R23. Administrative Services, Facilities Construction and Management.
R23-19. Facility Use Rules.
R23-19-1. Purpose.

The purpose of this rule is to provide for use of state facilities for continued operation of state government.

R23-19-2. Authority.

This Rule is authorized under Section 63A-5-204, which authorizes the Executive Director of the Department of Administrative Services to adopt rules governing state grounds surrounding facilities managed by DFCM.

R23-19-3. Definitions.

(1) The following definitions are provided to assist in understanding language incorporated into the following Facility Use Rules:

(a) "Agency" - department, division or agency within the structure of the State of Utah.

(b) "DFCM" - Division of Facilities Construction and Management, a division within the Department of Administrative Services.

(c) "Director" - the director of the Division of Facilities Construction and Management.

(d) "Facility Use Application" - a form that needs to be completed by prospective user and approved by resident agency for activities held within state-owned facilities and contains 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 waiver under R23-19-2(24); (vi) any other special considerations being requested; and (vii) all applications shall be reviewed by DFCM Facilities Management group determining the applicable category for activity and fee assessment. This decision may be appealed using process described under R23-19-2(24).

(e) "Facility Use Permit" - permit issued to users authorizing the use of state-owned facilities for designated activities and contains 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 Subsection 23-19-4(18); and (viii) the authorized resident agency representative signature authorizing the activity.

(f) "Fees" - 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; (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. "Base Cost" is the actual cost to the State for utilities, janitorial, security services and cost of rental for equipment used for activity. The "Fee Schedule", which is subject to change, shall be approved by the Director. A fee schedule shall be provided to applicant at time of application. The content of any first amendment activity shall not be a basis for calculating any portion of the fee.

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

(h) "State" - state of Utah and any of its departments, divisions, agencies or commissions.

(i) "Freedom of Speech Activities" - 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) "Community Service Activities" - an activity closely related to community service activities including public awards, public recognition and public benefits.

(k) "State Sponsored Activities" - this shall include any activity directly sponsored by the state of Utah, its departments, agencies and commission and shall be exempt from fees and insurance costs.

(l) "Commercial Activities" - any activity not meeting above criteria shall be characterized as commercial activity. Endorsements for commercial purposes of products or services is prohibited.

R23-19-4. General Rules.

(1) Those intending to use state facilities must obtain scheduling and authorization of activities in advance from the agency/department head or facilities manager. If no facility manager exists, approval must be obtained from resident agency or its representative. Users must comply with all rules and procedures established. The proposed activity shall not interfere with the operation of governmental business or public access.

(2) All rules apply to state-owned or leased facilities.

(3) Users may use the facilities for activities scheduled 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, weddings and receptions in the White Community Memorial Chapel, and meetings in the State Office Building Auditorium. Endorsements for commercial purposes of products or services is prohibited.

(4) The state of Utah, any of its departments or divisions, or any 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 applying for 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 exempt or waived under 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 state 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 state-owned properties without the express

written consent of DFCM or the appropriate resident agency.

(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 state-owned facilities.

(10) To protect the beauty of state 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 resident agency.

(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 facility manager or resident agency.

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

(f) Users may not decorate on the outside of any building.

(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 resident agency.

(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 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) 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 state.

(17) No money may be collected at state facilities; all tickets, if required, must be pre-sold.

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

(a) The state shall reserve 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 state facility. These rules do not apply to facilities of public or higher education.

(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 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 of the Department of Administrative Services (DAS) or the director's designee. The Executive Director or designee shall make a written determination of approval or disapproval of the waiver request and state 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 DAS Executive Director or designee within five days of notification. The DAS Executive Director or designee shall conduct a hearing and make his decision in writing as to appeal of the initial disapproval of a waiver within five days of the submission of the appeal. The person hearing the appeal shall not be the same person who denied the original request. 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. 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 of the Department of Administrative Services (DAS) or his designee. The Executive Director or designee shall make a written

determination of approval or disapproval of the waiver request and state 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 DAS Executive Director or designee within five days of notification. The DAS Executive Director or designee shall conduct a hearing and make his decision in writing as to appeal of the initial disapproval of a waiver within five days of the submission of the appeal. The person hearing the appeal shall not be the same person who denied the original request. 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. 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 DFCM. Chaperons will help direct roaming guests, check rest rooms periodically, aid in maintaining reasonable behavior and enforcement of the rules.

R23-19-5. Use of Capitol Rotunda.

In addition to the provisions of Section 2, 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 south entrance under the main stairs, after 5:00 p.m., and shall use the south elevator between the first and second floors, unless prior arrangement has been made with DFCM.

(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 DFCM or Protective Services.

(12) In addition, DFCM may require two uniformed security personnel for every 400 participants and will be included as a part of the base cost paid by user.

(13) Protective Services will determine number and arrange for uniformed security personnel.

(14) Users shall control entrances to allow only those persons attending 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 office may provide a warning to such person or group to cease and desist from such non-complying act. If a State law enforcement office reasonably observes that such non-complying act is continuing after such warning, then a State law enforcement office may have the person or group removed from the Capitol premises as well as take any other appropriate action allowed by law.

R23-19-6. Use of State Office Building Auditorium.

In addition to the provisions of Section 2, 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 DFCM.

(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 DFCM.

(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) Sufficient supervision shall be present to insure that people use only the Auditorium or rest room areas on the 1st

floor of the State Office Building.

R23-19-7. Use of White Community Memorial Chapel.

In addition to the provisions of Section 2, the following rules for the White Community Memorial Chapel shall be observed:

(1) The Chapel area has pew seating for 129 people, balcony seating for 35 people and elevated front "stand" seating for 16 people, but the Fire Marshal has established an occupancy limit of 164 people which shall not be exceeded.

(a) Users may use the speaker's pulpit and upright piano.

(2) The lower level of the building has a large open meeting room with seating for 76 people conference style and the Fire Marshal has established an occupancy limit of 76 people which shall not be exceeded.

(a) Users may use the full rest room facilities and full kitchen facilities for small to medium sized groups. Kitchen use includes electric stove, oven, refrigerator, double sinks, and work counter.

(3) The following is available for use:

(a) small kitchen facilities;

(b) hot water;

(c) air conditioning;

(d) fire extinguisher in basement; and

(e) the elevator serving lower level and main floor of chapel.

(4) The Chapel will be available from 7 a.m. until 12 midnight, seven days a week, 365 days a year unless otherwise specified.

(5) All vehicles coming to Capitol Hill in conjunction with the activity should park in the lot between the Chapel and Council Hall.

(6) Notice of intent to display, prepare, or consume food shall be communicated to DFCM on the Facility Use Application Form prior to issuance of the permit. Users shall treat the equipment with the utmost care and leave the equipment in its original condition after use.

(7) Sufficient supervision shall be present to insure that damage does not occur to the premises.

R23-19-8. Use of Capitol Complex Grounds.

In addition to the provisions of Section 2, the following rules for the Capitol Complex Grounds shall be observed:

(1) Camping is prohibited on the State Capitol Complex 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 and business activities.

(4) No motor vehicle races, neither speed, time, endurance, exhibition nor driving competition shall be held on the Capitol Complex grounds.

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

(6) Sufficient supervision shall be present to insure that people use only designated area and to insure that no damage occurs.

R23-19-9. Rules for Other State-Owned Facilities.

(1) All General Rules shall be observed.

(2) Permission to use other state facilities must be obtained from the facility manager or resident agency for the facility.

R23-19-10. Solicitation Policy.

(1) Definitions

(a) "Solicitation" is 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.

(b) "State property" is all premises maintained by, or for the use of, a state agency, department or division.

(2) Policy

(a) Solicitation, whether on-site or through establishment of an on-going delivery service, is prohibited on state property 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

(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 ball 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 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.

R23-19-11. Waiver.

Notwithstanding any provision of this Facility Use Rules R23-19, a waiver of any provision therof, may be made in writing by the DFCM Facilities Management group, if it

determines in writing that the strict holding of the 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 that the waiver should be granted. The request for waiver shall be made in writing 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 similarly to the appeal of the denial of a Facility Use Application.

KEY: public buildings, facilities use*
January 1, 1998 **63A-5-204**
Notice of Continuation June 16, 1997

R27. Administrative Services, Fleet Operations.
R27-1. Identification Mark for State Motor Vehicles.
R27-1-1. Authority.

(1) Pursuant to Section 63A-9-401(5), the Department of Administrative Services is responsible for ensuring that state-owned vehicles for all departments, universities and colleges are marked as required by Section 41-1a-407. If "EX" license plates are required, the identification mark is also required, as described herein, for these agencies.

(2) Subsection 41-7-1.5(1)(b) requires the Department of Administrative Services to enact rules relating to the size and design of the identification mark.

R27-1-2. Identification Mark.

(1) The identification mark shall be a likeness of the Great Seal of the State of Utah. It shall be four inches in diameter. At the option of the entity operating the motor vehicle, the identification mark may include a banner not more than four inches high which may bear the entity's logo and such name of department or division as the entity may specify.

(2) An identification mark shall be placed on both sides of the motor vehicle. The required portion of the identification mark (State Seal) shall be placed on in a visible location on each side of the vehicle.

(3) The requirement for the display of the identification mark is not intended to preclude other markings to identify special purpose vehicles.

(4) Vehicles used for law enforcement purposes may, at the discretion of the operating agency, display a likeness of the Great Seal of the State of Utah, worked in the same colors as the identification mark described in Subsection R27-1-2 (1), in the center of a gold star for identification purposes. Other emergency response vehicles are not precluded from displaying additional appropriate markings. At the option of the agency, this seal may be placed on the front door above any molding and, where practicable, below the window at least four inches. The optional banner portion of the identification mark shall be placed immediately below the State Seal portion.

(5) It is the intent of these rules that these identification marks clearly identify the vehicles as being the property of the State of Utah. Additional markings should be applied discriminately so as not to detract from that intent.

R27-1-3. License Plates.

(1) Every vehicle owned and operated or leased for the exclusive use of the state shall have placed on it a registration plate displaying the letters "EX." At the option of the Division of Fleet operations, a plate signifying that the vehicle is assigned to the central motor pool may be allowed.

(2) Plates issued to Utah Highway Patrol vehicles may bear the capital letters "UHP," a beehive logo, and the call number of the vehicle for which the plate is issued. In lieu of the identification mark herein described, the Utah Highway Patrol may use a substitute identification mark of its own specification.

R27-1-4. Exceptions.

(1) Neither the "EX" license plates nor the identification marks need be displayed on state-owned motor vehicles if:

(a) the motor vehicle is in the direct service of the Governor, Lieutenant Governor, Attorney General, State Auditor or State Treasurer of Utah;

(b) the motor vehicle is used in official investigative work where secrecy is essential;

(c) the motor vehicle is provided to an official as part of a compensation package allowing unlimited personal use of that vehicle; or

(d) the personal security of the occupants of the vehicle would be jeopardized if the identification mark were in place.

(2) State vehicles which meet the criteria described in Subsection R27-1-4 (1) may be excused from these rules to display the identification mark and "EX" license plates. Exceptions shall be requested in writing from the Executive Director of the Department of Administrative Services and shall continue in force only so long as the use of the vehicle continues.

(3) Exceptions shall expire when vehicles are replaced. New exceptions shall be requested when new vehicles are placed in use.

(4) No motor vehicle required to display "EX" license plates shall be exempt from displaying the identification mark.

R27-1-5. Effective Date.

(1) All motor vehicles obtained or leased for use after the effective date of these rules shall display the prescribed identification mark.

(2) All passenger motor vehicles owned, leased for use or operated by the state, except as herein excepted, shall display an identification mark as required by these rules no later than two years following the effective date of this rule. Special purpose vehicles currently displaying markings other than as prescribed herein may retain such markings until the vehicle bearing them is disposed of.

KEY: motor vehicles
1988 **41-1a-407**
Notice of Continuation December 2, 1997 **41-7-1.5**

R28. Administrative Services, Fleet Operations, Surplus Property.
R28-7. Surplus Property Rate Schedule.
R28-7-2. Definitions.

"S and H" means Services and Handling Charges.

"USASP" means Utah State Agency for Surplus Property.

R28-7-3. Rate Schedule.

The USASP operates by assessing S and H charges on property sold or donated. The S and H charges are based on the cost, direct and indirect, of administering the USASP program.

A. The USASP rate structure includes several individual rate schedules for different types of surplus property sales and/or services provided. The entire USASP rate structure is reevaluated at least annually and individual rates may be adjusted several times annually.

B. The USASP Director or designee may make exceptions to the rate structures referred to in "A" above for good cause. A good cause exception requires a weighing of:

1. The cost to the state;
2. The potential liability to the state;
3. The overall best interest of the state.

KEY: rates
1991 **63A-2-301**
Notice of Continuation December 2, 1997

R29. Administrative Services, Information Technology Services.

R29-2. Telecommunications Services and Requirements.

R29-2-1. Purpose.

As provided in Section 63A-6-106, all state agencies must subscribe to the telecommunications services of the Division of Information Technology Services, unless excepted by law. The purpose of this rule is to specify the standards and procedures required of state agencies for telecommunications services.

R29-2-2. Definitions.

(1) "agency" means all state agencies that fall within the purview 63A-6-106

(2) "division" means the Division of Information Technology Services.

R29-2-3. Required Agency Coordination with the Division of Information Technology Services.

A. Pursuant to Section 63A-6-106, all state agencies shall coordinate with and adhere to the requirements of the Division when:

1. in need of consulting assistance on telecommunications systems;
2. installing a new telecommunications system;
3. making additions or changes to a telecommunications system; or
4. moving all or some agency offices to a new location.

B. Agencies shall contact the Division about, and the Division shall provide assistance with:

1. evaluations of systems and system changes;
2. long distance services and costs;
3. technical training;
4. service and equipment procurement;
5. bid and proposal specifications and evaluations;
6. liaison with vendors;
7. maintenance contracts;
8. networking;
9. billing and questions on billings;
10. repair service;
11. operator assistance;
12. wiring and wire installation;
13. equipment and problems and alternatives;
14. line information and installation; and
15. other similar services.

R29-2-4. Delegation of Authority over Telecommunications Functions.

A. Pursuant to Section 63A-6-104, the Division may delegate specific telecommunications functions to specific agencies by written interagency agreement signed by the Division director and the head of the agency to which the authority is delegated.

B. Delegation agreements are subject to the approval of the executive director of the Department of Administrative Services.

C. Terms of the interagency agreement must adhere to the provisions of Section 63A-6-104(3) and shall be audited for compliance by the Division at least annually.

D. Upon an audit finding of agency non-compliance, the Division director shall issue a written report to the Director of the Department of Administrative Services recommending termination of the agreement or other corrective action. The Division shall send copies to the subject agency and head of the agency's department.

E. The Division shall provide any agency found in non-compliance an opportunity for an informal hearing or written response.

F. If, after receiving the agency's response, the Division still finds non-compliance with agreement terms, the Division shall terminate the agreement, subject to approval of the Director of the Department of Administrative Services.

R29-2-5. Telecommunications Standards and Specifications.

A. The Division shall develop and update a listing of statewide telecommunications standards and specifications. Agencies may obtain copies of the current standards and specifications from the Division upon request.

B. Because most standards and specifications may vary considerably from one system to another, the Division shall specify all applicable standards and specifications in each agency contract or interagency delegation agreement.

R29-2-6. Fee Schedules.

As provided in Section 63A-6-105, the Division shall determine a schedule of service fees to be charged agencies, based on the most cost effective and economical alternatives.

KEY: telecommunications, data processing*, appellate procedures

1992 63A-6-101 et seq.

Notice of Continuation December 15, 1997

R33. Administrative Services, Purchasing and General Services.

R33-1. Utah State Procurement Rules Definitions.

R33-1-1. Definitions.

A. Terms used in the procurement rules are defined in Section 63-56-5.

B. In addition:

(1) Actual Costs means direct and indirect costs which have been incurred for services rendered, supplies delivered, or construction built, as distinguished from allowable costs.

(2) Adequate Price Competition means when competitive sealed proposals are solicited and at least two responsible offerors independently contend for a contract to be awarded to the responsible offeror submitting the lowest evaluated price by submitting priced best and final offers meeting the requirements of the request for proposals. If the foregoing conditions are met, price competition shall be presumed to be "adequate" unless the procurement officer determines that there is not adequate competition.

(3) Brand Name or Equal Specification means a specification which uses a brand name specification to describe the standard of quality, performance, and other characteristics being solicited, and which invites the submission of equivalent products.

(4) Brand Name Specification means a specification calling for one or more products by manufacturers' names or catalogue numbers.

(5) Chief Procurement Officer means the procurement officer for the State of Utah.

(6) Consultant Services means work, rendered by either individuals or firms who possess specialized knowledge, experience, and expertise to investigate assigned problems or projects and to provide counsel, review, design, development, analysis, or advise in formulating or implementing programs or services or improvements in programs or services, including but not limited to such areas as management, personnel, finance, accounting, planning, and data processing.

(7) Cost Analysis means the evaluation of cost data for the purpose of arriving at estimates of costs to be incurred, prices to be paid, cost to be reimbursed, or costs actually incurred.

(8) Cost Data means factual information concerning the cost of labor, material, overhead, and other cost elements which are expected to be incurred or which have been actually incurred by the contractor in performing the contract.

(9) Cost Objective means a function, organizational subdivision, contract, or any other work unit for which provision is made to accumulate and measure the cost of processes, products, jobs, capitalized projects, and similar items.

(10) Discussions as used in source selection means negotiation during which the seller or buyer may alter or otherwise change the terms, price or other provisions of the proposed contract. Discussion can be conducted under competitive sealed proposals, sole source, and emergency procurements; such discussion is not permissible under competitive sealed bidding except to the extent in the first phase of multi-step bidding.

(11) Established Market Price means a current price, established in the usual and ordinary course of trade between buyers and sellers, which can be substantiated from sources independent of the manufacturer or supplier.

(12) Lease means a contract for the use of equipment or real property under which title does not pass to the purchasing agency.

(13) Prequalification for Inclusion on Bidders Lists means determining that a prospective bidder or offeror satisfies the criteria established for receipt of solicitations when and as issued.

(14) Price Analysis means the evaluation of price data without analysis of the separate cost components and profit which may assist in arriving at prices to be paid or costs to be reimbursed.

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

(16) Professional Services means work rendered by an independent contractor who has a professed knowledge of some department of learning or science used by its practical application to the affairs of others or in the practice of an art founded on it, including but not limited to accounting and auditing, court reporters, X-ray technicians, legal, medical, nursing, education, engineering, actuarial, architecture, veterinarians, and research. The knowledge is founded upon prolonged and specialized intellectual training which enables a particular service to be rendered. The word "professional" implies professed attainments in special knowledge as distinguished from mere skills.

(17) Property means all real property, personal property, or both, owned by a purchasing agency.

(18) Providers means suppliers of services, which might be termed "personal services", to benefit clients or citizens of the enacting jurisdiction which services otherwise might be performed by its own employees. For example, an enacting jurisdiction might contract with a school to conduct a training program for the handicapped. Similarly, the state might contract with persons to provide foster homes for children. It will be necessary to ascertain on a case-by-case basis whether the services to be rendered will involve extended analysis and significant features of judgment.

(19) Qualified Products List means a list of supplies, services, or construction items described by model or catalogue numbers, which, prior to solicitation, the purchasing agency has determined will meet the applicable specification requirements.

(20) Solicitation means an Invitation for Bids, a Request for Proposals, or any other document, such as a request for quotations, issued by the purchasing agency for the purpose of soliciting offers to perform a contract.

(21) Suppliers means prospective bidders or offerors, as used in section 63-56-27 of the Utah Procurement Code.

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R33. Administrative Services, Purchasing and General

Services.

R33-2. Procurement Organization.

R33-2-101. Delegation of Authority of the Chief Procurement Officer.

The Chief Procurement Officer may delegate in writing any authority Pursuant to Section 63-56-10 as deemed appropriate to any employees of the office of the Chief Procurement Officer or of a purchasing agency, respectively. These delegations shall remain in effect unless modified or until revoked in writing.

R33-2-102. Authority to Make Small Purchases.

(1) General. The Chief Procurement Officer may delegate to the head of any using agency the authority to make a purchase expected to be less than $20,000 for supplies and services. This delegation shall be in writing and may be limited as the Chief Procurement Officer directs.

(2) Purchasing Agencies Shall Make Small Purchases Pursuant to Rules. Purchasing agencies shall exercise authority as may be delegated, and such small purchases shall be made pursuant to subpart 3-3 of part 3 of these rules.

R33-2-103. Authority of Procurement Officers.

Procurement officers may take any action of a procurement nature to advance economic well-being and efficient operation of the state or agency so long as that action is not in conflict with the Utah Procurement Code or the Utah Procurement Rules.

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R33. Administrative Services, Purchasing and General Services.

R33-3. Source Selection and Contract Formation.

R33-3-1. Competitive Sealed Bidding; Multi-Step Sealed Bidding.

3-101 Content of the Invitation For Bids.

(1) Use. The Invitation for Bids is used to initiate a competitive sealed bid procurement.

(2) Content. The Invitation for Bids include the following:

(a) Instructions and information to bidders concerning the bid submission requirements, including the time and closing date for submission of bids, the address of the office to which bids are to be delivered, and any other special information;

(b) The purchase description, evaluation factors, delivery or performance schedule, and inspection and acceptance requirements not included in the purchase description;

(c) The contract terms and conditions, including warranty and bonding or other security requirements, as applicable.

(3) Incorporation by Reference. The Invitation for Bids may incorporate documents by reference provided that the Invitation for Bids specifies where the documents can be obtained.

(4) Acknowledgement of Amendments. The Invitation for Bids shall require the acknowledgement of the receipt of all amendments issued.

3-102 Bidding Time. Bidding time is the period of time between the date of distribution of the Invitation for Bids and the date set for opening of bids. In each case bidding time will be set to provide bidders a reasonable time to prepare their bids. A minimum of 10 calendar days shall be provided unless a shorter time is deemed necessary for a particular procurement as determined in writing by the Chief Procurement Officer.

3-103 Bidder Submissions.

(1) Bid Form. The Invitation for Bids shall provide a form which shall include space in which the bid price shall be inserted and which the bidder shall sign and submit along with all other necessary submissions.

(2) Telegraphic Bids. The Invitation for Bids may state that telegraphic bids and mailgrams will be considered whenever they are received in hand at the designated office by the time specified for bid opening. Telegraphic bids or mailgrams shall contain specific reference to the Invitation for Bids, the time and place of delivery, and a statement that the bidder agrees to all the terms, conditions, and provisions of the Invitation for Bids. Bidders submitting telegraphic or mailgram bids shall submit a formal bid on the Invitation for Bids form within three days of the bid opening date or a time designated by the procurement officer.

(3) Bid Samples and Descriptive Literature.

(a) Descriptive literature means information available in the ordinary course of business which shows the characteristics, construction, or operation of an item and assists the purchasing agency in considering whether the item meets requirements or criteria set forth in the invitation.

(b) Bid sample means a sample to be furnished by a bidder to show the characteristics of the item offered in the bid.

(c) Bid samples or descriptive literature may be required when it is necessary to evaluate required characteristics of the items bid.

(d) Samples of items, when called for in the Invitation for Bids, must be furnished free of expense, and if not destroyed by testing, will upon request, be returned at the bidder's expense. Samples submitted by the successful bidder may be held for comparison with merchandise furnished and will not necessarily be returned. Samples must be labeled or otherwise identified as called for by the purchasing agency.

(4) Bid Security. Bid and performance bonds or other security may be required for supply contracts or service contracts as the procurement officer deems advisable to protect the interests of the purchasing agency. Any requirements must be set forth in the solicitation. Bid or performance bonds should not be used as a substitute for a determination of bidder or offeror responsibility.

(5) Bid Price. Bid prices submitted in response to an invitation for bids must stand alone and may not be dependent upon a bid submitted by any other bidder. A bid reliant upon the submission of another bidder will not be considered for award.

3-104 Public Notice.

(1) Distribution. Invitation for Bids or notices of the availability of Invitation for Bids shall be mailed or otherwise furnished to a sufficient number of bidders for the purpose of securing reasonable competition. Notices of availability shall indicate where, when, and for how long Invitation for Bids may

be obtained; generally describe the supply, service, or construction desired; and may contain other appropriate information. Where appropriate, the procurement officer may require payment of a fee or a deposit for the supplying of the Invitation for Bids.

(2) Publication. Every procurement in excess of $20,000 shall be publicized in any or all of the following:

(a) in a newspaper of general circulation;

(b) in a newspaper of local circulation in the area pertinent to the procurement;

(c) in industry media; or

(d) in a government publication designed for giving public notice.

(3) Public Availability. A copy of the Invitation for Bids shall be made available for public inspection at the procurement officer's office.

3-105 Bidder List; Prequalification.

(1) Purpose. Lists of qualified prospective bidders may be compiled and maintained by purchasing agencies for the purpose of soliciting competition on various types of supplies, services, and construction. Qualifications for inclusion on the lists may include legal competence to contract and capabilities for production and distribution as considerations. However, solicitations shall not be restricted to prequalified suppliers, and unless otherwise provided inclusion or exclusion on the name of a business does not determine whether the business is responsible with respect to a particular procurement or otherwise capable of successfully performing a contract.

(2) Public Availability. Subject to procedures established by the procurement officer, names and addresses on bidder lists shall be available for public inspection.

3-106 Pre-Bid Conferences.

Pre-bid conferences may be conducted to explain the procurement requirements. They shall be announced to all prospective bidders known to have received an Invitation for Bids. The conference should be held long enough after the Invitation for Bids has been issued to allow bidders to become familiar with it, but sufficiently before bid opening to allow consideration of the conference results in preparing their bids. Nothing stated at the pre-bid conference shall change the Invitation for Bids unless a change is made by written amendment as provided in section 3-107 and the Invitation for Bids and the notice of the pre-bid conference shall so provide. If a written summary of the conference is deemed advisable by the procurement officer, a copy shall be supplied to all those prospective bidders known to have received an Invitation for Bids and shall be available as a public record.

3-107 Amendments to Invitation for Bids.

(1) Application. Amendments should be used to:

(a) make any changes in the Invitation for Bids including changes in quantity, purchase descriptions, delivery schedules, and opening dates;

(b) correct defects or ambiguities; or

(c) furnish to other bidders information given to one bidder if the information will assist the other bidders in submitting bids or if the lack of information would be equitable to other bidders.

(2) Form. Amendments to Invitation for bids shall be identified as such and shall require that the bidder acknowledge receipt of all amendments issued.

(3) Distribution. Amendments shall be sent to all prospective bidders known to have received an Invitation for Bids.

(4) Timeliness. Amendments shall be distributed within a reasonable time to allow prospective bidders to consider them in preparing their bids. If the time set for bid opening will not permit proper preparation, to the extent possible the time shall be increased in the amendment or, if necessary, by telegram or telephone and confirmed in the amendment.

3-108 Pre-Opening Modification of Withdrawal of Bids.

(1) Procedure. Bids may be modified or withdrawn by written or telegraphic notice received in the office designated in the Invitation for Bids prior to the time set for bid opening. A telegraphic modification or withdrawal received by telephone prior to bid opening from the receiving telegraph company will be effective if the telegraph company confirms the message by sending a copy of the written telegram showing that the message was received prior to bid opening.

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

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

3-109 Late Bids, Late Withdrawals, and Late Modifications.

(1) Definition. Any bid, withdrawal, or modification received at the address designated in the Invitation for Bids after the time and date set for opening of bids at the place designated for opening is late.

(2) Treatment. No late bid, late modification, or late withdrawal will be considered unless received before contract award, and the bid, modification, or withdrawal would have been timely but for the action or inaction of personnel directly serving the procurement activity or lateness otherwise not attributable to bidder's fault or negligence.

(3) Records. Records equivalent to those required in section 3-108 (3) shall be made and kept for each late bid, late modification, or late withdrawal.

3-110 Receipt, Opening, and Recording of Bids.

(1) Receipt. Upon receipt, all bids and modifications will be time stamped, but not opened. They shall be stored in a secure place until bid opening time.

(2) Opening and Recording. Bids and modifications shall be opened publicly, in the presence of one or more witnesses, at the time and place designated in the Invitation for Bids. The names of the bidders, the bid price, and other information as is deemed appropriate by the procurement officer, shall be read aloud or otherwise be made available. The opened bids shall be available for public inspection except to the extent the bidder designates trade secrets or other proprietary data to be confidential as set forth in subsection (3) of this section. Material so designated shall accompany the bid and shall be readily separable from the bid in order to facilitate public inspection of the nonconfidential portion of the bid. Make and model, and model or catalogue numbers of the items offered, deliveries, and terms of payment shall be publicly available at the time of bid opening regardless of any designation to the

contrary.

(3) Confidential Data. The procurement officer shall examine the bids to determine the validity of any requests for nondisclosure of trade secrets and other proprietary data identified in writing. If the parties do not agree as to the disclosure of data, the procurement officer shall inform the bidders in writing what portions of the bids will be disclosed.

3-111 Mistakes in Bids.

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

(2) Mistakes Discovered Before Opening. A bidder may correct mistakes discovered before bid opening by withdrawing or correcting the bid as provided in section 3-108.

(3) Confirmation of Bid. When it appears from a review of the bid that a mistake has been made, the bidder should be requested to confirm the bid. Situations in which confirmation should be requested include obvious, apparent errors on the face of the bid or a bid unreasonably lower than the other bids submitted. If the bidder alleges mistake, the bid may be corrected or withdrawn if the conditions set forth in subsection (1), (4) and (6) of this section are met.

(4) Mistakes Discovered After Opening But Before Award. This subsection sets forth procedures to be applied in three situations described in paragraphs (a), (b) and (c) below in which mistakes in bids are discovered after opening but before award.

(a) Minor Informalities. Minor informalities are matters of form rather than substance evident from the bid document, or insignificant mistakes that can be waived or corrected without prejudice to other bidders; that is, the effect on price, quantity, quality, delivery, or contractual conditions is not significant. The procurement officer may waive these informalities. Examples include the failure of a bidder to:

(i) return the number of signed bids required by the Invitation for Bids;

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

(iii) acknowledge receipt of an amendment to the Invitation for Bids, but only if:

(A) it is clear from the bid that the bidder received the amendment and intended to be bound by its terms; or

(B) the amendment involved had a negligible effect on price, quantity, quality, or delivery.

(C) Mistakes Where Intended Bid is Evident. If the mistake and the intended bid are clearly evident on the face of the bid document, the bid shall be corrected to the intended bid and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid document are typographical errors, errors in extending unit prices, transposition errors, and arithmetical errors.

(D) Mistakes Where Intended Bid is Not Evident. A bidder may be permitted to withdraw a low bid if:

(i) a mistake is clearly evident on the face of the bid document but the intended bid is not similarly evident; or

(ii) the bidder submits proof of evidentiary value which clearly and convincingly demonstrates that a mistake was made.

(5) Mistakes Discovered After Award. Mistakes shall not be corrected after award of the contract.

(6) Written Approval or Denial Required. The procurement officer shall approve or deny, in writing, a bidder's request to correct or withdraw a bid. Approval or denial may be so indicated on the bidder's written request for correction or withdrawal.

3-112 Bid Evaluation and Award.

(1) General. The contract is to be awarded to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the Invitation for Bids. The Invitation for Bids shall set forth the requirements and criteria which will be used to determine the lowest responsive and responsible bidder. No bid shall be evaluated for any requirements or criteria that are not disclosed in the Invitation for Bids. An Invitation for Bids, a Request for Proposals, or other solicitation may be canceled, or any or all bids or proposals may be rejected, in whole or in part, when it is the best interests of the purchasing agency as determined by the purchasing agency. In the event of cancellation of the solicitation or rejection of all bids or proposals received in response to a solicitation, the reasons for cancellation or rejection shall be made a part of the bid file and shall be available for public inspection and the purchasing agency shall (a) re-solicit new bids using the same or revised specifications; or (b) withdraw the requisition for supplies or services.

(2) Responsibility and Responsiveness. Responsibility of prospective contractors is covered by subpart 3-7 of these rules. Responsiveness of bids is covered by Subsection 63-56-5(21) and responsive bidder is defined in Subsection 63-56-5(23).

(3) Product Acceptability. The Invitation for Bids shall set forth the evaluation criteria to be used in determining product acceptability. It may require the submission of bid samples, descriptive literature, technical data, or other material. It may also provide for:

(a) inspection or testing of a product prior to award for such characteristics as quality or workmanship;

(b) examination of such elements as appearance, finish, taste, or feel; or

(c) other examinations to determine whether it conforms with any other purchase description requirements. The acceptability evaluation is not conducted for the purpose of determining whether one bidder's item is superior to another but only to determine that a bidder's offering is acceptable as set forth in the Invitation for Bids. Any bidder's offering which does not meet the acceptability requirements shall be rejected.

(4) Determination of Lowest Bidder. Bids will be evaluated to determine overall economy for the intended use, in accordance with the evaluation criteria set forth in the Invitation for Bids. Examples of criteria include transportation cost, energy cost, ownership and other identifiable costs or life-cycle cost formulae. Evaluation factors need not be precise predictors of actual future costs, but to the extent possible the evaluation factors shall:

(a) be reasonable estimates based upon information the purchasing agency has available concerning future use; and

(b) treat all bids equitably.

(5) Extension of Time for Bid or Proposal Acceptance. After opening bids or proposals, the procurement officer may request bidders or offerors to extend the time during which their bids or proposals may be accepted, provided that, with regard to bids, no other change is permitted. The reasons for requesting an extension shall be documented.

(6) Only One Bid or Proposal Received. If only one responsive bid is received in response to an Invitation for Bids, including multi-step bidding, an award may be made to the single bidder if the procurement officer finds that the price submitted is fair and reasonable, and that either other prospective bidders had reasonable opportunity to respond, or there is not adequate time for resolicitation. Otherwise, the bid may be rejected and:

(a) new bids or offers may be solicited;

(b) the proposed procurement may be canceled; or

(c) if the procurement officer determines in writing that the need for the supply of service continues but that the price of the one bid is not fair and reasonable and there is no time for resolicitation or resolicitation would likely be futile, the procurement may then be conducted under subpart 3-4 or subpart 3-5, as appropriate.

(7) Multiple or Alternate Bids or Proposals. Unless multiple or alternate bids or offers are specifically provided for, the solicitation shall state they will not be accepted. When prohibited, the multiple or alternate bids or offers shall be rejected although a clearly indicated base bid shall be considered for award as though it were the only bid or offer submitted by the bidder or offeror. The provisions of this subsection shall be set forth in the solicitation, and if multiple or alternate bids are allowed, it shall specify their treatment.

3-113 Tie Bids.

(1) Definition. Tie bids are low responsive bids from responsible bidders that are identical in price.

(2) Award. Award shall not be made by drawing lots, except as set forth below, or by dividing business among identical bidders. In the discretion of the procurement officer, award shall be made in any permissible manner that will discourage tie bids. Procedures which may be used to discourage tie bids include:

(a) where identical low bids include the cost of delivery, award the contract to the bidder farthest from the point of delivery;

(b) award the contract to the identical bidder who received the previous award and continue to award succeeding contracts to the same bidder so long as all low bids are identical;

(c) award to the identical bidder with the earliest delivery date;

(d) award to a Utah resident bidder or for a Utah produced product where other tie bids are from out of state;

(e) if price is considered excessive or for other reason the bids are unsatisfactory, reject all bids and negotiate a more favorable contract in the open market; or

(f) if no permissible method will be effective in discouraging tie bids and a written determination is made so stating, award may be made by drawing lots.

(3) Record. Records shall be made of all Invitations for Bids on which tie bids are received showing at least the following information:

(a) the Invitation for Bids;

(b) the supply, service, or construction item;

(c) all the bidders and the prices submitted; and

(d) procedure for resolving tie bids. A copy of each record shall be sent to the Attorney General if the tie bids are in excess of $8,000.

3-114 Multi-Step Sealed Bidding.

(1) Definition. Multi-step sealed bidding is a two-phase process consisting of a technical first phase composed of one or more steps in which bidders submit unpriced technical offers to be evaluated by the purchasing agency, and a second phase in which those bidders whose technical offers are determined to be acceptable during the first phase have their price bids considered. It is designed to obtain the benefits of competitive sealed bidding by award of a contract to the lowest responsive, responsible bidder, and at the same time obtain the benefits of the competitive sealed proposals procedure through the solicitation of technical offers and the conduct of discussions to arrive at technical offers and terms acceptable to the purchasing agency and suitable for competitive pricing.

(2) Use. The multi-step sealed bidding method will be used when the procurement officer deems it to the advantage of the purchasing agency. Multi-step sealed bidding will thus be used when it is considered desirable:

(a) to invite and evaluate technical offers to determine their acceptability to fulfill the purchase description requirements;

(b) to conduct discussions for the purposes of facilitating understanding of the technical offer and purchase description requirements and, where appropriate, obtain supplemental information, permit amendments of technical offers, or amend the purchase description;

(c) to accomplish subsections (a) and (b) of this section prior to soliciting priced bids; and

(d) to award the contract to the lowest responsive and responsible bidder in accordance with the competitive sealed bidding procedures.

3-115 Pre-Bid Conferences in Multi-Step Sealed Bidding.

Prior to the submission of unpriced technical offers, a pre-bid conference as contemplated by section 3-106 may be conducted by the procurement officer. The procurement officer may also hold a conference of all bidders in accordance with section 3-106 at any time during the evaluation of the unpriced technical offers.

3-116 Procedure for Phase One of Multi-Step Sealed Bidding.

(1) Form. Multi-step sealed bidding shall be initiated by the issuance of an Invitation for Bids in the form required by section 3-101. In addition to the requirements set forth in section 3-101, the multi-step Invitation for Bids shall state:

(a) that unpriced technical offers are requested;

(b) whether price bids are to be submitted at the same time as unpriced technical offers; if they are, the price bids shall be submitted in a separate sealed envelope;

(c) that it is a multi-step sealed bid procurement, and priced bids will be considered only in the second phase and only from those bidders whose unpriced technical offers are found acceptable in the first phase;

(d) the criteria to be used in the evaluation of the unpriced

technical offers;

(e) that the purchasing agency, to the extent the procurement officer finds necessary, may conduct oral or written discussions of the unpriced technical offers;

(f) that bidders may designate those portions of the unpriced technical offers which contain trade secrets or other proprietary data which are to remain confidential; and

(g) that the item being procured shall be furnished generally in accordance with the bidder's technical offer as found to be finally acceptable and shall meet the requirements of the Invitation for Bids.

(2) Amendments to the Invitation for Bids. After receipt of unpriced technical offers, amendments to the Invitation for Bids shall be distributed only to bidders who submitted unpriced technical offers and they shall be allowed to submit new unpriced technical offers or to amend those submitted. If, in the opinion of the procurement officer, a contemplated amendment will significantly change the nature of the procurement, the Invitation for Bids shall be canceled in accordance with Subsection R33-3-1 3-112(1) of these rules and a new Invitation for Bids issued.

(3) Receipt and Handling of Unpriced Technical Offers. Unpriced technical offers shall be opened publicly, identifying only the names of the bidders. Technical offers and modifications shall be time stamped upon receipt and held in a secure place until the established due date. After the date established for receipt of bids, a register of bids shall be open to public inspection and shall include the name of each bidder, and a description sufficient to identify the supply, service, or construction item offered. Prior to the award of the selection of the lowest responsive and responsible bidder following phase two, technical offerors shall be shown only to purchasing agency personnel having a legitimate interest in them. Bidders may request nondisclosure of trade secrets and other proprietary data identified in writing.

(4) Evaluation of Unpriced Technical Offers. The unpriced technical offers submitted by bidders shall be evaluated solely in accordance with the criteria set forth in the Invitation for Bids. The unpriced technical offers shall be categorized as:

(a) acceptable;

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

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

The procurement officer may initiate phase two of the procedure if, in the procurement officer's opinion, there are sufficient acceptable unpriced technical offers to assure effective price competition in the second phase without modification or alteration of the offers. If the procurement officer finds that this is not the case, the procurement officer shall issue an amendment to the Invitation for Bids or engage in technical discussions as set forth in subsection (5) of this section.

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

(6) Notice of Unacceptable Unpriced Technical Offer. When the procurement officer determines a bidder's unpriced technical offer to be unacceptable, the officer shall notify the bidder. The bidders shall not be afforded an additional opportunity to supplement technical offers.

3-117 Mistakes During Multi-Step Sealed Bidding.

Mistakes may be corrected or bids may be withdrawn during phase one:

(a) before unpriced technical offers are considered;

(b) after any discussions have commenced under section 3-116(5) (procedure for Phase One of Multi-Step Sealed Bidding, Discussion of Unpriced Technical Offers); or

(c) when responding to any amendment of the Invitation for Bids. Otherwise mistakes may be corrected or withdrawal permitted in accordance with section 3-111.

3-118 Carrying Out Phase Two.

(1) Initiation. Upon the completion of phase one, the procurement officer shall either:

(a) open price bids submitted in phase one from bidders whose unpriced technical offers were found to be acceptable; provided, however, that the offers have remained unchanged, and the Invitation for Bids has not been amended; or

(b) invite each acceptable bidder to submit a price bid.

(2) Conduct. Phase two is to be conducted as any other competitive sealed bid procurement except:

(a) as specifically set forth in section 3-114 through section 3-120 of these rules; and

(b) no public notice need be given of this invitation to submit.

3-119 Procuring Governmental Produced Supplies or Services.

Purchasing agency requirements may be fulfilled by procuring supplies produced or services performed incident to programs such as industries of correctional or other governmental institutions. The procurement officer shall determine whether the supplies or services meet the purchasing agency's requirements and whether the price represents a fair market value for the supplies or services. If it is determined that the requirements cannot thus be met or the price is not fair and reasonable, the procurement may be made from the private sector in accordance with the Utah Procurement Code. When procurements are made from other governmental agencies, the private sector need not be solicited to compete against them.

3-120 Purchase of Items Separately from Construction Contract.

The procurement officer is authorized to determine whether a supply item or group of supply items shall be included as a part of, or procured separately from, any contract for construction.

3-121 Exceptions to Competitive Sealed Bid Process.

(1) The Chief Procurement Officer, head of a purchasing

agency or designee may utilize alternative procurement methods to purchase items such as the following when determined to be more practicable or advantageous to the state.

(a) Used vehicles

(b) Livestock

(2) Alternative procurement methods including informal price quotations and direct negotiations may be used by the Chief Procurement Officer, head of the purchasing agency or designee for the following:

(a) Hotel conference facilities and services

(b) Speaker honorariums

(3) Documentation of the alternative procurement method utilized shall be part of the contract file.

R33-3-2. Competitive Sealed Proposals.

3-201 Use of Competitive Sealed Proposals.

(1) Appropriateness. Competitive sealed proposals may be a more appropriate method for a particular procurement or type of procurement than competitive sealed bidding, after consideration of factors such as:

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

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

(c) whether the relative skills or expertise of the offerors will have to be evaluated;

(d) whether cost is secondary to the characteristics of the product or service sought, as in a work of art; and

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

(2) Determinations.

(a) Except as provided in Section 63-56-21 of the Utah Procurement Code, before a solicitation may be issued for competitive sealed proposals, the procurement officer shall determine in writing that competitive sealed proposals is a more appropriate method for contracting than competitive sealed bidding.

(b) The procurement officer may make determinations by category of supply, service, or construction item rather than by individual procurement. Procurement of the types of supplies, services, or construction so designated may then be made by competitive sealed proposals without making the determination competitive sealed bidding is either not practicable or not advantageous. The officer who made the determination may modify or revoke it at any time and the determination should be reviewed for current applicability from time to time.

(3) Professional Services. For procurement of professional services, agencies shall submit to bidding procedures wherever practicable through the RFP procedures. Examples of professional services generally best procured through the RFP process are accounting and auditing, court reporters, x-ray technicians, legal, medical, nursing, education, actuarial, veterinarians, and research. The procurement officer will make the determination. Architecture and engineering professional services are to be procured in compliance with R33-5-510.

3-202 Content of the Request for Proposals.

The Request for Proposals shall be prepared in accordance with section 3-101 provided that it shall also include:

(a) a statement that discussions may be conducted with offerors who submit proposals determined to be reasonably susceptible of being selected for award, but that proposals may be accepted without discussions; and

(b) a statement of when and how price should be submitted.

3-203 Proposal Preparation Time.

Proposal preparation time shall be set to provide offerors a reasonable time to prepare their proposals. A minimum of 10 calendar days shall be provided unless a shorter time is deemed necessary for a particular procurement as determined in writing by the procurement officer.

3-204 Form of Proposal.

The manner in which proposals are to be submitted, including any forms for that purpose, may be designated as a part of the Request for Proposals.

3-205 Public Notice.

Public notice shall be given by distributing the Request for Proposals in the same manner provided for distributing an Invitation for Bids under section 3-104.

3-206 Pre-Proposal Conferences.

Pre-proposal conferences may be conducted in accordance with section 3-106. Any conference should be held prior to submission of initial proposals.

3-207 Amendments to Request for Proposals.

Amendments to the Request for Proposals may be made in accordance with section 3-107 prior to submission of proposals. After submission of proposals, amendments may be made in accordance with section 3-118(2).

3-208 Modification or Withdrawal of Proposals.

Proposals may be modified or withdrawn prior to the established due date in accordance with section 3-108. For the purposes of this section and section 3-209, the established due date is either the date and time announced for receipt of proposals or receipt of modifications to proposals, if any; or if discussions have begun, it is the date and time by which best and final offers must be submitted, provided that only offerors who submitted proposals by the time announced for receipt of proposals may submit best and final offers.

3-209 Late Proposals, Late Withdrawals, and Late Modifications.

(1) Definition. Except for modification allowed pursuant to negotiation, any proposal, withdrawal, or modification received after the established due date and time at the place designated for receipt of proposals is late.

(2) Treatment. No late proposal, late modification, or late withdrawal will be considered unless received before contract award, and the late proposal would have been timely but for the action or inaction of personnel directly serving the procurement activity or lateness otherwise not attributable to offeror's fault or negligence.

(3) Records. All documents shall be kept relating to the acceptance of any late proposal, modification or withdrawal.

3-210 Receipt and Registration of Proposals.

(1) Proposals shall be opened publicly, identifying only the names of the offerors. Proposals and modifications shall be time stamped upon receipt and held in a secure place until the established due date. After the date established for receipt of proposals, a register of proposals shall be open to public

inspection and shall include for all proposals the name of each offeror, the number of modifications received, if any, and a description sufficient to identify the supply, service, or construction item offered. Prior to award proposals and modifications shall be shown only to purchasing agency personnel having a legitimate interest in them.

(2) Proposals of the successful offeror(s) shall be open to public inspection for a period of 90 days after selection of the successful offeror(s). Proposals of offerors who are not awarded contracts shall not be open to public inspection.

(3) If the offeror selected for award has requested in writing the non-disclosure of trade secrets and other proprietary data so identified, the head of the agency conducting the procurement or a designee of this officer shall examine the request in the proposal to determine its validity prior to award of the contract. If the parties do not agree as to the disclosure of data in the contract, the head of the agency conducting the procurement or a designee of this officer shall inform the offeror in writing what portion of the proposal will be disclosed and that, unless the offeror withdraws the proposal it will be disclosed.

3-211 Evaluation of Proposals.

(1) Evaluation Factors in the Request for Proposals. The Request for Proposals shall state all of the evaluation factors and their relative importance, including price.

(2) Evaluation. The evaluation shall be based on the evaluation factors set forth in the Request for Proposals. Numerical rating systems may be used but are not required. Factors not specified in the Request for Proposals shall not be considered in determining award of contract.

(3) Classifying Proposals. For the purpose of conducting discussions under section 3-212, proposals shall be initially classified as:

(a) acceptable;

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

(c) unacceptable.

3-212 Proposal Discussion with Individual Offerors.

(1) "Offerors" Defined. For the purposes of this section, the term "offerors" includes only those businesses submitting proposals that are acceptable or potentially acceptable. The term shall not include businesses which submitted unacceptable proposals.

(2) Purposes of Discussions. Discussions are held to facilitate and encourage an adequate number of potential contractors to offer their best proposals, by amending their original offers, if needed.

(3) Conduct of Discussions. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussions and revisions of proposals. The procurement officer should establish procedures and schedules for conducting discussions. If during discussions there is a need for clarification or change of the Request for Proposals, it shall be amended to incorporate this clarification or change. Auction techniques and disclosure of any information derived from competing proposals are prohibited. Any oral clarification or change of a proposal shall be reduced to writing by the offeror.

(4) Best and Final Offers. The procurement officer shall establish a common time and date for submission of best and final offers. Best and final offers shall be submitted only once unless the procurement officer makes a written determination before each subsequent round of best and final offers demonstrating another round is in the purchasing agency's interest, and additional discussions will be conducted or the purchasing agency's requirements will be changed. Otherwise, no discussion of, or changes in, the best and final offers shall be allowed prior to award. Offerors shall also be informed that if they do not submit a notice of withdrawal or another best and final offer, their immediate previous offer will be construed as their best and final offer.

3-213 Mistakes in Proposals.

(1) Mistakes Discovered Before the Established Due Date. An offeror may correct mistakes discovered before the time and date established for receipt of proposals by withdrawing or correcting the proposal as provided in section 3-208.

(2) Confirmation of Proposal. When it appears from a review of the proposal before award that a mistake has been made, the offeror should be asked to confirm the proposal. If the offeror alleges mistake, the proposal may be corrected or withdrawn during any discussions that are held or if the conditions set forth in subsection (4) of this section are met.

(3) Mistakes Discovered After Receipt But Before Award. This subsection sets forth procedures to be applied in four situations in which mistakes in proposals are discovered after receipt of proposals but before award.

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

(b) Minor Informalities. Minor informalities, unless otherwise corrected by an offeror as provided in this section, shall be treated as they are under competitive sealed bidding.

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

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

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

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

(i) the mistake is clearly evident on the face of the proposal and the correct offer is not; or

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

(4) Mistakes Discovered After Award. Mistakes shall not

be corrected after award of the contract.

3-214 Award.

(1) Award Documentation. A written determination shall be made showing the basis on which the award was found to be most advantageous to the purchasing agency based on the factors set forth in the Request for Proposals.

(2) One Proposal Received. If only one proposal is received in response to a Request for Proposals, the procurement officer may, as the officer deems appropriate, either make an award or, if time permits, resolicit for the purpose of obtaining additional competitive sealed proposals.

3-215 Publicizing Awards.

(1) After a contract is entered into, notice of award shall be available in the purchasing agency's office.

3-216 Exceptions to Competitive Sealed Proposal Process.

(1) As authorized by Section 63-56-21(1) the Chief Procurement Officer or designee may determine that for a given request it is either not practicable or not advantageous for the state to procure a commodity or service referenced in section 3-201 above by soliciting competitive sealed proposals. When making this determination, the Chief Procurement Officer may take into consideration whether the potential cost of preparing, soliciting and evaluating competitive sealed proposals is expected to exceed the benefits normally associated with such solicitations. In the event of that it is so determined, the Chief Procurement Officer, head of a purchasing agency or designee may elect to utilize an alternative, more cost effective procurement method, which may include direct negotiations with a qualified vendor or contractor.

(2) Documentation of the alternative procurement method selected shall state the reasons for selection and shall be made a part of the contract file.

3-217 Multiple Award Contracts for Human Service Provider Services.

The Chief Procurement Officer, head of a purchasing agency or designee may elect to award multiple contracts for Human Service Provider Services through a competitive sealed proposal process by first determining the appropriate fee to be paid to providers and then contracting with all providers meeting the criteria established in the RFP. However this specialized system of contracting for human service provider services may only be used when:

(1) The agency has performed an appropriate analysis to determine appropriate rates to be paid;

(2) The agency files contain adequate documentation of the reasons the contractor was awarded the contract and the reasons for selecting a particular contractor to provide the service to each client; and

(3) The agency has a formal written complaint and appeal process, notice of which is provided to the contractors, and an internal audit function to insure that selection of the contractor from the list of awarded contractors was fair, equitable and appropriate.

R33-3-3. Small Purchases.

3-301 Authority to Make Small Purchases.

(1) Amount. The Office of the Chief Procurement Officer or purchasing agency may use these procedures if the procurement is estimated to be less than $20,000 for supplies, services or construction. If these procedures are not used, the other methods of source selection provided in Section 63-56-23 of the Utah Procurement Code and these rules shall apply.

(2) Existing Statewide Contracts. Supplies, services, or construction items available under statewide contracts or similar agreements shall be procured under these agreements in accordance with the provisions or requirements for use and not under this subpart unless otherwise authorized by the Chief Procurement Officer.

(3) Available from One Business Only. If the supply, service, or construction item is available only from one business, the sole source procurement method set forth in subpart 3-4 of these rules shall be used.

(4) Division of Requirements. Procurement requirements shall not be artificially divided to avoid using the other source selection methods set forth in Section 63-56-23 of the Utah Procurement Code.

3-302 Small Purchases of Supplies, Services or Construction Between $2,000 and $20,000.

(1) Procedure. Insofar as it is practical for small purchases of supplies, services or construction between $2,000 and $20,000, no less than two businesses shall be solicited to submit telephone or written quotations. Award shall be made to the business offering the lowest acceptable quotation.

(2) Records. The names of the businesses offering quotations and the date and amount of each quotation shall be recorded and maintained as a public record.

3-303 Small Purchases of $2,000 or Less.

The Chief Procurement Officer shall delegate to state agencies the ability to make purchases up to $2,000 without involvement of the Division of Purchasing and General Services. For purchases up to $500, the agency may select the best source without seeking competitive quotes. For purchases over $500 and up to $2,000, agencies shall obtain price competition, and shall purchase the item from the vendor offering the lowest quote. Unless otherwise delegated requests for all purchases over $2,000, and sole source purchases exceeding $500 shall be submitted to the Division of Purchasing and General Services.

3-304 Small Purchases of Services of Professionals, Providers, and Consultants.

If it is expected that the services of professionals, providers, and consultants can be procured for less than $20,000, the procedures specified in this subpart may be used.

R33-3-4. Sole Source Procurement.

3-401 Conditions For Use of Sole Source Procurement.

Sole source procurement shall be used only if a requirement is reasonably available from a single supplier. A requirement for a particular proprietary item does not justify a sole source procurement if there is more than one potential bidder or offeror for that item.

Examples of circumstances which could necessitate sole source procurement are:

(1) where the compatibility of equipment, accessories, replacement parts, or service is the paramount consideration;

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

(3) procurement of items for resale;

(4) procurement of public utility services.

The determination as to whether a procurement shall be made as a sole source shall be made by the procurement officer. Each request shall be submitted in writing by the using agency. The officer may specify the application of the determination and its duration. In cases of reasonable doubt, competition should be solicited. Any request by a using agency that a procurement be restricted to one potential contractor shall be accompanied by an explanation as to why no other will be suitable or acceptable to meet the need.

3-402 Negotiation in Sole Source Procurement.

The procurement officer shall conduct negotiations, as appropriate, as to price, delivery, and terms.

3-403 Unsolicited Offers.

(1) Definition. An unsolicited offer is any offer other than one submitted in response to a solicitation.

(2) Processing of Unsolicited Offers. If a purchasing agency that receives an unsolicited offer is not authorized to enter into a contract for the supplies or services offered, the head of the agency shall forward the offer to the procurement officer who has authority with respect to evaluation, acceptance, and rejection of the unsolicited offers.

(3) Conditions for Consideration. To be considered for evaluation an unsolicited offer:

(a) must be sufficiently detailed to allow a judgment to be made concerning the potential utility of the offer to the purchasing agency; and

(b) may be subject to testing under terms and conditions specified by the agency.

R33-3-5. Emergency Procurements.

3-501 Definition of Emergency Conditions.

An emergency condition is a situation which creates a threat to public health, welfare, or safety as may arise by reason of floods, epidemics, riots, equipment failures, or other reason as may be determined by the Chief Procurement Officer or designee. The existence of this condition creates an immediate and serious need for supplies, services, or construction that cannot be met through normal procurement methods.

3-502 Scope of Emergency Procurements.

Emergency procurement shall be limited to only those supplies, services, or construction items necessary to meet the emergency.

3-503 Authority to Make Emergency Procurements.

The Chief Procurement Officer may delegate in writing to any purchasing agency authority to make emergency procurements of up to an amount set forth in the delegation.

3-504 Source Selection Methods.

(1) General. The source selection method used shall be selected with a view to the end of assuring that the required supplies, services, or construction items are procured in time to meet the emergency. Given this constraint, competition that is practicable shall be obtained.

(2) After Unsuccessful Competitive Sealed Bidding. Competitive sealed bidding is unsuccessful when bids received pursuant to an Invitation for Bids are unreasonable, noncompetitive, or the low bid exceeds available funds as certified by the appropriate fiscal officer, and time or other circumstances will not permit the delay required to resolicit competitive sealed bids. If emergency conditions exist after or are brought about by an unsuccessful attempt to use competitive sealed bidding, an emergency procurement may be made.

3-505 Determination of Emergency Procurement.

The procurement officer or the agency official responsible for procurement shall make a written determination stating the basis for an emergency procurement and for the selection of the particular supplier. The determination shall be sent promptly to the Chief Procurement Officer.

R33-3-6. Responsibility.

3-601 Standards of Responsibility.

(1) Standards. Among factors to be considered in determining whether the standard of responsibility has been met are whether a prospective contractor has:

(a) available the appropriate financial, material, equipment, facility, and personnel resources and expertise, or the ability to obtain them, necessary to indicate capability to meet all contractual requirements;

(b) a satisfactory record of integrity;

(c) qualified legally to contract with the purchasing agency; and

(d) unreasonably failed to supply any necessary information in connection with the inquiry concerning responsibility.

Nothing shall prevent the procurement officer from establishing additional responsibility standards for a particular procurement, provided that these additional standards are set forth in the solicitation.

(2) Information Pertaining To Responsibility. A prospective contractor shall supply information requested by the procurement officer concerning the responsibility of the contractor. If the contractor fails to supply the requested information, the procurement officer shall base the determination of responsibility upon any available information or may find the prospective contractor nonresponsible if the failure is unreasonable.

3-602 Ability to Meet Standards.

The prospective contractor may demonstrate the availability of necessary financing, equipment, facilities, expertise, and personnel by submitting upon request:

(1) evidence that the contractor possesses the necessary items;

(2) acceptable plans to subcontract for the necessary items; or

(3) a documented commitment from, or explicit arrangement with, a satisfactory source to provide the necessary items.

3-603 Written Determination of Nonresponsibility Required.

If a bidder or offeror who otherwise would have been awarded a contract is found nonresponsible, a written determination of nonresponsibility setting forth the basis of the finding shall be prepared by the procurement officer. The determination shall be made part of the procurement file.

R33-3-7. Types of Contracts.

3-701 Policy Regarding Selection of Contract Types.

(1) General. The selection of an appropriate contract type

depends on factors such as the nature of the supplies, services, or construction to be procured, the uncertainties which may be involved in contract performance, and the extent to which the purchasing agency or the contractor is to assume the risk of the cost of performance of the contract. Contract types differ in the degree of responsibility assumed by the contractor for the costs of performance and the amount and kind of profit incentive offered the contractor to achieve or exceed specified standards or goals.

Among the factors to be considered in selecting any type of contract are:

(a) the type and complexity of the supply, service, or construction item being procured;

(b) the difficulty of estimating performance costs such as the inability of the purchasing agency to develop definitive specifications, to identify the risks to the contractor inherent in the nature of the work to be performed, or otherwise to establish clearly the requirements of the contract;

(c) the administrative costs to both parties;

(d) the degree to which the purchasing agency must provide technical coordination during the performance of the contract;

(e) the effect of the choice of the type of contract on the amount of competition to be expected;

(f) the stability of material or commodity market prices or wage levels;

(g) the urgency of the requirement;

(h) the length of contract performance; and

(i) federal requirements.

The purchasing agency should not contract in a manner that would place an unreasonable economic risk on the contractor, since this action would tend to jeopardize satisfactory performance on the contract.

(2) Use of Unlisted Contract Types. The provisions of this subpart list and define the principal contract types. In addition, any other type of contract, except cost-plus-a-percentage-of-cost, may be used provided the procurement officer determines in writing that this use is in the purchasing agency's best interest.

3-702 Fixed-Price Contracts.

(1) General. A fixed-price contract is the preferred and generally utilized type of contract. A fixed-price contract places responsibility on the contractor for the delivery of the product or the complete performance of the services or construction in accordance with the contract terms at a price that may be firm or subject to contractually specified adjustments. The fixed-price contract is appropriate for use when there is a reasonably definitive requirement, as in the case of construction or standard commercial products. The use of a fixed-price contract when risks are unknown or not readily measurable in terms of cost can result in inflated prices and inadequate competition; poor performance, disputes, and claims when performance proves difficult; or excessive profits when anticipated contingencies do not occur.

(2) Firm Fixed-Price Contract. A firm fixed-price contract provides a price that is not subject to adjustment.

(3) Fixed-Price Contract with Price Adjustment.

(a) A fixed-price contract with price adjustment provides for variation in the contract price under special conditions defined in the contract, other than customary provisions authorizing price adjustments due to modifications to the work. The formula or other basis by which the adjustment in contract price can be made shall be specified in the solicitation and the resulting contract. However, clauses providing for most-favored-customer prices for the purchasing agency, that is, the price to the purchasing agency will be lowered to the lowest priced sales to any other customer made during the contract period, shall not be used. Examples of conditions under which adjustments may be provided in fixed-price contracts are:

(i) changes in the contractor's labor contract rates;

(ii) changes due to rapid and substantial price fluctuations, which can be related to an accepted index; and

(iii) when a general price change alters the base price.

(b) If the contract permits unilateral action by the contractor to bring about the condition under which a price increase may occur, the contract shall reserve to the purchasing agency the right to reject the price increase and terminate the contract without cost or damages. Notice of the price increase shall be given by the contractor in the manner and within the time specified in the contract.

3-703 Cost-Reimbursement Contracts.

(1) General. The cost-reimbursement contract provides for payment to the contractor of allowable costs incurred in the performance of the contract as determined in accordance with part 7 of these rules and provided in the contract. This type of contract establishes at the outset an estimated cost for the performance of the contract and a dollar ceiling which the contractor may not exceed without prior approval of subsequent ratification by the procurement officer and, in addition, may provide for payment of a fee. The contractor agrees to perform as specified in the contract until the contract is completed or until the costs reach the specified ceiling, whichever occurs first.

This contract type is appropriate when the uncertainties involved in contract performance are of a magnitude that the cost of contract performance cannot be estimated with sufficient reasonableness to permit use of any type of fixed-price contract. In addition, a cost-reimbursement contract necessitates appropriate monitoring by purchasing agency personnel during performance so as to give reasonable assurance that the objectives of the contract are being met. It is particularly suitable for research, development, and study-type contracts.

(2) Determination Prior to Use. A cost-reimbursement contract may be used only when the procurement officer determines in writing that:

(a) a contract is likely to be less costly to the purchasing agency than any other type or that it is impracticable to obtain otherwise, the supplies, services, or construction;

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

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

(3) Cost Contract. A cost contract provides that the contractor will be reimbursed for allowable costs incurred in performing the contract.

(4) Cost-Plus-Fixed-Fee Contract. This is a cost-reimbursement type contract which provides for payment to the contractor of an agreed fixed fee in addition to reimbursement

of allowable, incurred costs. The fee is established at the time of contract award and does not vary whether the actual cost of contract performance is greater or less than the initial estimated cost established for the work. Thus, the fee is fixed but not the contract amount because the final contract amount will depend on the allowable costs reimbursed. The fee is subject to adjustment only if the contract is modified to provide for an increase or decrease in the work specified in the contract.

3-704 Cost Incentive Contracts.

(1) General. Cost incentive contracts provide for the sharing of cost risks between the purchasing agency and the contractor. This type of contract provides for the reimbursement to the contractor of allowable costs incurred up to a ceiling amount and establishes a formula in which the contractor is rewarded for performing at less than target cost or is penalized if it exceeds target cost. Profit or fee is dependent on how effectively the contractor controls cost in the performance of the contract.

(2) Fixed-Price Cost Incentive Contract.

(a) Description. In a fixed-price cost incentive contract, the parties establish at the outset a target cost, a target profit, a cost-sharing formula which provides a percentage increase or decrease of the target profit depending on whether the cost of performance is less than or exceeds the target cost, and a ceiling price. After performance of the contract, the actual cost of performance is arrived at based on the total incurred allowable cost as determined in accordance with part 7 of these rules and as provided in the contract. The final contract price is then established in accordance with the cost-sharing formula using the actual cost of performance. The final contract price may not exceed the ceiling price. The contractor is obligated to complete performance of the contract, and, if actual cost exceeds the ceiling price, the contractor suffers a loss.

(b) Objective. The fixed-price cost incentive contract serves three objectives. It permits the establishment of a firm ceiling price for performance of the contract which takes into account uncertainties and contingencies in the cost of performance. It motivates the contractor to perform the contract economically since cost is in inverse relation to profit; the lower the cost, the higher the profit. It provides a flexible pricing mechanism for establishing a cost sharing responsibility between the purchasing agency and contractor depending on the nature of the supplies, services, or construction being procured, the length of the contract performance, and the performance risks involved.

(3) Cost-Plus Contract with Cost Incentive Fee. In a cost-plus contract with cost incentive fee, the parties establish at the outset a target cost; a target fee; a cost-sharing formula for increase or decrease of fee depending on whether actual cost of performance is less than or exceeds the target cost, with maximum and minimum fee limitations; and a cost ceiling which represents the maximum amount which the purchasing agency is obligated to reimburse the contractor. The contractor continues performance until the work is complete or costs reach the ceiling specified in the contract, whichever first occurs. After performance is complete or costs reach the ceiling, the total incurred, allowable costs reimbursed in accordance with part 7 of these rules and as provided in the contract are applied in the cost-sharing formula to establish the incentive fee payable to the contractor. This type contract gives the contractor a stronger incentive to efficiently manage the contract than a cost-plus-fixed-fee contract provides.

(4) Determinations Required. Prior to entering into any cost incentive contract, the procurement officer shall make the written determination required by subsections 3-703(2)(b) and (c) of these rules. In addition, prior to entering any cost-plus contract with cost incentive fee, the procurement officer shall include in the written determination the determination required by subsection 3-703(2)(a) of these rules.

3-705 Performance Incentive Contracts.

In a performance incentive contract, the parties establish at the outset a pricing basis for the contract, performance goals, and a formula for increasing or decreasing the compensation if the specified performance goals are exceeded or not met. For example, early completion may entitle the contractor to a bonus while late completion may entitle the purchasing agency to a price decrease.

3-706 Time and Materials Contracts; Labor Hour Contracts.

(1) Time and Materials Contracts. Time and materials contracts provide for payment for materials at cost and labor performed at an hourly rate which includes overhead and profit. These contracts provide no incentives to minimize costs or effectively manage the contract work. Consequently, all such contracts shall contain a stated cost ceiling and shall be entered into only after the procurement officer determines in writing that:

(a) personnel have been assigned to closely monitor the performance of the work; and

(b) no other type of contract will suitably serve the purchasing agency's purpose.

(2) Labor Hour Contracts. A labor hour contract is the same as a time and materials contract except the contractor supplies no material. It is subject to the same considerations, and the procurement officer shall make the same determinations before it is used.

3-707 Definite Quantity and Indefinite Quantity Contracts.

(1) Definite Quantity. A definite quantity contract is a fixed-price contract that provides for delivery of a specified quantity of supplies or services either at specified times or when ordered.

(2) Indefinite Quantity. An indefinite quantity contract is a contract for an indefinite amount of supplies or services to be furnished as ordered that establishes unit prices of a fixed-price type. Generally an approximate quantity or the best information available is stated in the solicitation. The contract may provide a minimum quantity the purchasing agency is obligated to order and may also provide for a maximum quantity provision that limits the purchasing agency's obligation to order. The time of performance of an indefinite quantity contract may be extended upon agreement of the parties provided the extension is for 90 days or less and the procurement officer determines in writing that it is not practical to award another contract at the time of the extension.

(3) Requirements Contracts. A requirements contract is an indefinite quantity contract for supplies or services that obligates the purchasing agency to order all the actual, normal requirements of designated using agencies during a specified

period of time; and for the protection of the purchasing agency and the contractor. Invitations for Bids and resulting requirements contracts shall include a provision. However, the purchasing agency may reserve in the solicitation and in the resulting contract the right to take bids separately if a particular quantity requirement arises which exceeds an amount specified in the contract. Requirements contracts shall contain an exemption from ordering under the contract when the procurement officer approves a finding that the supply or service available under the contract will not meet a nonrecurring, special need of the purchasing agency.

3-708 Progressive and Multiple Awards.

(1) Progressive Award. A progressive award is an award of portions of a definite quantity requirement to more than one contractor. Each portion is for a definite quantity and the sum of the portions is the total definite quantity procured. A progressive award may be in the purchasing agency's best interest when awards to more than one bidder or offeror for different amounts of the same item are needed to obtain the total quantity or the time or times of delivery required.

(2) Multiple Award. A multiple award is an award of an indefinite quantity contract for one or more similar supplies or services to more than one bidder or offeror, and the purchasing agency is obligated to order all of its actual, normal requirements for the specified supplies or services from those contractors. A multiple award may be in the purchasing agency's best interest when award to two or more bidders or offerors for similar products is needed for adequate delivery, service, or availability, or for product compatibility. In making a multiple award, care shall be exercised to protect and promote the principles of competitive solicitation. Multiple awards shall not be made when a single award will meet the purchasing agency's needs without sacrifice of economy or service. Awards shall not be made for the purpose of dividing the business, making available product or supplier selection to allow for user preference, or avoiding the resolution of tie bids. Any awards shall be limited to the least number of suppliers necessary to meet the valid requirements of using agencies. All eligible users of the contract shall be named in the solicitation, and it shall be mandatory that the requirements of the users that can be met under the contract be obtained in accordance with the contract, provided, that:

(a) the purchasing agency shall reserve the right to take bids separately if a particular quantity requirement arises which exceeds an amount specified in the contract; or

(b) the purchasing agency shall reserve the right to take bids separately if the procurement officer approves a finding that the supply or service available under the contract will not meet a nonrecurring special need of the agency.

(3) Intent to Use. If a progressive or multiple award is anticipated prior to issuing a solicitation, the method of award shall be stated in the solicitation.

3-709 Leases.

(1) Use. A lease may be entered into provided:

(a) it is in the best interest of the purchasing agency;

(b) all conditions for renewal and costs of termination are set forth in the lease; and

(c) the lease is not used to avoid a competitive procurement.

(2) Competition. Lease and lease-purchase contracts are subject to the requirements of competition which govern the procurement of supplies.

(3) Lease with Purchase Option. A purchase option in a lease may be exercised only if the lease containing the purchase option was awarded under competitive bidding or competitive proposals, unless the requirement can be met only by the supply or facility being leased as determined in writing by the procurement officer. Before exercising this option, the procurement officer shall:

(a) investigate alternative means of procuring comparable supplies or facilities; and

(b) compare estimated costs and benefits associated with the alternative means and the exercise of the option, for example, the benefit of buying new state of the art data processing equipment compared to the estimated, initial savings associated with exercise of a purchase option.

3-710 Multi-Year Contracts; Installment Payments.

(1) Use. A contract may be entered into which extends beyond the current fiscal period provided any obligation for payment in a succeeding fiscal period is subject to the availability of funds.

(2) Termination. A multi-year contract may be terminated without cost to the purchasing agency by reason of unavailability of funds for the purpose or for lack of performance by the contractor. Termination for other reason shall be as provided by the contract.

(3) Installment Payments. Supply contracts may provide for installment purchase payments, including interest charges, over a period of time. Installment payments, however, should be used judiciously in order to achieve economy and not to avoid budgetary restraints, and shall be justified in writing by the head of the using agency. Heads of using agencies shall be responsible for ensuring that statutory or other prohibitions are not violated by use of installment provisions and that all budgetary or other required prior approvals are obtained. No agreement shall be used unless provision for installment payments is included in the solicitation document.

3-711 Contract Option.

(1) Provision. Any contract subject to an option for renewal, extension, or purchase, shall have had a provision included in the solicitation. When a contract is awarded by competitive sealed bidding, exercise of the option shall be at the purchasing agency's discretion only, and not subject to agreement or acceptance by the contractor.

(2) Exercise of Option. Before exercising any option for renewal, extension, or purchase, the procurement officer should attempt to ascertain whether a competitive procurement is practical, in terms of pertinent competitive and cost factors, and would be more advantageous to the purchasing agency than renewal or extension of the existing contract.

R33-3-8. Cost or Pricing Data and Analysis; Audits.

3-801 Scope.

This subpart sets forth the pricing policies which are applicable to contracts of any type and any included price adjustments when cost or pricing data are required to be submitted.

3-802 Requirements for Cost or Pricing Data.

(1) Submission of Cost or Pricing Data - Required. Cost or pricing data shall be required in support of a proposal leading to:

(a) the pricing of any contract expected to exceed $100,000 to be awarded by competitive sealed proposals or sole source procurement; or

(b) the pricing of any adjustment to any contract, including a contract, awarded by competitive sealed bidding, whether or not cost pricing data was required in connection with the initial pricing of the contract, as requested by the procurement officer. However, this requirement shall not apply when unrelated and separately priced adjustments for which cost or pricing data would not be required are consolidated for administrative convenience.

(2) Submission of Cost or Pricing Data - Permissive. After making determination that circumstances warrant action, the procurement officer may require the offeror or contractor to submit cost or pricing data in any other situation except where the contract award is made pursuant to competitive sealed bidding. Generally, cost or pricing data should not be required where the contract or modification is less than $2,000. Moreover, when less than complete cost analysis will provide a reasonable pricing result on awards or for change orders without the submission of complete cost or pricing data, the procurement officer shall request only that data considered adequate to support the limited extent of the cost analysis needed and need not require certification.

(3) Exceptions. Cost or pricing data need not be submitted and certified:

(a) where the contract price is based on:

(i) adequate price competition;

(ii) established catalog prices or market prices, if trade discounts are reflected in the prices; or

(iii) prices set by law or rule; or

(b) when the procurement officer determines in writing that the requirements for submitting cost or pricing data may be waived and the reasons for the waiver are stated in the determination. A copy of the determination shall be kept in the contract file and made available to the public upon request. If, after cost or pricing data were initially requested and received, it is determined that adequate price competition does exist, the data need not be certified.

If, despite the existence of an established catalog price or market price, the procurement officer considers that a price appears unreasonable, cost or pricing data may be requested. Where the reasonableness of the price can be assured by limited data pertaining to the differences in the item or services, requests should be so limited.

3-803 Submission of Cost or Pricing Data and Certification.

Cost or pricing data shall be submitted to the procurement officer at the time and in the manner prescribed in these rules or as otherwise from time to time prescribed by the procurement officer. When the procurement officer requires the offeror or contractor to submit cost or pricing data in support of any proposal, the data shall either be actually submitted or specifically identified in writing. When cost or pricing data is required, the data is to be submitted prior to beginning price negotiation and the offeror or contractor is required to keep the submission current throughout the negotiations. The offeror or contractor shall certify, as soon as practicable after agreement is reached on price, that the cost or pricing data submitted is accurate, complete, and current as of a mutually determined date prior to reaching agreement. Certification shall be made using the certificate set forth in section 3-804 of this subpart. A refusal by the offeror to supply the required data shall be referred to the procurement officer whose duty shall be to determine in writing whether to disqualify the noncomplying offeror, to defer award pending further investigation, or to enter into the contract. A refusal by a contractor to submit the required data to support a price adjustment shall be referred to the procurement officer who shall determine in writing whether to further investigate the price adjustment, not to allow any price adjustment, or to set the amount of the price adjustment.

3-804 Certificate of Current Cost or Pricing Data.

(1) Form of Certificate. When cost or pricing data must be certified, the certificate set forth below shall be included in the contract file along with any award documentation required under these rules. The offeror or contractor shall be required to submit the certificate as soon as practicable after agreement is reached on the contract price or adjustment.

"CERTIFICATE OF CURRENT COST OR PRICING DATA

This is to certify that, to the best of my knowledge and belief, cost or pricing data as defined in the Utah Procurement Rules submitted, either actually or by specific identification in writing, to the procurement officer in support of . . ., are accurate, complete, and current as of date, month and year. . . The effective date shall be the date when price negotiations were concluded and the contract price was agreed to. The responsibility of the offeror or contractor is not limited by the personal knowledge of the offeror's or contractor's negotiator if the offeror or contractor had information reasonably available at the time of agreement, showing that the negotiated price is not based on accurate, complete, and current data.

This certification includes the cost or pricing data supporting any advance agreement(s) between the offeror and the purchasing agency which are part of the proposal.

Firm

Name

Title

Date of Execution . . . (This date should be as close as practical to the date when the price negotiations were concluded and the contract price was agreed to.)"

(End of Certificate)

(2) Limitation of Representation. Because the certificate pertains to cost or pricing data, it is not to be construed as a representation as to the accuracy of the offeror's or contractor's judgment on the estimated portion of future costs or projections. It does, however, apply to the data upon which the offeror's or contractor's judgment is based. A certificate of current cost or pricing data is not a substitute for examination and analysis of the offeror's or contractor's proposal.

(3) Inclusion of Notice and Contract Clause. Whenever it is anticipated that a certificate of current cost or pricing data may be required, a clause giving notice of this requirement shall be included in the solicitation. If a certificate is required, the contract shall include a clause giving the purchasing agency a

contract right to a price adjustment, that is, to a reduction in the price to what it would have been if the contractor had submitted accurate, complete, and current data.

(4) Exercise of Option. The exercise of an option at the price established in the initial negotiation in which certified cost or pricing data were used does not require recertification or further submission of data.

3-805 Defective Cost or Pricing Data.

(1) Overstated Cost or Pricing Data. If certified cost or pricing data is subsequently found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the purchasing agency shall be entitled to an adjustment of the contract price, including profit or fee, to exclude any significant sum by which the price, including profit or fee, was increased because of the defective data. It is assumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee. Unless there is a clear indication that the defective data were not used or relied upon, the price should be reduced in this amount. In establishing that the defective data caused an increase in the contract price, the procurement officer is not expected to reconstruct the negotiation by speculating as to what would have been the mental attitudes of the negotiating parties if the correct data had been submitted at the time of agreement on price.

(2) Understated Cost or Pricing Data. In determining the amount of an adjustment, the contractor shall be entitled to an adjustment for any understated cost or pricing data submitted in support of price negotiations for the same pricing action up to the amount of the purchasing agency's claim for over stated cost or pricing data arising out of the same pricing action.

(3) Dispute as to Amount. If the contractor and the procurement officer cannot agree as to the amount of adjustment due to defective cost or pricing data, the procurement officer shall set an amount in accordance with subsections 3-805(1) and 3-805(2) of this subpart.

3-806 Price Analysis Techniques.

Price analysis is used to determine if a price is reasonable and acceptable. It involves a comparison of the prices for the same or similar items or services. Examples of price analysis criteria include:

(1) price submissions of other prospective bidders or offerors;

(2) prior price quotations and contract prices charged by any bidder, offeror, or contractor;

(3) prices published in catalogs or price lists; and

(4) prices available on the open market.

In making an analysis, consideration must be given to any differing delivery factors and contractual provisions, terms and conditions.

3-807 Cost Analysis Techniques.

(1) General. Cost analysis includes the appropriate verification of cost or pricing data, and the use of this data to evaluate:

(a) specific elements of costs;

(b) the necessity for certain costs;

(c) the reasonableness of amounts estimated for the necessary costs;

(d) the reasonableness of allowances for contingencies;

(e) the basis used for allocation of indirect costs;

(f) the appropriateness of allocations of particular indirect costs to the proposed contract; and

(g) the reasonableness of the total cost or price.

(2) Evaluations. Evaluations of cost or pricing data should include comparisons of costs and prices of an offeror's cost estimates with those of other offerors and any independent price and cost estimates. They shall also include consideration of whether the costs are reasonable and allocable under these rules.

3-808 Audit.

(1) The procurement officer may, at reasonable times and places, audit or cause to be audited, the books and records of a contractor, prospective contractor, subcontractor, or prospective subcontractor which are related to:

(a) the cost or pricing data submitted;

(b) a contract, including subcontracts, other than a firm fixed-price contract, awarded pursuant to these rules and the Utah Procurement Code.

(2) An audit performed by an auditor selected or approved by the procurement officer shall be submitted containing at least the following information:

(a) for cost and pricing data audits:

(i) a description of the original proposal and all submissions of cost or pricing data;

(ii) an explanation of the basis and the method used in preparing the proposal;

(iii) a statement identifying any cost or pricing data not submitted but examined by the auditor which has a significant affect on the proposed cost or price;

(iv) a description of any deficiency in the cost or pricing data submitted and an explanation of its affect on the proposal;

(v) a statement summarizing those major points where there is a disagreement as to the cost or pricing data submitted; and

(vi) a statement identifying any information obtained from other sources;

(b) the number of invoices or reimbursement vouchers submitted by the contractor or subcontractor for payment;

(c) the use of federal assistance funds; or

(d) the fluctuation of market prices affecting the contract.

The scope of the audit may be limited by the procurement officer.

(3) For contract audits, the scope of the report will depend on the scope of the audit ordered. However, the report should contain specific reference to the terms of the contract to which the audited data relates and a statement of the degree to which the auditor believes the audited data evidence compliance with those terms.

3-809 Retention of Books and Records.

(1) Relating to Cost and Pricing Data. Any contractor who receives a contract, change order, or contract modification for which cost or pricing data is required shall maintain the books and records that relate to the cost or pricing data for three years from the date of final payment under the contract.

(2) Relating to Other than Firm Fixed-Price Contracts. Books and records that relate to a contract in excess of $25,000, including subcontracts, other than a firm fixed-price contract, shall be maintained:

(a) by a contractor, for three years from the date of final payment under the contract; and

(b) by a subcontractor, for three years from the date of final payment under the subcontract.

R33-3-9. Plant or Site Inspection; Inspection of Supplies or Services.

3-901 Inspection of Plant or Site.

Circumstances under which the purchasing agency may perform inspections include inspections of the contractor's plant or site in order to determine:

(1) whether the standards set forth in section 3-601 have been met or are capable of being met; and

(2) if the contract is being performed in accordance with its terms.

3-902 Access to Plant or Place of Business.

The purchasing agency may enter a contractor's or subcontractor's plant or place of business to:

(1) inspect supplies or services for acceptance by the purchasing agency pursuant to the terms of a contract;

(2) audit cost or pricing data or audit the books and records of any contractor or subcontractor pursuant to Section 63-56-28 subsection (5) of the Utah Procurement Code; and

(3) investigate in connection with an action to debar or suspend a person from consideration for award of contracts pursuant to Section 63-56-48 of the Utah Procurement Code.

3-903 Inspection of Supplies and Services.

(1) Provisions for Inspection. Contracts may provide that the purchasing agency may inspect supplies and services at the contractor's or subcontractor's facility and perform tests to determine whether they conform to solicitation requirements or, after award, to contract requirements, and are acceptable. These inspections and tests shall be conducted in accordance with the terms of the solicitation and contract.

(2) Trial Use and Testing. The procurement officer is authorized to establish operational procedures governing the testing and trial use of various equipment, materials, and supplies by any using agency, and the relevance and use of resulting information to specifications and procurements.

3-904 Conduct of Inspections.

(1) Inspectors. Inspections or tests shall be performed so as not to unduly delay the work of the contractor or subcontractor. No inspector may change any provision of the specifications or the contract without written authorization of the procurement officer. The presence or absence of an inspector shall not relieve the contractor or subcontractor from any requirements of the contract.

(2) Location. When an inspection is made in the plant or place of business of a contractor or subcontractor, the contractor or subcontractor shall provide without charge all reasonable facilities and assistance for the safety and convenience of the person performing the inspection or testing.

(3) Time. Inspection or testing of supplies and services performed at the plant or place of business of any contractor or subcontractor shall be performed at reasonable times.

3-905 Inspection of Construction Projects.

On-site inspection of construction shall be performed in accordance with the terms of the contract.

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R33. Administrative Services, Purchasing and General Services.

R33-4. Specifications.

R33-4-1. General Provisions.

4-101 General Purpose and Policies.

(1) Purpose. Specifications shall be drafted with the objective of clearly describing the purchasing agency's requirements and of encouraging competition. The purpose of a specification is to serve as a basis for obtaining a supply, service, or construction item adequate and suitable for the purchasing agency's needs in a cost effective manner, taking into account, to the extent practicable, the costs of ownership and operation as well as initial acquisition costs.

(2) Use of Functional or Performance Descriptions. Specifications shall, to the extent practicable, emphasize functional or performance criteria while limiting design or other detailed physical descriptions to those necessary to meet the needs of the purchasing agency. To facilitate the use of the criteria, using agencies shall endeavor to include as a part of their purchase requisitions the principal functional or performance needs to be met. It is recognized, however, that the preference for use of functional or performance specifications is primarily applicable to the procurement of supplies and services. This preference is often not practicable in construction, apart from the procurement of supply-type items for a construction project.

(3) Preference for Commercially Available Products. It is the general policy that requirements be satisfied by standard commercial products whenever practicable.

4-102 Availability of Documents.

Except for testing and confidential data, specifications and any written determination or other document generated or used in the development of a specification shall be available for public inspection.

4-103 Emergency Authority.

In the event of an emergency, as determined by the procurement officer, the purchasing agency may procure by any reasonable means, with any available specifications, without regard to the provision of these rules.

4-104 Procedures for the Development of Specifications.

(1) Provisions of General Application.

(a) Application of Section. This section applies to all persons who may prepare a specification.

(b) Specification of Alternates May Be Included. A specification may provide alternate descriptions of supplies, services, or construction items where two or more design, functional, or performance criteria will satisfactorily meet the purchasing agency's requirements.

(c) Contractual Requirements Not to Be Included. To the extent feasible, a specification shall not include any solicitation or contract term or condition as a requirement for time or place of bid opening, time of delivery, payment, liquidated damages, or qualification of bidders.

(d) Use of Existing Specifications. If a specification for a common or general use item has been developed in accordance

with subsection (2) (a) of this section or a qualified products list has been developed in accordance with subsection (2) (d) of this section for a particular supply, service, or construction item, or need, it shall be used unless the procurement officer makes a written determination that its use is not in the purchasing agency's best interest and that another specification shall be used.

(e) The procurement officer should provide for the periodic review of specifications to determine whether any existing specification needs revision, or a new specification is needed to reflect changes in:

(i) the state of the art;

(ii) the characteristics of the available supplies, services, or construction items; or

(iii) needs of the using agency.

(f) The procurement officer may allow others to prepare specifications for the purchasing agency's use in making procurements when there will be no substantial conflict of interest involved and it is otherwise in the best interests of the purchasing agency as determined by the procurement officer.

(2) Special Additional Procedures.

(a) Specifications for Common or General Use Items.

(i) Preparation and Utilization. A standard specification for common or general use shall, to the extent practicable, be prepared and utilized when a supply, service, or construction item is used in common by several using agencies or used repeatedly by one using agency, and the characteristics of the supply, service, or construction item as commercially produced or provided remain relatively stable while the frequency or volume of procurements is significant, or where the purchasing agency's recurring needs require uniquely designed or specially produced items.

(ii) Final Approval. Final approval of a proposed specification for a common or general use item shall be given only by the procurement officer.

(iii) Revisions and Cancellations. All revisions to or cancellations of specifications for common or general use items may be made upon approval of the procurement officer.

(b) Brand Name or Equal Specification.

(i) Brand name or equal specifications may be used when the procurement officer determines that a specification is in the purchasing agency's best interest.

(ii) Designation of Several Brands. Brand name or equal specification shall seek to designate as many different brands as are practicable as "or equal" references and shall state that products substantially equivalent to those designated will be considered for award.

(iii) Required Characteristics. Unless the procurement officer authorized to finally approve specifications determines that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specifications shall include a description of the particular design and functional or performance characteristics which are required.

(iv) Nonrestrictive Use of Brand Name or Equal Specifications. Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of designating the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.

(c) Brand Name Specification.

(i) Use. Since use of a brand name specification is restrictive, a specification may be used when the procurement officer or designee makes a written determination. The determination may be in any form deemed acceptable to the chief procurement officer, as a purchase evaluation, or a statement of single source justification. The written statement must state specific reasons for use of the brand name specification.

(ii) Competition. The procurement officer shall seek to identify sources from which the designated brand name item or items can be obtained and shall solicit sources to achieve whatever degree of competition is practicable. If only one source can supply the requirement, the procurement shall be made under Section 63-56-23 of the Utah Procurement Code.

(d) Qualified Products List.

(i) Use. A qualified products list may be developed with the approval of the Chief Procurement Officer, or the head of a purchasing or using agency authorized to develop qualified products lists, when testing or examination of the supplies or construction items prior to issuance of the solicitation is desirable or necessary in order to satisfy purchasing agency requirements.

(ii) Solicitation. When developing a qualified products list, a representative group of potential suppliers shall be solicited to submit products for testing and examination to determine acceptability for inclusion on a qualified products list. Any potential supplier, even though not solicited, may offer products for consideration in accordance with any schedule or procedure established for this purpose.

(iii) Testing and Confidential Data. Inclusion on a qualified products list shall be based on results of tests or examinations conducted in accordance with prior established requirements. Except as otherwise provided by law, trade secrets, test data, and similar information provided by the supplier will be kept confidential when requested in writing by the supplier. However, qualified products lists' test results shall be made public, but in a manner so as to protect the confidentiality of the identity of the competitors by, for example, using numerical designations.

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R33. Administrative Services, Purchasing and General Services.
R33-5. Construction and Architect-Engineer Selection.
R33-5-101. Purpose and Authority.

As required by Sections 63-56-36, 63-56-38 (2), 63-56-39 and 63-56-40 (1), this rule contains provisions applicable to:

(1) selecting the appropriate method of management for construction contracts, that is, the contracting method and configuration that will most likely result in timely, economical, and otherwise successful completion of the construction project.

(2) establishing appropriate bid, performance, and payment bond requirements including criteria allowing for waiver of these requirements.

(3) governing appropriate contract provisions.

R33-5-102. Application.

The provisions of this chapter shall apply to all procurements of construction which are estimated to be greater than $20,000. Procurement of construction expected to be less than $20,000 shall be made in accordance with R33-3-3 (Small Purchases) except bid, performance and payment bonds shall be required unless waived in accordance with R33-5-355 (Waiver of Bonding Requirements on Small Projects).

R33-5-201. Methods of Construction Contract Management.

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

(2) Flexibility. It is intended that the Procurement Officer have sufficient flexibility in formulating the construction contract management method for a particular project to fulfill the needs of the procuring agencies. In each instance consideration commensurate with the project's size and importance should be given to all the appropriate and effective means of obtaining both the design and construction of the project. The methods for achieving the purposes set forth in this rule are not to be construed as an exclusive list.

(3) Selecting the Method of Construction Contracting. In selecting the construction contracting method, the Procurement Officer should consider the results achieved on similar projects in the past and the methods used. Consideration should be given to all appropriate and effective methods and their comparative advantages and disadvantages and how they might be adapted or combined to fulfill the needs of the procuring agencies.

(4) Criteria for Selecting Construction Contracting Methods. Before choosing the construction contracting method to use, a careful assessment must be made by the Procurement Officer of requirements the project must satisfy and those other characteristics that would be desirable. Some of the factors to consider are:

(a) when the project must be ready to be occupied;

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

(c) the extent to which the requirements of the procuring agencies and the ways in which they are to be met are known;

(d) the location of the project;

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

(f) the amount and type of financing available for the project, including whether the budget is fixed or what the source of funding is, for example, general or special appropriation, federal assistance moneys, general obligation bonds or revenue bonds, lapsing/nonlapsing status and legislative intent language;

(g) the availability, qualification, and experience of State personnel to be assigned to the project and how much time the State personnel can devote to the project;

(h) the availability, experience and qualifications of outside consultants and contractors to complete the project under the various methods being considered.

(5) General Descriptions.

(a) Use of Descriptions. The following descriptions are provided for the more common contracting methods. The methods described are not all mutually exclusive and may be combined on a project. These descriptions are not intended to be fixed in respect to all construction projects of the State. In each project, these descriptions may be adapted to fit the circumstances of that project. However, the Procurement Officer should endeavor to ensure that these terms are described adequately in the appropriate contracts, are not used in a misleading manner, and are understood by all relevant parties.

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

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

(d) Design-Build. In a design-build project, a business contracts directly with the State to meet the State's requirements as described in a set of performance specifications. Design responsibility and construction responsibility both rest with the design-build contractor. This method can include instances where the design-build contractor supplies the site as part of the package.

(e) Construction Manager. A construction manager is a person experienced in construction that has the ability to evaluate and to implement drawings and specifications as they affect time, cost, and quality of construction and the ability to coordinate the construction of the project, including the administration of change orders. The State may contract with the construction manager early in a project to assist in the development of a cost effective design. The construction manager may become the single prime contractor, or may guarantee that the project will be completed on time and will not exceed a specified maximum price. This method is frequently used on fast track projects with the construction manager obtaining subcontractors through the issuance of multiple bid packages as the design is developed. The procurement of a construction manager may be based, among other criteria, on proposals for a management fee which is either a lump sum or a percentage of construction costs with a guaranteed maximum cost. If the design is sufficiently developed prior to the selection of a construction manager, the procurement may be based on proposals for a lump sum or guaranteed maximum cost for the construction of the project. The contract with the

construction manager may provide for a sharing of any savings which are achieved below the guaranteed maximum cost.

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

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

R33-5-220. Selection Documentation.

The Procurement Officer shall include in the contract file a written statement, describing the construction contracting method chosen and the facts and conclusions which led to the selection of that method. The statement shall demonstrate that the State's requirements and resources, and the various groups of potential contractors were appropriately considered in making the selection.

R33-5-230. Single Prime Contractor: Use with Sequential Design and Construction.

When a single prime contractor is used with the sequential design and construction method, comprehensive plans and specifications that are precise enough shall be prepared to allow prospective prime (general) contractors to submit a competitive sealed bid. The prime contractor awarded the contract shall be responsible for the coordination of the specialty subcontractors and for the timely completion of the project at the price specified in the contract. The architect-engineer, the State project manager, and, if used, the construction manager shall monitor the progress of the project and otherwise represent the State's interest as required by contract.

R33-5-231. Single Prime Contractor: Use with Phased Design and Construction.

A single prime contractor may be used with the phased design and construction method. Under this approach, the State will let contracts for early construction phases to specialty contractors and when the plans and specifications are sufficiently complete to allow bids to be made will let the major project contract to a prime contractor. If the State finds it administratively and economically advantageous, the State may transfer or assign to the prime contractor the administration of the specialty contracts it let earlier.

R33-5-232. Single Prime Contractor: Contractual Provisions.

The rights, duties, and responsibilities of the State representatives, the architect-engineer, prime contractor(s), and, if applicable, the construction manager and any specialty contractors awarded projects with the State shall be carefully detailed in contracts. If phased design and construction is used, administration of ongoing specialty contracts let before the prime contract will have to be transferred or assigned to the prime contractor. The terms of this assignment or transfer (including the duties of the State to ensure that the specialty contractors are at a certain point of completion at the time of assignment), what liability to the specialty contractors remains with the State after assignment, if any, and what duties and responsibilities the prime contractor has with respect to the assigned specialty contractors shall all be set forth in the specialty contracts and the contract with the prime contractor.

R33-5-240. Multiple Prime Contractors: Use with Sequential Design and Construction, and with Phased Design and Construction.

(1) Multiple prime contractors may be used with sequential design and construction by splitting the plans and specifications into packages pertinent to recognized trade specialties. The State may undertake to manage and coordinate the project's work or contracts with a construction manager. The contracts may provide that responsibility for successful completion of the entire project rests with the State, the State's agent, or one of the multiple prime contractors. The contracts shall specify where this responsibility shall rest.

(2) Multiple prime contractors may be used with phased design and construction only when the architect-engineer's work is closely coordinated with the specialty contractors' work. Under this method, the specialty contractors shall contract directly with the State or with its construction manager.

R33-5-241. Multiple Prime Contractors: Contractual Provisions.

Whenever multiple prime contractors are used, the contract between the State and each prime contractor shall:

(1) state the scope of each contractor's responsibility.

(2) identify when the portions of its work are to be complete.

(3) provide for a system of timely reports on progress of the contractor's work and problems encountered.

(4) specify that each contractor is liable for damages caused other contractors and the State whether because of delay or otherwise.

(5) clearly delineate in all the parties' contracts the duties and authority of the State representative, the architect-engineer and, if one is employed, the construction manager with respect to the specialty contractors .

These contract clauses may not relieve the State of liability if it fails to properly coordinate and manage the project.

R33-5-250. Design-Build or Turnkey: Use.

(1) When the design-build or turnkey method is used the State shall:

(a) prepare a set of performance specifications including functional criteria, any life-cycle cost considerations, and other evaluation factors.

(b) specify the degree of detail necessary in the design proposal.

(c) shall select the contractor on the basis of the evaluation criteria stated in the solicitation.

(2) To ensure adequate continuing competition, the State may provide in the solicitation for payment of a stipulated stipend for proposal preparation costs, or a portion thereof.

R33-5-251. Design-Build or Turnkey: Contractual Provisions.

The contract documents shall:

(1) delineate clearly the State's rights to inspect plans and specifications, and the construction work in progress.

(2) indicate precisely what constitutes completion of the project by the contractor.

R33-5-260. Construction Manager: Use.

The State may contract with the construction manager early in a project to assist in the development of a cost effective design. The construction manager may become the single prime contractor, or may guarantee that the project will be completed on time and will not exceed a specified maximum price. This method is frequently used on fast track projects with the construction manager obtaining subcontractors through the issuance of multiple bid packages as the design is developed. The procurement of a construction manager may be based, among other criteria, on proposals for a management fee which is either a lump sum or a percentage of construction costs with a guaranteed maximum cost. If the design is sufficiently developed prior to the selection of a construction manager, the procurement may be based on proposals for a lump sum or guaranteed maximum cost for the construction of the project. The contract with the construction manager may provide for a sharing of any savings which are achieved below the guaranteed maximum cost.

R33-5-262. Construction Manager: Contractual Provisions.

The construction managers contract shall clearly set forth the duties and authority of the construction manager in respect to all the participants in the project. The contract shall also define the liability of the State and the construction manager for failure to properly coordinate specialty contractors' work.

R33-5-270. Sequential Design and Construction: Use.

When the state selects the sequential design and construction method, it shall gather a team to design the project and provide a complete set of drawings and specifications to use in awarding the construction contract or contracts. When this team uses a construction manager he may, in addition to reviewing the drawings and specifications, assist in separating them into packets when multiple prime contractors are used. Except for redesign necessitated by changes in State requirements or problems encountered during construction, design is complete at the time construction has begun.

R33-5-280. Phased Design and Construction: Use.

When the phased design and construction method is used the architect-engineer, and construction manager, (if one is used) shall resolve major design decisions, and shall prepare the detail design work in the sequence necessary to construct the project. Thus construction can begin before design is complete for the entire project. Construction shall only begin after the State's requirements are set, the overall (schematic) design is complete, and the complete drawings and specifications for the first construction phase are ready. The construction manager may also assist in packaging the various specialty contracts and to managing the work under those contracts.

R33-5-281. Phased Design and Construction: Contractual Provisions.

Contracts shall clearly establish:

(1) architect-engineer's obligation to design the project in a manner that allows for phased construction to allow phasing of project design.

(2) specialty contractors scope of work and duties to other contractors and the State.

(3) the management rights of the State and its construction manager when used.

R33-5-311. Bid Security: General.

Invitations for Bids on State construction contracts estimated to exceed $20,000 shall require the submission of bid security in an amount equal to at least 5% of the bid, at the time the bid is submitted. If a contractor fails to accompany its bid with the required bid security, the bid shall be deemed nonresponsive, in accordance with Section R33-3-112 (Bid Evaluation and Award, Responsibility and Responsiveness) except as provided by Section R33-5-313.

R33-5-312. Bid Security: Acceptable Bid Security.

Acceptable bid security shall be limited to:

(a) a bid bond in a form satisfactory to the State underwritten by a company licensed to issue bid bonds in this State;

(b) a cashiers, certified, or official check drawn by a federally insured financial institution; or

(c) cash.

R33-5-313. Bid Security: Nonsubstantial Failure to Comply.

If a bid does not comply with the security requirements of this Rule, the bid shall be rejected as nonresponsive, unless the failure to comply is determined by the Chief Procurement Officer, the head of a Purchasing Agency, or the designee of such officer to be nonsubstantial where:

(a) only one bid is received, and there is not sufficient time to rebid the contract;

(b) the amount of the bid security submitted, though less than the amount required by the Invitation for Bids, is equal to or greater than the difference in the price stated in the next higher acceptable bid; or

(c) the bid guarantee becomes inadequate as a result of the correction of a mistake in the bid or bid modification in accordance with Section R33-3-111 (Mistakes in Bids), if the bidder increases the amount of guarantee to required limits within 48 hours after the bid opening.

R33-5-321. Performance Bonds: General.

A performance bond on the exact form provided in R33-5-342 is required for all construction contracts in excess of $20,000, in the amount of 100% of the contract price. The performance bond shall be delivered by the contractor to the State at the same time the contract is executed. If a contractor fails to deliver the required performance bond, the contractor's bid shall be rejected, its bid security shall be enforced, and award of the contract shall be made to the next lowest bidder in accordance with Section R33-3-112 (Bid Evaluation and Award, Responsibility and Responsiveness).

R33-5-331. Payment Bonds: General.

A payment bond on the exact form provided in R33-5-343 is required for all construction contracts in excess of $20,000, in the amount of 100% of the contract price. The payment bond shall be delivered by the contractor to the State at the same time the contract is executed. If a contractor fails to deliver the required payment bond, the contractor's bid shall be rejected, its bid security shall be enforced, and award of the contract shall be made to the next lowest bidder in accordance with Section R33-3-112 (Bid Evaluation and Award, Responsibility and Responsiveness).

R33-5-341. Bond Forms.

(a) Bid Bonds, Payment Bonds and Performance Bonds must be from sureties meeting the requirements of Subsection R33-5-342(b) and must be on the exact bond forms most recently adopted by the Board and on file with the chief procurement officer, except bid bonds for projects under $1,000,000 as provided by subparagraph (c).

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

(c) For projects estimated to cost less than $ 1,000,000 the State may accept bid bonds on forms provided by appropriately licensed sureties. For projects estimated to exceed $1,000,000 the bid bond shall be on the exact bid bond forms adopted by the board as required by R33-5-341(a).

R33-5-350. Waiver of Bonding Requirements on Any Project.

The chief procurement officer, or head of the purchasing agency, may waive the bonding requirement if he finds, in writing, that bonds cannot reasonably be obtained for the work involved. Prior to waiver of the bonding requirement, the head of the requesting agency or designee shall agree in writing to the waiver. The agency will also be advised that the State cannot waive the liability associated with a judgment against the State, in the event of non-payment to a subcontractor or supplier. In the event of a judgment, the requesting agency would be required to make payment to the injured party.

R33-5-355. Waiver of Bonding Requirements on Small Projects.

The Chief Procurement Officer, or designated procurement official, may elect not to require a Performance or Payment Bond as required under Section 63-56-38 Utah Code Annotated, 1953 as amended, if the estimated total procurement does not exceed $20,000. Prior to waiver of the bonding requirement, the head of the requesting agency or designee shall agree in writing to the waiver. The agency will also be advised that the State cannot waive the liability associated with a judgment against the State, in the event of non-payment to a subcontractor or supplier. In the event of a judgment, the requesting agency would be required to make payment to the injured party.

R33-5-401. Construction Contract Clauses: Introduction.

The contract clauses presented in this rule are promulgated for use in construction contracts in accordance with Section 63-56-40 (Contract Clauses) of the Utah Procurement Code. Alternative clauses are provided in one instance to permit accommodation of differing contract situations.

R33-5-402. Mandatory Construction Contract Clauses.

The following construction contract clauses shall be included in all construction contracts: R33-5-420 Changes Clause; R33-5-440 Suspension of Work Clause; R33-5-460 Price Adjustment Clause; R33-5-470 Claims Based on a Procurement Officer's Actions or Omissions Clause; R33-5-480 Default Delay - Time Extension Clause; R33-5-495 Termination for Convenience Clause; R33-5-497 Remedies Clause.

R33-5-403. Optional Construction Contract Clauses.

The following construction contract clauses may optionally be used in appropriate contracting situations: R33-5-430 Variations in Estimated Quantities Clause; R33-5-450 Differing Site Conditions Clause; R33-5-490 Liquidated Damages Clause.

R33-5-410. Construction Contract Clauses: Revisions to Contract Clauses.

The clauses set forth in this rule may be varied for use in a particular contract when, pursuant to the provisions of Section 63-56-40 (Contract Clauses) of the Utah Procurement Code, the Chief Procurement Officer or the head of a Purchasing Agency makes a written determination describing the circumstances justifying the variation or variations.

Any material variation from these clauses shall be described in the solicitation documents in substantially the following form:

"Clause No. ....., entitled ....., is not a part of the general terms and conditions of this contract, and has been replaced by Special Clause No. ....., entitled ..... Your attention is specifically directed to this clause."

R33-5-420. Construction Contract Clauses: Changes Clause.

"CHANGES

(1) Change Order. The Procurement Officer, at any time, and without notice to the sureties, in a signed writing designated or indicated to be a change order, may order:

(a) changes in the work within the scope of the contract; and

(b) changes in the time for performance of the contract that do not alter the scope of the contract.

(2) Adjustment of Price or Time for Performance. If any such change order increases or decreases the contractor's cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, an adjustment shall be made and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract.

Failure of the parties to agree to an adjustment shall not excuse a contractor from proceeding with the contract as changed, provided that the State promptly and duly make such

provisional adjustments in payments or time for performance as may be reasonable. By proceeding with the work, the contractor shall not be deemed to have prejudiced any claim for additional compensation, or an extension of time for completion.

(3) Written Certification. The contractor shall not perform any change order which increases the contract amount unless it bears, or the contractor has separately received, a written certification, signed by the fiscal officer of the entity responsible for funding the project or the contract or other official responsible for monitoring and reporting upon the status of the costs of the total project or contract budget that funds are available therefor; and, if acting in good faith, the contractor may rely upon the validity of such certification.

(4) Time Period for Claim. Within 30 days after receipt of a written change order under Paragraph (1) (Change Order) of this clause, unless such period is extended by the Procurement Officer in writing, the contractor shall file notice of intent to assert a claim for an adjustment.

(5) Claim Barred after Final Payment. No claim by the contractor for an adjustment hereunder shall be allowed if notice is not given prior to final payment under this contract.

(6) Claims Not Barred. In the absence of such a change order, nothing in this clause shall restrict the contractor's right to pursue a claim arising under the contract, if pursued in accordance with the clause entitled 'Claims Based on a Procurement Officer's Actions or Omissions Clause' or for breach of contract."

R33-5-430. Construction Contract Clauses: Variations in Estimated Quantities Clause.

The following clause shall be inserted only in those construction contracts which contain estimated quantity items:

"VARIATIONS IN ESTIMATED QUANTITIES

(1) Variations Requiring Adjustments. Where the quantity of a pay item in this contract is an estimated quantity and where the actual quantity of such pay item varies more than 15% above or below the estimated quantity stated in this contract, an adjustment in the contract price shall be made upon demand of either party. The adjustment shall be based upon any increase or decrease in costs due solely to the variation above 15% or below 85% of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, the Procurement Officer shall, upon receipt of a timely written request for an extension of time, prior to the date of final settlement of the contract, ascertain the facts and make such adjustment for extending the completion date as in the judgment of the Procurement Officer the findings justify.

(2) Adjustments of Price. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract."

R33-5-440. Construction Contract Clauses: Suspension of Work Clause.

"SUSPENSION OF WORK

(1) Suspension for Convenience. The Procurement Officer may order the contractor in writing to suspend, delay, or interrupt all or any part of the work for such period of time as the Procurement Officer may determine to be appropriate for the convenience of the State.

(2) Adjustment of Cost. If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted by an act of the Procurement Officer in the administration of this contract, or by the failure of the Procurement Officer to act within the time specified in this contract (or if no time is specified, within reasonable time), an adjustment shall be made for any increase in the cost of performance of this contract necessarily caused by such unreasonable suspension, delay, or interruption and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent:

(a) that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the contractor; or

(b) for which an adjustment is provided for or excluded under any other provision of this contract.

(3) Time Restriction on Claim. No claim under this clause shall be allowed:

(a) for any costs incurred more than 20 days before the contractor shall have notified the Procurement Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order); and

(b) unless the claim is asserted in writing as soon as practicable after the termination of such suspension, delay, or interruption, but not later than the date of final payment under the contract.

(4) Adjustments of Price. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract."

R33-5-450. Construction Contract Clauses: Differing Site Conditions Clause.

Set forth below are alternative differing site conditions clauses to be used as appropriate.

(ALTERNATIVE A)

"DIFFERING SITE CONDITIONS: PRICE ADJUSTMENTS

(1) Notice. The contractor shall promptly, and before such conditions are disturbed, notify the Procurement Officer of:

(a) subsurface or latent physical conditions at the site differing materially from those indicated in this contract; or

(b) unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this contract.

(2) Adjustments of Price or Time for Performance. After receipt of such notice, the Procurement Officer shall promptly investigate the site, and if it is found that such conditions do materially so differ and cause an increase in the contractor's cost of, or the time required for, performance of any part of the work under this contract, whether or not changed as a result of such conditions, an adjustment shall be made and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract.

(3) Timeliness of Claim. No claim of the contractor under this clause shall be allowed unless the contractor has given the notice required in this clause; provided, however, that the time

prescribed therefor may be extended by the Procurement Officer in writing.

(4) No Claim After Final Payment. No claim by the contractor for an adjustment thereunder shall be allowed if asserted after final payment under this contract.

(5) Knowledge. Nothing contained in this clause shall be grounds for an adjustment in compensation if the contractor had actual knowledge of the existence of such conditions prior to the submission of bids."

(END OF ALTERNATIVE A)

(ALTERNATIVE B)

"SITE CONDITIONS CONTRACTOR'S RESPONSIBILITY

The contractor accepts the conditions at the construction site as they eventually may be found to exist and warrants and represents that the contract can and will be performed under such conditions, and that all materials, equipment, labor, and other facilities required because of any unforeseen conditions (physical or otherwise) shall be wholly at the contractor's own cost and expense, anything in this contract to the contrary notwithstanding."

(END OF ALTERNATIVE B)

R33-5-460. Construction Contract Clauses: Price Adjustment Clause.

"PRICE ADJUSTMENT

(1) Price Adjustment Methods. Any adjustment in contract price pursuant to clauses in this contract shall be made in one or more of the following ways:

(a) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;

(b) by unit prices specified in the contract or subsequently agreed upon;

(c) by the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as specified in the contract or subsequently agreed upon;

(d) in such other manner as the parties may mutually agree; or

(e) in the absence of agreement between the parties, by a unilateral determination by the Procurement Officer of costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as computed by the Procurement Officer in accordance with generally accepted accounting principles and applicable sections of the rules promulgated under Section 63-56-28 (Cost Principles) and subject to the provisions of Part H (Legal and Contractual Remedies) of the Utah Procurement Code.

(2) Submission of Cost or Pricing Data. The contractor shall submit cost or pricing data for any price adjustments subject to the provisions of Section 63-56-28 (Cost Principles) of the Utah Procurement Code."

R33-5-470. Construction Contract Clauses: Claims Based on a Procurement Officer's Actions or Omissions Clause.

"CLAIMS BASED ON A PROCUREMENT OFFICER'S ACTIONS OR OMISSIONS

(1) Notice of Claim. If any action or omission on the part of a Procurement Officer or designee of such officer, requiring performance changes within the scope of the contract constitutes the basis for a claim by the contractor for additional compensation, damages, or an extension of time for completion, the contractor shall continue with performance of the contract in compliance with the directions or orders of such officials, but by so doing, the contractor shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:

(a) the contractor shall have given written notice to the Procurement Officer or designee of such officer:

(i) prior to the commencement of the work involved, if at that time the contractor knows of the occurrence of such action or omission;

(ii) within 30 days after the contractor knows of the occurrence of such action or omission, if the contractor did not have such knowledge prior to the commencement of the work; or

(iii) within such further time as may be allowed by the Procurement Officer in writing.

This notice shall state that the contractor regards the act or omission as a reason which may entitle the contractor to additional compensation, damages, or an extension of time. The Procurement Officer or designee of such officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Procurement Officer or designee of such officer;

(b) the notice required by Subparagraph (a) of this Paragraph describes as clearly as practicable at the time the reasons why the contractor believes that additional compensation, damages, or an extension of time may be remedies to which the contractor is entitled; and

(c) the contractor maintains and, upon request, makes available to the Procurement Officer within a reasonable time, detailed records to the extent practicable, of the claimed additional costs or basis for an extension of time in connection with such changes.

(2) Limitation of Clause. Nothing herein contained, however, shall excuse the contractor from compliance with any rules of law precluding any State officers and any contractors from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the contract.

(3) Adjustments of Price. Any adjustment in the contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract."

R33-5-480. Construction Contract Clauses: Default-Delay-Time Extensions Clause.

"TERMINATION FOR DEFAULT FOR NONPERFORMANCE OR DELAY DAMAGES FOR DELAY-TIME EXTENSIONS

(1) Default. If the contractor refuses or fails to prosecute the work, or any separable part thereof, with such diligence as will assure its completion within the time specified in this contract, or any extension thereof, fails to complete said work within such time, or commits any other substantial breach of this contract, and further fails within (14) days after receipt of written notice from the Procurement Officer to commence and

continue correction of such refusal or failure with diligence and promptness, the Procurement Officer may, by written notice to the contractor, declare the contractor in breach and terminate the contractor's right to proceed with the work or such part of the work as to which there has been delay. In such event the State may take over the work and prosecute the same to completion, by contract or otherwise, and may take possession of, and utilize in completing the work, such materials, appliances, and plant as may be on the site of the work and necessary therefor. Whether or not the contractor's right to proceed with the work is terminated, the contractor and the contractor's sureties shall be liable for any damage to the State resulting from the contractor's refusal or failure to complete the work within the specified time.

(2) Liquidated Damages Upon Termination. If fixed and agreed liquidated damages are provided in the contract, and if the State so terminates the contractor's right to proceed, the resulting damage will consist of such liquidated damages for such reasonable time as may be required for final completion of the work.

(3) Liquidated Damages in Absence of Termination. If fixed and agreed liquidated damages are provided in the contract, and if the State does not terminate the contractor's right to proceed, the resulting damage will consist of such liquidated damages until the work is completed or accepted.

(4) Time Extension. The contractor's right to proceed shall not be so terminated nor the contractor charged with resulting damage if:

(a) the delay in the completion of the work arises from causes such as: acts of God; acts of the public enemy; acts of the State and any other governmental entity in either a sovereign or contractual capacity; acts of another contractor in the performance of a contract with the State; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; unusually severe weather; delays of subcontractors due to causes similar to those set forth above; or shortage of materials; provided, however, that no extension of time will be granted for a delay caused by a shortage of materials, unless the contractor furnishes to the Procurement Officer proof that the contractor has diligently made every effort to obtain such materials from all known sources within reasonable reach of the work, and further proof that the inability to obtain such materials when originally planned did in fact cause a delay in final completion of the entire work which could not be compensated for by revising the sequence of the contractor's operations; and

(b) the contractor, within ten days from the beginning of any such delay (unless the Procurement Officer grants a further period of time before the date of final payment under the contract), notifies the Procurement Officer in writing of the causes of delay. The Procurement Officer shall ascertain the facts and the extent of the delay and extend the time for completing the work when, in the judgment of the Procurement Officer, the findings of fact justify such an extension.

(5) Erroneous Termination for Default. If, after notice of termination of the contractor's right to proceed under the provisions of this clause, it is determined for any reason that the contractor was not in default under the provisions of this clause, or that the delay was excusable under the provisions of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the State, be the same as if the notice of termination had been issued pursuant to such clause. If, in the foregoing circumstances, this contract does not contain a clause providing for termination for convenience of the State, the contract shall be adjusted to compensate for such termination and the contract modified accordingly.

(6) Additional Rights and Remedies. The rights and remedies of the (State) provided in this clause are in addition to any other rights and remedies provided by law or under this contract."

R33-5-490. Construction Contract Clauses: Liquidated Damages Clause.

The following clause may be used in construction contracts when it is difficult to determine with reasonable accuracy damage to the State due to delays caused by late contractor performance or nonperformance.

"LIQUIDATED DAMAGES

When the contractor fails to complete the work or any portion of the work within the time or times fixed in the contract or any extension thereof, the contractor shall pay to the State ($) per calendar day of delay pursuant to the clause of this contract entitled, 'Termination for Default for Nonperformance or Delay-Damages for Delay-Time Extensions.'"

R33-5-495. Construction Contract Clauses: Termination for Convenience Clause.

"TERMINATION FOR CONVENIENCE

(1) Termination. The Procurement Officer may, when the interests of this State so require, terminate this contract in whole or in part, for the convenience of the State. The Procurement Officer shall give written notice of the termination to the contractor specifying the part of the contract terminated and when termination becomes effective,

(2) Contractor's Obligations. The contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the contractor will stop work to the extent specified. The contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Procurement Officer may direct the contractor to assign the contractor's right, title, and interest under terminated orders or subcontracts to the State. The contractor shall still complete the work not terminated by the notice of termination and may incur obligations as necessary to do so.

(3) Right to Construction and Supplies. The Procurement Officer may require the contractor to transfer title and deliver to the State in the manner and to the extent directed by the Procurement Officer:

(a) any completed construction; and

(b) such partially completed construction, supplies, materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "construction material") as the contractor has specifically produced or specially acquired for the performance of the terminated part of this contract.

The contractor shall protect and preserve property in the possession of the contractor in which the State has an interest. If the Procurement Officer does not exercise this right, the contractor shall use best efforts to sell such construction, supplies, and construction materials in accordance with the standards of Uniform Commercial Code Section 2-706. (U.C.C. SS2-706 is quoted in the Editorial Note at the end of this Section.) This in no way implies that the State has breached the contract by exercise of the Termination for Convenience Clause.

(4) Compensation.

(a) The contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data, submitted to the extent required by Section 63-56-28 (Cost or Pricing Data) of the Utah Procurement Code, bearing on such claim. If the contractor fails to file a termination claim within one year from the effective date of termination, the Procurement officer may pay the contractor, if at all, an amount set in accordance with Subparagraph (c) of this Paragraph.

(b) The Procurement Officer and the contractor may agree to a settlement provided the contractor has filed a termination claim supported by cost or pricing data submitted as required by Section 63-56-40 (Cost or Pricing Data) of the Utah Procurement Code and that the settlement does not exceed the total contract price plus settlement costs reduced by payments previously made by the State, the proceeds of any sales of construction, supplies, and construction materials under Paragraph (3) of this clause, and the contract price of the work not terminated.

(c) Absent complete agreement under Subparagraph (b) of this paragraph, the Procurement Officer shall pay the contractor the following amounts, provided payments under Subparagraph (b) shall not duplicate payments under this paragraph:

(i) with respect to all contract work performed prior to the effective date of the notice of termination, the total (without duplication of any items) of:

(A) the cost of such work plus a fair and reasonable profit on such portion of the work (such profit shall not include anticipatory profit or consequential damages) less amounts paid or to be paid for completed portions of such work; provided, however, that if it appears that the contractor would have sustained a loss if the entire contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;

(B) costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to paragraph (2) of this clause. These costs shall not include costs paid in accordance with subparagraph (c)(i)(A) of this paragraph;

(C) the reasonable settlement costs of the contractor including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this contract.

The total sum to be paid the contractor under this paragraph shall not exceed the total contract price plus the reasonable settlement costs of the contractor reduced by the amount of any sales of construction, supplies, and construction materials under paragraph (3) of this clause, and the contract price of work not terminated.

(d) Cost claimed, agreed to, or established under subparagraphs (b) and (c) of this paragraph shall be in accordance with R33-3-8."

R33-5-497. Construction Contract Clauses: Remedies Clause.

"REMEDIES

Any dispute arising under or out of this contract is subject to the provisions of Part H (Legal and Contractual Remedies) of the Utah Procurement Code."

R33-5-510. Application.

The provisions of this section apply to every procurement of services within the scope of the practice of architecture as defined by Section 58-3-2, or professional engineering as defined in Section 58-22-2, except as authorized by Section R33-3-4 and Section R33-3-5.

R33-5-520. Policy.

It is the policy of this State to:

(a) give public notice of all requirements for architect-engineer services except as noted in Sections R33-5-510 and R33-5-530 and

(b) negotiate contracts for these services on the basis of demonstrated competence and qualification for the type of service required, and at fair and reasonable prices.

R33-5-525. Annual Statement of Qualifications and Performance Data.

The Chief Procurement Officer, the head of a Purchasing Agency, or a designee of either officer shall request firms engaged in providing architect-engineer services to annually submit a statement of qualifications and performance data which should include the following:

(a) the name of the firm and the location of all of its offices, specifically indicating the principal place of business,

(b) the age of the firm and its average number of employees over the past five years,

(c) the education, training, and qualifications of members of the firm and key employees,

(d) the experience of the firm reflecting technical capabilities and project experience,

(e) the names of five clients who may be contacted, including at least two for whom services were rendered in the last year,

(f) any other pertinent information regarding qualifications and performance data requested by the Procurement Officer.

A standard form or format may be developed for these statements of qualifications and performance data. Firms may amend statements of qualifications and performance data at any time by filing a new statement.

R33-5-527. Billing Rate Survey.

The Consulting Engineers Council of Utah and the local

chapter of the American Institute of Architects will provide the results of an annual survey on billing rates within their respective disciplines to the chief procurement officer prior to April 1 each year. This information will then be made available to all public procurement units.

R33-5-530. Small Purchases of Architect-Engineer Services.

When the procurement of Architect-Engineer Services is estimated to be less than $20,000, the procurement officer may select the provider directly from either the list of firms who have submitted annual statements of qualifications and performance data, or from other qualified firms if necessary. If the procurement is estimated to exceed $20,000 then the selection method prescribed by the following sections apply.

R33-5-540. Architect-Engineer Selection Committee.

The Chief Procurement Officer, or designee, shall designate members of the Architect-Engineer Selection Committee. The selection committee must consist of at least three members, where possible at least one of which is well qualified in the professions of architecture or engineering, as appropriate.

The Chief Procurement Officer, or designee, shall designate one member of the committee as chair and to act as the Procurement Officer to coordinate the negotiations of a contract with the most qualified firm in accordance with Section 63-56-44 of the Utah Procurement Code.

R33-5-550. Public Notice.

Public notice for architect-engineer services shall be given by the Procurement Officer as provided in R33-3-104. The notice shall be published sufficiently in advance of when responses must be received in order that firms have an adequate opportunity to respond to the solicitation, but not less than the time required by R33-3-102. The notice shall contain a brief statement of the services required which adequately describes the project, the closing date for submissions and how specific information on the project may be obtained.

R33-5-560. Request for Statements of Interest.

A request for statements of interest (SOI) shall be prepared which describes the state's requirements and sets forth the evaluation criteria. It shall be distributed upon request and payment of a fee.

The request for statements of interest (SOI) shall include notice of any conference to be held and the criteria to be used in evaluating the statements of interest, qualifications and performance data and selecting firms, including:

(a) competence to perform the services as reflected by technical training and education, general experience, experience in providing the required services and the qualifications and competence of persons who would be assigned to perform the services.

(b) ability to perform the services as reflected by workload and the availability of adequate personnel, equipment, and facilities to perform the services expeditiously, and

(c) past performance as reflected by the evaluations of private persons and officials of other governmental entities that have retained the services of the firm with respect to factors such as control of costs, quality of work, and an ability to meet deadlines.

R33-5-570. Definition of Scope of Work.

Prior to initiating a request for SOI for architect-engineer services the using agency shall define the scope of the services. The scope definition shall be sufficient to define the work expected, as detailed as possible and the scope definition shall be the basis for the negotiation process. However the scope may be modified if necessary during final negotiations.

R33-5-580. Evaluation of Statements of Interest, Qualifications and Performance Data.

The selection committee shall evaluate:

(a) annual statement of qualifications and performance data submitted under Section R33-5-525;

(b) statements that may be submitted in response to the request for SOI for architect-engineer services, including proposals for joint ventures; and

(c) supplemental statements of qualifications and performance data, if their submission was required.

All statements and supplemental statements of qualifications and performance data shall be evaluated in light of the criteria set forth in the request for SOI for architect-engineering services.

R33-5-590. Selection of Firms for Discussions.

The selection committee shall select for discussions no fewer than three firms evaluated as being professionally and technically qualified unless fewer than three firms responded to the request for SOI. The Procurement Officer shall notify each firm in writing of the date, time, and place of discussions, and, if necessary, shall provide each firm with additional information on the project and the services required. This discussion phase may be waived if the evaluation of the statements of interest, qualifications and performance data indicate that one firm is clearly most qualified and if the scope and nature of the services are clearly defined.

R33-5-600. Discussions.

Following evaluation of the statements of interest, qualifications and performance data, the selection committee shall hold discussions with the firms selected pursuant to section R33-45-590 regarding the proposed contract. The purposes of these discussions shall be to:

(a) determine each firm's general capabilities and qualifications for performing the contract; and

(b) explore the scope and nature of the required services and the relative utility of alternative methods of approach.

R33-5-610. Selection of the Most Qualified Firms.

After discussions, the selection committee shall reevaluate and select, in order of preference, the firms which it deems to be the most highly qualified to provide the required services. The selection committee shall document the selection process indicating how the evaluation criteria were applied to determine the ranking of the most highly qualified firms.

R33-5-620. Negotiation and Award of Contract.

The Procurement Officer shall negotiate a contract with the most qualified firm for the required services at compensation determined to be fair and reasonable to the State. Contract negotiations shall be directed toward:

(a) making certain that the firm has a clear understanding of the scope of the work, specifically, the essential requirements involved in providing the required services;

(b) determining that the firm will make available the necessary personnel and facilities to perform the services within the required time, and

(c) agreeing upon compensation which is fair and reasonable, taking into account the estimated value, scope, complexity, and nature of the required services.

R33-5-630. Failure to Negotiate Contract with the Most Qualified Firm.

(a) If fair and reasonable compensation, contract requirements, and contract documents cannot be agreed upon with the most qualified firm, the Procurement Officer shall advise the firm in writing of the termination of negotiations.

(b) Upon failure to negotiate a contract with the most qualified firm, the Procurement Officer shall enter into negotiations with the next most qualified firm. If fair and reasonable compensation, contract requirements, and contract documents can be agreed upon, then the contract shall be awarded to that firm. If negotiations again fail, negotiations shall be terminated as provided in R33-5-630(a) of this section and commenced with the next most qualified firm.

R33-5-640. Notice of Award.

Written notice of the award shall be sent to the firm with whom the contract is successfully negotiated. Each firm with whom discussions were held shall be notified of the award. Notice of the award shall be made available to the public.

R33-5-650. Failure to Negotiate Contract with Firms Initially Selected as Most Qualified.

Should the Procurement Officer be unable to negotiate a contract with any of the firms initially selected as the most highly qualified firms. additional firms shall be selected in preferential order based on their respective qualifications, and negotiations shall continue in accordance with section R33-5-630 until an agreement is reached and the contract awarded.

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R33. Administrative Services, Purchasing and General Services.

R33-6. Modification and Termination of Contracts for Supplies and Services.

R33-6-101. Revisions to Contract Clauses.

The clauses set forth in this rule may be varied for use in a particular contract at the discretion of the procurement officer.

R33-6-102. Changes Clause.

Changes Clause in Fixed-Price Contracts. In fixed-price contracts, the following clause may be inserted:

"Changes"

Change Order. By a written order, at any time, and without notice to any surety, the procurement officer may, subject to all appropriate adjustments, make changes within the general scope of this contract in any one or more of the following:

(1) drawings, designs, or specifications, if the supplies to be furnished are to be specially manufactured for the purchasing agency,

(2) method of shipment or packing; or

(3) place of delivery.

Adjustments of Price or Time or Performance. If any change order increases or decreases the contractor's cost of, or the time required for, performance of any part of the work under this contract, an adjustment shall be made and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract. Failure of the parties to agree to an adjustment shall not excuse the contractor from proceeding with the contract as changed, provided that the purchasing agency promptly and duly makes provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the contractor shall not be deemed to have prejudiced any claim for additional compensation, or an extension of time for completion.

Time Period for Claim. Within 30 days after receipt of a written change order under the Change Order paragraph of this clause, unless the period is extended by the procurement officer in writing, the contractor shall file notice of intent to assert a claim for an adjustment.

Claim Barred After Final Payment. No claim by the contractor for an adjustment hereunder shall be allowed if asserted after final payment under this contract."

R33-6-103. Stop Work Order Clause.

(1) Use of Clause. This clause is authorized for use in any fixed-price contract under which work stoppage may be required for reasons such as advancements in the state of the art, production modifications, engineering changes or realignment of programs.

(2) Use of Orders.

(a) Because stop work orders may result in increased costs by reason of standby costs, these orders will be issued only with prior approval of the procurement officer.

(b) Stop work orders shall include, as appropriate:

(i) a clear description of the work to be suspended;

(ii) instructions as to the issuance of further orders by the contractor for material or services.

(c) If an extension of the stop work order is necessary, it must be evidenced by a supplemental agreement as soon as feasible after a stop work order is issued. Any cancellation of a stop work order shall be subject to the same approvals as were required for the issuance of the order.

(3) Clause.

"Stop Work Order"

Order to Stop Work. The procurement officer, may, by written order to the contractor, at any time, and without notice to any surety, require the contractor to stop all or any part of the

work called for by this contract. This order shall be for a specified period after the order is delivered to the contractor. Any order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, the contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or as legally extended, the procurement officer shall either:

(a) cancel the stop work order;

(b) terminate the work covered by the order; or

(c) terminate the contract.

Cancellation or Expiration of the Order. If a stop work order issued under this clause is properly canceled, the contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the contract shall be modified in writing accordingly, if:

(a) the stop work order results in an increase in the time required for, or in the contractor's cost properly allocable to, the performance of any part of this contract; and

(b) the contractor asserts a claim for such an adjustment within 30 days after the end of the period of work stoppage.

Termination of Stopped Work. If the work covered by the order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowed by adjustment or otherwise and the adjustment shall be in accordance with the Price Adjustment Clause of this contract."

R33-6-104. Variations in Estimated Quantities Clause.

(1) Definite Quantity Contracts. The following clause may be used in definite quantity supply or service contracts:

Variation in Quantity

Upon the agreement of the parties, the quantity of supplies or services, or both, specified in this contract may be increased provided:

(a) the unit prices for the increased quantity increment will remain the same; and

(b) an increase will either be more economical than awarding another contract or that it would not be practical to award another contract."

(2) Indefinite Quantity Contracts. No clause is provided here. However, the solicitation and contract should include:

(a) the minimum quantity, if any, the purchasing agency is obligated to order and the contractor to provide;

(b) whether there is an approximate quantity the purchasing agency expects to order and how this quantity relates to the minimum and maximum quantities that may be ordered under the contract;

(c) whether there is a maximum quantity the purchasing agency may order and the contractor must provide; and

(d) whether the purchasing agency is obligated to order its actual requirements under the contract, with exception for a stated quantity, which if exceeded, separate bids will be solicited.

R33-6-105. Price Adjustment Clause.

The following clause may be used when price adjustments are anticipated:

Price Adjustment

Price Adjustment Methods. Any adjustment in contract price pursuant to the application of a clause in this contract shall be made in one or more of the following ways:

(1) by agreement on a fixed-price adjustment;

(2) by unit prices specified in the contract;

(3) in another manner as the parties may mutually agree; or

(4) in the absence of agreement between the parties, by a unilateral determination by the procurement officer of the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee.

Submission of Cost or Pricing Data. The contractor shall provide cost or pricing data for any price adjustment subject to the provisions of the Cost or Pricing Data section of the Utah State Procurement Rules."

R33-6-106. Termination for Default Clause.

Termination For Default

Default. If the contractor refuses or fails to timely perform any of the provisions of this contract, with sufficient diligence as will ensure its completion within the time specified in this contract, the procurement officer may notify the contractor in writing of the nonperformance, and if not promptly corrected, such officer may terminate the contractor's right to proceed with the contract or part of the contract as to which there has been delay or a failure to properly perform. The contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services elsewhere.

Contractor's Duties. Notwithstanding termination of the contract and subject to any directions from the procurement officer, the contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the contractor in which the purchasing agency has an interest.

Compensation. Payment for completed supplies delivered and accepted by the purchasing agency shall be at the contract price. The purchasing agency may withhold amounts due the contractor as the procurement officer deems to be necessary to protect the purchasing agency against loss because of outstanding liens or claims of former lien holders and to reimburse the purchasing agency for the excess costs incurred in procuring similar goods and services.

Excuse for Nonperformance or Delayed Performance. The contractor shall not be in default by reason or any failure in performance of this contract in accordance with its terms if the failure arises out of acts of God; acts of the public enemy; acts of the state and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather.

Upon request of the contractor, the procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the contractor's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the

purchasing agency.

Erroneous Termination for Default. If after notice of termination of the contractor's right to proceed under the provision of this clause, it is determined for any reason that the contractor was not in default under the provisions of this clause, or that the delay was excusable, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the termination for convenience clause."

R33-6-107. Liquidated Damages Clause.

Liquidated Damages

When the contractor is given notice of delay or nonperformance and fails to cure in the time specified, in addition to any other damages that are applicable, the contractor shall be liable for $..... per calendar day from date set for cure until either the purchasing agency reasonably obtains similar supplies or services if the contractor is terminated for default, or until the contractor provides the supplies or services if the contractor is not terminated for default. To the extent that the contractor's delay or nonperformance is excused under the Excuse for Nonperformance or Delayed Performance paragraph of the Termination for Default Clause of this contract, liquidated damages shall not be due the purchasing agency.

R33-6-108. Termination for Convenience Clause.

Termination For Convenience

Termination. The procurement officer may, when the interests of the purchasing agency so require, terminate this contract in whole or in part, for the convenience of the agency. The procurement officer shall give written notice of the termination to the contractor specifying the part of the contract terminated and when termination becomes effective. This in no way implies that the purchasing agency has breached the contract by exercise of the Termination for Convenience Clause.

Contractor's Obligations. The contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the contractor will stop work to the extent specified. The contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The procurement officer may direct the contractor to assign the contractor's right, title, and interest under terminated orders or subcontracts to the purchasing agency. The contractor must still complete and deliver to the purchasing agency the work not terminated by the notice of termination and may incur obligations to do so.

Compensation.

(1) The contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data bearing on such claim. If the contractor fails to file a termination claim within 90 days from the effective date of termination, the procurement officer may pay the contractor, if at all, an amount set in accordance with subparagraph (c) of this paragraph.

(2) The procurement officer and the contractor may agree to a settlement provided the contractor has filed a termination claim supported by cost or pricing data and that the settlement does not exceed the total contract price plus settlement costs, reduced by payments previously made by the purchasing agency, the proceeds of any sales of supplies and manufacturing materials made under agreement, and the contract price of the work not terminated.

(3) Absent complete agreement under subparagraph (b) of this paragraph, the procurement officer shall pay the contractor the following amounts, provided payments agreed to under subparagraph (b) shall not duplicate payments under this subparagraph:

(a) contract prices for supplies or services accepted under the contract;

(b) costs incurred in preparing to perform the terminated portion of the work plus a fair and reasonable profit on a portion of the work not including anticipatory profit or consequential damages, less amounts paid or to be paid for accepted supplies or services; provided, however, that if it appears that the contractor would have sustained a loss if the entire contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;

(c) costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to the Contractor's Obligations paragraph of this clause. These costs must not include costs paid in accordance with subparagraph (c)(ii) of this paragraph;

(d) the reasonable settlement costs of the contractor including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this contract. The total sum to be paid the contractor under this subparagraph shall not exceed the total contract price reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subparagraph (b) of this paragraph, and the contract price of work not terminated.

(4) Cost claimed or agreed to under this section shall be in accordance with applicable sections of the Utah State Procurement Rules."

R33-6-109. Novation, Assignment or Change of Name.

(1) Assignment. No contract is transferable, or otherwise assignable, without the written consent of the procurement officer provided, however, that a contractor may assign monies receivable under a contract after due notice to the purchasing agency.

(2) Recognition of a Successor in Interest; Novation. When in the best interest of the purchasing agency, a successor in interest may be recognized in a novation agreement in which the transferor and the transferee shall agree that:

(a) the transferee assumes all of the transferor's obligations;

(b) the transferor waives all rights under the contract as against the agency; and

(c) unless the transferor guarantees performance of the contract by the transferee, the transferee shall, if required, furnish a satisfactory performance bond.

(3) Change of Name. When a contractor requests to change the name in which it holds a contract with a purchasing agency, the procurement officer responsible for the contract shall, upon receipt of a document indicating a change of name, enter into an agreement with the requesting contractor to effect such a change of name. The agreement changing the name should specifically indicate that no other terms and conditions of the contract are changed.

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R33. Administrative Services, Purchasing and General Services.
R33-7. Cost Principles.
R33-7-101. Applicability of Cost Principles.

(1) Application. This subpart contains cost principles and procedures to be used as guidance in:

(a) establishment of contract cost estimates and prices under contracts made by competitive sealed proposals where the award may not be based on adequate price competition, sole source procurement, contracts for certain services, or architect-engineer services;

(b) establishment of price adjustments for contract changes;

(c) pricing of termination for convenience settlements; and

(d) any other situation in which cost analysis is required.

(2) Limitation. Cost principles in this subpart are not applicable to:

(a) the establishment of prices under contracts made by competitive sealed bidding or otherwise based on adequate price competition rather than the analysis of individual, specific cost elements, except that this subpart does apply to the establishment of adjustments of price for changes made to contracts;

(b) prices which are fixed by law or rule;

(c) prices which are based on established catalog prices as defined in Section 63-56-5(8) of the Utah Procurement Code, or established market prices; and

(d) stipulated unit prices.

R33-7-102. Allowable Costs.

(1) General. Any contract cost proposed for estimating purposes or invoiced for cost-reimbursement purposes shall be allowable as provided in the contract. The contract shall provide that the total allowable cost of a contract is the sum of the allowable direct costs actually incurred or, in the case of forward pricing, the amount estimated to be incurred in the performance of the contract in accordance with its terms, plus the properly allocable portion of the allowable indirect costs, less any applicable credits such as discounts, rebates, refunds, and property disposal income.

(2) Accounting Consistency. All costs shall be accounted for in accordance with generally accepted accounting principles and in a manner that is consistent with the contractor's usual accounting practices in charging costs to other activities. In pricing a proposal, a contractor shall estimate costs consistently with cost accounting practices used in accumulating and reporting costs.

(3) When Allowable. The contract shall provide that costs shall be allowed to the extent they are:

(a) reasonable, as defined in Section 7-103;

(b) allocable, as defined in Section 7-104;

(c) not made unlawful under any applicable law;

(d) not unallowable under Section 7-105 or Section 7-106; and

(e) actually incurred or accrued and accounted for in accordance with generally accepted accounting principles in the case of costs invoiced for reimbursement.

R33-7-103. Reasonable Costs.

Any cost is reasonable if, in its nature or amount, it does not exceed that which would be incurred by an ordinarily prudent person in the conduct of competitive business. In determining the reasonableness of a given cost, consideration shall be given to:

(1) whether the cost is of a type generally recognized as ordinary and necessary for the conduct of the contractor's business or the performance of the contract;

(2) the restraints inherent in and the requirements imposed by the factors generally accepted sound business practices, arm's length bargaining, federal and state laws and regulations, and contract terms and specifications;

(3) the action that a prudent businessman would take under the circumstances, considering responsibilities to the owners of the business, employees, customers, the purchasing agency, and the general public;

(4) significant deviations from the contractor's established practices which may unjustifiably increase the contract costs; and

(5) any other relevant circumstances.

R33-7-104. Allocable Costs.

(1) General. A cost is allocable if it is assignable or chargeable to one or more cost objectives in accordance with relative benefits received and if it:

(a) is incurred specifically for the contract;

(b) benefits both the contract and other work, and can be distributed to both in reasonable proportion to the benefits received; or

(c) is necessary to the overall operation of the business, although a direct relationship to any particular cost objective cannot be shown.

(2) Allocation Consistency. Costs are allocable as direct or indirect costs. Similar costs shall be treated consistently either as direct costs or indirect costs except as provided by these rules. When a cost is treated as a direct cost in respect to one cost objective, it and all similar costs shall be treated as a direct cost for all cost objectives. Further, all costs similar to those included in any indirect cost pool shall be treated as indirect costs. All distributions to cost objectives from a cost pool shall be on the same basis.

(3) Direct Cost. A direct cost is any cost which can be identified specifically with a particular cost objective. A direct cost shall be allocated only to its specific cost objective. To be

allowable, a direct cost must be incurred in accordance with the terms of the contract.

(4) Indirect Costs.

(a) An indirect cost is one identified with more than one cost objective. Indirect costs are those remaining to be allocated to the several cost objectives after direct costs have been determined and charged directly to the contract or other work as appropriate. Any direct costs of minor dollar amount may be treated as indirect costs, provided that the treatment produces substantially the same results as treating the cost as a direct cost.

(b) Indirect costs shall be accumulated into logical cost groups with consideration of the reasons for incurring the costs. Each group should be distributed to cost objectives benefiting from the costs in the group. Each indirect cost group shall be distributed to the cost objectives substantially in proportion to the benefits received by the cost objectives. The number and composition of the groups and the method of distribution should not unduly complicate indirect cost allocation where substantially the same results could be achieved through less precise methods.

(c) The contractor's method of distribution may require examination when:

(i) any substantial difference exists between the cost patterns of the work performed under the contract and the contractor's other work;

(ii) any significant change occurs in the nature of the business, the extent of subcontracting, fixed asset improvement programs, inventories, the volume of sales and production, manufacturing processes, the contractor's products, or other relevant circumstances; or

(iii) indirect cost groups developed for a contractor's primary location are applied to off-site locations. Separate cost groups for costs allocable to off-site locations may be necessary to distribute the contractor's costs on the basis of the benefits accruing to the appropriate cost objectives.

(d) The base period for indirect cost allocation is the one in which the costs are incurred and accumulated for distribution to work performed in that period. Normally, the base period is the contractor's fiscal year. A different base period may be appropriate under unusual circumstances. In these cases, an appropriate period should be agreed to in advance.

R33-7-105. Treatment of Specific Costs.

(1) Advertising. The only allowable advertising costs are those for:

(a) the recruitment of personnel;

(b) the procurement of scarce items;

(c) the disposal of scrap or surplus materials;

(d) the listing of a business' name and location in a classified directory; and

(e) other forms of advertising as approved by the purchasing agency when in the best interest of the agency.

(2) Bad Debts. Bad debts include losses arising from uncollectible accounts and other claims, such as dishonored checks, employee advances, and related collection and legal costs. All bad debt costs are unallowable.

(3) Contingencies.

(a) Contingency costs are contributions to a reserve account for unforeseen costs. Contingency costs are unallowable except as provided in subsection (3) (b) of this section.

(b) For the purpose of establishing a contract cost estimate or price in advance of performance of the contract, recognition of uncertainties within a reasonably anticipated range of costs may be required and is not prohibited by this subsection. However, where contract clauses are present which serve to remove risks from the contractor, there shall not be included in the contract price a contingency factor for these risks. Further, contributions to a reserve for self-insurance in lieu of, and not in excess of, commercially available liability insurance premiums, are allowable as an indirect charge.

(4) Depreciation and Use Allowances.

(a) Depreciation and use allowances are allowable to compensate contractors for the use of buildings, capital improvements, and equipment. Depreciation is a method of allocating the acquisition cost of an asset to periods of its useful life. Useful life refers to the asset's period of economic usefulness in the particular contractor's operation as distinguished from its physical life. Use allowances provide compensation in lieu of depreciation or other equivalent costs. Consequently, these two methods may not be combined to compensate contractors for the use of any one type of property.

(b) The computation of depreciation or use allowances shall be based on acquisition costs. When the acquisition costs are unknown, reasonable estimates may be used.

(c) Depreciation shall be computed using any generally accepted method, provided that the method is consistently applied and results in equitable charges considering the use of the property. The straight-line method of depreciation is preferred unless the circumstances warrant some other method. However, the purchasing agency will accept any method which is accepted by the Internal Revenue Service.

(d) In order to compensate the contractor for use of depreciated, contractor-owned property which has been fully depreciated on the contractor's books and records and is being used in the performance of a contract, use allowances may be allowed as a cost of that contract. Use allowances are allowable, provided that they are computed in accordance with an established industry or government schedule or other method mutually agreed upon by the parties. If a schedule is not used, factors to consider in establishing the allowance are the original cost, remaining estimated useful life, the reasonable fair market value, and the affect of any increased maintenance or decreased efficiency.

(5) Entertainment.

(a) Entertainment costs include costs of amusements, social activities, and incidental costs such as meals, beverages, lodging, transportation, and gratuities. Entertainment costs are unallowable.

(b) Nothing shall make unallowable a legitimate expense for employee morale, health, welfare, food service, or lodging cost; except that, where a net profit is generated by employer related services, it shall be treated as a credit as provided in Section 7-207. This section shall not make unallowable costs incurred for meetings or conferences, including costs of food, rental facilities, and transportation where the primary purpose of incurring cost is the dissemination of technical information or the stimulation of production.

(6) Fines and Penalties. Fines and penalties include all costs incurred as the result of violations of or failure to comply with federal, state, and local laws and rules. Fines and penalties are unallowable costs unless incurred as a direct result of compliance with specific provisions of the contract or written instructions of the procurement officer. To the extent that workman's compensation is considered by state law to constitute a fine or penalty, it shall not be an allowable cost under this subsection.

(7) Gifts, Contributions, and Donations. A gift is property transferred to another person without the other person providing return consideration of equivalent value. Reasonable costs for employee morale, health, welfare, food services, or lodging are not gifts and are allowable. Contributions and donations are property transferred to a nonprofit institution which are not transferred in exchange for supplies or services of equivalent fair market value rendered by a nonprofit institution. Gifts, contributions, and donations are unallowable.

(8) Interest Costs.

(a) Interest is a cost of borrowing. Interest is not allowable except as provided in subsection (8)(b) of this section.

(b) Interest costs on contractor claims for payments due under purchasing agency contracts shall be allowable as provided in Section 63-56-64 of the Utah Procurement Code.

(9) Losses Incurred Under Other Contracts. A loss is the excess of costs over income earned under a particular contract. Losses may include both direct and indirect costs. A loss incurred under one contract may not be charged to any other contract.

(10) Material Costs.

(a) Material costs are the costs of all supplies, including raw materials, parts, and components whether acquired by purchase from an outside source or acquired by transfer from any division, subsidiary, or affiliate under the common control of the contractor, which are acquired in order to perform the contract. Material costs are allowable, subject to subsection 10(b) and subsection 10(c) of this section. In determining material costs, consideration shall be given to reasonable spoilage, reasonable inventory losses and reasonable overages.

(b) Material costs shall include adjustments for all available discounts, refunds, rebates and allowances which the contractor reasonably should take under the circumstances, and for credits for proceeds the contractor received or reasonably should receive from salvage and material returned to suppliers.

(c) Allowance for all materials transferred from any division including the division performing the contract, subsidiary, or affiliate under the common control of the contractor shall be made on the basis of costs incurred by the transferor determined in accordance with these cost principles rules, except that double charging of indirect costs is unallowable, except the transfer may be made at the established price provided that the price of materials is not determined to be unreasonable by the procurement officer and the price is not higher than the transferor's current sales price to its most favored customer for a like quantity under similar payment and delivery conditions and:

(i) the price is established either by the established catalog price, as defined in Section 63-56-5(8) of the Utah Procurement Code; or

(ii) by the lowest price offer obtained as a result of competitive sealed bidding or competitive sealed proposals conducted with other businesses that normally produce the item in similar quantities.

(11) Taxes.

(a) Except as limited in subsection 11(b) of this section, all taxes which the contractor is required to pay and which are paid and accrued in accordance with generally accepted accounting principles are allowable.

(b) The following costs are unallowable:

(i) federal income taxes and federal excess profit taxes;

(ii) all taxes from which the contractor could have obtained an exemption, but failed to do so, except where the administrative cost of obtaining the exemption would have exceeded the tax savings realized from the exemption;

(iii) any interest, fines, or penalties paid on delinquent taxes unless incurred at the written direction of the procurement officer; and

(iv) income tax accruals designed to account for the tax effects of differences between taxable income and pretax income as reflected by the contractor's books of account and financial statements.

(c) Any refund of taxes which were allowed as a direct cost under the contract shall be credited to the contract. Any refund of taxes which were allowed as an indirect cost under a contract shall be credited to the indirect cost group applicable to any contracts being priced or costs being reimbursed during the period in which the refund is made.

(d) Direct government charges for services such as water, or capital improvements such as sidewalks, are not considered taxes and are allowable costs.

R33-7-106. Costs Requiring Prior Approval to be Allowable.

(1) General. The costs described in subsections (2), (3), (4), and (5) of this section are allowable as direct costs to cost-reimbursement type contracts to the extent that they have been approved in advance by the procurement officer. In other situations those costs are negotiable in accordance with general standards.

(2) Pre-Contract Costs. Pre-contract costs are those incurred prior to the effective date of the contract directly pursuant to, and in anticipation of, the award of the contract. These costs are allowable to the extent that they would have been allowable if incurred after the date of the contract; provided that, in the case of a cost-reimbursement type contract, a special provision must be inserted in the contract setting forth the period of time and maximum amount of cost which will be covered as allowable pre-contract costs.

(3) Bid and Proposal Costs. Bid and proposal costs are the costs incurred in preparing, submitting, and supporting bids and proposals. Reasonable ordinary bid and proposal costs are allowable as indirect costs. Bid and proposal costs are allowable as direct costs only to the extent that they are specifically permitted by a provision of the contract or solicitation document. Where bid and proposal costs are allowable as direct costs, to avoid double accounting, the same bid and proposal costs shall not be charged as indirect costs.

(4) Insurance.

(a) Insurance costs are the costs of obtaining insurance in connection with performance of the contract or contributions to a reserve account for the purpose of self-insurance. Ordinary and necessary insurance costs are allowable in accordance with these cost principles. Self-insurance contributions are allowable only to the extent of the cost to the contractor to obtain similar insurance.

(b) Insurance costs may be approved as a direct cost only if the insurance is specifically required for the performance of the contract.

(c) Actual losses which should reasonably have been covered by permissible insurance or were expressly covered by self insurance are unallowable unless the parties expressly agree otherwise in the terms of the contract.

(5) Litigation Costs. Litigation costs include all filing fees, legal fees, expert witness fees, and all other costs involved in litigating claims in court or before an administrative board. Litigation costs are allowable as indirect costs in accordance with these rules, except that costs incurred in litigation against the purchasing agency are unallowable.

R33-7-107. Applicable Credits.

(1) Definitions and Examples. Applicable credits are receipts or price reductions which offset or reduce expenditures allocable to contracts as direct or indirect costs. Examples include purchase discounts, rebates, allowance, recoveries or indemnification for losses, sale of scrap and surplus equipment and materials, adjustments for overpayments or erroneous charges, and income from employee recreational or incidental services and food sales.

(2) Reducing Costs. Credits shall be applied to reduce related direct or indirect costs.

(3) Refund. The purchasing agency shall be entitled to a cash refund if the related expenditures have been paid to the contractor under a cost-reimbursement type contract.

R33-7-108. Advance Agreements.

(1) Purpose. Both the purchasing agency and the contractor should seek to avoid disputes and litigation arising from potential problems by providing in the terms of the contract the treatment to be accorded special or unusual costs.

(2) Procedure Required. Advance agreements may be negotiated either before or after contract award, but shall be negotiated before a significant portion of the cost covered by the agreement has been incurred. Advance agreements shall be in writing, executed by both contracting parties, and incorporated in the contract.

(3) Limitation on Costs Covered. An advance agreement shall not provide for any treatment of costs inconsistent with these rules unless a determination has been made pursuant to Section 7-210.

R33-7-109. Use of Federal Cost Principles.

(1) Cost Negotiations. In dealing with contractors operating according to federal cost principles, such as Defense Acquisition Regulation, 48 CFR 901 (1993), or Federal Procurement Regulations, 48 CFR 901 (1993), the procurement officer, after notifying the contractor, may use the federal cost principles as guidance in contract negotiations, subject to subsection (2) of this section.

(2) Incorporation of Federal Cost Principles; Conflicts Between Federal Principles and this Part.

(a) In contracts not awarded under a program which is funded by federal assistance funds, the procurement officer may explicitly incorporate federal cost principles into a solicitation and thus into any contract awarded pursuant to that solicitation. The procurement officer and the contractor by mutual agreement may incorporate federal cost principles into a contract during negotiation or after award. In either instance, the language incorporating the federal cost principles shall clearly state that to the extent federal cost principles conflict with the rules issued pursuant to Section 63-56-28(1), the state rules shall control.

(b) In contracts awarded under a program which is financed in whole or in part by federal assistance funds, all requirements set forth in the assistance document including specified federal cost principles, must be satisfied. To the extent that the cost principles specified in the grant document conflict with the cost principles issued pursuant to Section 63-56-28(1) of the Utah Procurement Code, the cost principles specified in the grant shall control.

R33-7-110. Authority to Deviate from Cost Principles.

If a procurement officer desires to deviate from the cost principles set forth in these rules, a written determination shall be made by the officer specifying the reasons for the deviation.

KEY: government purchasing
1988 **63-56**
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R33. Administrative Services, Purchasing and General Services.

R33-8. Property Management.

R33-8-101. Quality Assurance, Inspection, and Testing.

The procurement officer shall take steps to ascertain or verify that supplies, services, or construction items conform to specifications. In performing this duty, the procurement officer may establish inspection and testing facilities, employ inspection personnel, enter into arrangements for the joint or cooperative use of laboratories, and contract with others for inspection or testing work as needed. In accordance with section 63-56-10, the procurement officer may delegate responsibility for inspection and testing to using agencies.

R33-8-102. Warehousing and Storage.

Purchasing agencies are delegated the authority to exercise supervision of any receiving, storage, and distribution facilities and services within their purview.

R33-8-103. Inventory Management.

Purchasing agencies are delegated the authority to exercise supervision of all inventories of tangible personal property belonging to them. All property located in warehouses and similar storage areas shall be inventoried annually, and accountability for the property shall reside with the respective agencies.

R33-8-201. Surplus Property.

For the disposition of surplus property refer to R39.

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R33. Administrative Services, Purchasing and General Services.
R33-9. Insurance Procurement.
R33-9-101. Standard Bidding Method.

All new or renewal liability insurance purchases regardless of premium size and all other new or renewal insurance purchases over $5,000 annual premium will be made after advertisement for public bid, in accordance with these rules, except in cases of emergency for nonliability policies. In awarding the bid, the procurement officer shall consider the following:

(1) financial resources of agent, broker and underwriting company;

(2) quality of prior service rendered to the state;

(3) service facilities available in-state;

(4) service reputation;

(5) insurance experience and expertise;

(6) coverages and services to be provided; and

(7) any other reasonable factors which will provide the best possible coverage and service to the purchasing agency.

R33-9-102. Alternate Bidding Method.

To avoid oversaturation of limited primary or reinsurance markets, a two-step bidding method may be used at the option of the procurement officer.

(1) All interested agents and brokers would be required to qualify for final bidding according to reasonable selection criteria such as: similar accounts in office; size of firm; background of firm principles; specialized knowledge or expertise; and any other reasonable factors which will provide the best possible coverage for the purchasing agency. At least three unaffiliated brokers or agents must qualify for final bidding.

(2) The prequalified group of final bidders must submit a list of markets to the procurement officer in order of preference. The procurement officer will then, as equitably as possible, assign no more than five and no less than three markets to each final bidder, based upon their preferences.

Bidders will then submit an official bid for each assigned market, according to bid specifications.

KEY: government purchasing
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Notice of Continuation 1993

R68. Agriculture and Food, Plant Industry.
R68-2. Utah Commercial Feed Act Governing Feed.
R68-2-1. Authority.

Promulgated under authority of Section 4-12-3.

R68-2-2. Definition and Terms.

A. The names and definitions for commercial feeds shall be the Official Definition of Feed Ingredients adopted by the Association of American Feed Control Officials, except as the Commissioner designates other wise in specific cases.

B. The terms used in reference to commercial feeds shall be the Official Feed Terms adopted by the AAFCO, except as the Commissioner designates otherwise in specific cases.

C. The following commodities are declared exempt from the definition of commercial feed, under the provisions of Section 4-12-2: hay, straw, stover, silages, cobs, husks, and hulls when unground and when not mixed or intermixed with other materials: provided that these commodities are not adulterated within the meaning of Section 4-12-2.

R68-2-3. Registration of Products.

A. All commercial feeds and feed ingredients except those specifically exempted herein shall be officially registered annually with the Utah Department of Agriculture and Food.

1. Application for registration shall be made to the Department upon forms prescribed and provided by the Department and the applicant shall furnish all information requested thereon, being totally responsible for the accuracy and completeness of all required information.

2. A registration fee per product, determined by the department pursuant to Subsection 4-2-2(2) shall be paid by the applicant annually.

3. Each registration is renewable for a period of one year upon payment of the annual renewal fee per product, determined by the department pursuant to Subsection 4-2-2(2) which shall be paid on or before December 31 of each year. If the renewal of a commercial feed or feed ingredient registration is not filed prior to January 1 of any one year, an additional fee of $5.00 per product shall be assessed and added to the original registration fee and shall be paid by the applicant before the registration renewal for that commercial feed or feed ingredient shall be issued.

4. Whenever the name of a feed product is changed or there are changes in the product ingredients, a new registration shall be required. Other labeling changes shall not require registration, but the registrant shall submit copies of all changes to the Department as soon as they are effective. A reasonable time may be permitted to dispose of properly labeled stocks of the old product.

B. Any person who distributes customer-formula feed shall obtain a permit annually from the Department before distribution of such feeds.

1. Application for a customer-formula feed distribution permit shall be made to the Department upon forms prescribed and furnished by the Department accompanied by the annual renewal fee of $50.00.

2. Each renewal fee shall be paid on or before December 31 of each year. If the renewal fee for customer-formula feed distribution permit is not filed prior to January 1 of any one year, an additional fee of $5.00 shall be assessed and added to the original permit fee and shall be paid by the applicant before the permit shall be issued.

R68-2-4. Commercial Feed Labeling.

Commercial feed, other than customer-formula feed, shall be labeled with the information prescribed in this rule on the principal display panel of the product in the following general format.

A. Net weight.

B. Product name and brand name if any.

C. If a drug is used:

1. The word "medicated" shall appear directly following and below the product name in type size no smaller than one-half the type size of the product name.

2. The purpose of medication (claim statement).

3. An active drug ingredient statement listing the active drug ingredients by their established name and the amount in accordance with Subsection R68-2-7-D.

4. The required directions for use and precautionary statements or reference to their location if the detailed feeding directions and precautionary statements required by Section R68-2-9, appear elsewhere on the label.

D. Purpose statement

1. The statement of purpose shall contain the specific species and animal class(es) for which the feed is intended.

2. The manufacturer shall have flexibility in describing in more specific and common language the defined animal class, specie and purpose while being consistent with the category of animal class defined, which may include but not limited to including the weight range(s), sex or ages of the animal(s) for which the feed is manufactured.

3. The purpose statement may be excluded from the label if the product name includes a description of the species and animal class(es) for which the product is intended.

4. The purpose statement of a premix for the manufacture of feed may exclude the animal class and species and state "For Further Manufacture of Feed" if the nutrients contained in the premix are guaranteed and sufficient for formulation into various animal species feeds and premix specification are provided by the end user.

5. The purpose statement of a single purpose ingredient blend, such as a blend of animal protein products, milk products, fat products, roughage products or molasses products may exclude the animal class and species and state "For Further Manufacture of Feed" if the label guarantees of the nutrients contained in the single purpose nutrient blend are sufficient to provide for formulation into various animal species feeds.

E. The guaranteed analysis of the feed shall include the following items, unless exempted in Section R68-2-4, and in the order listed:

1. Minimum percentage of crude protein.

2. Maximum or minimum percentage of equivalent protein from non-protein nitrogen as required in Section R68-2-7.

3. Minimum percentage of amino acids when required by animal class or specie.

4. Minimum percentage of crude fat.

5. Maximum percentage of crude fiber.

6. Maximum percentage of acid detergent fiber when

required by animal class or specie.

7. Maximum percentage of moisture in pet foods.

8. Minerals, to include, in the following order: (a) minimum and maximum percentages of calcium (Ca), (b) minimum percentage of phosphorus (P), (c) minimum and maximum percentages of salt (NaCl) and sodium, and (d) other minerals.

9. Vitamins in such terms as specified in Section R68-2-7.

10. Total sugars as invert on dried molasses products or products being sold primarily for their sugar content.

11. Other required and voluntary guarantees should follow in a general format such that the units of measure used to express guarantees (percentage, parts per million, International Units, etc.) are listed in a sequence which provides a consistent grouping of the units of measure.

12. Exemptions.

a. Guarantees for minerals are not required when there are no specific label claims and when the commercial feed contains less than 6 1/2% of Calcium, Phosphorus, Sodium and Chloride and does not serve as a principal source of that mineral to the animal.

b. Guarantees for vitamins are not required when the commercial feed is neither formulated for nor represented in any manner as a vitamin supplement.

c. Guarantees for crude protein, crude fat, and crude fiber are not required when the commercial feed is intended for purposes other than to furnish these substances or they are of minor significance relating to the primary purpose of the product, such as drug premixes, mineral or vitamin supplements, and molasses.

F. Feed ingredients, collective terms for the grouping of feed ingredients, or appropriate statements.

1. The name of each ingredient as defined in the Official Publication of the Association of American Feed Control Officials, common or usual name, or one approved by the Commissioner.

2. Collective terms for the grouping of feed ingredients as defined in the Official Definitions of Feed Ingredients published in the Official Publication of the Association of American Feed Control Officials in lieu of the individual ingredients; provided that:

a. When a collective term for a group of ingredients is used on the label, individual ingredients within that group shall not be listed on the label.

b. The manufacturer shall provide the feed control officials, upon request, with a list of individual ingredients, within a defined group, that are or have been used at manufacturing facilities distributing in or into the state.

3. The registrant may affix the statement, "Ingredients as registered with the State" in lieu of the ingredient list on the label. The list of ingredients must be on file with the Department. This list shall be made available to the feed purchaser upon request.

G. Name and principal mailing address of the manufacturer, registrant, or person responsible for distributing the feed.

H. The lot number or batch number shall be on each label and may be the date the feed product was manufactured.

I. Commercial Livestock Feed Labeling requirements.

1. Swine formula feeds.

Animal classes: Pre-starter - 2 to 11 pounds, Starter - 11 to 44 pounds, Grower - 44 to 110 pounds, Finisher (market) 110 to 242 pounds, gilts, sows and adult boars, lactating gilts and sows.

Guaranteed Analysis, Swine complete feeds and supplements, (all animal classes).

Minimum percentage of crude protein, lysine and crude fat. Maximum percentage of crude fiber. Minimum and maximum percentage of calcium. Minimum percentage of phosphorus. Minimum and maximum percentage of salt (if added). Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee. Minimum selenium in parts per million (ppm). Minimum zinc in parts per million (ppm).

2. Poultry Feeds, Layers, Broilers, and Turkeys.

Animal classes:

a. Layers: - chickens that are grown to produce eggs for food, i.e., table eggs. Starting/growing - from day of hatch to approximately 10 weeks of age. Finisher - from approximately 10 weeks of age to time first egg is produced. (Approximately 20 weeks of age). Laying - from time first egg is laid throughout the time of egg production. Breeders - chickens that produce fertile eggs for hatch replacement layers to produce eggs for food, table eggs, from time first egg is laid throughout their reproductive cycle

b. Broilers - chickens that are grown for human food. Starting/growing - from day of hatch to approximately 5 weeks of age. Finisher - from approximately 5 weeks of age to market (42- to 52 days). Breeders - hybrid strains of chickens whose offspring are grown for human food, (broilers), any age and either sex.

c. Broilers, Breeders - chickens whose offspring are grown for human food (broilers). Starting/growing - from day of hatch until approximately 10 weeks of age. Finishing - from approximately 10 weeks of age to time first egg is produced, approximately 20 weeks of age. Laying - fertile egg producing chickens (broilers/roasters) from day of first egg throughout the time fertile eggs are produced.

d. Starting/growing - Turkeys that are grown for human food from day of hatch to approximately 13 weeks of age (females)and 16 weeks of age (males). Finisher - Turkeys that are grown for human food, females from approximately 13 weeks of age to approximately 17 weeks of age; males from 16 weeks of age to 20 weeks of age, (or desired market weight). Laying - Female turkeys that are producing eggs; from time first egg is produced, throughout the time they are producing eggs. Breeder - Turkeys that are grown to produce fertile eggs, from day of hatch to time first egg is produced (approximately 30 weeks of age), both sexes.

Guaranteed analysis: Poultry complete feeds and supplements. (all animal classes): Minimum percentage of crude protein, lysine, methionine and crude fat. Maximum percentage of crude fiber. Minimum and maximum percentage of calcium. Minimum percentage of phosphorus. Minimum and maximum percentage of salt (if added). Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee.

3. Beef cattle formula feeds: Animal classes; calves, birth

to weaning. Cattle on Pasture (may be specific as to reproduction stage; e.g. stocker, feeder, replacement heifers, brood cows, bulls, etc.)

a. Guaranteed analysis; Beef complete feeds and supplements, (all animal classes). Minimum percentage of crude protein. Maximum percentage of equivalent crude protein from non-protein nitrogen (NPN) when added. Minimum percentage of crude fat. Maximum percentage of crude fiber. Minimum and maximum percentage of calcium. Minimum percentage of phosphorus. Minimum and maximum percentage of salt (if added). Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee. Minimum percentage of potassium. Minimum vitamin A, other than precursors of vitamin A, in International Units per pound (if added).

b. Guaranteed analysis; Beef mineral feeds (if added). Minimum and maximum percentage of calcium. Minimum percentage of phosphorus. Minimum and maximum percentage of salt. Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee. Minimum percentage of magnesium. Minimum percentage of potassium. Minimum copper, selenium, and zinc in parts per million (PPM). Minimum vitamin A, other than precursors of vitamin A in International Units per pound.

4. Dairy formula feeds: Animal classes; Veal milk replacer - milk replacer to be fed for veal production. Herd milk replacer - milk replacer to be fed for herd replacement calves. Starter - approximately 3 days to 3 months. Growing heifers, bull, and dairy beef, (a.) grower 1 - 3 months to 12 months of age, (b) grower 2 - more than 12 months of age. Lactating dairy cattle. Non-lactating dairy cattle.

a. Guaranteed analysis; Veal and herd replacement milk replacer. Minimum percentage of crude protein and crude fat. Maximum percentage of crude fiber. Minimum and maximum percentage of calcium. Minimum percentage of phosphorus. Minimum vitamin A, other than precursors of vitamin A, in International Units per pound (if added).

b. Guaranteed analysis: Dairy cattle complete feeds and supplements; Minimum percentage of crude protein. Maximum percentage of non-protein nitrogen (NPN) when added. Minimum percentage of crude fat. Maximum percentage of crude fiber. Maximum percentage of acid detergent fiber (ADF). Minimum and maximum percentage of calcium. Minimum percentage of phosphorus. Minimum selenium in parts per million (PPM). Minimum vitamin A, other than precursors of vitamin A, in International Units per pound

c. Guaranteed analysis: Dairy mixing and pasture mineral with vitamins (if added). Minimum and maximum percentage of calcium. Minimum percentage of phosphorus. Minimum and maximum percentage of salt. Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum guarantee. Minimum percentage of magnesium. Minimum percentage of potassium. Minimum selenium in parts per million (ppm). Minimum vitamin A, other than the precursors of vitamin A, in International Units per pound.

5. Equine formula feeds: Animal classes; Foal, Mare, Breeding, Maintenance. Guaranteed analysis; Equine complete feeds and supplements (all animal classes). Minimum percentage of crude protein and crude fat. Maximum percentage of crude fiber. Minimum and maximum percentage of calcium. Minimum percentage of phosphorus. Minimum copper, selenium and zinc in parts per million (ppm). Minimum vitamin A, other than the precursors of vitamin A, in International Units per pound (if added). Guaranteed analysis for Equine Mineral Feeds (all animal classes). Minimum and maximum percentage of calcium, minimum percentage of phosphorus, minimum and maximum percentage of salt (if added), minimum and maximum percentage of sodium shall be guaranteed only when the total sodium exceeds that furnished by the maximum salt guarantee. Minimum copper, selenium and zinc in parts per million (ppm), minimum vitamin A, other than precursors of vitamin A, in International Units per pound (if added)

6. Goat and Sheep formula feeds: Animal classes; starter, grower, finisher, breeder, lactating. Guaranteed analysis; Goat and Sheep complete feeds and supplements (all animal classes). Minimum percentage of crude protein. Maximum percentage of equivalent crude protein from non-protein nitrogen (NPN) when added. Minimum percentage of crude fat. Maximum percentage of crude fiber. Minimum and maximum percentage of calcium. Minimum percentage of phosphorus. Minimum and maximum percentage of salt (if added). Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee. Minimum and maximum copper in parts per million (PPM) (if added, or if total copper exceeds 20 ppm). Minimum selenium in parts per million (ppm). Minimum vitamin A, other than precursors of vitamin A, in International Units per pound (if added).

7. Duck and Geese formula feeds: Animal classes; Ducks, starter - 0 to 3 weeks of age, grower - 3 to 6 weeks of age, finisher - 6 weeks to market, breeder/developer- 8 to 19 weeks of age, breeder-22 weeks to end of lay. Geese, starter-0 to 4 weeks of age, grower-4 to 8 weeks of age, finisher-8 weeks to market, breeder/developer-10 to 22 weeks of age, breeder-22 weeks to end of lay. Guaranteed analysis: duck and geese complete feeds and supplements (for all animal classes). Minimum percentage of crude protein and crude fat. Maximum percentage of crude fiber. Minimum and maximum percentage of calcium. Minimum percentage of phosphorus. Minimum and maximum percentage of salt (if added). Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee.

8. Fish complete feeds and supplements. Animal species shall be declared in lieu of animal class; trout, catfish, and other species. Guaranteed analysis: fish complete feeds and supplements; Minimum percentage of crude protein and crude fat. Maximum percentage of crude fiber. Minimum percentage of phosphorus.

9. Rabbit complete feeds and supplements. Animal classes, grower-4 to 12 weeks of age, breeder-12 weeks of age and over. Guaranteed analysis, Rabbit complete feeds and supplements(all animal classes). Minimum percentage of crude protein and crude fat. Minimum and maximum percentage of crude fiber (the maximum crude fiber shall not exceed the minimum by more than 5.0 units). Minimum and maximum percentage of calcium. Minimum percentage of phosphorus. Minimum and

maximum percentage of salt (if added). Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee. Minimum vitamin A, other than precursors of vitamin A, in International Units per pound (if added).

10. Other feeds shall include the following items in the order listed (unless exempted). The required guarantees of grain mixtures with or without molasses and feeds other than those described shall include the following items, unless exempted and in the order listed: Animal class(es) and species for which the product is intended. Guaranteed analysis; Minimum percentage of crude protein. Maximum or minimum percentage of equivalent protein from non-protein nitrogen as required. Minimum percentage of crude fat. Maximum percentage of crude fiber. Minerals in formula feeds, to include in the following order. Minimum and maximum percentages of calcium. Minimum percentage of phosphorus. Minimum and maximum percentage of salt (if added). Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee, other mineral.

J. A vignette, graphic, or pictorial representation of a product on a pet food label shall not misrepresent the contents of the package.

1. The use of the word "proven" in connection with label claims for a pet food is improper unless scientific or other empirical evidence establishing the claim represented as "proven" is available.

K. No statement shall appear upon the label of a pet food which makes false or misleading comparisons between that pet food and any other pet food.

L. Personal or commercial endorsements are permitted on pet food labels where said endorsements are factual and not otherwise misleading.

M. When a pet food is enclosed in any outer container or wrapper which is intended for retail sale, all required label information must appear on such outside container or wrapper.

N. The words "Dog Food," "Cat Food," or similar designations must appear conspicuously upon the principal display panels of the pet food labels.

O. The label of a pet food shall not contain an unqualified representation or claim, directly or indirectly, that the pet food therein contained or a recommended feeding thereof is or meets the requisites of a complete, perfect scientific or balanced ration for dogs or cats unless such product or feeding:

1. Contains ingredients in quantities sufficient to provide the estimated nutrient requirements for all stages of the life of a dog or cat, as the case may be, which have been established by a recognized authority on animal nutrition, such as the Committee on Animal Nutrition of the National Research Council of the National Academy of Sciences or,

2. Contains a combination of ingredients which when fed to a normal animal as the only source of nourishment will provide satisfactorily for fertility of females, gestation and lactation, normal growth from weaning to maturity without supplementary feeding, and will maintain the normal weight of an adult animal whether working or at rest and has had its capabilities in this regard demonstrated by adequate testing.

P. Labels for products which are compounded for or which are suitable for only a limited purpose (i.e., a product designed for the feeding of puppies) may contain representations that said pet food product or recommended feeding thereof, is or meets the requisites of a complete, perfect, scientific or balanced ration for dogs or cats only:

1. In conjunction with a statement of a limited purpose for which the product is intended or suitable (as, for example, in the statement 'a complete food for puppies'). Such representations and such required qualification therefore shall be juxtaposed on the same panel and in the same size, style and color print; and

2. Such qualified representations may appear on pet food labels only if:

a. The pet food contains ingredients in quantities sufficient to satisfy the estimated nutrient requirements established by a recognized authority on animal nutrition, such as the Committee on Animal Nutrition of the National Research Council of the National Academy of Sciences for such limited or qualified purpose; or

b. The pet food product contains a combination of ingredients which when fed for such limited purpose will satisfy the nutrient requirements for such limited purpose and has had its capabilities in this regard demonstrated by adequate testing.

Q. Except as specified by Section R68-2-6, the name of any ingredient which appears on the label other than in the product name shall not be given undue emphasis so as to create the impression that such an ingredient is present in the product in a larger amount than is the fact, and if the names of more than one such ingredient are shown, they shall appear in the order of their respective predominance by weight in the product.

R68-2-5. Customer-Formula Feed Labeling.

A. Customer-formula feed shall be accompanied with the following prescribed information shown on label, invoice, delivery ticket, or other shipping document:

1. The name and address of the manufacturer.

2. The name and address of the purchaser.

3. The date of sale or delivery.

4. The customer-formula feed name and brand name if any.

5. The product name and net weight of each registered commercial feed and each other ingredient used in the mixture.

6. If a drug-containing product is used:

a. The purpose of the medication (claim statement).

b. The established name of each active drug ingredient and the level of each drug used in the final mixture expressed in accordance with Section R68-2-7.

c. The directions for use and precautionary statements as required by Section R68-2-9.

R68-2-6. Brand and Product Names.

A. The brand or product name must be appropriate for the intended use of the feed and must not be misleading. If the name indicates the feed is made for a specific use, the character of the feed must conform therewith. A mixture labeled "Dairy Feed," for example, must be suitable for that purpose.

B. Commercial, registered brand or trade names are not permitted in guarantees of ingredient listings and only in the product name of feeds produced by or for the firm holding the rights to such a name.

C. The name of a commercial feed shall not be derived from one or more ingredients of a mixture to the exclusion of other ingredients and shall not be one representing any components of a mixture unless all components are included in the name; provided, that if any ingredient or combination of ingredients is intended to impart a distinctive characteristic to the product which is of significance to the purchaser, the name of that ingredient or combination of ingredients may be used as a part of the brand name or product name if the ingredient or combination of ingredients is quantitatively guaranteed in the guaranteed analysis, and the brand or product name is not otherwise false or misleading.

D. The word "protein" shall not be permitted in the product name of a feed that contains added non-protein nitrogen.

E. When the name carries a percentage value, it shall be understood to signify protein and/or equivalent protein content only, even though it may not explicitly modify the percentage with the word "protein"; provided, that other percentage values may be permitted if they are followed by the proper description and conform to good labeling practice. Digital numbers shall not be used in such a manner as to be misleading or confusing to the customer.

F. Single ingredient feeds shall have a product name in accordance with the designated definition of feed ingredients as recognized by the Association of American Feed Control Officials unless the Commissioner designates otherwise.

G. The word "vitamin," or a contraction thereof, or any word suggesting vitamin can be used only in the name of a feed which is represented to be a vitamin supplement, and which is labeled with the minimum content of each vitamin declared, as specified in Section R68-2-7.

H. The term "mineralized" shall not be used in the name of a feed except for "TRACE MINERALIZED SALT." When so used, the product must contain significant amounts of trace minerals which are recognized as essential for animal nutrition.

I. The term "meat" and "meat by-products" shall be qualified to designate the animal from which the meat and meat by-products is derived unless the meat and meat by-products are made from cattle, swine, sheep and goats.

J. No flavor designation shall be used on a pet food label unless the designated flavor is detectable by a recognized test method, or is one, the presence of which, provides a characteristic distinguishable by the pet. Any flavor designation on a pet food label must either conform to the name of its source as shown in the ingredient statement or the ingredient statement shall show the source of its flavor. The word flavor shall be printed in the same size type and with an equal degree of conspicuousness as the ingredient term(s) from which the flavor designation is derived. Distribution of pet food employing such flavor designation or claims on the labels of the product distributed by them shall, upon request, supply verification of the designated or claimed flavor to the appropriate control official.

K. The designation "100%" or "All" or words of similar connotation shall not be used in the brand or product name of a pet food if it contains more than one ingredient. However, for the purpose of this provision, water sufficient for processing, required decharacterizing agents and trace amounts of preservatives and condiments shall not be considered ingredients.

L. The name of the pet food shall not be derived from one or more ingredients of a mixture of a pet food product unless all components or ingredients are included in the name except as specified by Subsections R68-2-6-J, M or N; provided that the name of an ingredient or combination of ingredients may be used as a part of the product name if:

1. the ingredient or combination of ingredients is present in sufficient quantity to impart a distinctive characteristic to the product or is present in amounts which have a material bearing upon the price of the product or upon acceptance of the product by the purchaser thereof; or

2. it does not constitute a representation that the ingredient or combination of ingredients is present to the exclusion of other ingredients; or

3. it is not otherwise false or misleading.

M. When an ingredient or a combination of ingredients derived from animals, poultry, or fish constitutes 95% or more of the total weight of all ingredients of a pet food mixture, the name or names of such ingredient(s) may form a part of the product name of the pet food; provided, that where more than one ingredient is part of such product name, then all such ingredient names shall be in the same size, style and color print.

N. When an ingredient or a combination of ingredients derived from animals, poultry or fish constitutes at least 25% but less than 95% of the total weight of all ingredients of a pet food mixture the name or names of such ingredient or ingredients may form a part of the product name of the pet food only if the product name also includes a primary descriptive term such as "meatballs" or "fishcakes" so that the product name describes the contents of the products in accordance with an established law, custom or usage or so that the product name is not misleading. All such ingredient names and the primary descriptive term shall be in the same size, style and color print.

O. Contractions or coined names referring to ingredients shall not be used in the name of a pet food unless it is in compliance with Subsections R68-2-6-J, L, M and N.

R68-2-7. Expression of Guarantees.

A. The guarantees for crude protein, equivalent protein from non-protein nitrogen, crude fat, crude fiber and mineral guarantees, (when required) will be in terms of percentage.

B. Commercial feeds containing 6 1/2% or more Calcium, Phosphorus, Sodium and Chloride shall include in the guaranteed analysis the minimum and maximum percentages of calcium (Ca), the minimum percentage of phosphorus (P), and if salt is added, the minimum and maximum percentage of salt (NaCl). Minerals, except salt (NaCl), shall be guaranteed in terms of percentage of the element. When calcium and/or salt guarantees are given in the guaranteed analysis such shall be stated and conform to the following:

1. When the minimum is 5.0% the maximum shall not exceed the minimum by more than one percentage point.

2. When the minimum is above 5.0% the maximum shall not exceed the minimum by more than 5 percentage points.

C. Guarantees for minimum vitamin content of commercial feeds and feed supplements, when made, shall be stated on the label in milligrams per pound of feed except that:

1. Vitamin A, other than precursors of vitamin A, shall be stated in International or USP units per pound.

2. Vitamin D, in products offered for poultry feeding, shall be stated in International Chick Units per pound.

3. Vitamin D for other uses shall be stated in International or USP units per pound.

4. Vitamin E shall be stated in International or USP Units per pound.

5. Guarantees for vitamin content on the label of a commercial feed shall state the guarantee as true vitamins, not compounds, with the exception of the compounds, Pyridoxine, Hydrochloride, Choline Chloride, Thiamine, and d-Panto-thenic Acid.

6. Oils and premixes containing vitamin D or both may be labeled to show vitamin content in terms of units per gram.

D. Guarantees for drugs shall be stated in terms of percent by weight.

1. Antibiotics present at less than 2,000 grams per ton (total) of commercial feed shall be stated in grams per ton of commercial feed.

2. Antibiotics present at 2,000 or more grams per ton (total) of commercial feed shall be stated in grams per pound of commercial feed.

3. Labels for commercial feeds containing growth promotion and/or feed efficiency levels of antibiotics, which are to be fed continuously as the sole ration, are not required to make quantitative guarantees except as specifically noted in the Federal Food Additive Regulation for certain antibiotics, wherein, quantitative guarantees are required regardless of the level or purpose of the antibiotic.

4. The term "milligrams per pound" may be used for drugs or antibiotics in those cases where a dosage is given in "milligrams" in the feeding directions.

E. Commercial feeds containing any added non-protein nitrogen shall be labeled as follows:

1. For ruminants.

a. Complete feeds, supplements, and concentrates containing added non-protein nitrogen and containing more than 5% protein from natural sources shall be guaranteed as follows:

Crude Protein, minimum, (%)

(This includes not more than (%) equivalent protein from non-protein nitrogen).

b. Mixed feed concentrates and supplements containing less than 5% protein from natural sources may be guaranteed as follows:

Equivalent Crude Protein from Non-Protein Nitrogen, minimum, (%)

c. Ingredient sources of non-protein nitrogen such as Urea, Di-Ammonium Phosphate, Ammonium Polyphosphate Solution, Ammoniated Rice Hulls, or other basic non-protein nitrogen ingredients defined by the Association of American Feed Control Officials shall be guaranteed as follows:

Nitrogen, minimum, (%)

Equivalent Crude Protein from Non-Protein Nitrogen, minimum, (%)

2. For non-ruminants.

a. Complete feeds, supplements and concentrates containing crude protein from all forms of non-protein nitrogen, added as such, shall be labeled as follows:

Crude Protein, minimum (%)

(This includes not more than (%) equivalent crude protein which is not nutritionally available to species of animal for which feed is intended.)

b. Premixes, concentrates or supplements intended for non-ruminants containing more than 1.25% equivalent crude protein with adequate directions for use and a prominent statement: "WARNING: This feed must be used only in accordance with directions furnished on the label."

F. Mineral phosphatic materials for feeding purposes shall be labeled with the guarantee for minimum and maximum percentage of calcium (when present), the minimum percentage of phosphorus, and the maximum percentage of fluorine.

G. or the purpose of determining compliance with this act, a commercial feed shall be deemed in violation if an analysis shows one or more ingredients varies from the guarantee in an amount exceeding the permitted analytical variations (PAV) published by the Association of American Feed Control Officials.

R68-2-8. Ingredients.

A. The name of each ingredient or collective term for the grouping of ingredients, when required to be listed, shall be the name as defined in the Official Definitions of Feed Ingredients as published in the Official Publication of American Feed Control Officials, the common or usual name, or one approved by the Commissioner. Failure to list the ingredients of a pet food in descending order by their predominance by weight in non-quantitative terms may be misleading.

B. The name of each ingredient must be shown in letters or type of the same size.

C. No references to quality or grade of an ingredient shall appear in the ingredient statement of a feed.

D. The term "dehydrated" may precede the name of any product that has been artificially dried.

E. A single ingredient product defined by the Association of American Feed Control Officials is not required to have an ingredient statement.

F. Tentative definitions for ingredients shall not be used until adopted as official, unless no official definition exists or the ingredient has a common accepted name that requires no definition exists or the ingredient has a common accepted name that requires no definition, (i.e. sugar).

G. When the word "iodized" is used in connection with a feed ingredient, the feed ingredient shall contain not less than 0.0007% iodine, uniformly distributed.

R68-2-9. Directions for Use and Precautionary Statements.

A. Directions for use and precautionary statements on the labeling of all commercial feeds and customer-formula feeds containing additives (including drugs, special purpose additives, or non-nutritive additives) shall:

1. Be adequate to enable safe and effective use for the intended purposes by users with no special knowledge of the purpose and use of such articles: and,

2. Include, but not be limited to, all information described by all applicable rules under the Federal Food, Drug and Cosmetic Act.

B. Adequate directions for use and precautionary

statements are required for feeds containing non-protein nitrogen as specified in Section R68-2-9.

C. Adequate directions for use and precautionary statements necessary for safe and effective use are required on commercial feeds distributed to supply particular dietary needs or for supplementing or fortifying the usual diet or ration with any vitamin, mineral, or other dietary nutrient or compound.

R68-2-10. Non-Protein Nitrogen.

A. Urea and other non-protein nitrogen products defined in the Official Publication of the Association of American Feed Control Officials are acceptable ingredients only in commercial feeds for reminant animal as a source of equivalent crude protein. If the commercial feed contains more than 8.75% of equivalent crude protein from all forms of non-protein nitrogen, added as such, exceeds one-third of the total crude protein, the label shall bear adequate directions for the safe use of feeds and a precautionary statement: "CAUTION: USE AS DIRECTED." The directions for use and the caution statement shall be read and understood by ordinary persons under customary conditions of purchase and use.

B. Non-protein nitrogen defined in the Official Publication of the Association of American Feed Control Officials, when so indicated, are acceptable ingredients in commercial feeds distributed to non-ruminant animals as a source of nutrient as a source of nutrients other than equivalent crude protein. The maximum equivalent crude protein from non-protein nitrogen sources when used in non-ruminant rations shall not exceed 1.25% of the total daily ration.

C. On labels such as those for medicated feeds which bear adequate feeding directions and/or warning statements, the presence of added non-protein nitrogen shall not require a duplication of the feeding directions or the precautionary statements as long as those statements include sufficient information to ensure the safe and effective use of this product due to the presence of non-protein nitrogen.

R68-2-11. Drug and Feed Additives.

A. Prior to approval of a registration application and/or approval of a label for commercial feed which contain additives (including drugs, other special purpose additives, or non-nutritive additives) the distributor may be required to submit evidence to prove the safety and efficacy of the commercial feed when used according to the directions furnished on the label.

B. Satisfactory evidence of safety and efficacy of a commercial feed may be:

1. When the commercial feed contains such additives, the use of which conforms to the requirements of the applicable rule in the Code of Federal Regulations, Title 21, or which are "prior sanctioned" or "generally recognized as safe" for such use, or

2. When the commercial feed is itself a drug as defined in Section 4-12-2 and is generally recognized as safe and effective for the labeled use or is marketed subject to an application approved by the Food and Drug Administration under Title 21 U.S.C., 360 (b).

R68-2-12. Adulterants.

A. For the purpose of Section 4-12-2, the terms "poisonous or deleterious substances" include but are not limited to the following:

1. Fluorine and any mineral mixture which is to be used directly for the feeding of domestic animals and in which the fluorine exceeds 0.20% for breeding and dairy cattle; 0.30% for slaughter cattle; 0.30% for sheep; 0.35% for lambs; 0.45% for swine and 0.60% for poultry.

2. Fluorine bearing ingredients when used in such amounts that they raise the fluorine content of the total ration above the following amounts: 0.004% for breeding and dairy cattle: 0.009% for slaughter cattle; 0.006% for sheep; 0.01% for lambs; 0.015% for swine and 0.03% for poultry.

3. Soybean meal, flakes or pellets or other vegetable meal, flakes or pellets which have been extracted with trichlorethylene or other chlorinated solvents.

4. Sulfur dioxide, Sulfurous acid, and salts of Sulfurous acid when used in or on feeds or feed ingredients which are considered or reported to be a significant source of B_1 (Thiamine).

5. Aflatoxin content of any feed ingredient which exceeds 20 parts per billion and/or any quantity established by Federal Statutes or Guidelines.

B. A commercial feed shall be deemed to be adulterated if it contains a drug and the methods used in or the facilities or controls used for its manufacture, processing or packaging do not conform to current good manufacturing practice rules for medicated feeds and for medicated premixes as published in the Code of Federal Regulations, Title 21, Parts 225 and 226 Sections 225.1-225.115 and 226.1-226.115, respectively.

C. All screenings or by-products of grain and seeds containing weed seeds, when used in commercial feed or sold as such to the ultimate consumer shall be ground fine enough or other wise treated to destroy the viability of such weed seeds so that the finished product contains no more than six viable prohibited noxious weed seeds per pound.

KEY: feed contamination
December 16, 1997 **4-12-13**
Notice of Continuation August 21, 1996

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

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

R68-5-2. Grain Inspection Fees.

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

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

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

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

R68-5-3. Utah Standards For Safflower.

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

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

1. Basis of determination.

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

2. Certification.

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

C. Dockage.

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

1. Basis of determination.

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

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

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

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

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

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

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

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

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

3. Dockage will consist of:

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

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

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

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

4. Certification.

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

D. Test weight per bushel.

1. Basis of determination.

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

2. Certification.

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

E. Hulls.

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

1. Basis of determination.

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

2. Certification.

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

F. Dehulled kernels and broken seed.

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

1. Basis of determination.

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

2. Certification.

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

G. Other grains.

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

1. Basis of determination.

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

2. Certification.

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

H. Damaged and heat-damaged Safflower Seed.

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

have been materially discolored and damaged by heat.

1. Basis of determination.

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

2. Certification.

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

I. Split damage.

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

1. Basis of determination.

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

2. Certification.

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

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

TABLE

Utah Safflower Seed Grade Requirements

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

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

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

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

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

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

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

KEY: inspections
December 16, 1997 **4-2-2(2)**
Notice of Continuation 1994

R123. Auditor, Administration.
R123-3. State Auditor Adjudicative Proceedings.
R123-3-1. Definitions.

A. The terms used in this rule are defined in Section 63-46b-2, U.C.A.

B. Agency means the Utah State Auditor's Office.

R123-3-2. Designation.

A. The agency designates all agency action subject to the scope and applicability of the Utah Administrative Procedures Act, Utah Code Ann. Section 63-46b-1 et seq. as informal proceedings.

R123-3-3. Adjudicative Proceedings.

A. The following categories of proceedings are hereby designated as informal proceedings under Utah Administrative Procedures Act, Utah Code Annotated Section 63-46b-4:

1. All agency actions with respect to local government accounting, budgeting and financial reporting procedures.

2. All agency actions with respect to audits or special projects performed by the agency or audits under their jurisdiction.

B. Procedures for all categories of informal adjudicative proceedings shall comply with applicable provisions of U.C.A 63-46b-5.

1. No response need be filed to the notice of agency action or request for agency action.

2. The agency shall hold a hearing only if a hearing is required by statute, or is permitted by statute and a request for hearing is made within ten working days after receipt of the notice of agency action or request for agency action, otherwise, at the discretion of the State Auditor no hearing will be held.

3. Only the parties named in the notice of agency action or request for agency action will be permitted to testify, present evidence, and comment on the issues.

4. A hearing will not be held before ten working days after notice of the hearing has been given.

5. No discovery, either compulsory or voluntary, will be permitted except that all parties to the action shall have access to information contained in the agency's files and investigatory information and materials not restricted by law.

6. Intervention is prohibited unless a federal statute or rule requires that a state permit intervention.

7. Any hearing held under this rule is open to all parties.

8. Within thirty days after the close of any hearing held under this rule, or after the failure of a party to request a hearing, the agency shall issue a written decision and the reasons for the decision, notice of any right of judicial review available to the parties and the time limits for filing an appeal to the appropriate District Court.

9. The State Auditor's decision shall be based on the facts in the agency file and if a hearing is held, the facts based on evidence presented at the hearing.

10. The agency shall notify the parties of the agency's order by promptly mailing copy thereof to each at the address indicated in the file.

11. All hearings recorded, shall be at the agency's expense. Any party, at his own expense, may have a reporter approved by the agency prepare a transcript from the agency's record of the hearing.

12. Nothing in this section restricts or precludes any investigative right or power given to the agency by another statute.

KEY: administrative procedure, appellate procedures, auditing
1990 63-46b
Notice of Continuation December 31, 1997

R123. Auditor, Administration.
R123-4. Public Petitions for Declaratory Orders.
R123-4-1. Authority.

A. 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.

R123-4-2. Definitions.

Terms used in this rule are defined in Section 63-46b-2, except and in addition:

A. Agency means the Utah State Auditor's Office.

B. "Applicability" means a determination if a statute, rule, or order should be applied, and if so, how the law stated should be applied to the facts.

C. "Declaratory Order" means an administrative interpretation or explanation of rights, status, and other legal relations under a statute, rule or order.

R123-4-3. Petition Form and Filing.

A. The petition shall be addressed and delivered to the State Auditor, who shall mark the petition with the date of receipt.

B. The petition shall:

1. be clearly designated as a request for an agency declaratory order;

2. identify the statute, rule or order to be reviewed;

3. describe in detail the situation or circumstances in which applicability is to be reviewed;

4. describe the reason or need for the applicability review, addressing, in particular, why the review should not be considered frivolous;

5. include an address and telephone where the petitioner can be contacted during regular work days; and

6. be signed by the petitioner.

R123-4-4. Reviewability.

A. The agency may not issue a declaratory order if the subject matter is:

1. not within the jurisdiction and expertise of the agency;

2. frivolous, trivial, irrelevant or immaterial;

3. likely to substantially prejudice 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;

4. one in which the person requesting the declaratory order has participated in a completed or on-going adjudicative

proceeding concerning the same issue within the past 12 months; or

5. otherwise excluded by state and federal law.

R123-4-5. Intervention.

A. A person may file a petition for intervention in a declaratory proceeding only if they deliver to the State Auditor a petition complying with all of the requirements of Section 63-46b-9 within 20 days of the director's receipt of the petition for a declaratory order filed under Section 63-46b-21(4).

B. Petitions seeking declaratory orders will be designated as informal adjudicative proceedings.

R123-4-6. Petition Review and Disposition.

A. The agency will be governed by the provisions of Sections 63-46b-21(6) and (7):

R123-4-7. Administrative Review.

A. A petitioner may seek review or reconsideration of a declaratory order by petitioning the State Auditor under the procedures of Section 63-46b-13.

KEY: declaratory order
1990 63-46b
Notice of Continuation December 31, 1997

R123. Auditor, Administration.
R123-5. Audit Requirements for Audits of Political Subdivisions and Nonprofit Organizations.
R123-5-1. Authority.

1. As required by Section 51-2-3.5, this rule provides the guidelines, qualifications criteria, and procurement procedures for audits required to be made by Section 51-2-1.

R123-5-2. Definitions.

1. "Auditor" means a certified public accountant licensed to conduct audits in the state and includes any certified public accounting firm as defined by Section 58-26-2.

2. "Political subdivision" means all cities, counties, school districts, special districts, interlocal organizations, and any other entity established by a local governmental unit that receives tax exempt status for bonding or taxing purposes.

3. "Nonprofit organization" means any corporation created under Chapter 16-6.

R123-5-3. Audit Standards and Requirements.

1. The audits of all entities required to have an audit made by Section 51-2-1 shall be performed in accordance with Government Auditing Standards most recently published and issued by the Comptroller General of the United States.

2. The State Auditor shall adopt and maintain a legal compliance audit guide containing those fiscal laws and compliance requirements for state funds distributed to, and expended by, political subdivisions and non-profit organizations. This legal compliance audit guide may specify:

a. which grants and programs shall be considered major grants, and the compliance requirements which must be tested by the auditor,

b. the general compliance requirements applicable to all political subdivisions, and the audit requirements applicable to general compliance requirements,

c. the format for the auditor's statement expressing positive assurance with state fiscal laws identified by the State Auditor, and

d. those items related to internal controls and other financial issues which shall be included in the auditor's letter to management that must be filed with the audited financial statements.

3. The audits of all entities required to have an audit made by Section 51-2-1 shall be performed in accordance with the legal compliance audit guide maintained by the State Auditor.

R123-5-4. Audit Procurement.

The decision to retain an entity's auditor rests with the governing body of the entity. However, the auditor performing the audit must meet the peer review and continuing education requirements of Government Auditing Standards issued by the Comptroller General of the United States. If the governing body rebids the audit of its financial statements, it shall comply with the following audit procurement requirements:

a. Proposals will be obtained from any interested and qualified certified public accountant licensed to perform audits in the state, which may include the auditor currently performing the entity's audit. Notice may be given to potential auditors either through invitation or by notice published in a newspaper of general circulation. To promote competition it is recommended that at least three auditors be invited to participate in bidding for the audit.

b. The entity shall distribute a "request for proposal" to all auditors who meet the qualification criteria set by the procuring organization interested in bidding for the audit. As a minimum, the request for proposal shall contain the following:

(i) the name and address of the entity requesting the audit and its designated contact person,

(ii) the entity to be audited, the scope of services to be provided, and specific reports, etc. to be delivered,

(iii) the period to be audited,

(iv) the format in which the proposals should be prepared,

(v) the date and time proposals are due, and

(vi) the criteria to be used in evaluating the bid.

c. The entity may select the auditor or audit firm that the governing body desires to perform its audit and may reject any bid.

R123-5-5. Responsibility for Audit Quality.

1. The governing body of each political subdivision is responsible to ensure that the political subdivision obtains a quality audit of its financial records.

2. The governing body may appoint an audit committee with the responsibility of making recommendations to the governing body for selection of an auditor, ensuring that the auditor meets qualification requirements, and ensuring that the auditor complies with professional standards.

3. If the governing body appoints a separate audit committee, then the governing body shall review the recommendations of the audit committee and make the selection

of the auditor.

4. The audit committee will report its assessment of the auditor's compliance with professional standards to the governing body.

5. The auditor shall report the results of the audit to the governing body.

6. The governing body shall respond to the specific recommendations included in the auditor's letter to management. This response shall be remitted with the audited financial statements to the state auditor.

KEY: auditing, non-profit organizations
1990 51-2-1
Notice of Continuation December 31, 1997

R137. Career Service Review Board, Administration.
R137-1. Grievance Procedure Rules.
R137-1-1. Authority and Purpose of Rule for Grievance Procedures.

(1) The authority for the rule on these grievance procedures is found at Section 67-19a-203.

(2) This rule establishes official procedures and standardized practices for administering these grievance procedures.

R137-1-2. Definitions.

Terms defined in Section 63-46b-2 of the Utah Administrative Procedures Act (UAPA) are incorporated by reference within this rule. In addition, other terms which are used in this rule are defined below:

"Abandonment of Grievance" means either the voluntary withdrawal of a grievance or the failure by an employee to properly pursue a grievance through these grievance procedures.

"Administrative Review of the File" means an informal adjudicative proceeding according to Subsection 67-19a-403(2)(b)(ii).

"Administrator" means the incumbent in the position defined at Section 67-19a-101(1).

"Affidavit" means a signed and sworn statement offered for consideration in connection with a grievance proceeding.

"Appeal" means a formal request to a higher level of review of an unacceptable lower level decision.

"Appellant" means the party that is advancing an evidentiary level grievance decision to the appellate level before the board at Step 6.

"Appointing Authority" means the officer, board, commission, person or group of persons authorized to make appointments on personnel/human resource management matters in their respective agency.

"Board" means the entity defined at Section 67-19a-101(2), and refers to the five-member, gubernatorial-appointed entity at Sections 67-19a-201 and 67-19a-202.

"Burden of Moving Forward" means a party's obligation to present evidence on a particular issue at a particular time. The burden of moving forward may shift back and forth between the parties based on certain legal principles.

"Burden of Proof" means the obligation to prove affirmatively a fact or set of facts at issue between two parties. If proven, the opposing party then has a burden of proving any affirmative defense.

"CSRB" and "CSRB Office" mean the agency of state government that statutorily administers these grievance procedures according to Sections 67-19a-101 through 67-19a-408.

"Closing Statement" means a party's final summation of evidence and argument, which is presented at the conclusion of the hearing.

"Consolidation" means the combining of two or more grievances involving the same controversy for purposes of holding a joint hearing, proceeding, or administrative review.

"Continuance" means an authorized postponement or adjournment of a hearing until a later date, whether the date is specified or not.

"Declaratory Order" means a ruling that is explanatory in purpose; it is designed to clarify what before was uncertain or doubtful. A declaratory order constitutes a declaration of rights between parties to a dispute and is binding as to both present and future rights. It is an administrative interpretation or explanation of a right, statute, order or other legal matter under a statute, rule, or an order.

"Default" means an omission of or untimely failure to take or perform a required act in the processing of a grievance. It is the failure to discharge an obligation which results in a forfeiture.

"Deposition" means a form of discovery in which testimony of a witness is given under oath, subject to cross-examination, and recorded in writing, prior to the hearing.

"Discovery" means the prehearing process whereby one party may obtain from the opposing party, or from other individuals or entities, information regarding the witnesses to be called, the documents and exhibits to be used at the hearing, and the facts and information about the case.

"Evidentiary Hearing" means a proceeding of relative formality, though much less formal than a trial, in which witnesses are heard and evidence is presented and considered. Specific issues of fact and of law are tried. Afterwards, ultimate conclusions of fact and of law are set forth in a written decision or order.

"Excusable Neglect" means the exercise of due diligence by a reasonably prudent person and constitutes a failure to take proper steps at the proper time, not in consequence of the person's own carelessness, inattention, or willful disregard in the processing of a grievance, but in consequence of some unexpected or unavoidable hindrance or accident.

"File" means to submit a document, grievance, petition, or other paper to the CSRB Office as prescribed by these rules. The term "file" includes faxing and E-mailing.

"Filing Date" means the day that a document, grievance, petition, or other paper is recorded as having been received by the CSRB Office.

"Grievance Procedures" mean the grievance and appeal procedures codified at Sections 67-19a-101 through 67-19a-408 and promulgated through this rule.

"Grievant" means the person or party advancing one or more issues as a petitioner through these grievance procedures to the evidentiary/step 5 level. However, at the appellate/step 6 level one party is designated as the appellant, the other as respondent.

"Group Grievance" means a grievance submitted and signed by two or more aggrieved employees. The term does not include "class action."

"Hearing" means the opportunity to be heard in an administrative proceeding.

"Hearing Officer" means an impartial trier of facts appointed by the CSRB administrator and assigned to hear a particular grievance case at the evidentiary/step 5 level.

"Hearsay Evidence" means evidence not based upon a witness's personal knowledge as a direct observer of an event. Rather, hearsay evidence stems from the repetition of what a witness heard another person say. Hearsay's value rests upon the credibility of the declarant. Hearsay is a statement made outside of the hearing that is offered as evidence of the truth of matters asserted in the hearing.

"Issuance" means the date on which a decision, order or ruling is signed and dated; it is not the date of mailing, or the date of the mailing certificate, nor the postal date. Date of issuance is the date specified according to Subsection 63-46b-14(3)(a), of the UAPA.

"Joint Hearing" means the uniting of two or more grievances involving the same, similar, or related circumstances or issues to conduct a single hearing; also see "Consolidation."

"Jurisdiction" means the legal right and authority to hear and decide issues and controversies.

"Jurisdictional Hearing" means a hearing conducted by the administrator (or hearing officer who sits by designation to represent the administrator in these hearings) to determine timeliness, standing, jurisdiction, direct harm, and eligibility to advance a grievance issue to the evidentiary/step 5 level.

"Management Representative" means a person of managerial or supervisory status who is not subject to exclusion. Legal counsel is not included within the meaning of the term.

"Motion" means a request offered verbally or in writing for a ruling or to take some action.

"Notice" and "Notification" mean a proper written notice to the parties involved in a grievance procedural hearing or conference, setting forth date, time, location, and the issue to be considered.

"Pleadings" mean the formal written allegations of the parties that set forth their respective claims and defenses.

"Pro Se" means in one's own behalf. A person is represented pro se in an administrative proceeding when acting without legal counsel or other representation.

"Quash" means to cancel, annul, or vacate a subpoena.

"Relevant" means directly applying to the matter in question; pertinent, germane. It is evidence that tends to make the existence of any facts more probable or certain than they would be without the evidence; and tending to prove the precise fact at issue.

"Remand" means to send back, as for further deliberation and judgment, to the presiding official or other tribunal from which a case was appealed.

"Respondent" means the party against whom an appeal is made at the appellate/step 6 level.

"Standard of Proof" means the evidentiary standard, which in CSRB adjudications is the substantial evidence standard.

"Stay" means a temporary suspension of a case or of some designated proceeding within the case.

"Submit" means to commit to the discretion of another; to present for determination.

"Subpoena" means a formal legal document issued under authority to compel the appearance of a witness at an administrative proceeding, the disobedience of which may be punishable as a contempt of court.

"Subpoena Duces Tecum" means a formal legal document issued under authority to compel specific documents, books, writings, papers, or other items.

"Substantial Evidence" means evidence possessing something of substance and relevant consequence, and which furnishes substantial basis of fact from which issues tendered can be reasonable resolved. It is evidence that a reasonable mind might accept as adequate to support a conclusion, but is less than a preponderance.

"Summary Judgment" means a ruling made upon motion by a party or the presiding official when there is no dispute as to either material fact or inferences to be drawn from undisputed facts, or if only a question of law is involved. The motion may be directed toward all or part of a claim or defense.

"Transcript" means an official verbatim written record of an adjudicative proceeding or any part thereof, which has been recorded and subsequently transcribed by a certified court reporter.

"UAPA" means the Utah Administrative Procedures Act found at Sections 63-46b-1 through 63-46b-21.

"Withdraw" means to recall or retract a grievance from further consideration under these grievance procedures.

"Witness Fee" means an appearance fee and may also include a mileage rate established by statutory provision pursuant to Section 21-5-4.

"Working Days" means for purposes of the time periods for filing a grievance, advancing an appeal or responding to an employee's grievance or appeal, all days except for Saturdays, Sundays and recognized State holidays.

R137-1-3. Classification Jurisdiction.

The CSRB and the CSRB hearing officers have no jurisdiction over classification and reclassification grievances, appeals, and complaints nor over position schedule assignments, according to Section 67-19-31 and Subsections 67-19a-202(1)(a) and 67-19a-302(1), and Section R477-4-4.

R137-1-4. Complaints From Applicants.

(1) A public applicant for a position with the state's work force has no standing to submit a grievance and is precluded from using these grievance procedures, according to Subsection 67-19-16(6).

(2) A public applicant who alleges a violation of a legally prohibited practice based upon race, color, sex, pregnancy, childbirth, or pregnancy-related conditions, age, if the individual is 40 years of age or older, religion, national origin, or disability, is directed to Section R137-1-5 of these grievance procedures.

R137-1-5. Discrimination: Legally Prohibited Practices.

(1) Discrimination Claims. Claims alleged to be based upon a legally prohibited practice as set forth in Section 34-35-6, including employment discrimination on the basis of race, color, sex, pregnancy, childbirth, or pregnancy-related conditions, age, if the individual is 40 years of age or older, religion, national origin, or disability, are not admissible under these grievance procedures. The CSRB and CSRB hearing officers have no jurisdiction over the preceding claims.

(2) Processing Discrimination Complaints. A public applicant, a probationary employee, a career service employee, or an exempt employee who alleges a violation of a legally prohibited practice pursuant to Section 34-35-6, may file a timely complaint with the individual's respective department head. If the individual is not satisfied with the department head's decision, or if the decision is not rendered within ten working days after submission of the complaint, the individual may then file a complaint with the Utah Anti-discrimination Division pursuant to Section 67-19-32.

(3) Filing Discrimination Complaints. Employees and applicants desiring to file a legally prohibited discrimination complaint may contact the Utah Anti-Discrimination Division.

R137-1-6. Filing Procedure.

The submission of correspondence, pleadings, grievance materials, and legal documents is subject to the following provisions:

(1) Filing/Receipt. Papers to be filed with the CSRB Office or the administrator are deemed filed on the date actually received, and are so date-stamped. The date on which papers are received and date-stamped is regarded as the date of filing.

(2) Time Periods. All papers, memoranda, petitions, grievances, pleadings, briefs, exhibits, and written motions to be filed with the administrator must be filed in the CSRB Office, 1120 State Office Building, Capitol Hill, Salt Lake City, Utah 84114, within the time limits prescribed either by law, by these rules, or by order of the administrator, by the designated CSRB hearing officer, or the board's chair or vice-chair.

(a) All filing dates are based upon the CSRB Office's working days.

(b) Papers must be signed by the person filing the paper or by the person's authorized representative.

(c) Documents being submitted are to contain the name, business address, and telephone number of the representative, if a party or person is being represented.

(d) Copies of all filed papers shall be served upon the appropriate opposing party or person to grievance proceedings, with notice of service given to the administrator.

(e) Notice to a designated representative constitutes notice to the representative's client.

(f) Notice to an employee who is not represented shall be served at the address specified on the employee's statement of grievance or correspondence, or in the absence of such specification, at the last mailing address shown in the employing agency's personnel file.

R137-1-7. Subpoenas.

Subsection 63-46b-7(2) of the UAPA is incorporated by reference.

(1) Subpoena Power. Pursuant to Subsection 67-19a-204(2)(a)(ii), the administrator may issue subpoenas to witnesses and may obtain documents or other evidence in conjunction with any inquiry, investigation, hearing, or other proceedings.

(a) The aggrieved employee has the right to require the production of books, papers, records, and other items pertinent to the facts at issue that are within the control of the agency against which the grievance is lodged, and which are not held to be protected or privileged by law. Affidavits and ex parte statements offered during a hearing may be received and considered by the CSRB hearing officer.

(b) A person receiving a subpoena issued by the CSRB will find the title of the proceeding posted thereon, and the person to whom it is directed shall be compelled to attend and give testimony. A subpoena duces tecum may be used to produce designated books, or other items at a specified time and place when these items are under an agency's or a person's control.

(c) A request by counsel or a party's representative to issue a subpoena must be reasonable and timely. At least two full working days' notice prior to a scheduled hearing must be given to the administrator, not counting preparation and delivery time. The requesting party shall simultaneously notify the opposing party of the request.

(d) The original of each subpoena is to be presented to the person named therein, and a copy shall be issued to the counsel or representative of each party.

(2) Service of Subpoenas. Service of subpoenas shall be made by the requesting party delivering the subpoena to the person named, unless the CSRB Office is requested to deposit the subpoena properly addressed and postage prepaid, with the U.S. Postal Service, or to send it by State Mail Services, or to send it by E-mail, or in any combination.

(3) Proof of Service. If service has not been acknowledged by the witness, the server may make an affidavit of service. Failure to make proof of service does not affect the validity of the service.

(4) Quashing. Subsection 67-19a-204(2)(a)(iii) governs the quashing of subpoenas by the administrator.

R137-1-8. Notice, Service, Issuance and Distribution.

(1) Service by the Parties. The parties to a proceeding shall serve upon each other one copy of all pleadings filed with the administrator. Service of a pleading may be made by any of the following: personal delivery, U.S. Postal Service, postage prepaid, State Mail Services, facsimile, or E-mail.

(a) Pleadings must be accompanied by a certificate of service or an affidavit of mailing, indicating how, where, when and to whom service is being made.

(b) It is the duty of a party or person or their representative to notify the administrator and the opposing party or representative in writing of any changes in names, addresses, or telephone numbers.

(2) Service of Subpoena. Service of subpoenas shall be executed in accordance with Section R137-1-7(2) above.

(3) Issuance of Decisions and Orders. A CSRB decision, order, ruling or other document shall be considered issued on the date that it is signed by its CSRB originator, rather than on other dates such as the date it is mailed, postmarked, received or distributed.

(a) All notices, decisions, orders and rulings by the administrator by a CSRB hearing officer, or by the board's chair or vice-chair are to be distributed to the counsel or representatives of record and upon any person appearing pro se.

(b) The CSRB Office will retain the original notice, decision, order or ruling with the record of the proceedings. Distribution of a CSRB notice, decision, order or ruling is accomplished when any of the following occurs:

(i) deposit postage prepaid with the U.S. Postal Service,

(ii) deposit with State Mail Services,

(iii) personal delivery,

(iv) facsimile transmission, or

(v) E-mail transmission.

(c) A mailing certificate must be attached to the notice, decision, order or ruling bearing the date of mailing and the names and addresses of those persons to whom the notice, decision, order or ruling is originally distributed.

R137-1-9. Continuance/Postponement.

Timely, Written Requests. Upon receipt of a notice of hearing, or as soon thereafter as circumstances necessitating a continuance come to a party's knowledge, a party desiring to postpone the proceeding or filing of a pleading to a later date shall file a written request for continuance with the administrator.

(1) Every petition for a continuance shall specify the reason for the requested delay.

(2) In considering a request for continuance, the administrator, the appointed CSRB hearing officer, or the board shall take into account:

(a) whether the request was promptly and timely made, in writing; and

(b) whether the request is for good cause.

(3) A continuance may not be granted for insufficient cause nor as an excuse for lack of preparation.

(4) Parties must not anticipate that a given number of continuances are granted to each party, nor that a series of continuances is permitted.

R137-1-10. Eligibility to Grieve.

(1) Standing. Only executive branch career service employees may use these grievance procedures.

(a) Pursuant to Subsection 67-19-16-(6) and Section 67-19a-301, the board has no jurisdiction over grievance petitions filed by probationary employees, public applicants, exempt employees, noncareer service employees, public employees of the state's political subdivisions, public employees covered by other grievance systems, or employees of state institutions of higher education.

(2) Questionable Standing. Where a question or dispute exists whether an employee qualifies to use these grievance procedures, such controversies must be resolved through application of R137-1-17 by the administrator. The administrator's determination shall be final and subject to review only in the Utah Court of Appeals for formal adjudications and in the district court for informal adjudications according to Subsections 67-19a-301(2) and 67-19a-403(2), and Sections 63-46b-15 and 63-46b-16 of the UAPA.

(3) Class Action. Pursuant to Subsection 67-19a-401(7)(c), class action grievances will not be admissible for consideration by the board under these grievance procedures.

(4) Group Grievance. A group grievance is admissible provided that each aggrieved employee signs the grievance, according to Subsections 67-19a-401(7)(a) and (b).

R137-1-11. Issues Appealable to the Evidentiary/Step 5 and Appellate/Step 6 Levels.

All grievances shall be reviewed for jurisdictional considerations to determine:

(1) If the CSRB hearing officers and the board lack jurisdiction to hear matters which are not included within the scope of Subsections 67-19a-202(1)(a) and 67-19a-302(1), or

(2) If issues or components of a grievance are deemed to be satisfactorily resolved they may not qualify to be advanced further under these grievance procedures according to Section R137-1-17(2), and the board may refuse to hear or take action.

R137-1-12. Employees' Rights.

(1) Representation. The state does not provide legal counsel or representation to aggrieved employees nor pay the fees for an employee's representation. Also, Subsection 67-19a-406(4)(a) precludes the awarding of fees or costs to an employee's attorney or representative.

(2) Pro Se Status. A party or person to a grievance proceeding may be represented pro se. When a party or person is represented pro se, the party or person is entitled to request the issuance of subpoenas, directly examine and cross-examine witnesses, make opening and closing statements, submit documentary evidence, summarize testimony, and in all respects fully present one's own case.

(3) No Reprisal. Pursuant to Subsection 67-19a-303(3), no appointing authority, director, manager, or supervisor may take action to retaliate against a grievant, a representative, or a witness who participates in or is scheduled to participate in a grievance proceeding.

R137-1-13. Automatic Processing, Waiver, Excusable Neglect, Abandonment of Grievance, Default, Transfer and Stay.

(1) Automatic Processing. An agency's failure to reply in writing to an aggrieved employee's grievance within the prescribed time period automatically grants the aggrieved employee the right to advance the grievance to the next step of these grievance procedures listed in Section 14 (below). However, pursuant to Subsection 67-19a-401(2), the parties may mutually agree to waive steps 2, 3 or 4 or extend the statutory time period for those steps. Waivers of the statutory time periods by agency management and the aggrieved employee must be placed in writing and signed.

(2) Waiver. When the administrator finds that a grievance is one that an agency cannot resolve because of the nature of the grievance, the matter may be waived in writing to a higher level. Steps 2, 3, or 4 may be waived, but not steps 5 or 6. Any waiver agreed to between the parties must be in writing, dated, and signed by the parties or the parties' representatives according to Subsection 67-19a-401(2).

(3) Excusable Neglect. The standard of excusable neglect may be offered as a defense to lack of timeliness in processing a grievance or for not appearing at a scheduled proceeding.

(a) The administrator or appointed CSRB hearing officer shall determine the applicability of the excusable neglect standard on the basis of good cause.

(b) All questions are to be resolved at the original level of occurrence.

(4) Abandonment of Grievance. In the event the administrator determines that a grievance claim has been withdrawn, abandoned, or otherwise neglected beyond either the established time lines or a reasonable period, the matter no longer qualifies for further processing through these grievance procedures. When withdrawal is intended, it should be accomplished in writing.

(5) Default. An employee who defaults in processing a grievance forfeits further rights granted by these rules and under Section 63-46b-11 of the UAPA, which is incorporated by reference.

(6) Transfer. The administrator may administratively

transfer a grievance case from the aggrieved employee's department to another, more appropriate department to respond as necessary to serve the ends of justice and fairness.

(7) Stay. Upon written request, the administrator, the board, or the CSRB hearing officer may grant a stay of a decision, order, ruling, remedy, or proceeding, when based upon good cause.

(a) The administrator, the board, or the CSRB hearing officer may grant a stay for a specific period of time or may grant an indefinite stay of an evidentiary/step 5 or appellate/step 6 proceeding.

(b) In considering a request for a stay of proceedings, the administrator, the board, or the CSRB hearing officer may take into consideration whether the request is unopposed or not. If the request for a stay is unopposed, the request may be granted if based upon good cause. If the request is opposed, the request shall be considered on its merits and ruled upon accordingly.

R137-1-14. Grievance Procedure Steps.

Persons acting on grievances pursuant to Section 667-19a-402, and in accordance with these rules, shall conduct their filings through the following steps, or levels, of increasing accountability:

Step 1; A verbal discussion shall be held with the immediate supervisor. In this informal action, the employee is required to fully describe the grievance for possible resolution.

Step 2; A written form of the grievance shall be submitted to the immediate supervisor. Thus distinguished from a verbal gripe/complaint, it then becomes a formal complaint requiring a written response. Steps 2, 3 and 4 require a written response within time periods outlined in Section 67-19a-402, and are to be conducted by only one supervisor, director, etc.

Step 3; A review of the grievance is to then be conducted by the agency or division director;

Step 4; A review of the grievance is then conducted by the department head, executive director, or commissioner (or the designated representative);

Step 5; An evidentiary de novo hearing is conducted before the CSRB hearing officer.

An appellate review is conducted before the CSRB board members.

The purpose for the above steps, or levels, is to curtail employees from having to submit their grievances to persons in agency management not specified in the above steps or levels. Only the above-listed persons (or their designated representatives) in agency management are authorized to respond to state employees' grievances.

R137-1-15. Procedure for Grieving Disciplinary Action Imposed by Department Head.

(1) An aggrieved employee who has been issued a written reprimand, suspension without pay, demotion, or dismissal, imposed by the respective department head (i.e., executive director or commissioner) may appeal that action directly to the evidentiary/step 5 level.

(a) An appeal from discipline is distinguishable from a grievance.

(b) A grievance is filed at steps 1 and 2, and proceeds through steps 3 and 4.

(c) When an appeal from discipline imposed by a department head (or designated representative) occurs at the step 4 level, it may be appealed directly to the CSRB at the evidentiary/step 5 level.

(2) When appealed to the CSRB Office, the appeal must be filed within 20 working days from the date an aggrieved employee receives written notification from the department head who imposed the disciplinary action.

R137-1-16. Procedure for Grieving Reduction in Force.

An aggrieved employee may appeal from a reduction in force according to the following:

(1) Upon receiving the department head's final, written decision, the employee may appeal from a reduction in force by filing a written appeal within 20 working days with the CSRB Office.

R137-1-17. Jurisdictional Hearing.

A jurisdictional hearing is a formal adjudication conducted according to Subsection 67-19a-403(2)(b)(i) with Section 63-46b-8 of the UAPA incorporated by reference. An administrative review of the file is an informal adjudication according to Subsection 67-19a-403(2)(b)(ii) with Section 63-46b-4 of the UAPA incorporated by reference.

(1) Procedural Issues. The administrator shall determine the following: timeliness, standing, direct harm, jurisdiction, and eligibility of the issues to be advanced, and any other procedural matters or jurisdictional controversies according to Sections 67-19a-403 and 67-19a-404.

(2) Determination. The administrator shall determine which types of grievances may be heard at the evidentiary/step 5 level. Those types of grievances found to have been resolved at a lower level or those that do not qualify for advancement to the evidentiary/step 5 level are precluded from further consideration in any grievance submitted for CSRB consideration.

(3) Preclusion. Those types of actions not listed in Subsections 67-19a-202(1)(a) and 67-19a-302(1) are precluded from advancement to the evidentiary/step 5 level. When the grievance is precluded from the evidentiary/step 5 level, the matter under dispute shall be deemed as final at the level of the department head/step 4 written reply according to Subsection 67-19a-302(2).

(4) Reconsideration. A written request for reconsideration may be filed with the administrator. It must be filed within 20 days from the date that a jurisdictional hearing decision or an administrative review of the file decision is issued with Section 63-46b-13 of the UAPA incorporated by reference. The written reconsideration request must contain specific reasons why a reconsideration is warranted with respect to the factual findings and legal conclusions of the jurisdictional hearing decision or administrative review of the file decision. New or additional evidence may not be considered.

(5) Judicial Review.

(a) The aggrieved employee or the responding agency may appeal the administrator's formal adjudicative jurisdictional hearing decision and final agency action to the Utah Court of Appeals within 30 calendar days from the date of issuance according to Subsection 63-46b-14(3)(a) and Section 63-46b-16

of the UAPA which are incorporated by reference.

(b) The aggrieved employee or the responding agency may appeal the administrator's informal adjudicative decision and final agency action of an administrative review of the file to the district court according to Sections 63-46b-15 and 63-46b-17 of the UAPA which are incorporated by reference.

(6) Summary Judgment. The administrator may, pursuant to an administrative review of the procedural facts and circumstances of a grievance case, summarily dispose of a case on the ground that:

(a) the matter is untimely;

(b) the grievant has failed to appear at the properly scheduled date, time, and place pursuant to written notice;

(c) the grievant lacks standing;

(d) the grievant has withdrawn or otherwise abandoned the grievance;

(e) the grievant has not been directly harmed;

(f) the issue grieved does not qualify to be advanced beyond step 4; or

(g) the requested remedy or relief exceeds the scope of these grievance procedures.

(7) Transcription and Transcript Fees. If a party appeals a jurisdictional hearing decision to the Utah Court of Appeals or to the district court, the appealing party is responsible for paying all transcription costs and any transcript fees. The CSRB does not participate in the payment of these fees when appeals are taken to the appellate or trial court. See Utah Rules of Appellate Procedure, Rule 11, and Section 63-46b-16(3), regarding transcript costs from formal adjudications under the UAPA.

R137-1-18. Procedural Matters.

The provisions under this section pertain to jurisdictional and evidentiary/step 5 proceedings of the CSRB, but not to appellate/step 6 proceedings unless specifically indicated.

(1) Purpose. A formal adjudicative proceeding provides a fair and impartial opportunity for the parties to be heard and to present their evidence. The adjudicative process allows the CSRB administrator or the CSRB hearing officer to be completely informed about the case. After having considered the parties' evidence, the CSRB administrator or the CSRB hearing officer may then render a proper determination based upon all of the facts, circumstances, and applicable laws, rules and policies.

(2) Types of Adjudications. For purposes of Section 63-46b-4 of the UAPA:

(a) All CSRB jurisdictional, evidentiary/step 5 and appellate/step 6 adjudications are formal adjudicative proceedings. Sections 63-46b-7 through 63-46b-11, 63-46b-14 and 63-46b-16 through 63-46b-18 of the UAPA are incorporated by reference within this rule and are applicable to these adjudicative proceedings.

(b) An administrative review of the file pursuant to Subsection 65-19a-403(2)(b)(ii) is an informal adjudicative proceeding with Sections 63-46b-5, 63-46b-15, and 63-46b-17 of the UAPA incorporated by reference.

(3) Rules of Evidence/Procedure Inapplicable. The technical rules of evidence and the formal rules of civil procedure as observed in the courts of law are inapplicable to grievance procedure proceedings, except for the rules of privilege as recognized by law and those specific references to the rules of evidence and procedure as set forth in the UAPA.

(4) Expelling. The CSRB hearing officer may clear the proceeding of witnesses not under examination and may exclude any unruly or disruptive person.

(5) Presentation of Case. Each party's representative is given the opportunity to make an opening statement. At the appropriate time, each party's representative is given the opportunity to present evidence. After each party's representative has presented its respective case, the moving party, followed by the responding party, may offer a closing statement. The moving party may offer one rebuttal. Continuous rebuttal is not permissible.

(6) Objections.

(a) When an objection is made as to the admissibility of evidence, the CSRB hearing officer shall note the objection for the record. A ruling is then made by the CSRB hearing officer, or the objection may be taken under advisement to be ruled upon later.

(b) The CSRB hearing officer has discretion to exclude inadmissible evidence and to order that cumulative or repetitive evidence be discontinued.

(c) A party objecting to the introduction of evidence must state the precise grounds of the objection at the time such evidence is offered.

(7) Marking Exhibits. All exhibits shall be numerically marked and labeled in the order received into evidence, unless previously marked and labeled.

(8) Motion to Dismiss. The CSRB hearing officer may, upon a party's motion or upon the CSRB hearing officer's own motion, dismiss the grievance or appeal with due regard for the standard of excusable neglect according to R137-1-13(3).

(9) Consolidation of Grievances. Grievances of the same or of a sufficiently similar context may be consolidated by the administrator for purposes of conducting a single or joint hearing.

(10) Standard of Proof. In all CSRB adjudicative proceedings, the standard of proof is the substantial evidence standard according to Subsection 67-19a-406(2)(c).

(11) Hearsay Evidence. Hearsay evidence is admissible in CSRB formal adjudicative proceedings as qualified by Subsection 63-46b-10(3) of the UAPA which is incorporated by reference.

(12) Discovery. The following rule provisions satisfy Subsection 63-46b-7(1) of the UAPA on discovery.

(a) Discovery shall be limited to that which is relevant and nonprivileged, and for which each party has a substantial, demonstrable need for supporting their respective claims or defenses.

(b) At the discretion and approval of the appointed CSRB hearing officer, parties to a dispute may obtain discovery. The CSRB hearing officer has discretion to entertain motions to conduct discovery on a case-by-case basis regarding the following:

(i) production of witnesses;

(ii) production of documents, records and things;

(iii) issuance of subpoenas which are issued pursuant to R137-1-6 and R137-1-8;

(iv) the taking of interrogatories;

(v) the taking of depositions, when a proposed witness is not available for giving testimony at a scheduled hearing and when a witness's testimony appears reasonably calculated to lead to the discovery of admissible evidence;

(vi) requests for admissions; and

(vii) physical and mental examinations.

(c) Witness lists and copies of exhibits shall be offered by each party to the opposing party and to the appointed CSRB hearing officer during a prehearing/scheduling conference, unless the exchange is scheduled for a later date.

(i) Each party's list of witnesses shall contain a brief statement describing the nature of the proposed testimony to be offered by each witness.

(ii) A party may not surprise the opposing party with a witness or an exhibit at the hearing which was not made known at the prehearing/scheduling conference, or by a scheduled exchange date, unless the witness or exhibit is in direct rebuttal to admitted opposing evidence. Also refer to R137-1-7(1)(c).

(13) Page Limitation.

(a) Written motions, pleadings, briefs, and memoranda for all CSRB proceedings may not exceed 20 typed, double-spaced 8-1/2 x 11 inch pages, exclusive of any statement of facts. Reply briefs may not exceed ten pages.

(b) An application for an exception to the above-stated page limitation provisions must be timely filed in writing, and not more than ten double-spaced 8-1/2 x 11 inch pages in a 12-point font. The applicant party has the burden to offer sufficient justification for requests more than 20 and 10 pages respectively to the CSRB for the granting of any exceptions to the page limitation provision.

(c) The CSRB may weigh all requests to exceed the page limitation provision based upon the reasonableness and necessity of such requests in light of each case and its circumstances. The board does not automatically grant exceptions simply on the basis of a request.

R137-1-19. Witnesses.

(1) Availability of State Employees to Testify. An agency shall be responsible for making available any of its employees who are requested to testify in a hearing.

(a) Off Duty Employees. Agencies are not responsible for making available an employee who is: off duty; on sick, annual or other approved leave; or who, for any other reason, is not at work during the time the hearing is in progress.

(b) Nondisruption. The parties and their representatives, the administrator and the CSRB hearing officer shall make every effort to avoid disruption to the operation of state government in the calling of state employees to testify in hearings under these grievance procedures.

(c) Witness Failure. If a requested witness does not appear at the scheduled hearing, the witness's failure to appear may not necessitate the postponement of any proceedings.

(d) Excessive Witnesses. If the number of witnesses requested by a party is excessive, the administrator or the CSRB hearing officer may require the party to justify the request or face denial of part or all of the request.

(e) Witness Fees and Mileage Fees. A witness fee and a mileage fee are available to nonstate employees and to state employees who use nonworking hours if their presence is required in a grievance proceeding as a witness according to Section 21-5-4. The CSRB reserves the right to determine on an individual case basis whether it will authorize a travel fee, and to what extent, for an out-of-state witness called by a party.

(2) Hostile Witnesses. When the CSRB hearing officer determines that a witness is uncooperative or even hostile, the witness may be examined by the party calling that witness as if under cross-examination. The party calling the witness may, upon showing that the witness was called in good faith but that the testimony is a surprise, proceed to impeach the witness by proof of prior inconsistent statements.

(3) Exclusion/Sequestering of Witnesses.

(a) The CSRB hearing officer may sequester witnesses from the hearing until they are called to testify.

(b) Witnesses not presently testifying may be sequestered on motion by one or both parties.

(c) The CSRB hearing officer will counsel the witnesses not to discuss the case with those witnesses who have not yet testified.

(4) Management Representative. Prior to every hearing the agency's representative may designate a person to serve as the agency's management representative. The agency's management representative is entitled to remain throughout the hearing to represent the agency at any proceeding even if called to testify. Neither the grievant nor the management representative may be excluded from the hearing.

R137-1-20. Public Hearings.

A CSRB hearing is open to the public unless there are reasonable grounds to justify an executive session for either part or all of a hearing. This provision does not apply to witnesses who are being called to testify according to R137-1-19.

(1) Closing Hearings. All grievance procedure hearings shall be open to the public except as follows:

(a) The administrator, the board, or the CSRB hearing officer may close either a portion or an entire hearing based upon a compelling reason.

(b) An evidentiary/step 5 hearing may be closed in part or in its entirety when the proceeding involves discussion about a state employee's character, professional competence, or physical or mental health according to Subsection 52-4-5(1)(a)(i) of the Open and Public Meetings statute.

(2) Sealing Evidence. The administrator, the board, or the CSRB hearing officer may seal the record when appropriate according to Subsection 67-19a-406(4)(c) and 67-19a-408(6).

(3) Media Presence. All hearings at the jurisdictional, evidentiary/step 5 and appellate/step 6 levels are open to the media, unless closed pursuant to R137-1-20(1) above. However, television cameras are not permitted at the evidentiary/step 5 proceeding.

(4) Distribution of Decisions. The administrator may provide copies of legal decisions, orders, and rulings to the public upon request. Portions of or entire legal decisions and orders may be withheld if deemed to be legally privileged or protected under the state's Government Records Access and Management Act (GRAMA), or if the record is sealed according to Subsection 67-19a-408(5).

R137-1-21. The Evidentiary/Step 5 Adjudicatory

Procedures.

(1) Authority of the CSRB Hearing Officer/Presiding Officer. The CSRB hearing officer/presiding officer is authorized to:

(a) serve as the presiding officer at evidentiary/step 5 hearings as set forth at Subsection 63-46b-2(h)(i) of the UAPA;

(b) maintain order, ensure the development of a clear and complete record, rule upon offers of proof, receive relevant evidence, and assign the burden of proof according to Subsection 67-19a-406(2);

(c) set reasonable limits on repetitive and cumulative testimony and sequester any witness whose later testimony might be colored by the testimony of another witness or any person whose presence might have a chilling effect on another testifying witness;

(d) rule on motions, exhibit lists, witness lists and proposed findings;

(e) require the filing of memoranda of law and the presentation of oral argument with respect to any question of law;

(f) compel testimony and order the production of evidence and the appearance of witnesses;

(g) admit evidence that has reasonable and probative value; and

(h) reopen the evidentiary record.

(2) Conduct of Hearings. A hearing shall be confined to those issues related to the subject matter presented in the original grievance statement.

(a) An evidentiary proceeding may not be allowed to develop into a general inquiry into the policies and operations of an agency.

(b) An evidentiary proceeding is intended solely to receive evidence that either refutes or substantiates specific claims or charges. A proceeding may not be used as an occasion for irresponsible accusations, general attacks upon the character or conduct of the employing agency, agency management, or other employees. A hearing may not be used as a forum for making derogatory assertions having no bearing on the claims or specific matters under review.

(3) Evidentiary/Step 5 Hearing. An evidentiary/step 5 hearing shall be a new hearing for the record according to Subsections 67-19a-406(1) and (2), held de novo, with both parties being granted full administrative process as follows:

(a) The CSRB hearing officer shall first make factual findings based solely on the evidence presented at the hearing without deference to any prior factual findings of the agency. The CSRB hearing officer shall then determine whether:

(i) the factual findings made from the evidentiary/step 5 hearing support with substantial evidence the allegations made by the agency or the appointing authority, and

(ii) the agency has correctly applied relevant policies, rules, and statutes.

(b) When the CSRB hearing officer determines in accordance with the procedures set forth above that the evidentiary/step 5 factual findings support the allegations of the agency or the appointing authority, then the CSRB hearing officer must determine whether the agency's decision, including any disciplinary sanctions imposed, is excessive, disproportionate or otherwise constitutes an abuse of discretion. In making this latter determination, the CSRB hearing officer shall give deference to the decision of the agency or the appointing authority unless the agency's penalty is determined to be excessive, disproportionate or constitutes an abuse of discretion in which instance the CSRB hearing officer shall determine the appropriate remedy.

(4) Discretion. Upon commencement, the CSRB hearing officer shall announce that the hearing is convened and is being held on the record. The CSRB hearing officer shall note appearances for the record and shall determine which party has the burden of moving forward first.

(5) Closing the Record. After all testimony, documentary evidence, and arguments have been presented, the CSRB hearing officer shall close the record and terminate the proceeding, unless one or both parties agree to submit a posthearing brief or memoranda of law within a specified time.

(6) Posthearing Briefs. When posthearing briefs or memoranda of law are scheduled to be submitted, the record shall remain open until the briefs or memoranda are exchanged and received by the CSRB hearing officer and incorporated into the record, or until the time to receive these submissions has expired. After receipt of posthearing documents, or upon the expiration of the time to receive posthearing documents, the case is then taken under advisement, and the tolling period commences for the issuance of the written decision.

(7) Findings of Fact, Conclusions of Law. Notwithstanding R137-1-21(1)(h) above, following the closing of the record, the CSRB hearing officer shall write a decision containing findings of fact and conclusions of law according to Section 67-19a-406 and Section 63-46b-10 of the UAPA, which is incorporated by reference. When the CSRB hearing officer's decision and order is filed with the administrator it then becomes the decision and order of the evidentiary/step 5 hearing.

(8) Distribution of Decisions. The administrator shall distribute copies of the evidentiary/step 5 decision and order to the persons, parties and representatives of record.

(9) Past Work Record. In those proceedings where a disciplinary penalty is at issue, the past employment record of the employee is relevant for purposes of either mitigating or sustaining the penalty when substantial evidence supports an agency's allegations.

(10) Compliance and Enforcement. State agencies, department heads, division directors and officials are expected to comply with decisions and orders issued by the CSRB hearing officer, unless an appeal is taken to the appellate/step 6 level. Enforcement measures available to the CSRB include:

(a) petitioning the governor, who may remove his appointed state officers with or without cause, and with respect to those who can only be removed for cause, refusal to obey a lawful order may constitute sufficient cause for removal;

(b) a mandamus order to compel the official to obey the order;

(c) the charge of a Class A misdemeanor according to Section 67-19-29; and

(d) seeking enforcement of a legal decision, order or ruling through civil enforcement in the district court according to Subsection 63-46b-19(1) of the UAPA which is incorporated by reference.

(11) Rehearings. Rehearings are not permitted.

(12) Reconsideration.

(a) Section 63-46b-13 of the UAPA is incorporated by reference within this rule, and requests for reconsideration of an evidentiary/step 5 decision will be conducted in accordance with that section, except for the time period which is stated below.

(b) The written reconsideration request must contain specific reasons why a reconsideration is warranted with respect to the factual findings and legal conclusions of the evidentiary/step 5 decision. The same CSRB hearing officer shall decide the propriety of a reconsideration. A request for reconsideration is filed with the administrator. To be timely the written request for reconsideration shall be filed within ten working days upon receipt of the evidentiary/step 5 decision according to the time period at Subsection 67-19a-407(1)(a)(i), not Section 63-46b-13.

(c) An appeal to the appellate/step 6 level from a CSRB hearing officer's reconsideration decision and order must be filed within ten working days upon receipt of the reconsideration or within ten working days after expiration of the time for receipt of the reconsideration, whichever is first.

R137-1-22. The Board's Appellate/Step 6 Procedures.

(1) Transcript Production. The party appealing the CSRB hearing officer's evidentiary/step 5 decision to the board at the appellate/step 6 level shall order transcription of the evidentiary/step 5 hearing from the court reporting firm within ten working days upon receipt of acknowledgment of the appeal from the administrator.

(a) The appellant shall share an equal fee payment with the CSRB Office to the court reporting firm. Transcript production cost-sharing applies equally only to the appellant and to the CSRB Office. The CSRB Office receives the transcript original; the appellant receives a transcript copy.

(b) The respondent may inquire of the CSRB Office about obtaining a transcript copy, or may directly purchase a copy from the court reporting firm.

(2) Briefs. An appeal hearing before the board at step 6 is based upon the evidentiary record previously established by the CSRB hearing officer during the evidentiary/step 5 hearing. No additional or new evidence is permitted unless compelled by the board.

(a) The appellant in an appellate/step 6 proceeding must obtain the transcript of the evidentiary/step 5 hearing. After receipt of the transcript, the appellant has 30 calendar days to file an original and six copies of a brief with the administrator. Additionally, the respondent must be provided with a copy of the appellant's brief.

(b) After receiving a copy of the appellant's brief, the respondent then has 30 calendar days to file an original and six copies of a brief with the administrator. The appellant may file an original and six copies of a reply brief which addresses the respondent's brief.

(c) After receiving both parties' briefs, the administrator distributes the briefs and the CSRB hearing officer's evidentiary/step 5 decision to the board members.

(d) Each party is responsible for filing its original and six copies with the CSRB Office and for exchanging a copy with the opposing party.

(e) Briefs shall be date-stamped upon their receipt in the CSRB Office.

(f) The time frame for receiving briefs shall be modified or waived only for good cause as determined by the CSRB chair or vice-chair, or the administrator.

(3) Rules of Procedure. The following rules are applicable to appeal hearings before the board at the appellate/step 6 level:

(a) Dismissal of Appeal. Upon a motion by either party or upon its own motion, the board may dismiss any appeal prior to holding a formal appeal hearing if the appeal is clearly moot, without merit, improperly filed, untimely filed, or outside the scope of the board's authority.

(b) Notice. The board shall distribute written notice of the date, time, place, and issues for hearing to the aggrieved employee, to the employee's counsel or representative, to the appropriate agency official, to the agency's counsel or representative, and to the agency's management representative, at least five working days before the date set for the hearing.

(c) Compelling Evidence. The board may compel evidence in the conduct of its appeal hearings, according to Subsection 67-19a-202(3).

(d) Oral Argument/Time Limitation. The board grants up to 20 to 25 minutes to each party for oral argument. The board may grant additional time when deemed appropriate.

(e) Oral Argument Set Aside. If the board determines that oral argument is unnecessary, the parties shall be notified. However, the parties' representatives may be expected to appear before the board at the date, time, and place noticed to answer any questions raised by the board members.

(f) Argument or Memoranda. The board may require the parties to offer oral argument or submit written memoranda of law.

(4) The Board's Standards of Review. The board's standards of review based upon the following criteria:

(a) The board shall first make a determination of whether the factual findings of the CSRB hearing officer are reasonable and rational according to the substantial evidence standard. When the board determines that the factual findings of the CSRB hearing officer are not reasonable and rational based on the evidentiary/step 5 record as a whole, then the board may, in its discretion, correct the factual findings, and also make new or additional factual findings.

(b) Once the board has either determined that the factual findings of the CSRB hearing officer are reasonable and rational or has corrected the factual findings based upon the evidentiary/step 5 record as a whole, the board must then determine whether the CSRB hearing officer has correctly applied the relevant policies, rules, and statutes according to the correctness standard, with no deference being granted to the evidentiary/step 5 decision of the CSRB hearing officer.

(c) Finally, the board must determine whether the decision of the CSRB hearing officer, including the totality of the sanctions imposed by the agency, is reasonable and rational based upon the ultimate factual findings and correct application of relevant policies, rules, and statutes determined according to the above provisions.

(5) Appeal Hearing Record. The proceeding before the board shall be recorded by a certified court reporter, or in exceptional circumstances by a recording machine.

(6) Appellate Review. Upon a party's application for review of the CSRB hearing officer's evidentiary/step 5 decision, the board's appellate/step 6 decision is based upon a review of the record, including briefs and oral arguments presented at step 6, and no further evidentiary hearing will be held unless otherwise ordered by the board. Section 63-46b-10 of the UAPA is incorporated by reference.

(7) Remand. Until the board's decision is final, the board may remand the case to the original CSRB hearing officer to take additional evidence or to resolve any further evidentiary issues of fact or law with instructions or may make any other appropriate disposition of the appeal.

(8) Distribution of Appellate Decisions. The board's decision and order is issued on the date that it is signed and dated by the CSRB chair, vice-chair or another board member. After the board's appellate/step 6 decision is issued, it is distributed according to R137-1-8(3).

(a) The board's appellate decision shall be distributed to the aggrieved employee, the employee's counsel or representative, the appropriate agency official, the agency's counsel or representative, and to the agency's management representative. The board's appellate decision shall be final in terms of administrative review under these grievance procedures. The board may, at its discretion, release to the parties its determination orally prior to issuance of its official written decision.

(b) The board's appellate decision is binding on the agency that is a party to the appeal unless its decision and ruling is overturned, vacated, or modified resulting from an appeal to the Utah Court of Appeals.

(c) The board may affirm, reverse, adopt, modify, supplement, amend, or vacate the CSRB hearing officer's decision, either in whole or in part.

(9) Rehearings. The board does not permit rehearings.

(10) Reconsideration.

(a) Reconsideration requests of the board's appellate/step 6 decisions will be conducted pursuant to the provisions of Section 63-46b-13.

(b) Any request for reconsideration of a previously issued decision by the board is subject to the following conditions:

(i) Reconsideration requests must contain specific reasons why a reconsideration is warranted with respect to the board's factual findings and legal conclusions.

(ii) The board has discretion to decide whether it may reconsider any previously adjudicated matter.

(iii) The board only grants a reconsideration if appropriate justification is offered.

(iv) When the board agrees to the petitioner's request, the board's reconsideration response is in writing, with no further hearing or proceeding on the record, unless the board reopens the record or remands the case to the evidentiary/step 5 level.

(v) Any appeal from a board-issued reconsideration to the Utah Court of Appeals must be filed according to Section 63-46b-14(3)(a)of the UAPA.

(11) An Appeal to the Utah Court of Appeals.

To appeal to the Utah Court of Appeals, a party must file with the court within 30 calendar days from the date of issuance of the board's decision and final agency action according to Sections 63-46b-14 and 63-46b-16 of the UAPA, which are incorporated by reference. The dates of mailing, postmarking and receipt are not applicable to filing with the court.

(12) Transcript Fee. The party petitioning the Utah Court of Appeals for a review must bear all costs of transcript production for the appellate/step 6 proceeding. The CSRB Office may not share any cost for a transcript or transcription of the appeal hearing. The petitioning party should provide a copy of the appeal hearing's transcript to the responding party when an appellate/step 6 proceeding is transcribed.

R137-1-23. Declaratory Orders.

This rule provides a procedure for the submission and review of requests for and disposition of declaratory rulings pertaining to the applicability of statutes, administrative rules, and orders either governing or issued by the administrator, the board or a CSRB hearing officer. Section 63-46b-21 of the UAPA is incorporated by reference.

(1) Applicability. The applicability of a declaratory order refers to the determination of whether a statute, rule, or order should be applied, and if so, how the law should be applied to the facts.

(2) Petition Procedure. Any person or agency with proper standing may petition for a declaratory ruling.

(a) The petition must be addressed and delivered to the CSRB Office or the administrator.

(b) The petition shall be date-stamped upon receipt in the CSRB Office.

(3) Petition Form. The petition shall:

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

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

(c) describe the circumstances in which applicability is to be reviewed;

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

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

(f) be signed by the petitioner.

(4) Petition Review and Disposition. As appropriate the administrator or the board:

(a) shall review and consider the petition;

(b) shall prepare a declaratory ruling, stating:

(i) the applicability or nonapplicability of the statute, rule, or order at issue;

(ii) the reasons for the applicability or nonapplicability of the statute, rule, decision or order; and

(iii) any requirements imposed on a petitioning person or agency, or any other person according to the ruling; and

(c) may:

(i) interview the petitioner or the agency representative;

(ii) hold a public hearing on the petition;

(iii) consult with legal counsel or the Attorney General; or

(iv) take any action that the board, in its judgment, deems necessary to provide the petition with an adequate review and due consideration.

(5) Time Period and Issuance. The board or the administrator shall prepare the declaratory ruling without unnecessary delay. The board shall issue a copy of the ruling to

the petitioner by depositing it with the U.S. Postal Service, postage prepaid, or by depositing it with State Mail Services, by faxing it or E-mailing it, as appropriate. In the event of a necessary delay, the board must issue a notice of progress to the petitioner within 30 days of receipt of the petition.

(6) Records. The CSRB Office shall retain the petition and the original of the declaratory ruling in its records.

(7) Statutory Construction. Questions requiring the construction of statutory provisions may be submitted to the Attorney General for a formal or informal letter opinion.

(8) Refusal. The board or the administrator may refuse to issue a declaratory order if the question in issue is one that is being contested in a case currently before the board.

KEY: grievance procedures

December 16, 1997	**34-35-6**
Notice of Continuation January 30, 1997	**67-19-30**
	67-19-31
	67-19-32
	67-19a et seq.
	63-46b et seq.

R156. Commerce, Occupational and Professional Licensing.
R156-22. Professional Engineers and Professional Land Surveyors Licensing Act Rules.
R156-22-101. Title.

These rules are known as the "Professional Engineers and Professional Land Surveyors Licensing Act Rules".

R156-22-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 22, as used in Title 58, Chapters 1 and 22, or these rules:

(1) "Complete and final" as used in Subsection 58-22-603(1) means "complete construction plans" as defined in Subsection 58-22-102(3).

(2) "Direct supervision" as used in Subsection 58-22-102(10) means "supervision" as defined in Subsection 58-22-102(16).

(3) "Employee" means one or more individuals who are working or providing services for compensation paid in the form of wages or salary from which there is withheld or should be withheld income taxes or social security taxes under applicable law.

(4) "Engineering surveys" as used in Subsection 58-22-102(9) include all survey activities required to support the sound conception, planning, design, construction, maintenance, and operation of engineered projects, but exclude the surveying of real property for the establishment of land boundaries, rights-of-way, easements, alignment of streets, and the dependent or independent surveys or resurveys of the public land survey system.

(5) "Full time" means a minimum of 30 hours per week for periods of time not less than 10 weeks in length.

(6) "Qualifying experience for licensure as a professional engineer" as used in Section R156-22-203 means full time professional engineering performed by an applicant for licensure as a professional engineer requiring the application of the engineering sciences in the investigation, planning, design and construction of engineering works and systems performed under the supervision of a licensed professional engineer.

(7) "Qualifying experience for licensure as a land surveyor" as used in Section R156-22-205 means full time professional land surveying performed by an applicant for licensure as a professional land surveyor requiring actual field and office time spent monumenting property boundaries, platting and laying out lands and subdivisions, recording plats and keeping accurate records and field notes performed under the supervision of a licensed professional land surveyor.

(8) "Recognized jurisdiction" as used in Subsection 58-22-302(4)(d)(i), for licensure by endorsement, means any state, district or territory of the United States, or any foreign country who issues licenses for professional engineers, professional structural engineers, or professional land suveryors, and whose licensure requirements include:

(a) Professional Engineer.

(i) a bachelors or post graduate degree in engineering or equivalent education as determined by the NCEES Foreign Engineering Education Evaluation Program and four years of full time engineering experience under supervision of one or more licensed engineers; or eight years of full time engineering experience under supervision of one or more licensed professional engineers; and

(ii) passing the NCEES Principles and Practice of Engineering Examination or passing a professional engineering examination that is substantially equivalent to the NCEES Principles and Practice of Engineering Examination.

(b) Professional Structural Engineer.

(i) a bachelors or post graduate degree in engineering or equivalent education as determined by the NCEES Foreign Engineering Education Evaluation Program and four years of full time engineering experience under supervision of one or more licensed engineers; or eight years of full time engineering experience under supervision of one or more licensed professional engineers;

(ii) passing the NCEES Principles and Practice of Engineering Examination - Civil or passing a professional engineering examination that is substantially equivalent to the NCEES Principles and Practice of Engineering Examination - Civil;

(iii) passing the NCEES Structural I and II Examination or passing a professional engineering examination that is substantially equivalent to the NCEES Structural I and II Examination; and

(iv) three years of licensed experience in professional structural engineering.

(c) Professional Land Surveyor.

(i) a two or four year degree in land surveying or equivalent education as determined by the NCEES Foreign Engineering Education Evaluation Program and four years of full time land surveying experience under supervision of one or more licensed professional land surveyors; or eight years of full time land surveying experience under supervision of one or more licensed professional land surveyors; and

(ii) passing the NCEES Principles and Practice of Land Surveying Examination or passing a professional land surveying examination that is substantially equivalent to the NCEES Principles and Practice of Land Surveying Examination.

(9) "Responsible charge" as used in Subsections 58-22-102(7) and 58-22-305(7) means direct control and management by a principal over the practice of professional engineering, professional structural engineering or professional land surveying by an organization.

(10) "TAC/ABET" means Technology Accreditation Commission/Accreditation Board for Engineering and Technology.

(11) "Unlicensed employees, subordinates, associates, or drafters of a person licensed under this chapter" as used in Subsection 58-22-305(4) means persons not licensed as a professional engineer, professional structural engineer, or professional land surveyor, who perform professional engineering or professional land surveying services under the supervision of a licensed professional engineer, professional structural engineer or professional land surveyor, and who do not offer professional engineering or professional land surveying services directly to the public.

(12) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 22, is further defined, in accordance with Subsection 58-1-203(5), in Section R156-22-601.

R156-22-103. Authority - Purpose.

These rules are adopted by the division under the authority of Subsection 58-1-106(1) to enable the division to administer Title 58, Chapter 22.

R156-22-104. Organization - Relationship to Rule R156-1.

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

R156-22-201. Engineering Program Criteria.

In accordance with Subsections 58-22-302(1)(d) and 58-22-302(2)(d), the engineering program criteria is established as one of the following:

(1) The engineering program shall be accredited by EAC/ABET or the Canadian Engineering Accrediting Board.

(2) The post graduate engineering degree is earned from an institution which offers a bachelors or masters degree in an engineering program accredited by EAC/ABET.

(3) If the degree was earned in a foreign country, the engineering curriculum shall be determined to be substantially equivalent to a EAC/ABET accredited program by the NCEES Foreign Engineering Education Evaluation Program.

R156-22-202. Qualifying Experience Requirements for Licensure as a Professional Engineer - Supervision of Construction Work Not Qualifying Experience - Verifications Required.

In accordance with Subsection 58-22-302(1)(e), the qualifying experience requirements for licensure as a professional engineer are established as follows:

(1) Each applicant shall complete four years of qualifying experience in professional engineering approved by the division in collaboration with the board in accordance with the following:

(a) Up to one year of qualifying experience may be obtained while enrolled in an engineering program meeting the criteria set forth in Section R156-22-201.

(b) Unlimited qualifying experience may be obtained after meeting the education requirements.

(c) A maximum of three of the four years of qualifying experience may be approved by the board for persons who complete one or more of the following:

(i) A maximum of three years of qualifying experience may be granted for teaching advanced engineering subjects in a college or university offering an engineering curriculum accredited by EAC\ABET.

(ii) A maximum of three years of qualifying experience may be granted for conducting research in a college or university offering an engineering curriculum accredited by EAC/ABET.

(iii) A maximum of one year of qualifying experience may be granted for completion of a masters degree in engineering from an institution which offers a bachelor of science degree accredited by EAC/ABET, when the degree is the second professional engineering degree conferred.

(iv) A maximum of two years of qualifying experience may be granted for completion of a doctorate degree in engineering from an institution which offers a bachelor of science degree accredited by EAC/ABET, when the degree is the second professional engineering degree conferred.

(2) An applicant who was unsuccessful in obtaining licensure by experience before July 1, 1996, but who passed the NCEES Fundamentals of Engineering Examination and completed four years of qualifying experience before July 1, 1996, and who thereafter completes the education requirements in Section R156-22-201, may receive credit for the qualifying experience obtained before July 1, 1996 regardless of the requirements of Subsection (1).

(3) The performance or supervision of construction work as a contractor, foreman or superintendent is not qualifying experience for licensure as a professional engineer.

(4) Each applicant shall submit a minimum of three verifications of qualifying experience on forms available from the division from licensed professional engineers who have provided supervision or who have personal knowledge of the applicant's knowledge, ability and competence to practice professional engineering.

R156-22-203. Experience Requirements for Licensure as a Professional Structural Engineer.

(1) In accordance with Subsection 58-22-302(2)(e), each applicant shall submit a minimum of three verifications of professional structural engineering experience on forms available from the division from licensed professional engineers or professional structural engineers who have personal knowledge of the applicant's knowledge, ability and competence to practice professional structural engineering, which experience is in addition to the qualifying experience required for licensure as a professional engineer.

(2) Professional structural engineering experience shall include responsible charge of structural design in one or more of the following areas:

(a) structural design of any building or structure two stories and more, or 45 feet in height, designed in Uniform Building Code (UBC) seismic zones 2, 3, or 4;

(b) structural design for a major seismic retrofit/rehabilitation of an existing building or structure in UBC seismic zones 2, 3, or 4; or

(c) structural design of any other structure of comparable structural complexity.

(3) Professional structural engineering experience shall include responsible charge of structural design in all of the following areas:

(a) use of three of the following four materials as they relate to the design, rehabilitation or investigation of buildings or structures:

(i) steel;

(ii) concrete;

(iii) wood; or

(iv) masonry;

(b) selection of framing systems including the consideration of alternatives and the selection of an appropriate system for the interaction of structural components to support vertical and lateral loads;

(c) selection of foundation systems including the consideration of alternatives and the selection of an appropriate type of foundation system to support the structure;

(d) design and detailing for the transfer of forces between stories in multi-story buildings or structures;

(e) application of lateral design in the design of the buildings or structures in addition to any wind design requirements; and

(f) application of the local, state and federal code requirements as they relate to design loads, materials, and detailing.

R156-22-204. Examination Requirements for Licensure as a Professional Engineer.

In accordance with Subsection 58-22-302(1)(f), the examination requirements for licensure as a professional engineer are defined, clarified or established as the following:

(1) the NCEES Fundamentals of Engineering ("FE") Examination with a passing score as established by the NCEES;

(2) upon completion of the qualifying experience requirement, the NCEES Principles and Practice of Engineering ("PPE") Examination with a passing score as established by the NCEES; and

(3) the Utah Law and Rules Examination with a score of at least 75.

R156-22-205. Examination Requirements for Licensure as a Professional Structural Engineer.

In accordance with Subsection 58-22-302(2)(f), the examination requirements for licensure as a professional structural engineer are defined, clarified, or established as the following:

(1) the NCEES Fundamentals of Engineering Examination with a passing score as established by the NCEES;

(2) the NCEES Principles and Practice Examination in the category of civil or structural with a passing score as established by the NCEES;

(3) the NCEES Structural I and Structural II Examinations with a passing score as established by the NCEES or the 16 hour California Structural Examination with a passing score as established by the California engineering board; and

(4) the Utah Law and Rules Examination with a passing score of at least 75 except for individuals who may have already passed a previous edition of the same examination for licensure as a professional engineer.

R156-22-301. Equivalent Land Surveying Program for Licensure as a Professional Land Surveyor.

In accordance with Subsection 58-22-302(3)(d), an equivalent land surveying program for licensure as a professional land surveyor is defined as an earned bachelors or masters degree from a curriculum related to land surveying and completion of a minimum of 32 quarter hours or equivalent semester hours of course work in land surveying which shall include the following courses:

(i) boundary law;

(ii) writing legal descriptions;

(iii) public land survey system; and

(iv) surveying field techniques.

R156-22-302. Qualifying Experience Requirements for Licensure as a Professional Land Surveyor - Verifications Required.

In accordance with Subsections 58-22-302(3)(e) and (f), qualifying experience for licensure as a professional land surveyor is defined, clarified or established as follows:

(1) Applicants who have met the education requirements in Subsection 58-22-302(3)(d) shall document four years of qualifying experience in land surveying which experience may be obtained before, during or after completing the education requirements for licensure.

(2) Applicants who did not complete the education requirements in Subsection 58-22-302(3)(d) shall document eight years of qualifying experience in land surveying.

(3) Each applicant shall submit a minimum of three verifications of qualifying experience on forms available from the division from licensed professional land surveyors who have provided supervision or who have personal knowledge of the applicant's knowledge, ability and competence to practice professional land surveying.

R156-22-303. Examination Requirements for Licensure as a Professional Land Surveyor.

In accordance with Subsection 58-22-302(3)(g), the examination requirements for licensure as a professional land surveyor are established as the following:

(1) the NCEES Fundamentals of Land Surveying ("FLS") Examination with a passing score as established by the NCEES;

(2) upon completion of the qualifying experience, the NCEES Principles and Practice of Land Surveying ("PPLS") Examination with a passing score as established by the NCEES; and

(3) the Utah Local Practice Examination with a passing score of at least 75.

R156-22-401. Examination Requirements for Licensure by Endorsement.

In accordance with Subsection 58-22-302(4)(d)(ii), the examination requirements for licensure by endorsement are established as follows:

(1) An applicant for licensure as a professional engineer by endorsement shall comply with the examination requirements in Section R156-22-204 except that the board may waive either the FE Examination or the PPE Examination or both for an applicant who was not required to pass the FE Examination or the PPE Examination for initial licensure from the recognized jurisdiction the applicant was originally licensed.

(2) An applicant for licensure as a professional structural engineer by endorsement shall comply with the examination requirements in Section R156-22-205 except that the board may waive the FE Examination for an applicant who was not required to pass the FE Examination for initial licensure from the recognized jurisdiction the applicant was originally licensed.

(3) An applicant for licensure as a professional land surveyor by endorsement shall comply with the examination requirements in Section R156-22-303 except that the board may waive either the FLS Examination or the PPLS Examination or both to an applicant who was not required to pass the FLS Examination or the PPLS Examination for initial licensure from the recognized jurisdiction the applicant was originally licensed.

R156-22-501. Continuing Education for Professional Land Surveyors.

In accordance with Subsections 58-22-303(2) and 58-22-304(1), the qualifying continuing professional education standards for professional land surveyors are established as follows:

(1) During each two year period commencing on January 1 of each even numbered year, a licensed professional land surveyor shall be required to complete not less than 24 hours of qualified professional education directly related to the licensee's professional practice.

(2) The required number of hours of professional education for an individual who first becomes licensed during the two year period shall be decreased in a pro-rata amount equal to any part of that two year period preceding the date on which that individual first became licensed.

(3) Qualified continuing professional education under this section shall:

(a) have an identifiable clear statement of purpose and defined objective for the educational program directly related to the practice of a professional land surveyor;

(b) be relevant to the licensee's professional practice;

(c) be presented in a competent, well organized and sequential manner consistent with the stated purpose and objective of the program;

(d) be prepared and presented by individuals who are qualified by education, training and experience; and

(e) have associated with it a competent method of registration of individuals who actually completed the professional education program and records of that registration and completion are available for review.

(4) Credit for qualified continuing professional education shall be recognized in accordance with the following:

(a) unlimited hours shall be recognized for professional education completed in blocks of time of not less than one hour in formally established classroom courses, seminars, or conferences;

(b) a maximum of 12 hours per two year period may be recognized for teaching in a college or university or for teaching qualified continuing professional education courses in the field of land surveying;

(c) a maximum of four hours per two year period may be recognized for preparation of papers, articles, or books directly related to the practice of professional land surveying and submitted for publication;

(d) a maximum of six hours per two year period may be recognized for active professional practice of land surveying; and

(e) a maximum of six hours per two year period may be recognized for active membership in any state, national or international organization for the development and improvement of the profession of land surveying.

(5) A licensee shall be responsible for maintaining records of completed qualified continuing professional education for a period of four years after close of the two year period to which the records pertain. It is the responsibility of the licensee to maintain information with respect to qualified continuing professional education to demonstrate it meets the requirements under this section.

(6) If a licensee exceeds the 24 hours of qualified continuing professional education during the two year period, the licensee may carry forward a maximum of 12 hours of qualified continuing professional education into the next two year period.

(7) A licensee who documents they are engaged in full time activities or is subjected to circumstances which prevent that licensee from meeting the continuing professional education requirements established under this section may be excused from the requirement for a period of up to three years. However, it is the responsibility of the licensee to document the reasons and justify why the requirement could not be met.

R156-22-601. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) submitting an incomplete final plan, specification, report or set of construction plans to:

(a) a client, when the licensee represents, or could reasonably expect the client to consider the plan, specification, report or set of construction plans to be complete and final; or

(b) to a building official for the purpose of obtaining a building permit;

(2) failing as a principal to exercise responsible charge;

(3) failing as a supervisor to exercise supervision of an employee, subordinate, associate or drafter; or

(4) failing to conform to the accepted and recognized standards and ethics of the profession including those stated in the "Model Rules of Professional Conduct" of the National Council of Examiners for Engineering and Surveying (NCEES), 1990, which is hereby incorporated by reference.

R156-22-701. Seal Requirements.

(1) In accordance with Section 58-22-601, all final plans, specifications, reports, maps, sketches, surveys, drawings, documents and plats prepared by the licensee or prepared under the supervision of the licensee, shall be sealed in accordance with the following:

(a) Each seal shall be a circular seal, 1-1/2 inches minimum diameter.

(b) Each seal shall include the licensee's name, license number, "State of Utah", and "Professional Engineer", "Licensed Professional Engineer", "Registered Professional Engineer", "Certified Structural Engineer", "Structural Engineer", "Licensed Professional Structural Engineer", "Professional Structural Engineer", "Land Surveyor", "Professional Land Surveyor", "Licensed Professional Land Surveyor" or "Licensed Land Surveyor", as appropriate.

(c) Each seal shall be signed and dated with the signature and date appearing across the face of each seal imprint.

(d) Each original set of final plans, specifications, reports, maps, sketches, surveys, drawings, documents and plats, as a minimum, shall have the original seal imprint, original signature and date placed on the cover or title sheet.

(e) A seal may be a wet stamp, embossed, or electronically produced.

(f) Copies of the original set of plans, specifications, reports, maps, sketches, surveys, drawings, documents and plats which contain the original seal, original signature and date is permitted, if the seal, signature and date is clearly recognizable.

(2) A person who qualifies for and uses the title of professional engineer intern is not permitted to use a seal.

KEY: engineers, surveyors, professional land surveyors*, professional engineers*
September 17, 1996 **58-22-101**
58-1-106(1)
58-1-202(1)

R156. Commerce, Occupational and Professional Licensing.
R156-56. Utah Uniform Building Standard Act Rules.
R156-56-101. Title.

These rules are known as the "Utah Uniform Building Standard Act Rules".

R156-56-102. Definitions.

In addition to the definitions in Title 58, Chapters 1, 55 and 56, as used in Title 58, Chapter 56 or these rules:

(1) "Building construction trades" means, for the purpose of these rules only, those areas of construction regulated in the UBC, NEC, IPC, UPC and UMC and requiring inspection by compliance agencies.

(2) "Building permit" means, for the purpose of determining the building permit surcharge under Subsection 58-56-9(4), a warrant, license or authorization to build or construct a building or structure or any part thereof.

(3) "Building permit fee" means, for the purpose of determining the building permit surcharge under Subsection 58-56-9(4), fees assessed by an agency of the state or political subdivision of the state for the issuance of permits for construction, alteration, remodeling, and repair and installation including building, electrical, mechanical and plumbing components.

(4) "Construction of a permanent foundation", as used in Subsection 58-56-3(10), means a foundation system constructed entirely of placed concrete and is installed around the exterior of the manufactured/mobile home which when completed will be the only source of support and attachment of the home to the ground.

(5) "Direct supervision" means that the inspector responsible for supervising an inspector-in-training shall be physically present on-site at the time of inspection and the supervising inspector is responsible for any work delegated to the inspector-in-training. The inspector-in-training may not approve or disapprove any work and may not sign any orders, approvals or permits.

(6) "Employed by a local regulator, state regulator or compliance agency" means, with respect to Subsection 58-56-9(1), the hiring of services of a qualified inspector whether by an employer/employee relationship, an independent contractor relationship, a fee-for-service relationship or any other lawful arrangement under which the regulating agency purchases the services of a qualified inspector.

(7) "Indirect supervision" means that the inspector responsible for supervising an inspector-in-training may be remote from the site of inspection and the supervisor reviews the results of the inspection with the inspector-in-training and is responsible for any work delegated to the inspector-in-training. The inspector-in-training may issue orders, approvals and permits with the approval of his supervisor and may sign orders, approvals and permits with his supervisor's approval.

(8) "Inspector" means a person employed by a local regulator, state regulator or compliance agency for the purpose of inspecting building, electrical, plumbing or mechanical construction, alteration, remodeling, repair or installation in accordance with the UBC, NEC, UPC and UMC and taking appropriate action based upon the findings made during inspection.

(9) "Permanently affixed to real property" means a manufactured home or mobile home which has been anchored to, and supported by a permanent foundation, and which has complied with all of the provisions of Section 59-2-602.

(10) "Refuses to establish a method of appeal" means with respect to Subsection 58-56-8(3), that a compliance agency does not in fact adopt a formal written method of appealing uniform building standard matters in accordance with generally recognized standards of due process; or, that the compliance agency does not convene an appeals board and render a decision in the matter within ninety days from the date on which the appeal is properly filed with the compliance agency.

(11) "Set-up" means the installation of a manufactured/mobile or modular home.

(12) "Uniform Building Standards" means the UBC, UMC, IPC, UPC and NEC as amended and the HUD Code as amended (See R156-56-701) and NCSBCS.

(13) "Unprofessional conduct" as defined in Title 58, Chapter 1 is further defined, in accordance with Subsection 58-1-203(5), in Section R156-56-502.

R156-56-103. Authority.

These rules are adopted by the division under the authority of Subsection 58-1-106(1) to enable the division to administer Title 58, Chapter 56.

R156-56-104. Organization - Relationship to Rule R156-1.

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

R156-56-105. Board of Appeals.

If the commission is required to act as an appeals board in accordance with the provisions of Subsection 58-56-8(3), the following shall regulate the convening and conduct of the special appeals board:

(1) If a compliance agency refuses to establish a method of appeal regarding a uniform building standard issue, the appealing party may petition the commission to act as the board of appeals.

(2) The person making the appeal shall file the request to convene the commission as an appeals board in accordance with the requirements for a request for agency action, as set forth in Subsection 63-46b-3(3)(a) and Section R151-46b-7. A request by other means shall not be considered. Any request received by the commission or division by any other means shall be returned to the appellant with appropriate instructions.

(3) A copy of the final written decision of the compliance agency interpreting or applying a code which is the subject of the dispute shall be submitted as an attachment to the request. If the person making the appeal requests, but does not timely receive a final written decision, the person shall submit an

affidavit to this effect in lieu of the final written decision.

(4) The request shall be filed with the division no later than 30 days following the issuance of the disputed written decision by the compliance agency.

(5) The compliance agency shall file a written response to the request not later than 20 days after the filing of the request. The request and response shall be provided to the commission in advance of any hearing in order to properly frame the disputed issues.

(6) Except with regard to the time period specified in Subsection (7), the time periods specified in this section may, upon a showing of good cause, be modified by the presiding officer conducting the proceeding.

(7) The commission shall convene as an appeals board within 45 days after a request is properly filed.

(8) Upon the convening of the commission as an appeals board, the board members shall review the issue to be considered to determine if a member of the board has a conflict of interest which would preclude him from fairly hearing and deciding the issue. If it is determined that a conflict does exist, the member shall be excused from participating in the proceedings.

(9) The hearing shall be a formal hearing held in accordance with the Utah Administrative Procedures Act, Title 63, Chapter 46b.

(10) Decisions relating to the application and interpretation of the code made by a compliance agency board of appeals shall be binding for the specific individual case and shall not require commission approval. Copies of compliance agencies board of appeals decisions shall be submitted to the division as a means of a record.

R156-56-106. Fees.

In accordance with Subsection 58-56-9(4), on April 30, July 31, October 31 and January 31 of each year, each agency of the state and each political subdivision of the state which assesses a building permit fee shall file with the division a report of building fees and surcharge for the immediately preceding calendar quarter; and, shall remit 80% of the amount of the surcharge to have been assessed to the division.

R156-56-201. Building Inspector Licensing Board.

In accordance with Section 58-56-8.5, the board shall be as follows:

(1) one member licensed as a Combination Inspector I, a Combination Inspector II, a Combination Inspector III, or a Building Inspector I;

(2) one member licensed as an Electrical Inspector I;

(3) one member licensed as a Plumbing Inspector I;

(4) one member licensed as a Mechanical Inspector I; and

(5) one member shall be from the general public.

R156-56-202. Advisory Peer Committees Created - Membership - Duties.

(1) There is created in accordance with Subsection 58-1-203(6) and 58-56-5(10)(e), the following committees as advisory peer committees to the Uniform Building Codes Commission:

(a) the Education Advisory Committee consisting of nine members;

(b) the Plumbing and Health Advisory Committee consisting of nine members;

(c) the Structural Advisory Committee consisting of seven members;

(d) the Architectural Advisory Committee consisting of seven members;

(e) the Fire Protection Advisory Committee consisting of seven members;

(f) the Mechanical Advisory Committee consisting of seven members; and

(g) the Electrical Advisory Committee consisting of seven members.

(2) The committees shall be appointed and serve in accordance with Section R156-1-205. The membership of each committee shall be made up of individuals who have direct knowledge or involvement in the area of code involved in the title of that committee.

(3) The duties and responsibilities of the committees shall include:

(a) review of requests for amendments to the adopted codes as assigned to each committee by the division with the collaboration of the commission; and

(b) submission of recommendations concerning the requests for amendment.

R156-56-301. Reserved.

R156-56-302. Licensure of Inspectors.

In accordance with Subsection 58-56-9(1), the licensee classifications, scope of work, qualifications for licensure, and application for license are established as follows:

(1) License Classifications. Each inspector employed by a local regulator, state regulator, compliance agency, or private agency providing inspection services to a regulator or compliance agency, shall qualify for licensure and be licensed by the division in one of the following classifications not later than July 1, 1993:

(a) Building Inspector I - UBC;

(b) Electrical Inspector I - NEC;

(c) Plumbing Inspector I - IPC and UPC;

(d) Mechanical Inspector I - UMC;

(e) Combination Inspector I - UBC, NEC, IPC, UPC, UMC;

(f) Combination Inspector II - Limited Commercial Combination;

(g) Combination Inspector III - Dwelling; and

(h) Building Inspector III - UBC;

(i) Electrical Inspector III - NEC;

(j) Plumbing Inspector III - IPC and UPC;

(k) Mechanical Inspector III - UMC; and

(l) Inspector-in-Training.

(2) Scope of Work. The scope of work permitted under each inspector classification is as follows:

(a) Building Inspector I - UBC.

(i) In accordance with the provisions of the UBC, inspect the construction, alteration, remodeling or repair of any building or structure, or the components of any building or structure for which a standard is provided in the specific edition of the UBC

adopted under these rules or amendments to the UBC as included in these rules.

(ii) Determine whether the construction, alteration, remodeling or repair is in compliance or is not in compliance with the adopted UBC.

(iii) After determination of compliance or non-compliance with the adopted building code, take appropriate action as is provided in the UBC.

(b) Electrical Inspector I - NEC.

(i) In accordance with the NEC, inspect all electrical components of any building, structure or work for which a standard is provided in the specific edition of the NEC adopted under these rules or amendments to the NEC as included in these rules.

(ii) Determine whether the construction, alteration, remodeling, repair or installation of the electrical components of any building, structure or work is in compliance or is not in compliance with the adopted NEC.

(iii) After determination of compliance or noncompliance with the NEC, take appropriate administrative action as is provided in the UBC.

(c) Plumbing Inspector I - IPC and UPC.

(i) In accordance with the IPC and UPC, inspect all plumbing components of any building, structure or work for which a standard is provided in the specific edition of the IPC and UPC adopted under these rules or amendments to the IPC and UPC as included in these rules.

(ii) Determine whether the construction, alteration, remodeling, repair or installation of the plumbing components of any building, structure or work is in compliance or is not in compliance with the adopted IPC and UPC.

(iii) After determination of compliance or noncompliance with the IPC and UPC, take appropriate action as is provided in the IPC and UPC.

(d) Mechanical Inspector I - UMC.

(i) In accordance with the UMC, inspect all mechanical components of any building, structure or work for which a standard is provided in the specific edition of the UMC adopted under these rules or amendments to the UMC as included in these rules.

(ii) Determine whether the construction, alteration, remodeling, repair or installation of the mechanical component of any building, structure or work is in compliance or is not in compliance with the adopted UMC.

(iii) After determination of compliance or noncompliance with the UMC, take appropriate action as is provided in the UMC.

(e) Combination Inspector I - UBC, NEC, IPC, UPC and UMC.

(i) In accordance with the UBC, NEC, IPC, UPC and UMC, inspect the components of any building, structure or work for which a standard is provided in the specific edition of the aforesaid codes adopted under these rules or amendments to these codes as included in these rules.

(ii) Determine whether the construction, alteration, remodeling, repair or installation of all components of any building, structure or work is in compliance with the adopted UBC, NEC, IPC, UPC and UMC.

(iii) After determination of compliance or noncompliance with the UBC, IPC, UPC, NEC and UMC, take appropriate action as is provided in the aforesaid codes.

(f) Combination Inspector II - Limited Commercial Combination.

(i) In accordance with the provisions of the UBC, inspect the construction, alteration, remodeling or repair of any residential building not exceeding 15 units and two stories in height which is classified under an "R" occupancy in the UBC; all accessory buildings classified under a "U" occupancy in the UBC; and commercial buildings limited to those not exceeding two stories in height or 6000 square feet for buildings classified under a "A-3" occupancy in the UBC, 8000 square feet for buildings classified under a "B", "F-1", "M", "S-1", "S-3", or "S-5 occupancy in the UBC, and 3000 square feet for buildings classified under a "H-4" occupancy in the UBC.

(ii) In accordance with the NEC, IPC, UPC and UMC inspect the electrical, plumbing and mechanical components of a building defined in the above Subsection (i) of Subsection (f).

(iii) Determine whether the construction, alteration, remodeling or repair is in compliance or is not in compliance with the adopted building codes.

(iv) After determination of compliance with the adopted building codes, take appropriate action as is provided in the UBC, NEC, IPC, UPC or UMC.

(g) Combination Inspector III - Dwelling.

(i) In accordance with the provisions of the UBC, inspect the construction, alteration, remodeling or repair of any single-family or two family residential building classified under an "R-3" occupancy in the UBC, accessory buildings to R-3 dwellings classified under "U-1" or "U-2" occupancy in the UBC, and agricultural buildings classified under an "U-1", "U-2", "UBC Appendix Chapter 3, Division II", or "UBC Appendix Chapter 3, Division IV" occupancy in the UBC.

(ii) In accordance with the NEC, IPC, UPC and UMC inspect the electrical, plumbing and mechanical components of a building defined in the above Subsection (i) of Subsection (g).

(iii) Determine whether the construction, alteration, remodeling or repair is in compliance or is not in compliance with the adopted building codes.

(iv) After determination of compliance with the adopted building codes, take appropriate action as is provided in the UBC, NEC, IPC, UPC or UMC.

(h) Building Inspector III - UBC.

In accordance with the provisions of the UBC, inspect the construction, alteration, remodeling, or repair of any single-family or two-family residential building classified under an "R-3" occupancy, accessory buildings to R-3 dwellings classified under "U-1" or "U-2" occupancy, and agricultural buildings classified under an "U-1", "U-2", or "UBC Appendix Chapter 3, Division IV" occupancy as defined in the UBC.

(i) Electrical Inspector III - NEC.

In accordance with the NEC, inspect the electrical components of any single-family or two-family residential building classified under an "R-3" occupancy, accessory buildings to R-3 dwellings classified under an "U-1" or "U-2" occupancy, and agricultural buildings classified under an "U-1", "U-2" or "UBC Appendix Chapter 3, Division IV" occupancy as defined in the UBC.

(j) Plumbing Inspector III - IPC and UPC.

In accordance with the IPC and UPC, inspect the plumbing components of any single-family or two-family residential building classified under an "R-3" occupancy, accessory buildings to R-3 dwellings classified under an "U-1" or "U-2" occupancy, and agricultural buildings classified under an "U-1", "U-2" or "UBC Appendix Chapter 3, Division IV" occupancy as defined in the UBC.

(k) Mechanical Inspector III - UMC.

In accordance with the UMC, inspect the mechanical components of any single-family or two-family residential building classified under an "R-3" occupancy, accessory buildings to R-3 dwellings classified under an "U-1" or "U-2" occupancy, and agricultural buildings classified under an "U-1", "U-2" or "UBC Appendix Chapter 3, Division IV" occupancy as defined in the UBC.

(l) Inspector-in-Training.

(i) Under the direct supervision of a licensed building inspector, licensed electrical inspector, licensed plumbing inspector or licensed mechanical inspector, for the purpose of training, inspect the construction, alteration, remodeling, repair and/or installation of buildings, electrical components, plumbing components, and/or mechanical components for which a standard is provided in the adopted editions of the UBC, NEC, IPC, UPC or UMC or under amendments to those codes when the regulator, compliance agency, or private agency providing inspection services to a regulator or a compliance agency elects to employ the services of a licensed inspector-in-training. Nothing in this subsection shall be interpreted to require a regulator, compliance agency, or private agency to employ the services of a person licensed in the classification inspector-in-training.

(ii) A licensed inspector-in-training may not take any action authorized under the UBC, NEC, IPC, UPC and/or UMC upon a finding after inspection of compliance or noncompliance other than to inform the licensed inspector responsible for his supervision during the first 250 hours of direct supervision. Thereafter the inspector-in-training may perform assigned duties under indirect supervision. Related experience and education approved by the division in collaboration with the committee of up to a maximum of 230 hours may be credited towards the first 250 hours of direct supervision.

(iii) The supervising licensed inspector is at all times responsible for the work of the inspector-in-training while that inspector is training and assigned to be under the direction of that supervisor.

(iv) An inspector-in-training license in each single classification may be issued by the division to an individual for a period not to exceed two years.

(3) Qualifications for Licensure. The qualifications for licensure for each inspector classification are as follows:

(a) Building Inspector I - UBC.

Has passed the examination for and maintained as current the "Building Inspector Certification" issued by the International Conference of Building Officials, or has passed a Building Inspector I examination if such is developed at the direction of the division in collaboration with the commission.

(b) Electrical Inspector I - NEC.

Has passed the examination for and obtained the "Electrical Inspector Certification" issued by the International Conference of Building Officials or a "General Electrical Inspectors Certification" issued by the International Association of Electrical Inspectors, or has passed an Electrical Inspector examination if such is developed at the direction of the division in collaboration with the commission.

(c) Plumbing Inspector I - IPC and UPC.

Has passed the examination for and obtained the "Commercial Plumbing Inspector Certification" issued by the International Association of Plumbing and Mechanical Officials, the "Plumbing Inspector Certification" issued by the International Conference of Building Officials, or has passed a Plumbing Inspector examination if such is developed at the direction of the division in collaboration with the commission.

(d) Mechanical Inspector I - UMC.

Has passed the examination for and obtained the "Commercial Mechanical Inspector Certification" issued by the International Code Council or International Association of Plumbing and Mechanical Officials, the "Mechanical Inspectors Certification" issued by the International Conference of Building Officials, or has passed a Mechanical Inspector examination if such is developed at the direction of the division in collaboration with the commission.

(e) Combination Inspector I - UBC, NEC, IPC, UPC, UMC.

Has passed the examination for and maintained as current the following national certifications:

(i) the "Building Inspector Certification" issued by the International Conference of Building Officials;

(ii) the "Electrical Inspector Certification" issued by the International Conference of Building Officials or the "General Electrical Certification" issued by the International Association of Electrical Inspectors;

(iii) the "Plumbing Inspector Certification" issued by the International Conference of Building Officials, International Code Council or the International Association of Plumbing and Mechanical Officials or the "Commercial Plumbing Inspector Certification" issued by the International Code Council or International Association of Plumbing and Mechanical Officials; and

(iv) the "Mechanical Inspector Certification" issued by the International Conference of Building Officials or the "Commercial Mechanical Inspector Certification" issued by the International Association of Plumbing and Mechanical Officials.

(f) Combination Inspector II - Limited Commercial Combination.

(i) Has passed the examination for and maintained as current:

(A) the "Combination Dwelling Inspector Certification" issued by the International Conference of Building Officials; or

(B) the "Combination Inspector III State Certification" as developed at the direction of the division in collaboration with the commission; and

(C) the "Limited Commercial Combination Certification" issued by the International Conference of Building Officials.

(ii) After July 1, 1993 those newly qualifying for licensure by passing and maintaining ICBO Combination Dwelling Certification must also pass and maintain the ICBO Light Commercial Combination Certification.

(g) Combination Inspector III - Dwelling.

(i) Has passed the examination for and maintained as current the "Building Inspector III Certification" as prepared and administered under the direction of the division in collaboration with the commission or has passed the examination for and maintained as current the "Combination Dwelling Inspector Certification" issued by the International Conference of Building Officials.

(A) Proof of passing and maintaining as current a board approved national certification exam in plumbing, electrical, mechanical or building inspection exempts the applicant from having to take and pass that portion of the state exam.

(h) Building Inspector III - UBC.

Has passed the examination for and maintained as current the "Building Inspector III - Residential Building Inspector Certification" as prepared and administered under the direction of the division.

(i) Electrical Inspector III - NEC.

Has passed the examination for and maintained as current the "Electrical Inspector III - Residential Electrical Inspector Certification" as prepared and administered under the direction of the division.

(j) Plumbing Inspector III - IPC and UPC.

Has passed the examination for and maintained as current the "Plumbing Inspector III - Residential Plumbing Inspector Certification" as prepared and administered under the direction of the division.

(k) Mechanical Inspector III - UMC.

Has passed the examination for and maintained as current the "Mechanical Inspector III - Residential Mechanical Inspector Certification" as prepared and administered under the direction of the division.

(l) Inspector-in-training.

Show the applicant has graduated from high school or has obtained an equivalent certification.

(4) Application for License.

(a) An applicant for licensure shall:

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

(ii) pay a fee determined by the department pursuant to Section 63-38-3.2.

R156-56-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year cycle applicable to licenses under Title 58, Chapter 56 is established by rule in Section R156-1-308.

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

R156-56-501. Reserved.

R156-56-502. Unprofessional Conduct.

(5) Unprofessional Conduct.

"Unprofessional conduct" includes:

(a) knowingly failing to inspect or issue correction notices for code violations which when left uncorrected would constitute a hazard to the public health and safety and knowingly failing to require that correction notices are complied with;

(b) the use of alcohol or the illegal use of drugs while performing duties as a building inspector or at any time to the extent that the inspector is physically or mentally impaired and unable to effectively perform his duties as an inspector;

(c) gross negligence in the performance of official duties as an inspector;

(d) failure to supervise an inspector-in-training for which an inspector assumes responsibility in accordance with these rules or in a manner to ensure the public health, safety and welfare;

(e) the personal use of information or knowingly revealing information to unauthorized persons when that information has been obtained by the inspector as a result of their employment, work, or position as an inspector;

(f) unlawful acts or acts which are clearly unethical under generally recognized standards of conduct of an inspector;

(g) engaging in fraud or knowingly misrepresenting a fact relating to the performance of duties and responsibilities as an inspector;

(h) knowingly failing to require that all plans, specifications, drawings, documents and reports be stamped by architects, professional engineers or both as established by law;

(i) knowingly failing to report to the Division any act or omission of a licensee under Title 58, Chapter 55, which when left uncorrected constitutes a hazard to the public health and safety;

(j) knowingly failing to report to the Division unlicensed practice by persons performing services who are required by law to be licensed under Title 58, Chapter 55; and

(k) approval of work which materially varies from approved documents that have been stamped by an architect, professional engineer or both unless authorized by the licensed architect, professional engineer or both.

R156-56-601. Modular Unit Construction and Set-up.

Modular construction and set-up shall be as set forth in accordance with the following:

(1) Construction shall be in accordance with the building standards accepted by the state pursuant to Section 58-56-4.

(2) The inspection of the construction, modification of or set-up of a modular unit shall be the responsibility of the local regulator; however, nothing in these rules shall preclude the local regulator from entering into an agreement with another qualified person for the inspection of the unit(s) in the manufacturing facility.

(3) The division upon request by a local jurisdiction may inspect modular units built in the State of Utah.

R156-56-701. Specific Editions of Uniform Building Standards.

(1) In accordance with Subsection 58-56-4(3), the following Uniform Building Standards are hereby incorporated by reference and adopted as the building standard editions to be applied to construction in the state:

(a) the 1994 edition of the Uniform Building Code (UBC) promulgated by the International Conference of Building Officials to be in effect until January 1, 1998;

(b) the 1997 edition of the Uniform Building Code (UBC)

to become effective January 1, 1998;

(c) the 1996 edition of the National Electrical Code (NEC) promulgated by the National Fire Protection Association;

(d) the 1991 edition of the Uniform Plumbing Code (UPC) promulgated by the International Association of Plumbing and Mechanical Officials with all appendices and installation standards except appendix I which is not adopted herein, to be in effect until January 1, 1999;

(e) the 1997 edition of the International Plumbing Code (IPC) promulgated by the International Code Council to become effective January 1, 1998;

(f) the 1994 ICBO edition of the Uniform Mechanical Code (UMC), as published by the International Congress of Building Officials, and promulgated by the International Conference of Building Officials and the International Association of Plumbing and Mechanical Officials;

(g) the Federal Manufactured Housing Construction and Safety Standards Act (HUD Code) as promulgated by the Department of Housing and Urban Development and published in the Federal Register as set forth in 24 CFR parts 3280 and 3282 as revised April 1, 1990; and

(h) the 1994 edition of NCSBCS A225.1 Manufactured Home Installations promulgated by the National Conference of States on Building Codes and Standards (NCSBCS).

(2) Amendments adopted by rule to prior editions of the Uniform Building Standards shall remain in effect until specifically amended or repealed.

(3) The manufacturer, dealer or homeowner shall be permitted to design for unusual installation of a manufactured home not provided for in the manufacturer's standard installation instruction or NCSBCS/ANSI 225.1, Manufactured Home Installations, provided the design is approved in writing by a professional engineer or architect licensed in Utah. Guidelines for Manufactured Housing Installation as promulgated by the International Conference of Building Officials may be used as a reference guide.

R156-56-702. Commission Override of the Division.

(1) In the event that the director of the division rules contrary to the recommendation of the commission with respect to the provisions of Subsection 58-56-7(8), the director shall present his action and the basis for that action at the commission's next meeting or at a special meeting called by either the division or the commission.

(2) The commission may override the division's action by a two-thirds vote which equals eight votes.

(3) In the event of a vacancy on the commission, a vote of a minimum of two-thirds of the existing commissioners must be obtained to override the division.

R156-56-703. Code Amendments.

In accordance with Subsection 58-56-7(1), the procedure and manner under which requests for amendments to codes shall be filed with the division and recommended or declined for adoption are as follows:

(1) All requests for amendments to any of the uniform building standards shall be submitted to the division on forms specifically prepared by the division for that purpose.

(2) The processing of requests for code amendments shall be in accordance with division policies and procedures.

R156-56-704. Amendments to the UBC.

(1) Statewide Amendments

Chapter 1, Section 101.3 is amended by adding the following paragraph:

"The appendix chapters of this code are approved for adoption in each political subdivision of the State provided that each said political subdivision shall furnish to the Division a list of adopted chapters of the appendix to be kept on file. Where this code is not adopted by any political subdivision, the use of the appendix chapters shall be as determined by the Division with the concurrence of the Commission".

Chapter 1, Section 104.1 is amended as follows:

"There is hereby established in each political subdivision of the state a code enforcement agency which shall be under the administrative and operational control of the building official. The building official shall be appointed by the local regulator. If the local regulator fails to appoint a building official, the Director of the Division of Occupational and Professional Licensing with the Commission shall appoint one".

Chapter 1, Section 107.1 is amended as follows:

"Fees assessed in accordance with the provisions of this section shall be as set forth in the fee schedule adopted by each political subdivision".

Chapter 1, Section 109.1 is amended by replacing the exception with the following:

EXCEPTION: Group R, Division 3 and Group U Occupancies; provided local jurisdictions may require a certificate of occupancy for Group R, Division 3 occupancies.

Chapter 3, Section 305.1, Division 3 is amended by adding the following exception:

EXCEPTION: Areas used for group day care purposes of not less than seven persons and not more than 12 persons may be located in a dwelling unit, provided the building substantially complies with the requirements for a Group R, Division 3 occupancy. The increased requirements in Chapter 10 for occupant loads of 10 or more shall not apply. In addition, dwellings used for day care will be provided with all of the following:

1. Areas used for group day care shall have two separate means of egress arranged so that if one is blocked, the other will be available.

a. Exit doors, other than the main exit, may be 32 inches wide.

b. When area is located in the basement or on the second floor, one of the exits must discharge directly to the outside.

c. Any interior stairway used as an exit from a basement shall be enclosed by a smoke and draft barrier which includes a self-closing, 20 minute fire-rated door assembly.

2. Group day care uses located in dwelling units shall not be located above the second floor.

3. Rooms used for sleeping shall have at least one window or door approved for emergency escape per Section 310.4.

4. Closet door latches shall be such that children can open the door from the inside of the closet.

5. Bathroom door locks shall be readily openable by staff from the outside.

6. Smoke detectors shall be installed in accordance with

Section 310.9.1, including existing dwelling units.

Chapter 10, Section 1005.8.1 is amended by adding Exception 3 as follows:

3. In Group E-1 and E-2 occupancies that are fully protected by an approved fire sprinkler system, the door closers may be of the friction hold open type on classrooms only. In non-sprinkled E-1 and E-2 occupancies, classroom doors shall be held open only by a magnetic hold open device.

Chapter 10, Section 1006.9 is amended by adding Exception 3 as follows:

3. Handrails serving an individual unit in a Group R, Division 1 or Division 3 Occupancy may have either a circular cross section with a diameter of 1 1/4 inches (32 mm) to 2 inches (51 mm), or a non-circular cross section with a perimeter dimension of at least 4 inches (102 mm) but not more than 6 5/8 inches (168 mm) and a largest cross sectional dimension not exceeding 3 1/4 inches (83 mm). The perimeter on non-circular cross sections shall be measured from one side of the cross section, 2 inches (51 mm) down from the top or crown.

An indentation is required on both sides of non-circular handrail cross sections. This indentation must be in the area of the sides between 5/8 inch (16 mm) and 1 1/2 inches (38 mm) down from the top or crown of the cross section. The indentation shall be a minimum of 1/4 inch (6 mm) deep on each side and shall be at least 1/2 inch (13 mm) high.

Edges within the handgrip shall have a minimum radius of 1/16 inch (2 mm). The handrail surface shall be smooth with no cusps so as to avoid catching clothing or skin.

Chapter 16, Section 1603.6, Footnote 3 is amended to read as follows:

3 Snow loads over 30 psf may be reduced in accordance with Section 1628.1, Item 3 (amended), and snow loads 30 psf or less need not be combined with seismic.

Chapter 16, Section 1628.1, Item 3 is amended as follows:

c. Where the snow load is greater than 30 psf, the snow load shall be included. The snow load shall be adjusted in accordance with the following formula: $W_s = (0.25 + 0.025(A-5))P_f$

WHERE: W_s = Weight of snow to be included in seismic calculations;

A = Elevation above sea level at the location of the structure in question (ft/1000);

P_f = Minimum roof snow load, psf.

Chapter 19, Section 1914.3.1 is amended by adding an exception between the first and second paragraphs as follows:

EXCEPTION: The foundations for buildings or portions thereof which are constructed in accordance with the conventional framing requirements specified in Chapter 23 of this code shall be deemed to meet the requirements of this section if they are constructed as follows:

1. Minimum wall thickness: 8 inches;

2. Maximum wall height: 8 feet;

3. Wall Steel: No. 4 deformed bars with a minimum yield strength of 60,000 psi not more than 24 inches on center vertically and horizontally, or No. 4 deformed bars with a minimum yield strength of 40,000 psi not more than 16 inches on center vertically and 24 inches on center horizontally. All bars shall be placed in the center of the wall.

4. Openings: Two No. 4 bars on all sides of openings extending so as to develop the bar beyond the corners of the openings.

5. Dowels: Dowels with a standard hook shall be placed in the footing so as to match the wall steel, and extend at least 12 inches into the wall.

6. Limitation: This exception may not be used for structures located where the difference in grade from one side of the structure to the other is more than 5 feet, or for walls retaining more than 4 feet of soil and which do not connect to floor diaphragms, or for walls containing openings more than 6 feet wide.

Chapter 23, Section 2304.3.4, Item 2 is amended as follows:

(2) When the accumulated duration of the full maximum load during the life of the member does not exceed the period indicated below, the values may be increased in the tables as follows:

15 percent for two months' duration, as for snow below 5000 feet elevation (the remainder of (2) is unchanged).

Chapter 23, Section 2316.1 is amended by adding exception 5 as follows:

5. Veneer of brick or stone applied as specified in Section 1403.6 may be supported on structural glued-laminated timber or laminated veneer lumber provided that the beam be designed to limit the dead load deflection to 1/800 of the span and the total load deflection to 1/600 of the span with due consideration given for shrinkage and creep. The beam shall be protected from exposure to weather as required for dwelling under Section 1402.1.

Chapter 34, Section 3403.2 is amended as follows:

The following is added at the end of paragraph (b):

Buildings constructed prior to 1975 with parapet walls, cornices, spires, towers, tanks, signs, statuary and other appendages shall have such appendages evaluated by a licensed engineer to determine resistance to design loads specified in this code when said building is undergoing reroofing, or alteration of or repair to said feature.

EXCEPTION: Group R-3 and U occupancies.

Original plans and/or structural calculations may be utilized to demonstrate that the parapets or appendages are structurally adequate. When found to be deficient because of design or deteriorated condition, the engineer shall prepare specific recommendations to anchor, brace, reinforce or remove the deficient feature.

The maximum height of an unreinforced masonry parapet above the level of diaphragm tension anchors or above the parapet braces shall not exceed one and one-half times the thickness of the parapet wall. The parapet height may be a maximum of two and one-half times its thickness in other than Seismic Zones Nos. 3 and 4. If the required parapet height exceeds this maximum height, a bracing system designed for the force factors specified in Table No. 16-0 for walls shall support the top of the parapet. When positive diaphragm connections are absent, tension roof anchors are required. Approved alternate methods of equivalent strength will be considered when accompanied by engineer sealed drawings, details and calculations.

Appendix Chapter 3, Division IV, Requirements for Group R, Division 4 Occupancies, is adopted as a part of the UBC and

incorporated by reference.

Appendix Chapter 11, Division I, Site Accessibility, is adopted as a part of the UBC and incorporated by reference.

Appendix Chapter 11, Division II, Accessibility For Existing Buildings, is adopted as a part of the UBC and incorporated by reference.

Appendix Chapter 13, Energy Conservation in New Building Construction, is adopted as a part of the UBC and incorporated by reference.

Appendix Chapter 13, Section 1302.2 is amended as follows:

In order to comply with the purpose of this appendix, low-rise residential buildings shall be designed to comply with the requirements of the Model Energy Code promulgated jointly by the International Conference of Building Code Officials (ICBO); the Southern Building Code Congress International, Inc. (SBCCI); the Building Officials and Code Administrators International, Inc. (BOCA); and the National Conference of States on Building Codes and Standards, dated 1993. Commercial and high-rise residential buildings shall be designed to comply with the requirements of the Energy Code for Commercial and High-Rise Residential Building, which is a codification of ASHRAE/IES Standard 90.1 - 1989, Energy Efficient Design of New Buildings except Low-Rise Residential Buildings.

The Model Energy Code is amended as follows:

Section 502.2.1 Walls is amended as follows:

Equation 1 shall be used to determine acceptable combinations to meet this requirement, and when metal studs are used, Uw-values shall be those calculated using appropriate correction factors for thermal bridging of insulation as published in Section 8 of RS-1; or calculated using ASHRAE RS-4 approved methodology for either serial or parallel path thermal transfer; or U-values compiled in Table 8-Y of the "User's Manual" for ASHRAE/IES Standard 90.1-1989, which is hereby incorporated by reference and which shall be available at all offices issuing building permits or the Division of Occupational and Professional Licensing or insertion in the Model Energy Code.

Simplified prescriptive maps, tables or other compliance aids, manuals or computer programs as may be supplied by DOE/Pacific Northwest Laboratory or others, when certified by the state or its agencies, may be used to demonstrate energy code compliance.

ASHRAE/IES Standard 90.1-1989 is amended as follows:

Section 101.3.1.2 Exceptions:

(4) The building official may approve designs which do not fully conform with all of the requirements of this code where in the opinion of the building official full compliance is physically impossible and/or economically impractical.

Appendix Chapter 16, Division I, Snow Load Design is adopted and incorporated by reference.

Appendix Chapter 16, Division I, Section 1636 is amended as follows:

The ground snow load, P_g, to be used in the determination of design snow loads for buildings and other structures shall be determined by using the following formula: $P_g = (P_o^2 + S^2(A-A_o)^2)^{1/2}$ for A greater than A_o and $P_g = P_o$ for A less than = A_o

WHERE:

P_g = Ground snow load at a given elevation (psf)

P_o = Base ground snow load (psf) from Table A-16-R

S = Change in ground snow load with elevation (psf/1000 ft), from Table A-16-R

A = Elevation above sea level at the location for which snow load is being determined (ft/1000)

A_o = Asymptote and zero ground snow axis intercept (ft/1000) from Table A-16-R

The ground snow load, P_g, may be adjusted by the building official when a licensed engineer or architect submits data substantiating the adjustments. A record of such action together with the substantiating data shall be provided to the division for a permanent record. The building official may round the snow load to the nearest 5 psf.

TABLE NO. A-16-R
STATE OF UTAH - REGIONAL SNOW LOAD FACTORS

COUNTY	P_o	S	A_o
Beaver	43	63	6.2
Box Elder	43	63	5.2
Cache	50	63	4.5
Carbon	43	63	5.2
Daggett	43	63	6.5
Davis	43	63	4.5
Duchesne	43	63	6.5
Emery	43	63	6.0
Garfield	43	63	6.0
Grand	36	63	6.5
Iron	43	63	5.8
Juab	43	63	5.2
Kane	36	63	5.7
Millard	43	63	5.3
Morgan	57	63	4.5
Piute	43	63	6.2
Rich	57	63	4.1
Salt Lake	43	63	4.5
San Juan	43	63	6.5
Sanpete	43	63	5.2
Sevier	43	63	6.0
Summit	86	63	5.0
Tooele	43	63	4.5
Uintah	43	63	7.0
Utah	43	63	4.5
Wasatch	86	63	5.0
Washington	29	63	6.0
Wayne	36	63	6.5
Weber	43	63	4.5

Appendix Chapter 29, Minimum Plumbing Facilities, is adopted as a part of the UBC and incorporated by reference.

Appendix Chapter 29 is amended as follows:

The following is added as footnote 7:

7. When provided, there shall be an equal number of diaper changing facilities for men as for women.

Appendix Chapter 30, Elevators, Dumbwaiters, Escalators and Moving Walks, is adopted as a part of the UBC and incorporated by reference.

Appendix Chapter 30, Section 3012 is amended as follows:

The following is added at the end of Section 3012:

Exceptions to ANSI/ASME A17.1:

(1) Delete Rule 102.2(c)(3); and

(2) Rule 102.2(c)(4) shall apply to all elevators except hydraulic elevators with 50 feet of travel or less.

Chapter 9-1 of the UBC Standards is amended as follows:

Replace the current Uniform Building Code Standard 9-1 (NFPA-13, 1991 edition) with the most current fire sprinkler standard, NFPA-13, 1994 edition.

Chapter 9-3 of the UBC Standards is amended as follows:

Replace the current Uniform Building Code Standard 9-3 (NFPA-13R, 1989 edition) with the most current fire sprinkler standard, NFPA-13R, 1994 edition.

(2) Local Amendments

Beaver County

Beaver County adopted Appendix Chapter 3, Division II.

Heber City Corporation

Heber City Corporation adopted Appendix Chapter 33.

Murray City Corporation adopted Appendix Chapter 3 Division II, Appendix Chapter 31 Division III, and Appendix Chapter 33.

City of North Salt Lake

City of North Salt Lake adopted Appendix Chapter 3, except Section 332, Appendix Chapter 9, Appendix Chapter 12, Division I, Appendix Chapter 15, Appendix Chapter 31, Division II and III and Appendix Chapter 33.

City of Orem

City of Orem adopted Appendix Chapter 3, Division I, Appendix Chapter 3, Division II, Appendix Chapter 31, Division III, and Appendix Chapter 33.

Park City Corporation

Chapter 9, Section 904.2.1 is amended by adding the following sections:

904.2.1.1 All new construction having more than 6,000 square feet on any one floor, except R-3 occupancy.

904.2.1.2 All new construction having more than two (2) stories, except R-3 occupancy.

904.2.1.3 All new construction having three (3) or more dwelling units, including units rented or leased, and including condominiums or other separate ownership.

904.2.1.4 All new construction in the Historic Commercial Business zone district, regardless of occupancy.

904.2.1.5 All new construction and buildings in the General Commercial zone district where there are side yard setbacks or where one or more side yard setbacks is less than two and one half (2.5) feet per story of height.

904.2.1.6 All existing building within the Historic District Commercial Business zone by August 15, 1996.

Park City Corporation

Chapter 15, Table No. 15-A. The following is added as footnote 6:

6 Wood roof covering is prohibited in areas with a combined rating of more than 11 using the following tables with a score of 9 for weather factors.

TABLE
WILDFIRE HAZARD SEVERITY SCALE

RATING	SLOPE	VEGETATION
1	less than or equal to 10%	Pinion-juniper
2	10.1 - 20%	Grass-sagebrush
3	greater than 20%	Mountain brush or softwoods

PROHIBITION/EXEMPTION TABLE

RATING	WOOD ROOF PROHIBITION
less than or equal to 11	wood roofs are allowed
greater than or equal to 12	wood roofs are prohibited

Park City Corporation

Chapter 33, Section 3306.2 is amended as follows:

Omit paragraph 1 and add a period after the word "excavation" in the third line of paragraph 2 and omit "nor exempt any excavation having an unsupported height greater than 5 feet after the completion of such structure". Delete paragraphs 8 and 9. Re-number the sections and add a new paragraph 7 requiring a permit for removal of substantial vegetation, shrubs, trees and stabilizing grass, but not to include weeds.

Park City Corporation adopted Appendix Chapter 23 Division I and IV, Chapter 31, Chapter 32, Chapter 35, Chapter 51, Chapter 53 and Chapter 70.

Salt Lake County

Salt Lake County adopted Chapter 15, Chapter 16, Division III, Chapter 31, Division II, Chapter 31, Division III and Chapter 33.

City of St. George

City of St. George adopted Appendix Chapter 3 and Appendix Chapter 33.

Sandy City

Chapter 9, Section 904.2 is amended as follows:

An automatic fire sprinkler system shall be installed in all occupancies where the required fire flow exceeds 2,000 gallons per minute based on Table A-III-A-1 of the 1994 Uniform Fire Code.

Exception: Automatic fire sprinklers are not required in buildings used solely for worship, Group R, Division 3 and Group U occupancies.

Summit County

Summit County adopted Appendix Chapter 33.

Summit County

Chapter 9, Section 904.2

1. All new construction having more than 6,000 square feet on any one floor, except R-3 and U occupancies.

2. All new construction having more than two (2) stories, except R-3 and U occupancies.

3. All new construction having three (3) or more dwelling units, including units rented or leased and including condominiums or other separate ownership.

4. All newly constructed structures used as dwelling units in a multi-unit structure shall have at least an one hour fire resistive separation between units.

Washington City

Washington City adopted Appendix Chapter 33.

City of West Jordan

City of West Jordan adopted Appendix Chapter 3, Division II, Appendix Chapter 4, Division II, Appendix Chapter 13 and Appendix Chapter 33.

R156-56-705. Amendments to the NEC.

(1) Statewide Amendments

Section 300-11. is amended as follows:

Section 300-11. is repealed in its entirety and replaced with the following:

Section 300-11. Securing and Supporting.

(a) Secured in Place. Raceways, cable assemblies, boxes,

cabinets, and fittings shall be securely fastened in place. Support wires that do not provide secure support shall not be permitted as the sole support.

Branch-circuit wiring associated with equipment that is located within, supported by, or secured to a fire-rated floor or roof/ceiling assembly shall not be secured to the ceiling support wires.

Branch-circuit wiring associated with equipment that is located within, supported by, or secured to a non-fire rated floor or roof/ceiling assembly shall be permitted to be supported by the ceiling support wires.

Exception: As permitted elsewhere in this Code.

(b) Raceways used as means of Support. Raceways shall not be used as a means of support for other raceways, cables, or nonelectric equipment.

Exception No. 1: Where the raceways or means of support are identified for the purpose.

(FPN): See Article 318 for cable trays.

Exception No. 2: Raceways containing power supply conductors for electrically controlled equipment shall be permitted to support Class 2 circuit conductors or cables that are solely for the purpose of connection to the equipment control circuits.

Exception No. 3: As permitted in Section 370-23 for boxes or conduit bodies or Section 410-16(f) for fixtures.

(2) Local Amendments

City of West Jordan

City of West Jordan adopted Appendix A.

R156-56-706. Amendments to the IPC.

R156-56-707. Amendments to the UPC.

(1) Statewide Amendments

Chapter 1, Section 104 (a) is amended as follows:

"(a) Certified Backflow Assembly Tester - A certified backflow assembly tester is a person who has shown competence to test backflow assemblies to the satisfaction of the Administrative Authority having jurisdiction."

Chapter 6, Section 601 (b) is amended as follows:

"(b) No cold storage room, refrigerator, cooling counter, compartment, receptacle, appurtenance, or device which is used, designed or intended to be used for the storage or holding of food or drink and no dish-washing or culinary sink in any food preparation room which is used for soaking, washing, or preparing ready-to-serve food shall have any drain in connection therewith directly connected to any soil, waste, or vent pipe. A minimum of one compartment of a three-compartment sink located in a food preparation room shall be indirectly drained through an airbreak. Such equipment or fixtures shall be drained by means of indirect waste pipes, as defined in Chapter 1 of this Code, and all wastes drained by them shall discharge through an airbreak into an open floor sink or other approved type receptor which is properly connected to the drainage system.

The foregoing does not apply to walk-in refrigerators or combination walk-in, reach-in refrigerators used for storage and sales of products packaged in bottles, cartons, or containers.

Cooling and air-conditioning equipment may be separated by an airbreak."

Chapter 6, Section 608 (d) is replaced by the following:

"(d) Domestic pump-type dishwashers may be directly connected to the inlet side (top or head) of an approved food waste disposal unit or a branch tailpiece in the tailpiece of the sink, by either the use of an approved airgap device installed above the flood level of the sink, or by the drain hose being extended and secured as high as possible under the bottom of the countertop before it is connected to the branch tailpiece located above the trap or to an approved food waste disposal unit."

Chapter 7, Section 702 (c) is amended as follows:

"(c) A trap arm may change direction without the use of a cleanout when such accumulated change of direction does not exceed one hundred and thirty-five (135) degrees." The Exception following paragraph (c) is deleted.

Chapter 7, Section 707 is amended as follows:

"Floor drain or similar traps directly connected to the drainage system and subject to infrequent use shall be provided with an approved means of maintaining their water seals, except where not deemed necessary for safety or sanitation by the Administrative Authority."

Chapter 8, Section 804 - the following is added as paragraph (g):

"(g) Corrugated Stainless Steel Tubing (CSST) Joint - The method of joining CSST shall be by mechanical fittings listed for use with specific CSST systems."

Chapter 9, Section 902 is amended as follows:

"Special-use fixtures may be made of soapstone, chemical stoneware, or may be lined with lead, copper base alloy, nickel-copper alloy, corrosion-resisting steel, or other materials especially suited for the use for which the fixture is intended.

Other special use sinks may be made of approved type bonderized and galvanized sheet steel of not less than No. 16 U.S. Gauge (.0625 inches) (1.6 mm). All sheet metal plumbing fixtures shall be adequately designed, constructed, and braced in an approved manner to satisfactorily accomplish their intended purpose.

Chapter 9, Section 905(c) is added as follows:

(c) Effective July 1, 1992:

(1) All tank type water closets with a flow rate greater than 1.6 gallons per flush are prohibited.

(2) Shower heads with a flow rate greater than 2.5 gallons per minute are prohibited.

(d) Bonderized and galvanized sheet steel restaurant kitchen sinks are prohibited.

Chapter 9, Section 910 is amended as follows:

"Each building intended for human habitation shall be provided with sanitary facilities.

(a) A lavatory or similar fixture shall be provided in the same room or an immediately adjoining room wherever a water closet or urinal is installed.

(b) All public rest room facilities shall be equipped with at least one floor drain.

(c) Hot and cold water shall be supplied to all plumbing fixtures which normally use hot and cold water for their proper use and function."

Chapter 10, Section 1003 (c) is amended as follows:

"(c) Access and clearance shall be provided for the required testing, maintenance and repair."

Chapter 10, Section 1003 (s) is amended as follows:

"(s) Potable Water Supply to Carbonaters shall be protected by a stainless steel vented dual check valve and installed per the requirements of this chapter."

Chapter 10, Section 1003 - the following is added as paragraph (u):

"(u) Addition of chemicals other than pure glycerin (CP or USP 96.5%) or propylene glycol to any wet standpipe fire suppression system shall require the installation of a Reduced Pressure Zone Principle Backflow Assembly. A warning sign shall be posted at those systems containing pure glycerine or propylene glycol stating CAUTION - FILL ONLY WITH WATER SOLUTIONS OF PURE GLYCERINE (C.P. OR U.S.P. 96.5%) OR PROPYLENE GLYCOL."

Chapter 10, Section 1004 (a) is amended as follows:

"(a) Water pipe and fittings shall be of brass, copper, cast iron, galvanized malleable iron, galvanized wrought iron, galvanized steel, or other approved materials. Asbestos-cement, CPVC, PB, PE, or PVC water pipe manufactured to recognized standards may be used for cold water distribution systems outside a building. PB manifold and CPVC water pipe and tubing may be used for hot and cold water distribution systems within a building in accordance with manufacturers recommendation. PB systems must have all unions left accessible. All materials used in the water supply system, except valves and similar devices shall be of a like material, except where otherwise approved by the Administrative Authority."

Chapter 11, Section 1101 (d) is amended as follows:

"(d) The public sewer may be considered as being available when such public sewer is within three hundred (300) feet of any property line with any building used for human occupancy."

Chapter 12, Section 1202 - the following is added as paragraphs (c) through (e). All remaining paragraphs are renumbered.

"(c) CSST - Corrugated Stainless Steel Tubing.

(d) CSST Gas Manifold - A listed fitting used to connect multiple branches to a central gas piping system.

(e) EHD - Equivalent Hydraulic Diameter."

Chapter 12, Section 1202, new paragraph (g) is amended as follows:

"(g) Gas Piping - Any installation of pipe, CSST, valves, and fittings that is used to convey fuel gas, installed on any premises or in any building, but shall not include:

(1) Any portion of the service piping.

(2) Any approved piping connection six feet (1.8 m) or less in length between an existing gas outlet and a gas appliance in the same room with the outlet."

Chapter 12, Section 1205 is amended as follows:

"No rigid gas piping shall be strained or bent and no appliance shall be supported by or develop any strain or stress on its supply piping. Gas piping supplying appliances designed to be supported by the piping may be used to support such appliances, when first approved by the Administrative Authority."

Chapter 12, Section 1211 is amended as follows:

(g) All gas meters located more than 6500 feet above sea level must be located in an area that is protected from ice and snow or be provided with snow and ice protection.

Chapter 12, Section 1212 (a), (b) and (c) are amended as follows:

"(a) All pipe used for the installation, extension, alteration, or repair of any gas piping shall be standard weight wrought iron or steel (galvanized or black), yellow brass (containing not more than 75 percent copper), internally tinned or equivalently treated copper of iron pipe size or listed CSST. Approved PVC or PE pipe may be used in exterior buried piping systems. Type "K" copper tubing without joints below grade may be used in exterior LP Gas piping systems only.

(b) New materials shall be utilized when installing CSST. All other pipe shall be either new, or shall previously have been used for no other purpose than conveying gas; it shall be in good condition and free from internal obstructions. Burred ends shall be reamed to the full bore of the pipe.

(c) All fittings used in connection with the above piping shall be of malleable iron, yellow brass (containing not more than 75 percent copper), or approved plastic fittings. All fittings and components used with CSST shall be part of the same listed system."

Chapter 12, Section 1213 (a) is amended as follows:

"(a) All joints in the piping system, unless welded or a component of a listed CSST system, shall be screwed joints, having approved standard threads. Such screwed joints shall be made up with approved pipe joint material, insoluble in the presence of fuel gas and applied to the male threads only."

Chapter 12, Section 1213 (c) is amended as follows:

"(c) No gas piping shall be installed in or on the ground under any building or structure and all exposed gas piping shall be kept at least six inches (152.4 mm) above grade or structure. CSST shall only be installed within the building structure downstream of the meter."

Chapter 12, Section 1213 - the following will be added after paragraph (h):

"EXCEPTION: CSST shall be supported with hooks, metal pipe, straps, bands, brackets, or hangers suitable for the size and weight of the tubing, at intervals not to exceed those shown in Table 12-11.

A listed termination fitting shall be installed and secured to the structure at all CSST gas outlets."

Chapter 12, Section 1213 (o), the following is added:

When approved by the authority having jurisdiction, shut-off valves for listed, vented decorative appliances may be accessibly located in an area remote from the appliance. Such valve shall be permanently identified and shall serve no other equipment.

Chapter 12, Section 1213 (q) is amended as follows:

"(q) Changes in direction of gas piping shall be made by appropriate use of fittings, except CSST may be bent to a radius of not less than three times the nominal tubing diameter, and PE gas pipe and tubing may be bent to a radius of not less than 20 times the nominal pipe or tubing diameter."

Chapter 12, Section 1213 - the following are added as paragraphs (r) and (s):

"(r) CSST Installation Requirements

(1) CSST may be installed in concealed locations. Listed CSST fittings and assemblies shall not be considered concealed if accessible.

(2) CSST installed in exposed and/or concealed locations subject to physical damage shall be adequately protected.

(3) When CSST passes through wood members, it shall be installed and protected as follows:

1. Bored Holes - In locations where CSST is installed through bored holes in wood members, holes shall be bored so that the edge of the hole is not less than two inches (50.8 mm) from the nearest edge of the wood member. Where this distance cannot be maintained at any point, the CSST shall be protected by a listed striker plate of the appropriate length and width. The diameter of bored holes shall be a minimum of one-half inch larger than the L.D. of the CSST.

2. Notches in wood are prohibited for CSST installations.

(4) When CSST passes through metal members, it shall be installed and protected as follows: In both exposed and concealed locations where CSST passes through metal members, the CSST shall be protected by bushings or grommets securely fastened in the opening prior to installation. Where nails or screws may penetrate CSST, it shall be protected by a listed striker plate of appropriate length and width.

(5) When CSST is installed parallel to framing members, it shall be installed and protected as follows: CSST shall be installed and supported so that the nearest outside surface of the tubing is not less than two and one-half inches (63.5 mm) from the nearest edge of the framing member where nails or screws may penetrate. Where the distance cannot be maintained at any point, the tubing shall be protected by a listed striker plate of appropriate length and width.

(s) Each manifold used with a CSST system shall:

(1) Be accessible.

(2) Be securely fastened to the structure.

(3) Be installed in a location that communicates with a ventilated area."

Chapter 12, Section 1215 (e) is amended as follows:

The following is added after paragraph (e):

EXCEPTION: LP Gas Piping may be installed in basements of buildings with not more than 6,000 square feet per floor and not classified as group E, H or I occupancy, PROVIDED:

1. All new systems shall be installed in accordance with NFPA Articles 58 and 54.

2. The entire gas system shall be pressure tested and inspected for leaks as set forth in NFPA Article 54, Sections 4.1.1 through 4.3.4 and all tanks, piping, regulators, gauges, connectors, valves, vents, thermostats, pilots, burners and appliance controls shall be inspected for proper installation and function as administered and required by the Utah LPG Board and reinspected every five years thereafter. The inspector shall be a certified LPG serviceman as provided by the Liquified Petroleum Gas Act.

3. All new LPG systems installed in basements shall be inspected by a certified LPG serviceman and approved before occupancy is allowed. All existing below grade installations shall be inspected and approved within five years of the adoption of this program and every five years thereafter.

4. A visible tag indicating the system has successfully passed a gas check inspection shall be affixed to the LPG supply tank. Such tag shall indicate the name of the company, the certification number of the inspector, and the date of inspection.

5. An approved and listed audible LP gas detector alarm shall be installed in all new below grade installations in accordance with the manufacturer's listing.

Chapter 12, Section 1215 (f) is amended as follows:

The following is added after paragraph (f):

EXCEPTION: LP Gas Piping may be installed in basements of buildings with not more than 6,000 square feet per floor and not classified as group E, H or I occupancy, PROVIDED:

1. All new LPG systems installed in basements shall be inspected by a certified LPG serviceman and approved before occupancy is allowed. All existing below grade installations shall be inspected and approved within five years of the adoption of this program and every five years thereafter.

2. An approved and listed audible LP gas detector alarm shall be installed in all new below grade installations in accordance with manufacturers listing.

Chapter 12, Section 1219 (a) is amended as follows:

"(a) Where the maximum demand does not exceed 250 cubic feet per hour (2 L/s) and the maximum length of piping between the meter and the most distant outlet is not over 250 feet (76 m), the size of each section and each outlet of any system of gas piping shall be determined by means of Table 12-3. Other systems within the range of Table 12-3 may be sized from that table or by means of the methods set forth in subsection (c) of this section. For systems using CSST, refer to Tables 12-12 and 12-13."

Chapter 12, Section 1219 (b) (2) and (4) are amended as follows:

"(b) To determine the size of each section of pipe or EHD for CSST, in any system within the range of Table 12-3, 12-12 or 12-13, proceed as follows:

(2) In Table 12-3, 12-12 or 12-13, select the column showing that distance, or the next longer distance, if the table does not give the exact length.

(4) Opposite this demand figure, in the first column at the left in Table 12-3, 12-12 or 12-13, will be found the correct size of pipe or CSST."

Chapter 12, Section 1219 - the following will be added after paragraph (c):

"EXCEPTION: For CSST systems, see Table 12-13 for permissible pressure drops greater than one-half inch water column. Table 12-13 shall be used in conjunction with medium pressure systems only, and for sizing the tubing in the low pressure portion of medium pressure systems."

Chapter 12, Section 1219 (d) is amended as follows:

"(d) Where the gas pressure may be higher than 14 inches (355.6 mm) or lower than six inches (152.4 mm) of water column, or when diversity demand factors are used, the design, pipe, sizing, materials, location, and use of such systems first shall be approved by the Administrative Authority. Piping systems designed for pressures higher than the serving gas supplier's standard delivery pressure shall have prior verification from the gas supplier of the availability of the design pressure. Systems using undiluted liquified petroleum gas may be sized using either Table 12-7 for steel pipe or Table 12-16 for CSST systems for 11 inches (279.4 mm) water column and in accordance with the provisions of subsections (a) and (b)."

Chapter 12, Section 1220 (f) and (g) are amended as

follows:

"(f) Tables 12-4, 12-5 and 12-6 may be used to size natural gas piping system carrying two, three, or five psig (13.8, 20.7, or 34.5 kPa) gas. Tables 12-14 and 12-15 may be used to size CSST systems, carrying two or five psig. The procedure to determine the size of each section of the system is similar to that contained in Section 1219 of this Code using the pipe length from the meter to the most remote regulator on the medium pressure system and sizing the downstream low pressure piping from Table 12-3 for steel pipe and Table 12-13 for CSST.

(g) For other than CSST systems, Table 12-8 may be used to size undiluted liquified petroleum gas piping systems carrying 10 psig (68.9 kPa) gas. The procedure to determine the size of each section of the system is similar to Section 1219 of this Code using the pipe length from the first stage or tank regulator to the most remote regulator in the second state system. Low pressure piping to be sized from Table 12-7."

TABLE I
Table 12-11
Support Intervals for CSST

Tubing Size EHD	Feet	Meters
1-16 horizontal	4	1.22
17-32 horizontal	6	1.83
1-32 vertical	Every floor not to exceed 10 feet between supports	

TABLE II
Table 12-12
Maximum Capacity of CSST in Cubic Feet per Hour for Gas Pressure of 7 in. WC and Pressure Drop of 0.5 in. WC (Based on 0.60 Specific Gravity Gas)(1)

Tubing Length (ft)

EHD(2) Flow Designation	5	10	15	20	25	30	40	50
12	48	25	24	21	20	17	14	13
13	50	34	28	23	21	18	15	14
14	70	52	43	37	34	31	28	27
17	116	85	70	62	55	50	42	39
18	129	90	75	65	58	54	45	41
19	143	102	79	70	63	58	49	44
20	250	168	130	110	105	96	80	72
22	258	174	133	116	105	96	80	75
26	336	232	174	161	145	129	110	98
31	581	400	323	278	245	226	187	169

	60	70	80	90	100	150	200	250	300
12	11	11	10	10	7	5	-	-	-
13	12	11	11	10	9	6	5	4	-
14	25	24	22	21	19	14	10	8	5
17	34	32	28	27	22	19	15	14	10
18	37	36	35	30	23	21	15	15	13
19	40	39	37	36	35	29	23	18	15
20	60	55	48	46	42	29	23	18	15
22	60	56	52	49	45	36	31	27	23
26	88	83	77	75	72	67	61	49	48
31	152	142	129	127	117	106	96	75	71

(1)Table includes losses for four 90 degree bends and two end fittings. Tubing runs with larger numbers of bends and/or fittings should be increased by an equivalent length of tubing to the following equation: L equals 1.3n where L is additional length (ft) of tubing and n is the number of additional fittings and/or levels.

(2)EHD - Effective Hydraulic Diameter - A measure of the relative hydraulic efficiency between different tubing sizes. The greater the value of EHD, the greater the gas capacity of the tubing.

TABLE III
Table 12-12A
Maximum Capacity of CSST in Liters of Gas per Second for Gas Pressure of 177.8 mm WC and Pressure Drop of 12.7 mm WC (Based on 0.60 Specific Gravity Gas)(1)

Tubing Length (m)

EHD(2) Flow Designation	1.50	3.00	4.60	6.00	7.60	9.00
12	0.38	0.20	0.19	0.17	0.16	0.13
13	0.39	0.27	0.22	0.18	0.17	0.14
14	0.55	0.41	0.34	0.29	0.27	0.24
17	0.91	0.67	0.55	0.49	0.43	0.39
18	1.02	0.71	0.59	0.51	0.46	0.42
19	1.13	0.80	0.62	0.55	0.50	0.46
20	1.97	1.32	1.02	0.87	0.83	0.76
22	2.03	1.37	1.05	0.91	0.83	0.76
26	2.64	1.83	1.37	1.27	1.14	1.02
31	4.57	3.15	2.54	2.19	1.93	1.78

	12.20	15.20	18.30	21.30	24.40	27.40
12	0.11	0.10	0.09	0.09	0.08	0.08
13	0.12	0.11	0.09	0.09	0.09	0.08
14	0.22	0.21	0.20	0.19	0.17	0.17
17	0.33	0.31	0.27	0.25	0.22	0.21
18	0.35	0.32	0.29	0.28	0.27	0.24
19	0.39	0.35	0.31	0.31	0.29	0.28
20	0.63	0.57	0.47	0.43	0.38	0.36
22	0.63	0.59	0.47	0.44	0.41	0.39
26	0.87	0.77	0.69	0.65	0.61	0.59
31	1.47	1.33	1.20	1.12	1.02	1.00

	30.50	45.70	60.90	76.20	91.40
12	0.06	0.04	-	-	-
13	0.07	0.05	0.04	0.03	-
14	0.15	0.11	0.08	0.06	0.04
17	0.17	0.15	0.13	0.11	0.08
18	0.18	0.17	0.13	0.12	0.10
19	0.28	0.23	0.18	0.14	0.12
20	0.33	0.23	0.18	0.14	0.12
22	0.35	0.28	0.24	0.21	0.18
26	0.56	0.53	0.48	0.39	0.38
31	0.92	0.83	0.76	0.59	0.56

(1)Table includes losses for four 90 degree bends and two end fittings. Tubing runs with larger numbers of bends and/or fittings should be increased by an equivalent length of tubing to the following equation: L equals 0.4n where L is additional length (m) of tubing and n is the number of additional fittings and/or levels.

(2)EHD - Effective Hydraulic Diameter - A measure of the relative hydraulic efficiency between different tubing sizes. The greater the value of EHD, the greater the gas capacity of the tubing.

TABLE IV
Table 12-13

Maximum Capacity of CSST in Cubic Feet per Hour for
Gas Pressure of 10 in. WC and Pressure Drop of 3 in. WC
(Based on 0.60 Specific Gravity Gas)(1)

Tubing Length (ft)

EHD(2) Flow Designation	5	10	15	20	25	30	40	50
12	102	75	60	52	47	42	41	38
13	132	90	72	68	56	50	43	38
14	155	114	93	83	75	70	62	56
17	240	180	148	130	115	108	99	90
18	310	219	168	148	136	129	114	101
19	361	258	207	181	158	145	124	110
20	510	387	310	286	247	225	207	188
22	658	449	368	310	287	254	213	190
26	852	581	478	413	361	336	290	256
31	1485	1033	826	697	633	581	491	439

	60	70	80	90	100	150	200	250	300
12	34	30	28	27	25	21	18	16	15
13	34	31	28	27	26	21	18	16	15
14	52	48	45	43	41	35	30	28	27
17	85	80	75	70	68	55	46	42	38
18	90	84	77	74	71	57	48	45	40
19	101	93	88	83	77	63	54	49	44
20	174	158	150	137	128	104	90	79	73
22	177	163	155	140	130	107	90	80	73
26	232	213	200	183	178	142	123	108	99
31	400	368	349	323	303	245	209	187	170

(1)Table includes losses for four 90 degree bends and two end fittings. Tubing runs with larger numbers of bends and/or fittings should be increased by an equivalent length of tubing to the following equation: L equals 1.3n where L is additional length (ft) of tubing and n is the number of additional fittings and/or levels.

(2)EHD - Effective Hydraulic Diameter - A measure of the relative hydraulic efficiency between different tubing sizes. The greater the value of EHD, the greater the gas capacity of the tubing.

TABLE V
Table 12-13A
Maximum Capacity of CSST in Liters of Gas per Second for
Gas Pressure of 254 mm WC and Pressure Drop of 76.2 mm WC
(Based on 0.60 Specific Gravity Gas)(1)
Tubing Length (m)

EHD(2) Flow Designation	1.50	3.00	4.60	6.00	7.60	9.00
12	0.80	0.59	0.47	0.41	0.37	0.33
13	1.04	0.71	0.57	0.54	0.44	0.39
14	1.22	0.90	0.73	0.65	0.59	0.55
17	1.89	1.42	1.16	1.02	0.91	0.85
18	2.44	1.72	1.32	1.16	1.07	1.02
19	2.84	2.03	1.63	1.42	1.24	1.14
20	4.01	3.05	2.44	2.25	1.94	1.77
22	5.18	3.53	2.90	2.44	2.26	2.00
26	6.71	4.57	3.76	3.25	2.84	2.64
31	11.69	8.13	6.50	5.49	4.98	4.57

	12.20	15.20	18.30	21.30	24.40	27.40
12	0.32	0.30	0.27	0.24	0.22	0.21
13	0.34	0.30	0.27	0.24	0.22	0.21
14	0.49	0.44	0.41	0.38	0.35	0.34
17	0.78	0.71	0.67	0.63	0.59	0.55
18	0.90	0.79	0.71	0.66	0.61	0.58
19	0.98	0.87	0.79	0.73	0.69	0.65
20	1.63	1.48	1.37	1.24	1.18	1.08
22	1.68	1.50	1.39	1.28	1.22	1.10
26	2.28	2.01	1.83	1.68	1.57	1.44
31	3.86	3.45	3.15	2.90	2.75	2.54

	30.50	45.70	60.90	76.20	91.40
12	0.20	0.17	0.14	0.13	0.12
13	0.20	0.17	0.14	0.13	0.12
14	0.32	0.28	0.24	0.22	0.21
17	0.54	0.43	0.36	0.33	0.30
18	0.56	0.45	0.38	0.35	0.31
19	0.61	0.50	0.42	0.39	0.35
20	1.01	0.82	0.71	0.62	0.57
22	1.02	0.84	0.71	0.63	0.57
26	1.40	1.12	0.97	0.85	0.78
31	2.38	1.93	1.64	1.47	1.34

(1)Table includes losses for four 90 degree bends and two end fittings. Tubing runs with larger numbers of bends and/or fittings should be increased by an equivalent length of tubing to the following equation: L equals 0.4n where L is additional length (m) of tubing and n is the number of additional fittings and/or levels.

(2)EHD - Effective Hydraulic Diameter - A measure of the relative hydraulic efficiency between different tubing sizes. The greater the value of EHD, the greater the gas capacity of the tubing.

TABLE VI
Table 12-14
Maximum Capacity of CSST in Cubic Feet per Hour for
Gas Pressure of 2 psi and Pressure Drop of 1.5 psi
(Based on 0.60 Specific Gravity Gas)(1)

Tubing Length (ft)

EHD(2) Flow Designation	10	25	30	40	50	75	80	100
12	250	170	160	142	130	112	110	100
13	355	207	187	155	142	127	123	106
14	361	239	219	194	176	147	145	129
17	570	380	360	320	290	245	235	225
18	839	503	452	413	368	297	284	271
19	981	607	555	478	420	349	336	297
20	1180	800	745	650	600	520	500	460
22	2195	1252	1097	968	865	704	658	594
26	2324	1446	1291	1150	1007	800	775	697
31	4002	2453	2259	1937	1743	1394	1420	1188

	150	200	250	300	400	500
12	85	75	64	55	50	45
13	88	75	65	58	50	45
14	110	96	86	80	70	63
17	180	160	144	135	118	105
18	194	168	168	142	129	121
19	245	213	186	174	145	129
20	380	340	310	280	250	220
22	452	387	349	284	261	220
26	568	484	432	400	336	297
31	968	839	749	684	581	503

Table does not include effect of pressure drop across line regulator. If regulator loss exceeds 4 in WC, DO NOT USE THIS TABLE. Consult with regulator manufacturer for pressure drops and capacity factors. Pressure drop across regulator may vary with the flow rate.

CAUTION: Capacities shown in table may exceed maximum

capacity of selected regulator. Consult with tubing manufacturer for guidance.

(1)Table includes losses for four 90 degree bends and two end fittings. Tubing runs with larger numbers of bends and/or fittings should be increased by an equivalent length of tubing to the following equation: L equals 1.3n where L is additional length (ft) of tubing and n is the number of additional fittings and/or levels.

(2)EHD - Effective Hydraulic Diameter - A measure of the relative hydraulic efficiency between different tubing sizes. The greater the value of EHD, the greater the gas capacity of the tubing.

TABLE VII
Table 12-14A
Maximum Capacity of CSST in Liters of Gas per Second for Gas Pressure of 13.8 kpa and Pressure Drop of 10.3 kPa
(Based on 0.60 Specific Gravity Gas)(1)

Tubing Length (m)

EHD(2) Flow Designation	3.00	7.62	9.00	12.20	15.20	22.86
12	1.97	1.34	1.26	1.12	1.02	0.88
13	2.79	1.63	1.47	1.22	1.12	1.00
14	2.84	1.88	1.72	1.53	1.39	1.16
17	4.49	2.99	2.83	2.52	2.28	1.93
18	6.60	3.96	3.56	3.25	2.90	2.34
19	7.72	4.78	4.37	3.76	3.31	2.75
20	9.29	6.30	5.86	5.12	4.72	4.09
22	17.27	9.85	8.63	7.62	6.81	5.54
26	18.29	11.38	10.16	9.05	7.93	6.30
31	31.50	19.31	17.78	15.24	13.72	10.97

	24.40	30.50	45.70	60.90	76.20	91.40
12	0.87	0.79	0.67	0.59	0.50	0.43
13	0.97	0.83	0.69	0.59	0.51	0.46
14	1.14	1.02	0.87	0.76	0.68	0.63
17	1.85	1.77	1.42	1.26	1.13	1.06
18	2.24	2.13	1.53	1.32	1.32	1.12
19	2.64	2.34	1.93	1.68	1.46	1.37
20	3.94	3.62	2.99	2.68	2.44	2.20
22	5.18	4.67	3.56	3.05	2.75	2.24
26	6.10	5.49	4.47	3.81	3.40	3.15
31	11.18	9.35	7.62	6.60	5.89	5.38

	121.90	152.40
12	0.39	0.35
13	0.39	0.35
14	0.55	0.50
17	0.93	0.83
18	1.02	0.95
19	1.14	1.02
20	1.97	1.73
22	2.05	1.73
26	2.64	2.34
31	4.57	3.96

Table does not include effect of pressure drop across line regulator. If regulator loss exceeds 100 mm WC, DO NOT USE THIS TABLE. Consult with regulator manufacturer for pressure drops and capacity factors. Pressure drop across regulator may vary with the flow rate.

CAUTION: Capacities shown in table may exceed maximum capacity of selected regulator. Consult with tubing manufacturer for guidance.

(1)Table includes losses for four 90 degree bends and two end fittings. Tubing runs with larger numbers of bends and/or fittings should be increased by an equivalent length of tubing to the following equation: L equals 0.4n where L is additional length (m) of tubing and n is the number of additional fittings and/or levels.

(2)EHD - Effective Hydraulic Diameter - A measure of the relative hydraulic efficiency between different tubing sizes. The greater the value of EHD, the greater the gas capacity of the tubing.

TABLE VIII
Table 12-15
Maximum Capacity of CSST in Cubic Feet per Hour for Gas Pressure of 5 psi and Pressure Drop of 3.5 psi
(Based on 0.60 Specific Gravity Gas)(1)

Tubing Length (ft)

EHD(2) Flow Designation	10	25	30	40	50	75	80	100
12	350	240	225	192	185	155	151	140
13	490	340	312	279	250	207	198	181
14	542	355	323	284	258	217	200	187
17	830	560	510	447	405	345	340	310
18	1291	775	749	633	549	439	432	400
19	1549	968	891	723	646	568	516	465
20	1700	1175	1075	900	850	705	700	640
22	3357	2195	2066	1678	1420	1046	1033	910
26	3679	2259	2079	1704	1549	1291	1188	1110
31	6455	3873	3550	3034	2776	2182	2130	1904

	150	200	250	300	400	500
12	120	105	98	90	78	70
13	136	116	101	96	80	70
14	161	142	127	116	98	93
17	260	230	210	192	118	155
18	336	290	239	232	213	187
19	374	323	290	258	219	207
20	540	480	440	405	342	320
22	749	633	523	497	432	368
26	852	749	665	607	503	465
31	1549	1323	1162	1065	878	813

Table does not include effect of pressure drop across line regulator. If regulator loss exceeds 1 psig, DO NOT USE THIS TABLE. Consult with regulator manufacturer for pressure drops and capacity factors. Pressure drop across regulator may vary with the flow rate.

CAUTION: Capacities shown in table may exceed maximum capacity of selected regulator. Consult with tubing manufacturer for guidance.

(1)Table includes losses for four 90 degree bends and two end fittings. Tubing runs with larger numbers of bends and/or fittings should be increased by an equivalent length of tubing to the following equation: L equals 1.3n where L is additional length (ft) of tubing and n is the number of additional fittings and/or levels.

(2)EHD - Effective Hydraulic Diameter - A measure of the relative hydraulic efficiency between different tubing sizes. The greater the value of EHD, the greater the gas capacity of the tubing.

TABLE IX
Table 12-15A
Maximum Capacity of CSST in Liters of Gas per Second for Gas Pressure of 34.5 kPa and Pressure Drop of 24.2 kPa
(Based on 0.60 Specific Gravity Gas)(1)

Tubing Length (m)

EHD(2) Flow Designation	3.00	7.62	9.00	12.20	15.20	22.86
12	2.75	1.89	1.77	1.51	1.46	1.22
13	3.86	2.66	2.46	2.20	1.97	1.63
14	4.27	2.79	2.54	2.24	2.03	1.71
17	6.53	4.41	4.01	3.52	3.19	2.72
18	10.16	6.10	5.89	4.98	4.32	3.45
19	12.19	7.62	7.01	5.69	5.08	4.47
20	13.38	9.25	8.46	7.08	6.69	5.55
22	26.42	17.27	16.26	13.21	11.18	8.23
26	28.95	17.78	16.36	13.41	12.19	10.16
31	50.80	30.48	27.94	23.88	21.85	17.17
	24.40	30.50	45.70	60.90	76.20	91.40
12	1.19	1.10	0.94	0.83	0.77	0.71
13	1.56	1.42	1.07	0.91	0.79	0.76
14	1.57	1.47	1.27	1.12	1.00	0.91
17	2.68	2.44	2.05	1.81	1.65	1.51
18	3.40	3.15	2.64	2.28	1.88	1.83
19	4.06	3.66	2.94	2.54	2.28	2.03
20	5.51	5.04	4.25	3.78	3.46	3.19
22	8.13	7.16	5.89	4.98	4.12	3.91
26	9.35	8.74	6.71	5.89	5.23	4.78
31	16.76	14.98	12.19	10.41	9.14	8.38
	121.90	152.40				
12	0.61	0.55				
13	0.63	0.55				
14	0.77	0.73				
17	0.93	1.22				
18	1.68	1.47				
19	1.72	1.63				
20	2.69	2.52				
22	3.40	2.90				
26	3.96	3.66				
31	6.91	6.40				

Table does not include effect of pressure drop across line regulator. If regulator loss exceeds 6.9 kPa, DO NOT USE THIS TABLE. Consult with regulator manufacturer for pressure drops and capacity factors. Pressure drop across regulator may vary with the flow rate.

CAUTION: Capacities shown in table may exceed maximum capacity of selected regulator. Consult with tubing manufacturer for guidance.

(1)Table includes losses for four 90 degree bends and two end fittings. Tubing runs with larger numbers of bends and/or fittings should be increased by an equivalent length of tubing to the following equation: L equals 0.4n where L is additional length (m) of tubing and n is the number of additional fittings and/or levels.

(2)EHD - Effective Hydraulic Diameter - A measure of the relative hydraulic efficiency between different tubing sizes. The greater the value of EHD, the greater the gas capacity of the tubing.

TABLE X
Table 12-16
Maximum Capacity of CSST in Cubic Feet per Hour of Undiluted Liquefied Petroleum Gases at a Pressure of 11 in. WC and Pressure Drop of 0.5 in. WC
(Based on 1.52 Specific Gravity Gas)(1)

Tubing Length (ft)

EHD(2) Flow Designation	5	10	15	20	25	30	40	50
12	30	21	16	13	12	11	9	8
13	31	21	18	14	13	11	9	9
14	44	33	27	23	21	19	18	17
17	73	53	44	39	35	31	26	25
18	81	57	47	41	36	34	28	26
19	90	64	50	44	40	36	31	28
20	157	106	82	69	66	60	50	45
22	162	109	84	73	66	60	50	47
26	211	146	109	101	91	81	69	62
31	365	251	203	175	154	142	117	106
	60	70	80	90	100	150		
12	7	7	6	6	4	3		
13	8	7	7	6	6	4		
14	16	15	14	13	12	9		
17	21	20	18	17	14	12		
18	23	23	22	19	14	13		
19	25	25	23	23	22	18		
20	38	35	30	29	26	18		
22	38	35	33	31	28	23		
26	55	52	48	47	45	42		
31	96	89	81	80	74	67		
	200	250	300					
12	-	-	-					
13	3	3	0					
14	6	5	3					
17	10	9	6					
18	10	9	8					
19	14	11	9					
20	14	11	9					
22	19	17	14					
26	38	31	30					
31	60	47	45					

(1)Table includes losses for four 90 degree bends and two end fittings. Tubing runs with larger numbers of bends and/or fittings should be increased by an equivalent length of tubing to the following equation: L equals 1.3n where L is additional length (ft) of tubing and n is the number of additional fittings and/or levels.

(2)EHD - Effective Hydraulic Diameter - A measure of the relative hydraulic efficiency between different tubing sizes. The greater the value of EHD, the greater the gas capacity of the tubing.

TABLE XI
Table 12-16A
Maximum Capacity of CSST in Liters of Gas per Second of Undiluted Liquefied Petroleum Gases at a Pressure of 279.44 mm WC and Pressure Drop of 12.7 mm WC
(Based on 1.52 Specific Gravity Gas)(1)

Tubing Length (m)

EHD(2) Flow Designation	1.50	3.00	4.60	6.00	7.60	9.00
12	0.24	0.17	0.12	0.10	0.09	0.08
13	0.25	0.17	0.14	0.11	0.10	0.09
14	0.35	0.26	0.21	0.18	0.17	0.15
17	0.57	0.42	0.35	0.31	0.27	0.25
18	0.64	0.45	0.37	0.32	0.29	0.27
19	0.71	0.50	0.39	0.35	0.31	0.29
20	1.24	0.83	0.64	0.54	0.52	0.47
22	1.28	0.86	0.66	0.57	0.52	0.47
26	1.66	1.15	0.86	0.80	0.72	0.64
31	2.87	1.98	1.60	1.37	1.21	1.12

	12.20	15.20	18.30	21.30	24.40	27.40
12	0.07	0.06	0.05	0.05	0.04	0.04
13	0.07	0.07	0.06	0.05	0.05	0.05
14	0.14	0.13	0.12	0.12	0.11	0.10
17	0.21	0.19	0.17	0.16	0.14	0.13
18	0.22	0.20	0.18	0.18	0.17	0.15
19	0.24	0.22	0.20	0.19	0.18	0.18
20	0.40	0.36	0.30	0.27	0.24	0.23
22	0.40	0.37	0.30	0.28	0.26	0.24
26	0.54	0.48	0.44	0.41	0.38	0.37
31	0.92	0.84	0.75	0.70	0.64	0.63

	30.50	45.70	60.90	76.20	91.40
12	0.03	0.02	-	-	-
13	0.04	0.03	0.02	0.02	-
14	0.09	0.07	0.05	0.04	0.02
17	0.11	0.09	0.08	0.07	0.05
18	0.11	0.10	0.08	0.07	0.06
19	0.17	0.14	0.11	0.09	0.07
20	0.21	0.14	0.11	0.09	0.07
22	0.22	0.18	0.15	0.13	0.11
26	0.36	0.33	0.30	0.24	0.24
31	0.58	0.52	0.47	0.37	0.35

(1)Table includes losses for four 90 degree bends and two end fittings. Tubing runs with larger numbers of bends and/or fittings should be increased by an equivalent length of tubing to the following equation: L equals 0.4n where L is additional length (m) of tubing and n is the number of additional fittings and/or levels.

(2)EHD - Effective Hydraulic Diameter - A measure of the relative hydraulic efficiency between different tubing sizes. The greater the value of EHD, the greater the gas capacity of the tubing.

Chapter 13, Section 1310 (g) is amended as follows:

"(g) When a water heater is located in an attic or furred space where damage may result from a leaking water heater, a watertight pan of corrosion resistant materials shall be installed beneath the water heater with a minimum one and one-half (1-1/2) inch diameter drain to an approved location."

(2) Local Amendments

City of Logan

City of Logan adopted Appendix H.

City of Orem

City of Orem adopted Appendix A.

City of West Jordan

City of West Jordan adopted Appendix A, Appendix B, Appendix D, Appendix E and Appendix I.

R156-56-708. Amendments to the UMC.

(1) Statewide Amendments

Chapter 3, Section 303.2 - the following is added as Exception 3:

3. When approved by the authority having jurisdiction, shut-off valves for listed, vented decorative appliances may be accessibly located in an area remote from the appliance. Such valve shall be permanently identified and shall serve no other equipment.

Chapter 3, Section 304.6 is amended as follows:

The following is added after paragraph 304.6:

Exception: LP Gas burning appliances may be installed in basements of buildings with not more than 6,000 square feet per floor and not classified as group E, H or I occupancy, PROVIDED:

A. All new systems shall be installed in accordance with NFPA Article 58 and 54.

B. The entire gas system shall be pressure tested and inspected for leaks as set forth in NFPA Article 54, Sections 4.1.1 through 4.3.4 and all tanks, piping, regulators, gauges, connectors, valves, vents, thermostats, pilots, burners and appliance controls shall be inspected for proper installation and function as administered and required by Utah State LPG Board and reinspected every five years thereafter. Inspector shall be a certified LPG serviceman as provided by the Liquified Petroleum Gas Act.

C. All new LPG systems installed in basements shall be inspected by a certified LPG serviceman and approved before occupancy is allowed. All existing below grade installations shall be inspected and approved within five years of adoption of this program and every five years thereafter.

D. A visible tag indicating system has successfully passed gas check inspection shall be affixed to LPG supply tank. Tag shall indicate name of company, certification number of inspector, and date of inspection.

E. An approved and listed audible LP gas detector alarm shall be installed in all new below grade installations in accordance with manufacturers listing.

Chapter 7, Section 702.0 is amended as follows:

The following is added after Section 702.1:

Exception: When all air is taken from the outdoors for an appliance with a minimum clearance of one inch (2.5 cm) on the sides and backs and six inches (15.2 cm) on the front, one opening shall be permitted and located within the upper 12 inches (304 mm) of the enclosure.

Table 7-1, Column II is amended as follows. Table No. 7-1, Column II is deleted and replaced with the following:

TABLE NO. 7-1
SIZE OF COMBUSTION-AIR OPENINGS OR DUCTS(1)
COLUMN II
BUILDINGS OF UNUSUALLY TIGHT CONSTRUCTION(2)

CONDITION	SIZE OF OPENINGS OR DUCTS
Appliance in unconfined(2) space: Obtain combustion air from outdoors or from space freely communicating with outdoors.	Provide two openings, each have one square inch (645 mm^2) per 5000 Btu/h (1.47 kW)input. Ducts admitting outdoor air may be connected to the cold-air return. x0.293 for W x645.2 for mm^2
Appliance in confined(4) space: Obtain combustion air from outdoors, or from space freely communicating with outdoors.	1. Provide two vertical ducts or plenums; one square inch per 4,000 Btu/h input each duct or plenum. 2. Provide two horizontal ducts or plenums; one square inch per 2,000 Btu/h input each duct or plenum. 3. Provide two openings in an exterior wall of

the enclosure; each opening one square inch per 4,000 Btu/h input.

4. Provide one ceiling ventilated attic and one vertical duct to attic; each opening one square inch per 4,000 Btu/h input.

5. Provide one opening or one vertical duct or one horizontal duct in the enclosure; one square inch per 3,000 Btu/h input but no smaller than vent flow area.

6. Provide one opening in enclosure ceiling to ventilated attic and one opening in enclosure floor to ventilated crawl space; each opening one square inch per 4,000 Btu/h input.

(1) For location of openings, see Section 702.0
(2) As defined in Section 223.0
(3) When the total input rating of appliances in enclosure exceeds 100,000 Btu/h (29.3 kW), the area of each opening into the enclosure shall be increased one square inch (645 mm^2) for each 1,000 Btu/h (293 W) over 100,000 (29.3 kW).
(4) As defined in Section 205.0.

Appendix B, Chapter 13 is adopted as a part of the UMC and incorporated by reference.

Appendix B, Chapter 13, Section 1313.2 is amended to include the following:

All gas meters located more than 6500 feet above sea level must be located in an area that is protected from ice and snow or be provided with snow and ice protection.

(2) Local Amendments

City of West Jordan

City of West Jordan adopted Appendix B.

KEY: contractors, building codes, building inspection, licensing

January 1, 1998	**58-1-106(1)**
Notice of Continuation June 3, 1997	**58-1-202(1)**
	58-56-1
	58-56-4(2)
	58-56-6(2)(a)

R164. Commerce, Securities.
R164-1. Fraudulent Practices.
R164-1-3. Fraudulent Practices of Broker-Dealers, Broker-Dealer Agents, and Issuer-Agents.

(A) Authority and purpose.

(1) The Division enacts this rule under authority granted by Subsection 61-1-1(3) and Section 61-1-24.

(2) This rule identifies practices by broker-dealers, broker-dealer agents, or issuer-agents which are generally associated with schemes to manipulate the securities markets.

(3) A broker-dealer, broker-dealer agent, or issuer-agent who engages in one or more of the practices listed below will be deemed to have engaged in an "act, practice or course of business which operates or would operate as a fraud" as used in Subsection 61-1-1(3).

(4) This rule is not intended to be all-inclusive. Thus, acts or practices not listed may also be deemed fraudulent.

(5) This rule does not preclude application of the anti-fraud provisions of Subsection 61-1-1(3) against anyone for practices similar in nature to the practices listed in Subsection (C).

(B) Definitions used in the rule.

(1) "Customer" means potential, current, or past clients.

(2) "Designated security" means any equity security other than a security

(2)(a) listed, or approved for listing upon notice of issuance, on a national securities exchange and makes transaction reports available as required under SEC Rule 11Aa3-1, Dissemination of transaction reports and last sale data with respect to transactions in reported securities, 17 CFR 240.11Aa3-1 (1992), which is adopted and incorporated by reference and available from the SEC;

(2)(b) listed, or approved for listing upon notice of issuance, on the NASDAQ system;

(2)(c) issued by an investment company registered under the Investment Company Act of 1940;

(2)(d) that is a put option or call option issued by The Options Clearing Corporation; or

(2)(e) whose issuer has net tangible assets in excess of $4,000,000 as demonstrated by financial statements, dated less than fifteen months previous to the date of the transaction with the person, that you have reviewed and have a reasonable basis to believe are true and complete, and

(2)(e)(i) in the event the issuer is other than a foreign private issuer, are the most recent financial statements for the issuer that have been audited and reported on by an independent public accountant in accordance with SEC Rule 2-02, Accountant's reports, 17 CFR 210.2-02 (1992), which is adopted and incorporated by reference and available from the SEC; or

(2)(e)(ii) in the event the issuer is a foreign private issuer, are the most recent financial statements for the issuer that have been filed with the Commission; furnished to the Commission pursuant to SEC Rule 12g3-2(b), Exemptions for American depositary receipts and certain foreign securities, 17 CFR 240.12g3-2 (1992), which is adopted and incorporated by reference and available from the SEC; or prepared in accordance with generally accepted accounting principles in the country of incorporation, audited in compliance with the requirements of that jurisdiction, and reported on by an accountant duly registered and in good standing in accordance with the regulations of that jurisdiction.

(3) "Exempt transactions" under subparagraph (C)(1)(h) means:

(3)(a) transactions in which the price of the designated security is five dollars or more, exclusive of costs or charges; provided, however, that if the designated security is a unit composed of one or more securities, the unit price divided by the number of components of the unit other than warrants, options, rights, or similar securities must be five dollars or more, and any component of the unit that is a warrant, option, right, or similar securities, or a convertible security must have an exercise price or conversion price of five dollars or more;

(3)(b) transactions that are not recommended by you or your agent;

(3)(c) transactions by you:

(3)(c)(i) where commissions, commission equivalents, and mark-ups from transactions in designated securities during each of the immediately preceding three months, and during eleven or more of the preceding twelve months, did not exceed five percent of your total commissions, commission-equivalents, and mark-ups from transactions in securities during those months; and

(3)(c)(ii) you have not executed principal transactions in connection with the solicitation to purchase the designated security that is the subject of the transaction in the immediately preceding twelve months.

(3)(d) transactions that, upon prior written request or upon its own motion, the Division conditionally or unconditionally exempts as not encompassed within this definition.

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

(5) "Market-maker" means a broker-dealer who, with respect to a particular security,

(5)(a) regularly publishes bona fide, competitive bid and ask quotations in a recognized inter-dealer quotation system, or

(5)(b) regularly furnishes bona fide competitive bid and offer quotations to other broker-dealers upon request; and

(5)(c) is ready, willing and able to effect transactions in reasonable quantities at his quoted price with other broker-dealers on a regular basis.

(6) "NASDAQ" means National Association of Securities Dealers Automatic Quotation System.

(7) "You" means broker-dealers, broker-dealer agents, or issuer-agents as applicable.

(C) Acts which will be deemed fraudulent.

(1) If you engage in any of the following acts you will be deemed to be violating the anti-fraud provisions of Subsection 61-1-1(3):

(1)(a) Effecting a transaction with a customer in any security at an unreasonable price or at a price not reasonably related to the current market price of the security.

(1)(b) Receiving an unreasonable commission or profit.

(1)(c) Contradicting or negating the importance of information contained in a prospectus or other offering materials with intent to deceive or mislead.

(1)(d) Using advertising or sales presentations in a deceptive or misleading manner.

(1)(e) Leading a customer to believe that you are in possession of material, non-public information which would impact on the value of a security whether or not you are in possession of the material non-public information.

(1)(f) Making contradictory recommendations to different customers of similar investment objective for some to sell and others to purchase the same security, at or about the same time, when not justified by the particular circumstance of each customer.

(1)(g) Failing to make a bona fide public offering of all the securities allotted to you for distribution by, among other things,

(1)(g)(i) transferring securities to a customer, another broker-dealer or a fictitious account with the understanding that those securities will be returned to you or your nominee, or;

(1)(g)(ii) parking or withholding securities.

(1)(h) in connection with the solicitation of a purchase of a designated security which is not an exempt transaction as defined above:

(1)(h)(i) failing to disclose to your customer the bid and ask price, at which you effect transactions with individual, retail customers, of the designated security as well as its spread in both percentage and dollar amounts at the time of solicitation and on the trade confirmation documents.

(1)(h)(ii) failing to advise your customer, both at the time of solicitation and on the confirmation, of any and all compensation related to a specific securities transaction to be paid to you, including commissions, sales charges, or concessions.

(1)(h)(iii) failing, to disclose, both at the time of solicitation and on the confirmation, your firm's short inventory position of more than 5%, or your firm's long inventory position of more than 10%, of the issued and outstanding shares of that class of securities of the issuer, if:

(1)(h)(iii)(aa) your firm is a market-maker at the time of the solicitation, and

(1)(h)(iii)(bb) the transaction is a principal transaction;

(1)(h)(iv) conducting or participating in sales contests in a particular designated security.

(1)(h)(v) failing to include with the confirmation, in a form satisfactory to the Division, a written explanation of the bid and ask price.

(1)(h)(vi) failing or refusing to execute sell orders from a customer from whom you or your firm solicited the purchase of the designated security in a principal transaction.

(1)(h)(vii) soliciting a secondary market transaction when there has not been a bona fide distribution in the primary market.

(1)(h)(viii) engaging in a pattern of compensating an agent in different amounts for effecting sales and purchases in the same designated security.

(1)(i) effecting transactions in, or inducing the purchase or sale of any security by means of any manipulative, deceptive or other fraudulent device or contrivance, including the use of boiler room tactics or use of fictitious or nominee accounts.

KEY: securities, securities regulation, fraud
1991 **61-1-1**
Notice of Continuation December 29, 1997 **61-1-3**
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.

(B) Definitions used in the rule.

(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 become a licensed broker-dealer applicant must be a member of the NASD and file with the CRD the following with original signatures as applicable:

(1)(a)(i) SEC Form BD - Uniform Application for Broker-Dealer Registration, 7/88, which is available from the SEC or the NASD;

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

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

(1)(b) In addition, applicant must file with the Division the following:

(1)(b)(i) Certificate of Authority to do business in Utah, available from the Division of Corporations and Commercial Code of the Utah Department of Commerce, only if applicant has or will have an office in Utah;

(1)(c) 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, which is available from the SEC or the NASD, 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 the license fee specified in the Division's fee schedule before December 31, to the CRD.

(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, 5/87, which is available from

the SEC.

(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 become a licensed broker-dealer agent applicant or the sponsoring broker-dealer must file with 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, 4/90, which is available from the NASD;

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

(1)(a)(iii) a 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 the renewal fee specified in the Divisions fee schedule before December 31 to the CRD.

(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, 4/90, which is available from the NASD.

(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) Applicant may associate with only one broker-dealer at one time.

(4)(b) However, a dual license may be allowed by the director if:

(4)(b)(i) applicant requests a dual license in a 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.

(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 become a licensed issuer-agent, applicant or the sponsoring issuer must file with the Division the following:

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

(1)(a)(ii) proof that applicant passed the USASLE;

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

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

(1)(b) A certificate of license will not be issued.

(2) License renewal requirements

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

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

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

(2)(b)(ii) The renewal 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 a written request for withdrawal with the Division.

(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.

(B) Definitions

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

(2) "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. Licensing fees referred to in this rule are not included.

(3) "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.

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

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

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

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

(C) Investment adviser licensing, renewal, and withdrawal requirements

(1) Licensing requirements

(1)(a) To become a licensed investment adviser applicant must file with the Division the following with original signatures as applicable:

(1)(a)(i) SEC Form ADV - Uniform Application for Investment Adviser Registration, 8/88, which is available from the SEC or NASAA, bearing applicant's SEC investment adviser number and including applicant's audited balance sheet if required under item 13 of part II of Form ADV;

(1)(a)(ii) NASAA Form U-2 - Uniform Consent to Service of Process, which is available from NASAA or the Division;

(1)(a)(iii) Division Form 4-5BIA - Corporate Indemnity Bond of Investment Adviser, 2/9/90, which is available from the Division, if required by Section R164-4-5, or proof of membership in SIPC;

(1)(a)(iv) NASD Form U-4 - Uniform Application for Securities Industry Registration or Transfer, 4/90, which is available from the NASD;

(1)(a)(v) proof that applicant or applicant's designated official, if applicant is a partnership or corporation:

(1)(a)(v)(aa) passed the Series 65, Uniform Investment Adviser Law Exam (Series 65 Exam), or the Series 66, Uniform Combined State Law Examination (Series 66 Exam), which are administered by the NASD;

(1)(a)(v)(bb) the Division will consider applicant's request for waiver of this requirement if, prior to April 23, 1990, applicant was licensed as an investment adviser in another jurisdiction, with the Securities and Exchange Commission, or if applicant submits other evidence, satisfactory to the Division, of applicant's knowledge of the law pertaining to investment advisers and of applicant's competence to supervise investment adviser representatives.

(1)(a)(vi) a certificate of authority to do business in Utah, available from the Division of Corporations and Commercial Code of the Utah Department of Commerce, if applicant is an out-of-state investment adviser with a branch office in Utah;

(1)(a)(vii) the fee as specified in the Division's fee schedule.

(1)(b) A certificate of license will not be issued.

(2) License renewal requirements

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

(2)(b) To renew license, applicant must submit the following to the Division, with original signatures as applicable, before December 31:

(2)(b)(i) the renewal fee specified in the Division's fee schedule;

(2)(b)(ii) a copy of applicant's most recent SEC Form ADV-S - Annual Report for Investment Advisors Registration under the Investment Advisors Act of 1940, which is available from the SEC;

(2)(b)(iii) Division Form 4-5BIA, indemnity bond, which is available from the Division, if otherwise required;

(2)(b)(iv) proof that applicant has passed the Series 65 or the Series 66 Exam, if applicant is renewing a license which was issued after April 23, 1990. The Division will consider applicant's request for waiver of this requirement if, prior to April 23, 1990, applicant was licensed as an investment adviser in another jurisdiction, with the Securities and Exchange Commission, or if applicant submits other evidence, satisfactory to the Division, of applicant's knowledge of the law pertaining to investment advisers and of applicant's competence to supervise investment adviser representatives.

(3) License or application withdrawal requirements

(3)(a) To withdraw a license or application applicant must file with the SEC and the Division, SEC Form ADV-W - Notice of Withdrawal from Registration as Investment Adviser, 7/88, which is available from the SEC.

(3)(b) A withdrawal is effective thirty days following receipt of SEC Form ADV-W, unless the Division notifies applicant otherwise.

(D) Investment adviser representative licensing, renewal, and withdrawal requirements

(1) Licensing requirements

(1)(a) To become a licensed investment adviser representative applicant must file the following with original signatures as applicable with the Division:

(1)(a)(i) NASD Form U-4;

(1)(a)(ii) proof applicant passed the Series 65 or the Series 66 Exam. The Division will consider applicant's request for waiver of this requirement if applicant:

(1)(a)(ii)(aa) is a certified public accountant who has passed the Accredited Personal Financial Specialist examination (APFSE);

(1)(a)(ii)(bb) has qualified for and received a designation as a Certified Financial Planner (CFP), Chartered Financial Consultant (ChFC), Chartered Financial Analyst (CFA), or similar designation, suitable to the Division, which evidences applicant's professional competence to provide investment advice or investment advisory services; or

(1)(a)(ii)(cc) is licensed with a broker-dealer, has passed the Series 63, Uniform Securities Agent State Law Examination (USASLE) and either the Series 6, Investment Company Products/Variable Contracts Representative Examination, Series 6 Exam, or the Series 7, General Securities Representative Examination, Series 7 Exam, which are administered by the NASD, and the extent of applicant's investment advisory services is the referral of applicant's clients to a duly licensed investment adviser; and

(1)(a)(iii) a fee as specified in the Division's fee schedule.

(1)(b) A certificate of license will not be issued.

(2) License renewal requirements

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

(2)(b) To renew license, applicant must:

(2)(b)(i) provide proof that applicant has passed the Series 65 or the Series 66 Exam if applicant is renewing a license which was issued after April 23, 1990. The Division will consider applicant's request for waiver of this requirement if applicant:

(2)(b)(i)(aa) is a certified public accountant who has passed the APFSE;

(2)(b)(i)(bb) has qualified for and received a designation as a CFP, ChFC, CFA, or similar designation, suitable to the Division, which evidences applicant's professional competence to provide investment advice or investment advisory services; or

(2)(b)(i)(cc) is licensed with a broker-dealer, has passed the USASLE and either the Series 6 Exam or the Series 7 Exam, and the extent of applicant's investment advisory services is the referral of applicant's clients to a duly licensed investment adviser; and

(2)(b)(ii) submit the renewal fee specified in the Division's fee schedule to the Division before December 31.

(3) License or application withdrawal requirements

(3)(a) To withdraw a license or application applicant must file a written request for withdrawal with the Division.

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

(4) Miscellaneous provisions

(4)(a) Applicant may associate with only one investment adviser at one time.

(4)(b) However, a dual license may be allowed by the director if:

(4)(b)(i) Applicant requests a dual license in a writing to the Division which identifies the investment advisers with which applicant intends to associate and sets forth the reasons for the dual license.

(4)(b)(ii) Both investment advisers with which applicant intends to associate represent in writing to the Division that each assumes full responsibility for applicant at all times.

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

(E) 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 (4/90), which is available from the NASD.

(C) Testing requirements

(1) A broker-dealer agent must pass the Series 63, Uniform Securities Agent State Law Exam ("USASLE") or the Series 66, Uniform Combined State Law Examination (Series 66 Exam), and any other examination required by the NASD in connection with a new application, which are administered by the NASD, 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.

(2) An issuer-agent must pass the USASLE 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.

(3) An investment adviser or investment adviser representative must pass the Series 65, Uniform Investment Adviser Law Exam (Series 65 Exam) or the Series 66 Exam, which are administered by the NASD, if the investment adviser or investment adviser representative's most recent license terminated two or more years before the date of receipt by the Division of a new application.

(D) Correcting amendments

(1) A broker-dealer or broker-dealer agent must promptly file with the CRD, and not the Division, amendments to SEC Form BD - Uniform Application for Broker-Dealer Registration, 7/88, or NASD Form U-4 - Uniform Application for Securities Industry Registration or Transfer, 4/90, which are available from the NASD, in accordance with the instructions on those forms.

(2) An issuer-agent, investment adviser, or investment adviser representative must promptly file with the Division amendments to SEC Form ADV - Uniform Application for Investment Adviser Registration, 8/88, which is available from the SEC, NASD Form U-4 or any other information which materially changes the information on file with the Division.

(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.

(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.

(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)).

(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)).

(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) Unless an investment adviser posts a bond pursuant 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) 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:

(2)(a) A trial balance of all ledger accounts;

(2)(b) A statement of all client funds or securities which are not segregated;

(2)(c) A computation of the aggregate amount of client ledger debit balances; and

(2)(d) A statement as to the number of client accounts.

(3) The Division may require that a current appraisal be submitted in order to establish the worth of any asset.

(4) 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", which is available from the Division; 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) 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", which is available from the Division.

(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", which is available from the Division.

(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 advisors.

(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;

(2) NASAA Form U-2 - Uniform Consent to Service of Process; and

(3) a 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, applicant must submit the following to the Division or the CRD, with original signatures as applicable, before December 31:

(2)(a) a copy of applicant's most recent SEC Form ADV-S - Annual Report for Investment Advisors Registration under the Investment Advisors Act of 1940; and

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

KEY: securities, securities regulation

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R164. Commerce, Securities.

R164-5. Broker-Dealer and Investment Adviser Books and Records.

R164-5-1. Recordkeeping Requirements of Broker-Dealers and Investment Advisers.

(A) Authority and Purpose

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

(2) This rule specifies the books and records a broker-dealer and an investment adviser must maintain.

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

(C) Broker-dealer requirements

(1) Unless otherwise provided by order of the SEC, each broker-dealer licensed or required to be licensed under this Act shall make, maintain and preserve books and records in compliance with SEC Rules 17a-3 (17 CFR 240.17a-3(1996)), 17a-4 (17 CFR 240.17a-4(1996)), 15c2-6 (17 CFR 240.15c2-6(1996)) and 15c2-11 (17 CFR 240.15c2-11(1996)).

(2) To the extent that 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 rule.

(D) Investment adviser requirements

(1) Unless otherwise provided by order of the SEC, each investment adviser licensed or required to be licensed under the Act shall make, maintain and preserve books and records in compliance with SEC Rule 204-2 (17 CFR 275.204-2(1996)), notwithstanding the fact that such investment adviser is not registered or required to be registered under section 203 of the Investment Advisers Act of 1940.

(2) To the extent that the SEC promulgates changes to the above-referenced rules, investment advisers 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 investment adviser's compliance with the amended rule.

(3) Every investment adviser that has its principal place of business in a state other than this state shall be exempt from the requirements of subparagraph (D), provided the investment adviser is licensed or registered in such state and is in compliance with such state's record keeping requirements.

R164-5-3. Financial Reporting of Broker-Dealers and Investment Advisers.

(A) Authority and Purpose

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

(2) This rule specifies the annual financial report required of a broker-dealer and an investment adviser.

(B) Definitions

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

(C) Broker-Dealer required financial statements

(1) Upon request, each broker-dealer must file with the Division audited financial statements as of the end of its fiscal year. The statements must meet the requirements of Paragraph (E) or an independent public accountants.

(D) Investment Adviser required financial statements

(1) Each investment adviser who has custody or possession of client's funds or securities or requires payment of advisory fees six months or more in advance and in excess of $500 per client shall file with the Division audited financial statements as of the end of the investment adviser's fiscal year. The statements must meet the requirements of Paragraph (E).

(E) Financial statement requirements

The financial statements filed pursuant to this rule must:

(1) include a balance sheet, a statement of income or operations, a statement of shareholder equity, and a statement of cash flows, accompanied by appropriate notes stating the accounting principles and practices followed in their preparation, the basis at which securities are included and other notes as may be necessary for an understanding of the statements.

(2) be prepared in accordance with generally accepted accounting principles.

(3) be audited by an independent certified public accountant. The audit must:

(a) be made in accordance with generally accepted auditing standards;

(b) include a review of the accounting system, the internal accounting controls and procedures for the safeguarding of securities and funds including appropriate tests thereof since the prior examination.

(4) be accompanied by an unqualified opinion of the auditor as to the report of financial condition. In addition, the auditor shall submit as a supplementary opinion any comments, based upon the audit, as to any material inadequacies found to exist in the accounting system, the internal accounting controls and procedures for safeguarding securities and funds, and shall indicate any corrective action taken or proposed.

(5) The financial statements shall be filed with the Division within 90 days following the end of the investment advisor's licensee's fiscal year.

KEY: securities, securities regulation
July 14, 1997 **61-1-5**
Notice of Continuation December 29, 1997 **61-1-24**

R164. Commerce, Securities.
R164-6. Denial, Suspension or Revocation of a License.
R164-6-1g. Dishonest or Unethical Business Practices.

(A) Authority and purpose

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

(2) This rule identifies certain acts and practices which the Division deems violative of Subsection 61-1-6(1)(g). The list contained herein should not be considered to be all-inclusive of acts and practices which violate that subsection, but rather is intended to act as a guide to broker-dealers, agents, investment advisers, and federal covered advisers as to the types of conduct which are prohibited.

(3) Conduct which violates Section 61-1-1 may also be considered to violate Subsection 61-1-6(1)(g).

(4) This rule is patterned after well-established standards in the industry which have been adopted by the SEC, the NASD, NASAA, the national securities exchanges and various courts. It represents one of the purposes of the securities laws: to create viable securities markets in which those persons involved are held to a high standard of fairness with respect to their dealings with the public.

(5) The provisions of this rule apply to federal covered advisers to the extent that the conduct alleged is fraudulent or deceptive, or to the extent permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290).

(6) The federal statutory and regulatory provisions referenced in Paragraph (E) shall apply to investment advisers and federal covered advisers, regardless of whether the federal provision limits its application to advisers subject to federal registration.

(B) Definitions

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

(2) "Market maker" means a broker-dealer who, with respect to a particular security:

(2)(a) regularly publishes bona fide, competitive bid and ask quotations in a recognized inter-dealer quotation system, or

(2)(b) regularly furnishes bona fide competitive bid and offer quotations to other broker-dealers upon request; and

(2)(c) is ready, willing and able to effect transactions in reasonable quantities at his quoted price with other broker-dealers on a regular basis.

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

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

(5) "NASDAQ" means National Association of Securities Dealers Automated Quotation System.

(6) "OTC" means over-the-counter.

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

(C) Broker-Dealers

In relation to Broker-Dealers, as used in Subsection 61-1-6(1)(g) "dishonest or unethical practices" shall include, but not be limited to the following:

(1) engaging in a pattern of unreasonable and unjustifiable delays in the delivery of securities purchased by any of its customers or in the payment, upon request, of free credit balances reflecting completed transactions of any of its customers, or both.

(2) inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account.

(3) recommending to a customer the purchase, sale or exchange of any security without reasonable grounds to believe that such transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other relevant information known by the broker-dealer.

(4) executing a transaction on behalf of a customer without prior authorization to do so.

(5) exercising any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time or price for the execution of orders, or both.

(6) executing any transaction in a margin account without securing from the customer a properly executed written margin agreement promptly after the initial transaction in the account.

(7) failing to segregate a customer's free securities or securities held in safekeeping.

(8) hypothecating a customer's securities without having a lien thereon unless the broker-dealer secures from the customer a properly executed written consent promptly after the initial transaction, except as permitted by the rules and regulations of the SEC.

(9) entering into a transaction with or for a customer at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit.

(10) failing to furnish to a customer purchasing securities in an offering, no later than the date of confirmation of the transaction, either a final prospectus or a preliminary prospectus and an additional document, which together include all information set forth in the final prospectus.

(11) charging fees for services without prior notification to a customer as to the nature and amount of the fees.

(12) charging unreasonable and inequitable fees for services performed, including miscellaneous services such as collection of monies due for principal, dividends or interest, exchange or transfer of securities, appraisals, safekeeping, or custody of securities and other services related to its securities business.

(13) offering to buy from or sell to any person any security at a stated price unless the broker-dealer is prepared to purchase or sell, as the case may be, at the price and under the conditions as are stated at the time of the offer to buy or sell.

(14) representing that a security is being offered to a customer "at the market" or a price relevant to the market price unless the broker-dealer knows or has reasonable grounds to believe that a market for the security exists other than that made, created or controlled by the broker-dealer, or by any person for whom the broker-dealer is acting or with whom the broker-dealer is associated in the distribution, or any person controlled by, controlling or under common control with the broker-dealer.

(15) effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive or fraudulent device, practice, plan, program, design or contrivance, which may include but not be limited to:

(15)(a) effecting any transaction in a security which involves no change in the beneficial ownership thereof;

(15)(b) entering an order or orders for the purchase or sale of a security with the knowledge that an order or orders of substantially the same size, at substantially the same time and substantially the same price, for the sale of the security, has been or will be entered by or for the same or different parties for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security; provided, however, nothing in this subparagraph shall prohibit a broker-dealer from entering bona fide agency cross transactions for its customers; or

(15)(c) effecting, alone or with one or more other persons, a series of transactions in any security creating actual or apparent active trading in a security or raising or depressing the price of a security, for the purpose of inducing the purchase or sale of the security by others.

(16) guaranteeing a customer against loss in any securities account of the customer carried by the broker-dealer or in any securities transaction effected by the broker-dealer with or for the customer.

(17) publishing or circulating, or causing to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which:

(17)(a) purports to report any transaction as a purchase or sale of any security unless the broker-dealer believes that the transaction was a bona fide purchase or sale of the security; or

(17)(b) purports to quote the bid price or asked price for any security, unless the broker-dealer believes that the quotation represents a bona fide bid for, or offer of, the security.

(18) using any advertising or sales presentation in such a fashion as to be deceptive or misleading. An example of the prohibited practice would be distribution of any nonfactual data, material or presentation based on conjecture, unfounded or unrealistic claims or assertions in any brochure, flyer, or display by words, pictures, graphs or otherwise designed to supplement, detract from, supersede or defeat the purpose or effect of any prospectus or disclosure.

(19) failing to disclose to a customer that the broker-dealer is controlled by, controlling, affiliated with or under common control with the issuer of any security before entering into any contract with or for a customer for the purchase or sale of the security, and if the disclosure is not made in writing, it shall be supplemented by the giving or sending of written disclosure at or before the completion of the transaction.

(20) failing to make a bona fide public offering of all of the securities allotted to a broker-dealer for distribution, whether acquired as an underwriter, a selling group member, or from a member participating in the distribution as an underwriter or selling group member.

(21) failure or refusal to furnish a customer, upon reasonable request, information to which the customer is entitled, or to respond to a formal written request or complaint.

(22) permitting a person to open an account for another person or transact business in the account unless there is on file written authorization for the action from the person in whose name the account is carried.

(23) permitting a person to open or transact business in a fictitious account.

(24) permitting an agent to open or transact business in an account other than the agent's own account, unless the agent discloses in writing to the broker-dealer or issuer with which the agent associates the reason therefor.

(25) in connection with the solicitation of a sale or purchase of an OTC, non-NASDAQ security, failing to promptly provide the most current prospectus or the most recently filed periodic report filed under Section 13 of the Securities Exchange Act of 1934, when requested to do so by a customer.

(26) marking any order tickets or confirmations as "unsolicited" when in fact the transaction is solicited.

(27) for any month in which activity has occurred in a customer's account, but in no event less than every three months, failing to provide each customer with a statement of account which, with respect to all OTC non-NASDAQ equity securities in the account, contains a value for each security based on the closing market bid on a date certain; provided that, this subsection shall apply only if the firm has been a market maker in the security at any time during the month in which the

monthly or quarterly statement is issued.

(28) failing to comply with any applicable provision of the Conduct Rules of the NASD or any applicable fair practice or ethical standard promulgated by the SEC or by a self-regulatory organization to which the broker-dealer is subject and which is approved by the SEC.

(29) any acts or practices enumerated in Section R164-1-3.

(30) failing to comply with a reasonable request from the Division for information or testimony, or an examination request made pursuant to Subsection 61-1-5(5), or a subpoena of the Division.

(D) Agents.

In relation to agents of broker-dealers or agents of issuers, as used in Subsection 61-1-6(1)(g) "dishonest or unethical practices" shall include, but not be limited to the following:

(1) engaging in the practice of lending or borrowing money or securities from a customer, or acting as a custodian for money, securities or an executed stock power of a customer.

(2) effecting securities transactions not recorded on the regular books or records of the broker-dealer which the agent represents, in the case of agents of broker-dealers, unless the transactions are authorized in writing by the broker-dealer prior to execution of the transaction.

(3) establishing or maintaining an account containing fictitious information in order to execute transactions which would otherwise be prohibited.

(4) sharing directly or indirectly in profits or losses in the account of any customer without the prior written authorization of the customer and the broker-dealer which the agent represents.

(5) dividing or otherwise splitting the agent's commissions, profits or other compensation from the purchase or sale of securities with any person not also licensed as an agent for the same broker-dealer, or for a broker-dealer under direct or indirect common control.

(6) for agents who are dually under Rule R164-4-1(D)(4)(b), failing to disclose the dual license to a client.

(7) engaging in conduct specified in subsections (C)(2), (C)(3), (C)(4), (C)(5), (C)(6), (C)(9), (C)(10), (C)(15), (C)(16), (C)(17), (C)(18), (C)(24), (C)(25), (C)(26), (C)(28), (C)(29) or (C)(30) of Rule R164-6-1g.

(E) Investment Advisers and Federal Covered Advisers

In relation to investment advisers and federal covered advisers, as used in Subsection 61-1-6(1)(g) "dishonest or unethical practices" shall include, but not be limited to the following:

(1) Recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known by the investment adviser.

(2) Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within ten (10) business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both.

(3) Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account if that an adviser in such situations can directly benefit from the number of securities transactions effected in a client's account. The rule appropriately forbids an excessive number of transaction orders to be induced by an adviser for a "customer account."

(4) Placing an order to purchase or sell a security for the account of a client without authority to do so.

(5) Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party trading authorization from the client.

(6) Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment adviser, or a financial institution engaged in the business of loaning funds.

(7) Loaning money to a client unless the investment adviser is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser.

(8) To misrepresent to any advisory client, or prospective advisory client, the qualifications of the investment adviser or any employee of the investment adviser, or to misrepresent the nature of the advisory services being offered or fees to be charged for such service, or to omit to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading.

(9) Providing a report or recommendation to any advisory client prepared by someone other than the adviser without disclosing that fact. (This prohibition does not apply to a situation where the adviser uses published research reports or statistical analyses to render advice or where an adviser orders such a report in the normal course of providing service.)

(10) Charging a client an unreasonable advisory fee.

(11) Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the adviser or any of its employees which could reasonably be expected to impair the rendering of unbiased and objective advice including:

(11)(a) Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; and

(11)(b) Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the adviser or its employees.

(12) Guaranteeing a client that a specific result will be achieved (gain or no loss) with advice which will be rendered.

(13) Publishing, circulation or distributing any advertisement which does not comply with Rule 206(4)-1 under the Investment Advisers Act of 1940.

(14) Disclosing the identity, affairs, or investments of any client unless required by law to do so, or unless consented to by the client.

(15) Taking any action, directly or indirectly, with respect

to those securities or funds in which any client has any beneficial interest, where the investment adviser has custody or possession of such securities or funds when the advisor's action is subject to and does not comply with the requirements of Reg. 206(4)-2 under the Investment Advisers Act of 1940.

(16) Entering into, extending or renewing any investment advisory contract unless such contract in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or non-performance, whether the contract grants discretionary power to the adviser and that no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract.

(17) Failing to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information in violation of Section 204A of the Investment Advisers Act of 1940.

(18) Entering into, extending, or renewing any advisory contract which would violate section 205 of the Investment Advisers Act of 1940. This provision shall apply to all advisers registered or required to be registered under this Act, notwithstanding whether such adviser would be exempt from federal registration pursuant to section 203(b) of the Investment Advisers Act of 1940.

(19) To indicate, in an advisory contract, any condition, stipulation, or provisions binding any person to waive compliance with any provision of this act or of the Investment Advisers Act of 1940, or any other practice that would violate section 215 of the Investment Advisers Act of 1940.

(20) Engaging in any act, practice, or course of business which is fraudulent, deceptive, or manipulative in contravention of section 206(4) of the Investment Advisers Act of 1940 notwithstanding the fact that such investment adviser is not registered or required to be registered under section 203 of the Investment Advisers Act of 1940.

(21) Engaging in conduct or any act, indirectly or through or by any other person, which would be unlawful for such person to do directly under the provisions of this act or any rule or regulation thereunder.

KEY: securities regulation
July 14, 1997 **61-1-6(1)(g)**
Notice of Continuation December 29, 1997 **61-1-24**

R164. Commerce, Securities.
R164-9. Registration by Coordination.
R164-9-1. Registration by Coordination.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-9, 61-1-11 and 61-1-24.

(2) This rule sets forth the procedure and requirements to be met when applying for registration by coordination in Utah. Any security for which a registration statement under the Securities Act of 1933 or a notification under Regulation A, 17 C.F.R. sections 230.251 through 230.263 (1994), has been filed with the SEC in connection with the same offering may be registered by coordination under Section 61-1-9.

(3) The rule also authorizes optional electronic filing of registration statements and allows an optional modification of the term of effectiveness to facilitate simultaneous electronic filing.

(4) Offerings which are registered, as opposed to being exempt from registration, in less than 20 states, including the state of Utah, are subject to the requirements of Section R164-11-1. Failure to comply with the requirements of Section R164-11-1 may be grounds for denial, suspension or revocation of effectiveness of a registration statement filed under Section 61-1-9.

(B) Definitions

(1) "Designee" means any person or entity authorized and recognized by the Division in this rule to accept filings on behalf of the Division by electronic or other means of communication.

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

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

(4) "Registration Statement" means the registration statement filed under the Securities Act of 1933 or the notification filed under Regulation A, 17 C.F.R. sections 230.251 through 230.263 (1994).

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

(6) "SRD" means the Securities Registration Depository, Inc.

(C) Registration requirements

(1) An issuer may register securities by submitting to the Division or its designee the following:

(1)(a) One original application on NASAA Form U-1 - Uniform Application to Register Securities;

(1)(b) One copy of the registration statement, including exhibits, together with all amendments as filed with the SEC under the Securities Act of 1933 or SEC Regulation A;

(1)(c) One original NASAA Form U-2 - Uniform Consent to Service of Process;

(1)(d) A fee as specified in the Division's fee schedule; and

(1)(e) Any additional documents or information which the Division requests.

(2) No document or application shall be deemed to be filed, and the ten working day period referred to in Subsection 61-1-9(3)(b) shall not begin, until all items required by Subparagraph (C)(1) have been received by the Division or its designee.

(3) Where the Division notifies the registrant in writing of any missing or incomplete documents or information, or other deficiencies in the registration statement, registrant must respond promptly. If the registrant does not respond to the Division in writing within 30 calendar days of the mailing date of the Division's letter, the registration statement will be deemed incomplete and action may be taken to deny the effectiveness of the registration statement, and to impose a fine.

(D) Additional notification to the Division

The registrant shall notify the Division within two business days upon the receipt of any stop order, denial, order to show cause, suspension or revocation order, injunction or restraining

order, or similar order entered or issued by any state or other regulatory authority or by any court, concerning the securities covered by this application or other securities of the issuer currently being offered to the public.

(E) Effective date

(1) The registration statement becomes effective as set forth in Subsection 61-1-9(3).

(2) The registration statement is effective for one year from its effective date with the Division.

(3) A registration statement which does not become effective within one year from the filing date may be deemed materially incomplete and action may be taken to deny effectiveness to the registration statement.

(4) To facilitate the coordination of expiration dates with other states, the issuer may request a specific term of effectiveness which does not exceed one year.

(F) Post effective amendments

A registration statement may be amended by filing with the Division or its designee an amended NASAA Form U-1 - Uniform Application to Register Securities, and an amended registration statement. The amendment becomes effective when the Division so orders.

(G) Re-registration

The registrant may re-register securities, for which a registration statement is about to expire, by submitting to the Division or its designee, a NASAA Form U-1, an updated registration statement and the filing fee specified in the Division's fee schedule.

(H) Closing report

Within 30 days of the close of the offering or the expiration of the registration statement, whichever occurs first, the registrant shall file a closing report. The closing report must be filed on Division Form 9-1.

(I) Recognized designee

(1) The Division authorizes and recognizes the SRD as designee to receive filings under this rule on behalf of the Division, including but not limited to applications, registration statements and fees.

(2) The designation provided in this rule is for the sole purpose of receiving filings on behalf of the Division and then transmitting those documents to the Division, or for any other purpose which the Division may prescribe by order or release.

R164-9-2. MJDS - Financial Statement Requirement.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-9 and 61-1-24.

(2) This rule clarifies that financial statements and other financial information which have been prepared in accordance with Canadian generally accepted accounting principles, consistently applied, will be permitted in registration statements filed by Canadian issuers with the Division under Section 61-1-9 and with the SEC under MJDS.

(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) Canadian generally accepted accounting principles

(1) Financial statements and other financial information which have been prepared in accordance with Canadian generally accepted accounting principles, consistently applied, may be contained in a registration statement filed with the Division under Section 61-1-9 and with the SEC under MJDS on SEC Forms F-7, F-8, F-9 or F-10, Securities Act of 1933 Release No. 6902, effective July 1, 1991, 56 F.R. 30036; amended in Securities Act of 1933 Release No. 6902A, effective July 1, 1991, 57 F.R. 10614, which are available from the SEC, and:

(1)(a) The securities which are the subject of a registration statement filed with the Division on SEC Form F-7 are offered for cash upon the exercise of rights granted to existing security holders.

(1)(b) The securities which are the subject of a registration statement filed with the Division on SEC Form F-8 are securities to be issued in an exchange offer, merger or other business combination.

(1)(c) The securities which are the subject of the registration statement filed with the Division on SEC Form F-9 are either non-convertible preferred stock or non-convertible debt which are to be rated in one of the four highest rating categories by one or more nationally recognized statistical rating organizations.

(1)(d) The securities which are the subject of a registration statement filed with the Division on Form F-10 are offered and sold pursuant to a prospectus in which the SEC has not required reconciliation to United States generally accepted accounting principles with respect to the financial information presented therein.

(D) Preferred stock and certain debt securities

(1) For purposes of this rule, preferred stock and debt securities which are not convertible for at least one year from the date of effectiveness of the registration statement will be deemed to meet the requirement of Subparagraph (C)(1)(c).

R164-9-3b. MJDS - Review Period.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Subsection 61-1-9(6) and Section 61-1-24.

(2) This rule provides a shorter review period for registration statements filed by Canadian issuers with the Division under Section 61-1-9 and with the SEC under its multijurisdictional disclosure system.

(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) Review period

(1) The ten-working day disclosure statement filing requirement set forth in Subsection 61-1-9(3)(b) shall be reduced to seven working days for a registration statement filed

with the Division and with the SEC under MJDS on SEC Forms F-7, F-8, F-9 or F-10, Securities Act of 1933 Release No. 6902, effective July 1, 1991, 56 F.R. 30036; amended in Securities Act of 1933 Release No. 6902A, effective July 1, 1991, 57 F.R. 10614, which are available from the SEC.

KEY: securities, securities regulation
July 3, 1997 **61-1-9**
Notice of Continuation December 29, 1997 **61-1-11**
61-1-24

R164. Commerce, Securities.
R164-10. Registration by Qualification.
R164-10-2. Registration Statements.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-10, 61-1-11, and 61-1-24.

(2) This rule sets forth the procedure and requirements to be met when applying for registration by qualification in Utah. It is available for registration of securities by any person who proposes to issue or sell any security.

(3) This rule requires that the registration statement must contain certain information. The issuer, issuer-agent and broker-dealer should be aware that information not specifically required by this rule or by the Division prior to effectiveness may be necessary to be included so as to meet the disclosure requirements of Section 61-1-1. Review of the registration statement by the Division does not imply that the disclosure requirements of Section 61-1-1 have been met.

(4) Section 61-1-12 enables the Director of the Division to deny effectiveness to, or revoke or suspend effectiveness of, any securities registration statement, and to impose a fine. Applicant should be aware that criteria contained in Section 61-1-12 will be applied in addition to the requirements of this rule.

(5) This rule requires that certain actions be taken by the issuer after the effective date of the registration statement. See paragraph (C) of this rule. Effectiveness of the registration statement may be suspended or revoked, and a fine imposed, for failure to comply with these requirements.

(6) Section 61-1-16 prohibits the filing of false or misleading documents with the Division. Documents and information filed with the Division should be closely scrutinized prior to signing and filing to insure their accuracy.

(7) Any security may be registered by qualification.

(8) Qualifying companies may utilize NASAA Form U-7 to satisfy the prospectus information requirements set forth in subparagraphs (E)(1) and (E)(2) this rule.

(B) Definitions used in this rule

(1) "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:

(1)(a) planned principal operations have not commenced; or

(1)(b) planned principal operations have commenced, but there has been no significant revenue therefrom.

(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) "Expert" means any person referred to in Subsection 61-1-10(2)(o), whose opinion, appraisal, report, name or similar information, is used in the registration statement or provides information which is used in the registration statement.

(5) "Financial statements" means a balance sheet, an income statement or statement of operations, a statement of cash flows, a statement of stockholders' equity or partners' capital, and appropriate notes to the financial statements.

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

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

(C) Registration requirements

(1) The issuer must file with the Division the documents and information required by paragraphs (C) and (D) of this rule, and pay a fee as specified in the Division's fee schedule.

(2) The registration statement must

(2)(a) contain the documents required by paragraph (D) of this rule,

(2)(b) comply with the merit requirements of paragraph (G) of this rule,

(2)(c) comply with the requirements of Section R164-11-1,

(2)(d) comply with the fund impound requirements of Section R164-11-7b, and

(2)(e) comply with the sales commission requirements of Section R164-12-1f.

(3) Within ten working days after the effective date of the registration statement, issuer must file with the Division two copies of the final prospectus.

(4) Within ten working days after the expiration of the effectiveness of the registration statement, sale of the entire amount of the securities registered in the offering, or termination of the offering, whichever occurs first, issuer must file with the Division a completed and executed closing report on Division Form 10-2-1A.

(5) Within ten working days after the expiration of effectiveness of the registration statement, sale of the entire amount of the securities registered in the offering, or termination of the offering, whichever occurs first, issuer must file with the Division a list of persons who have purchased or subscribed to the offering, including the residential address of each purchaser, the dates of and amount of securities purchased or subscribed to, and the consideration paid by each purchaser or subscriber.

(6) Subsequent to the filing date of the registration statement, issuer must file with the Division financial statements which meet the requirements of paragraph (H) of this rule.

(7) Where the Division has notified issuer in writing of any missing or incomplete documents, deficiencies in the registration statement, or changes required in the prospectus, issuer must respond promptly. If issuer does not respond to the Division's deficiency letter within 30 calendar days of the mailing date of its deficiency letter, the registration statement may be deemed incomplete and appropriate action may be taken to deny effectiveness to the registration statement, and to impose

a fine.

(D) Documents to be filed with the Division

The registration statement must contain the following:

(1) One original Division Form 10-2-1 which has been manually executed by all officers, directors, or partners;

(2) One original Division Form 10-2-1B certification for each officer, director, promoter, holder of 10% of the outstanding stock, broker-dealer or issuer-agent, and attorney;

(3) One original NASAA Form U-2, Uniform Consent to Service of Process, which is available from NASAA or the Division, appointing the Director, Utah Division of Securities as issuer's agent for service;

(4) Two copies of the preliminary prospectus containing the information required by paragraph (E) of this rule;

(5) Two copies of financial statements conforming to the requirements of paragraph (F) of this rule;

(6) One original opinion of counsel as required by Subsection 61-1-10(2)(n);

(7) One original NASAA Form U-2A, Uniform Corporate Resolution, which is available from NASAA or the Division, of the issuer where the registration statement is filed by or on behalf of a person other than an individual;

(8) One copy of the organizational documents as required by paragraph (I) of this rule;

(9) One copy of the subscription agreement, if any, to be used in connection with the offering;

(10) One original specimen security as required by paragraph (J) of this rule;

(11) One copy of the executed selling documents as required by paragraph (K) of this rule;

(12) One original of completed and executed documents required by Section R164-11-7b;

(13) One copy of any order, judgment or decree described in subparagraph (E)(2)(d)(ix) of this rule;

(14) At the time of filing the registration statement or not less than five days prior to use, one copy of any item, other than the prospectus, intended to be used to advertise or solicit interest in the offering; except no filing shall be required for notices and advertisements used after the effective date of a registration statement which contains only statements allowed by SEC Rule 134, Communications Not Deemed a Prospectus, 17 CFR 230.134, 1993, which is adopted and incorporated by reference and available from the SEC or the Division;

(15) Original written consents as required by paragraph (L) of this rule;

(16) One copy of each material contract or agreement with an affiliate of the issuer and one copy of any other material contract;

(17) One original of documents supporting the value of assets as shown on the financial statements such as appraisals, assays, reserve reports, engineer reports and similar expert evaluations as discussed in the prospectus; and

(18) Other material documents or information as requested by the Division. The provisions of subparagraph (C)(7) of this rule apply to such requests.

(E) Prospectus information requirements

The prospectus must contain at least the following information:

(1) Facing pages

(1)(a) Title of document;

(1)(b) Number and class of shares or units offered;

(1)(c) Par or stated value;

(1)(d) Entity description, including:

(1)(d)(i) name,

(1)(d)(ii) address,

(1)(d)(iii) type,

(1)(d)(iv) state and date of incorporation or organization;

(1)(e) Statement as to whether or not a public market exists or will exist;

(1)(f) Statement as to how the securities are registered or exempt at both the federal and state level;

(1)(g) Statement that registration with the Division is neither a recommendation or endorsement of any security, individual, firm or corporation;

(1)(h) Statement as to whom offering is made;

(1)(i) In chart form, including:

(1)(i)(i) shares or units offered,

(1)(i)(ii) price per share,

(1)(i)(iii) commissions,

(1)(i)(iv) net proceeds to the issuer, and

(1)(i)(v) minimums and maximums sought;

(1)(j) Footnotes including:

(1)(j)(i) consideration sought,

(1)(j)(ii) manner of offering,

(1)(j)(iii) amount and type of sales commissions to be paid, and

(1)(j)(iv) the maximum amount of offering expenses;

(1)(k) Broker-dealer or agent name, address, and telephone number;

(1)(l) Statement that no person is authorized to make any statements not contained in the disclosure document and that practices to the contrary may be a criminal offense;

(1)(m) Effective date of the prospectus.

(2) Subsequent pages

(2)(a) The issuer:

(2)(a)(i) history,

(2)(a)(ii) purpose,

(2)(a)(iii) intentions,

(2)(a)(iv) predecessors;

(2)(b) Risk factors;

(2)(c) Conflicts of interest;

(2)(d) With respect to every director and officer of the issuer, the following information:

(2)(d)(i) Name, age, residential address;

(2)(d)(ii) Occupation and business experience during the past five years;

(2)(d)(iii) The number of shares or partnership interests of the issuer owned as of a specified date within 30 days of the filing of the registration statement, the approximate date of purchase and the consideration paid for those shares or interests;

(2)(d)(iv) The amount of the securities covered by the registration statement to which an intention to subscribe has been indicated;

(2)(d)(v) Any material interest in any material transaction with the issuer or any significant subsidiary effected within the past three years or proposed to be effected;

(2)(d)(vi) Any family relationship between any director or officer;

(2)(d)(vii) Any other director or officer or similar position held in any other non-public company;

(2)(d)(viii) Any previous involvement in a public company as an officer, director or promoter, including a complete description of the company and affiliation with the company, the dates of and amounts raised in public offerings of the company and, if the company has undergone a reorganization, merger or an acquisition of assets in which an amount of stock representing more than 50% of the company's outstanding stock was issued, the consideration per share received by the company and the book value per share of the company immediately before and after the reorganization, merger or acquisition of assets;

(2)(d)(ix) Involvement in any material legal proceeding;

(2)(d)(x) Any remuneration paid directly or indirectly by the issuer, its predecessors, parents, or subsidiaries, during the past twelve months and estimated to be paid during the succeeding twelve months;

(2)(e) With respect to any person owning of record, or beneficially, 10% of the outstanding shares of any class of equity security of the issuer, the same information specified in subparagraphs (E)(2)(d)(i) and (iii)-(x) of this rule.

(2)(f) With respect to every promoter, if the issuer was organized within the past three years, the same information as specified in subparagraph (E)(2)(d) of this rule and any amount paid by the issuer within the past three years as well as the consideration given for such payments.

(2)(g) With respect to any person on whose behalf any part of the offering is to be made in a nonissuer distribution the following information:

(2)(g)(i) The information required in subparagraph (E)(2)(d)(i) of this rule;

(2)(g)(ii) The amount of securities of the issuer held as of the date the registration statement was filed with the Division;

(2)(g)(iii) The information required in subparagraph (E)(2)(d)(v) of this rule;

(2)(g)(iv) Statement of reasons for making the offering.

(2)(h) Dilution, share ownership and capital contributions: narrative discussion and graphic or tabular illustration, such as bar graphs or pie charts;

(2)(i) Fund impound:

(2)(i)(i) amount,

(2)(i)(ii) duration,

(2)(i)(iii) location, and

(2)(i)(iv) statement that funds will be released only upon order of the Division;

(2)(j) Material litigation which affects the offering;

(2)(k) Summary of the Opinion of Counsel required by Subsection 61-1-10(2)(n);

(2)(l) The substance of reports, findings, appraisals and valuations provided by persons who are named as having prepared or certified such reports or valuations pursuant to Subsection 61-1-10(2)(o);

(2)(m) With respect to Limited Partnerships, net worth of each individual general partner exclusive of home, automobile and home furnishings or, in the alternative, a representation that the general partner meets the net worth requirements of subparagraph (G)(3)(b)(iii) of this rule;

(2)(n) Definition section, where material;

(2)(o) Substance of material contracts and agreements;

(2)(p) The amount of shares subject to transferability restrictions, contractual or otherwise, and the nature of said restriction;

(2)(q) Statement as to the issuer's fiscal year-end date;

(2)(r) Financial statements as required by this rule;

(2)(s) Statement of the intended use of proceeds of the offering as required by Subsection 61-1-10(2)(i);

(2)(t) Transfer agent's name and street address;

(2)(u) Statement that any and all amendments to the prospectus will be promptly filed with the Division, distributed to purchasers in the offering, and made a part of any prospectus used thereafter;

(2)(v) Statement that the Division, market makers, and security holders will be promptly notified in writing of any change in the management, purpose, and control of the issuer, or any material or adverse condition affecting the issuer.

(3) Small Company Offering Registration (SCOR)

(3)(a) A company issuing securities exempt from federal registration under Rule 504 of Regulation D, Regulation A, or Section 3(a)(11) of the Securities Act of 1933, may utilize the NASAA Form U-7, which is available from NASAA or the Division, as the prospectus for the offering to satisfy subparagraph (D)(4) of this rule, provided that the issuer:

(3)(a)(i) complies with each of the requirements set forth in Part I(1) of the NASAA SCOR Issuer's Manual;

(3)(a)(ii) complies with all conditions set forth in, and provides all information required by Part I(2) of the NASAA SCOR Issuer's Manual; and,

(3)(a)(iii) in all material respects complies with all other requirements of this rule.

(3)(b) The filing of one original NASAA Form U-1, Uniform Application to Register Securities, which has been manually executed by all officers and directors of the issuer, satisfies subparagraph (D)(1).

(F) Financial statements

The financial statements contained in the registration statement and the prospectus must meet the requirements of this paragraph (F).

(1) Financial statements of the issuer, or the issuer and its predecessors or any business to which the issuer is a successor, which are to be filed as part of the registration statement must be prepared in accordance with generally accepted accounting principles (GAAP).

(2) Audited financial statements required herein must be accompanied by an unqualified opinion report by an independent certified public accountant.

(3) Consolidated financial statements must be prepared for an issuer that has majority-owned subsidiaries.

(4) The Division may permit the omission of one or more of the financial statements required under this rule and in substitution thereof permit appropriate comparable financial statements, upon the written request of issuer and where consistent with the protection of Utah investors.

(5) The Division may require the filing of other financial statements in addition to or in substitution for the financial statements herein required where such financial statements are necessary or appropriate for an adequate presentation of the issuer's financial condition or the financial condition of any person considered necessary, where consistent with the

protection of Utah investors.

(6) Issuer must file audited financial statements for the most recent fiscal year, or as of a date within four months of the date the registration statement is filed with the Division if the issuer, including predecessors, has existed for a period of less than one fiscal year.

(7) When the filing date of the registration statement falls after a date four months subsequent to the issuer's most recent fiscal year end, unaudited interim financial statements dated within four months of the filing date must also be included in the registration statement.

(8) Unaudited financial statements must be filed for the two fiscal years preceding the most recent fiscal year or for such shorter period as the issuer and any predecessors have been in existence if less than three years.

(9) If the financial statements required herein are as of a date more than four months prior to the date that the registration statement is expected to become effective, the financial statements must be updated as of a date within four months of the expected effective date and include the entire period since the last fiscal year end. Such interim financial statements need not be audited.

(10) If any part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements shall be required of that business as if it were the issuer.

(11) An issuer which is a limited partnership shall also be required to file the balance sheets of the general partners as described below.

(11)(a) Where a general partner of the limited partnership is a corporation there must be filed an audited balance sheet of such corporation as of the end of its most recently completed fiscal year.

(11)(b) Where a general partner of the limited partnership is a partnership there must be filed an audited balance sheet of such partnership as of the end of its most recently completed fiscal year.

(11)(c) Where a general partner of the limited partnership is a natural person there must be filed, only as supplemental information, an unaudited balance sheet of such natural person as of a date no more than four months prior to the date the registration statement was filed.

(G) Merit requirements

(1) Minimum offering amount for a development stage company

(1)(a) The minimum offering amount for a development stage company shall not be less than an amount such that immediately following the close of the offering the net tangible asset value of the company is equal to or greater than $75,000, based on the net tangible asset value of the most recent balance sheet included in the prospectus as adjusted to give effect to the minimum net proceeds of the offering and, at the discretion of the Division, any value not recognized for financial statement purposes as supported by independent appraisal or other recognized authority.

(2) Dilution

(2)(a) The maximum dilution to the net tangible asset value of the securities offered in a public offering pursuant to Section 61-1-10 shall not exceed 33 1/3% of the public offering price for a development stage company or 50% for all other companies.

(2)(b) This subparagraph (G)(2) of this rule shall apply to all offerings of preferred or common corporate stock.

(2)(c) Dilution shall be equal to the difference between the offering price of the shares and the net tangible asset value per share based on the most recent balance sheet included in the prospectus as adjusted to give effect to the maximum net proceeds of the offering. The net tangible asset value of the shares at the close of the offering shall be determined by dividing the net tangible asset value of the corporation by the total number of shares outstanding at the close of the offering. The net tangible asset value of the corporation shall be equal to the total assets of the corporation less the intangible assets and the liabilities of the corporation.

(2)(d) In the event that not all shares offered are sold, the shareholders, other than those purchasing in the offering, shall be required to contribute to the company a sufficient number of shares or tangible assets so that dilution, based on the most recent balance sheet included in the prospectus and receipt of the net proceeds from the shares actually sold, does not exceed the maximum dilution allowed.

(2)(e) Registration will not be permitted to close, and will not be issued a closing letter, where the dilution at the close of the offering is greater than the maximum dilution allowed and such violation has not been remedied.

(3) Equity

(3)(a) Corporate Equity and Debt Offering.

(3)(a)(i) Prior to and during the effectiveness of a registration statement pertaining to an offering of securities which are corporate equity securities, rights to obtain corporate equity securities, securities convertible into corporate equity securities, or corporate debt securities, the corporation must have equity equal to at least 10% of the maximum aggregate offering price of the securities which are registered or to be registered. Equity shall be equal to the sum of stated capital, capital surplus which was contributed in cash, and retained earnings. Retained deficits will not reduce the equity of the corporation for purposes of this subparagraph (G)(3)(a) of this rule. In no event shall capital contributed in the form of services or any evidence of indebtedness qualify as any portion of equity in order to meet the requirements of this subparagraph (G)(3)(a) of this rule.

(3)(a)(ii) Tangible property may be considered to satisfy this requirement, in the discretion of the Division, only where the value of such property is ascertained and supported by the issuer, where the value substantially exceeds the necessary equity requirement and where clear title to the property is held by the issuer.

(3)(b) Limited Partnership and Trust Certificate Offering. Prior to the effectiveness of a registration statement relating to limited partnership units, issuer must meet one of the following requirements:

(3)(b)(i) The general partner, promoter, or manager has paid, in cash, at least an amount equal to 5% of the maximum aggregate offering price of the securities to be registered to the issuer for equity interests in the issuer;

(3)(b)(ii) The general partner, promoter, or manager has the ability to pay and commit themselves to pay, in cash, 5% of

the maximum aggregate offering price of the securities to be registered into the fund impound prior to the release of the impound and in addition to any other impound which may be required by the rules of the Division; or,

(3)(b)(iii) The general partner, promoter, or manager has an aggregate net tangible asset value exclusive of home, automobile, and home furnishings equal to 10% of the maximum aggregate offering price of the securities to be registered. Where a general partner, promoter or manager is also a general partner, promoter or manager of another partnership or trust for which this subparagraph was used to satisfy the equity requirements for a registered offering of that partnership or trust, the aggregate net tangible asset value will be reduced by the amount required to satisfy the equity requirements of the previous offering.

(4) Offering Expenses

The maximum offering expenses, not including commissions on the sales of the securities, which shall be paid from the proceeds of the public offering or by the issuer in connection with the public offering is the greater of $6,000 or 8% of the minimum aggregate offering price of the securities registered.

(H) Post filing financial statement requirements

(1) The financial statements required by this paragraph (H) of this rule must be prepared in accordance with the requirements set forth in paragraph (F) of this rule.

(2) Subsequent to the filing date of a registration statement, the following financial statements must be filed:

(2)(a) After the end of each fiscal year, through and including the year in which 80% of the offering proceeds will have been used, audited financial statements for the previous fiscal year must be filed with the Division within 90 days after the end of the applicant fiscal year.

(2)(b) If an effective registered offering has not been completely sold at a date six months after the end of the issuer's last fiscal year, unaudited interim financial statements must be filed with the Division within 30 days of that date for the period ending six months from the fiscal year end. Financial statements required by this subparagraph (H)(2) of this rule shall not be required where interim financial statements are filed pursuant to the requirements in paragraph (F) of this rule which cover at least the same period covered by this subparagraph (H)(2).

(3) If an effective registered offering has not been completely sold, the financial statements required by this paragraph (H) of this rule must be appended to every prospectus used thereafter.

(I) Organizational documents

(1) Corporation. A registration statement for the proposed sale of securities of a corporation must contain:

(1)(a) one copy of the certificate and articles of incorporation and all amendments thereto; and

(1)(b) By-laws.

(2) Limited Partnership. A registration statement for the proposed sale of securities of a limited partnership must contain:

(2)(a) one copy of the limited partnership agreement, and

(2)(b) the documentation of the managing general partner which would be required by this paragraph (I) of this rule if the managing general partner was the issuer of the securities.

(3) Others. As the Division specifies in each instance.

(J) Specimen Security

The registration statement must contain either:

(1) An original specimen security which conforms to the description of the security in the registration statement; or

(2)(a) A letter, signed by a director of the issuer, or a person of similar responsibility for an unincorporated issuer, stating that a specimen security meeting the requirements of subparagraph (J)(1) of this rule will be delivered prior to the release of impounded funds, and

(2)(b) A notation on Item 12 of Division Form 11-7B that it shall be a condition of release of such impounded funds for the issuer to provide a specimen security meeting the requirements of subparagraph (J)(1) of this rule.

(K) Selling documents

The registration statement must contain the following documents with respect to the persons who propose to offer or sell the securities pursuant to the registration statement:

(1) Where the securities are to be offered through a licensed agent or broker-dealer, one copy of the signed agreement between the agent OR broker-dealer and the issuer setting forth the compensation each person will receive in connection with such distribution, and a description of any transactions between such person and the issuer within the twelve months preceding the filing of the registration statement.

(2) Where the securities are to be offered through any person not licensed with the Division as a broker-dealer or agent, the broker-dealer or agent application and supporting documents and information, as required in Section R164-4-1, for such person must accompany the registration statement at the time of the original filing.

(3) No registration statement shall become effective where

(3)(a) the only person participating in the distribution is a broker-dealer which is a member of the NASD, and

(3)(b) the Division has not received written confirmation or oral confirmation to be followed by written confirmation that the NASD has no objection to the compensation arrangements set forth in the registration statement.

(4) No registration statement shall be effective or become effective without complete compliance with Section R164-4-1 by at least one person participating in the distribution.

(L) Consent of expert

(1) Where any information provided by an expert is used in the registration statement or prospectus, the registration statement must include the consent of the expert to the specific use of the information in the prospectus or registration statement.

(2) Where the name of an expert is used in the registration statement or prospectus, the registration statement or prospectus must contain the consent of the expert as to the specific use of the expert's name.

(M) Amendments

(1) Whenever there is a material change in any information or document filed with the Division, the issuer must file a correcting amendment with the Division within ten working days after the material change.

(2) There is no charge for filing a correcting amendment.

KEY: financial statements, securities, securities regulation
July 3, 1997 **61-1-10**

Notice of Continuation December 29, 1997 **61-1-24**

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.

KEY: securities, securities regulation

July 9, 1997	**61-1-7**
Notice of Continuation December 30, 1997	**61-1-8**
	61-1-9
	61-1-10
	61-1-20
	61-1-22
	61-1-24

R164. Commerce, Securities.

R164-18. Procedures.

R164-18-6. Procedures for Administrative Actions.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Sections 63-46b-4, 63-46b-5, 63-46b-21, and 61-1-24.

(2) The purpose of this rule is to:

(a) designate those actions which the Division shall deem to be requests for initial agency action;

(b) designate those categories of adjudicative proceedings which will be conducted on an informal basis, in accordance with the Utah Administrative Procedures Act and the Rules of Procedure for Adjudicative Proceedings before the Department of Commerce;

(c) set forth circumstances in which hearings shall be required or permitted; and

(d) clarify certain Division policies regarding declaratory orders.

(B) Definitions

(1) "Act" means Title 61, Chapter 1, Utah Uniform Securities Act.

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

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

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

(C) Categorization of Adjudicative Proceedings

All adjudicative proceedings under the Act are designated as informal adjudicative proceedings, except that the director may convert proceedings to formal adjudicative proceedings in accordance with the provisions of Subsection 63-46b-4(3).

(D) Commencement of Adjudicative Proceedings

Filing of the following documents with the Division shall be deemed to be a request for initial Division action:

(1) SEC Form BD - Uniform Application for Broker-Dealer Registration pursuant to Sections 61-1-4 and R164-4-1 (whether filed with the division or the CRD);

(2) NASD Form U-4 - Uniform Application for Securities Industry Registration or Transfer pursuant to Sections 61-1-4 and R164-4-1 (whether filed with the division or the CRD);

(3) SEC Form ADV - Uniform Application for Investment Adviser Registration pursuant to Sections 61-1-4 and R164-4-2 (whether filed with the division or the CRD);

(4) Application for Registration by Notification - Filed pursuant to Section 61-1-8;

(5) NASAA Form U-1 - Uniform Application to Register Securities pursuant to Sections 61-1-9 and R164-9-1;

(6) Form 10-2-1 - Application for Registration by Qualification pursuant to Sections 61-1-10 and R164-10-2;

(7) Request for declaratory order designating a person as not being within the definition of "broker-dealer" as defined in Subsection 61-1-13(3), or "agent" as defined in Subsection 61-1-13(2);

(8) Request for declaratory order designating a person as not being within the definition of "investment adviser" as defined in Subsection 61-1-13(15), or "investment adviser representative" as defined in Subsection 61-1-13(16);

(9) Request for order finding that registration is not necessary or appropriate pursuant to Subsection 61-1-14(1)(l) (exempt securities);

(10) Request for order finding that registration is not necessary or appropriate pursuant to Subsection 61-1-14(2)(s) (exempt transactions);

(11) Request for order releasing impounded funds pursuant to Section R164-11-7b;

(12) Request for confirmation of exchange listing exemption pursuant to Section R164-14-1g;

(13) Request for confirmation of blue chip fund exemption pursuant to Subsection 61-1-14(1)(k);

(14) Request for confirmation of manual listing exemption pursuant to Section R164-14-2b;

(15) Request for confirmation of secondary trading exemption pursuant to Section R164-14-2m;

(16) Request for confirmation of reorganization exemption pursuant to Section R164-14-2p.

(E) Procedures for Informal Adjudicative Proceedings

A hearing will be held only if required by the Act or by the provisions of this section. When a hearing is permitted but not required, a hearing will be held only if requested by a party within 30 days from the date a notice of agency action is mailed.

(F) Hearings: When Held

(1) Under the Act, a hearing is not required and will not be held in the following adjudicative proceedings:

(a) Licensing of broker-dealer, agent, investment adviser, or investment adviser representative pursuant to Section 61-1-4;

(b) Order requiring applicant to publish announcement of application pursuant to Subsection 61-1-4(1)(c);

(c) Cancellation of registration or application of broker-dealer, agent, investment adviser, or investment adviser representative pursuant to Subsection 61-1-6(5);

(d) Grant of registration by notification pursuant to Section 61-1-8;

(e) Grant of registration by coordination pursuant to Section 61-1-9;

(f) Stop order based on failure to file price amendments pursuant to Subsection 61-1-9(5);

(g) Grant of registration by qualification pursuant to Section 61-1-10;

(h) Order requiring additional information or verification pursuant to Subsection 61-1-10(2)(q);

(i) Order imposing conditions of registration pursuant to Subsection 61-1-11(7);

(j) Order vacating or modifying stop order pursuant to Subsection 61-1-12(2);

(k) Order designating a person as not being within the definition of a "broker-dealer" pursuant to Subsection 61-1-13(3), or "agent" pursuant to Subsection 61-1-13(2);

(l) Order designating a person as not being within the definition of "investment advisor" pursuant to Subsection 61-1-13(15), or "investment adviser representative" pursuant to Subsection 61-1-13(16);

(m) Order finding that registration is not necessary or appropriate pursuant to Subsection 61-1-14(1)(l) (exempt securities);

(n) Order finding that registration is not necessary or appropriate pursuant to Subsection 61-1-14(2)(s) (exempt transactions);

(o) Order requiring filing of prospectus, sales literature, etc.pursuant to Section 61-1-15;

(p) Order releasing impounded funds pursuant to Section R164-11-7b;

(q) Order to show cause pursuant to Subsection 61-1-20(1)(a);

(r) Confirmation of exchange listing exemption pursuant

to Section R164-14-1g;

(s) Confirmation of blue chip fund exemption pursuant to Subsection 61-1-14(1)(k);

(t) Confirmation of manual listing exemption pursuant to Section R164-14-2b;

(u) Confirmation of secondary trading exemption pursuant to Section R164-14-2m;

(v) Confirmation of reorganization exemption pursuant to R164-14-2p.

(2) In the following proceedings, a hearing will be held only if timely requested:

(a) Petition for order denying, suspending or revoking registration of broker-dealer, agent, investment adviser, or investment adviser representative pursuant to Section 61-1-6;

(b) Petition for stop order denying, suspending or revoking effectiveness of a securities registration statement pursuant to Section 61-1-12;

(c) Order denying or revoking exemption under Subsection 61-1-14(2)(p)(v);

(d) Petition for order denying or revoking exemption from registration pursuant to Subsection 61-1-14(4);

(G) Declaratory Orders

(1) The Division will not issue declaratory orders when a petition requests a ruling with respect to the applicability of Section 61-1-1.

(2) A request for a "no-action" letter under Section R164-25-5 shall be deemed to be a petition for a declaratory order.

KEY: securities regulation, adjudicative procedure

July 3, 1997	**61-1-18.3**
Notice of Continuation December 29, 1997	**61-1-4**
	61-1-11

R199. Community and Economic Development, Community Development.

R199-8. Permanent Community Impact Fund Board Review and Approval of Applications for Funding Assistance.

R199-8-1. Purpose.

The Permanent Community Impact Fund Board (the Board) provides loans and/or grants to State agencies and subdivisions of the State which are or may be socially or economically impacted, directly or indirectly, by mineral resource development. Authorization for the Board is contained in Section 9-4-301 et seq.

R199-8-2. Eligibility.

Only those applications for funding assistance which are submitted by an eligible applicant for an eligible project shall be funded by the Board.

Eligible projects include: a) planning; b) the construction and maintenance of public facilities; and c) the provision of public services. "Public Facilities and Services" means public infrastructure or services traditionally provided by governmental entities.

Eligible applicants include state agencies and subdivisions of the state as defined in Subsection 9-4-302(5)3, which are or may be socially or economically impacted, directly or indirectly, by mineral resource development.

R199-8-3. Application Requirements.

A. Applications for funding assistance may be submitted at any time. Applicants shall submit their funding requests on the Board's most current application form, furnished by the Department of Community and Economic Development (DCED). Applicants submitting incomplete applications will be notified of deficiencies and their request for funding assistance will be held by the Board's staff pending submission of the required information by the applicant.

Complete applications which have been accepted for processing will be placed on the next available "Application Review Meeting" agenda.

B. Additional general information not specifically covered by the application form should also be furnished to the Board and its staff when such information would be helpful to the Board in appraising the merits of the project.

C. For proposed drinking water and sewer projects, sufficient technical information must be provided to the Utah Department of Environmental Quality (DEQ) to permit their review. The Board will not act on any drinking water or sewer project unless they receive such review from DEQ.

D. Planning grants and studies normally require a fifty percent cash contribution by the applicant.

E. The Board requires all applicants to have a vigorous public participation effort. All applicants shall hold at least one formal public hearing to solicit comment concerning the size, scope and nature of any funding request prior to its submission to the Board. In that public hearing, the public shall be advised the financing may be in the form of a loan, even if the application requests a grant.

Complete and detailed information shall be given to the public regarding the proposed project and its financing. The information shall include the expected financial impact including potential repayment terms and the costs to the public as user fees, special assessments, or property taxes if the financing is in the form of a loan. The Board may require additional public hearings if determines the applicant did not adequately disclose to the public the impact of the financial assistance during the initial public hearing.

When the Board offers the applicant a financial package that is substantially different in the amounts, terms or conditions initially requested by an applicant, the Board may require additional public hearings to solicit public comment on the modified funding package.

A copy of the public notice and transcript or minutes of the hearing shall be attached to the funding request. Public opinion polls may be submitted in addition to the transcript or minutes.

F. Letters of comment outlining specific benefits (or problems) to the community and State may be submitted with the application.

G. All applicants are required to notify in writing the applicable Association of Governments of their intention to submit a funding request to the Board. A copy of any comments made by the Association of Governments shall be attached to the funding request. It is the intent of the Board to encourage regional review and prioritization of funding requests to help ensure the timely consideration of all worthwhile projects.

H. State statute requires the Board before it grants or loans any funds or approves any undertaking to take into account the effect of the undertaking on any district, site, building structure or specimen that is included in or eligible for inclusion in the National Register of Historic Places or the State Register and to allow the state historic preservation officer (SHPO) a reasonable opportunity to comment on the undertaking or expenditure. In order to comply with that duty, the Board requires all applicants to provide the SHPO with a description of the proposed project and attach the SHPO's comments to the application. The Board also requires that if during the construction of the project the applicant discovers any cultural/paleontological resources, the applicant shall cease project activities which may affect or impact the cultural/paleontological resource, notify the Board and the SHPO of the discovery, allow the Board to take into account the effects of the project on cultural/paleontological resources, and not proceed until further approval is given by the Board.

I. All applicants must provide evidence and arguments to the Board as to how the proposed funding assistance provides for planning, the construction and maintenance of public facilities or the provision of public services.

J. All applicants must demonstrate that the facilities or services provided will be available and open to the general public and that the proposed funding assistance is not merely a device to pass along low interest government financing to the private sector.

K. All applicants must demonstrate that any arrangement with a lessee of the proposed project will constitute a true lease, and not a disguised financing arrangement. The lessee must be required to pay a reasonable market rental for the use of the facility. In addition, the applicant shall have no arrangement with the lessee to sell the facility to the lessee, unless fair market value is received.

L. Each applicant must submit evidence and legal opinion

that it has the authority to construct, own and lease the proposed project. In the case of a request for an interest bearing loan, the applicant must provide an opinion of nationally-recognized bond counsel that the interest will not be subject to federal income taxes.

M. All applicants shall certify to the Board that they will comply with the provisions of Titles VI and VII of the Civil Rights Act of 1964 (42 USC 2000e), as amended, which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agree to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90, as amended, which prohibits discrimination on the basis of age; Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 and 28 CFR 35, as amended, which prohibit discrimination on the basis of disabilities; Utah Anti-Discriminatory Act, Section 34-35-1 et seq., which prohibits discrimination against any employee or applicant for employment because of race, color, sex, age, religion, national origin, or handicap, and to certify compliance with the ADA to the Board on an annual basis and upon completion of the project.

R199-8-4. Board Review Procedures.

A. The Board will review applications and authorize funding assistance on a "Trimester" basis. The initial meetings of each "Trimester" shall be "Project Review Meetings". The final meeting of each "Trimester" shall be a "Prioritization and Funding Meeting". Board meetings shall be held the first Thursday of each month, except July when no meeting will be held. "Prioritization and Funding Meetings" shall be held in April, August and December.

B. The process for review of new applications for funding assistance shall be as follows:

1. Submission of an application to the Board's staff for technical review and analysis.

2. Incomplete applications will be held by the Board's staff pending submission of required information.

3. Complete applications accepted for processing will be placed on the next available "Project Review Meeting" agenda.

4. At the "Project Review Meeting" the Board may either:

a. deny the application;

b. place the application on the "Pending List" for consideration at a future "Project Review Meeting" after additional review, options analysis and funding coordination by the applicant and the Board's staff;

c. place the application on the "Prioritization List" for consideration at the next "Prioritization and Funding Meeting".

C. Applicants and their representatives shall be informed of any "Project Review Meeting" at which their applications will be considered. Applicants may make formal presentations to the Board and respond to the Board's questions during the "Project Review Meetings".

D. No funds shall be committed by the Board at the "Project Review Meetings", with the exception of bona fide emergencies.

E. Applications for funding assistance which have been placed on the "Prioritization List" will be considered at the "Prioritization and Funding Meeting" for that Trimester. Applications which do not receive funding authorization will be held over for reconsideration at the next "Prioritization and Funding Meeting". Applications which have not received funding authorization after reconsideration will be deemed denied.

F. When two or more applications for funding assistance from various applicants in a given county are being considered at a "Project Prioritization and Funding Meeting", that county's Council of Governments (COG) or other broad based intergovernmental coordination body shall submit a list showing the COG's prioritization of those applications.

R199-8-5. Local Capital Improvement Lists.

A. A consolidated list of the anticipated capital needs for eligible entities will be submitted from each county, or in the case of state agencies, from DCED. This list should be produced as a cooperative venture of all the eligible entities within each county.

B. The list will contain a short term (one year), medium term (five year) and long range component (5-10 years).

C. The list should contain the following items: jurisdiction, summary description, project time frame, anticipated time of submission to PCIFB, projected overall cost of project, anticipated funding sources.

D. Projects not identified in a county's or DCED's list, will not be funded by the PCIFB, unless they address a bona fide public safety or health emergency or for other compelling reasons.

E. An up-dated list shall be submitted to the Board no later than January 31 of each year. The short term (one year) component of the list shall be prioritized on a county-wide basis by a cooperative venture of the eligible entities within a county.

R199-8-6. Modification or Alteration of Approved Projects.

A recipient of PCIFB grant funds may not, for a period of ten years from the approval of funding by the Board, change or alter the use, intended use, ownership or scope of a project without the prior approval of the Board. A recipient of PCIFB loan funds may not, for the term of the loan, change or alter the use, intended use, ownership or scope of a project without the prior approval of the Board. The recipient shall submit a written request for such approval and provide such information as requested by the Board or its staff, including at a minimum a description of the modified project sufficient for the Board to determine whether the modified project is an eligible use of PCIFB funds.

The Board may place such conditions on the proposed modifications or modified project as it deems appropriate, including but not limited to modifying or changing the financial terms, requiring additional project actions or participants, or requiring purchase or other satisfaction of all or a portion of the Board's interests in the approved project. Approval shall only be granted if the modified project, use or ownership is also an eligible us of PCIFB funds, unless the recipient purchases or otherwise satisfies in full the Board's interest in the previously approved or the proposed project.

KEY: grants

December 23, 1996 **9-4-305**
Notice of Continuation December 23, 1997

R199. Community and Economic Development, Community Development.
R199-9. Policy Concerning Enforceability and Taxability of Bonds Purchased.
R199-9-1. Enforceability.

In providing any financial assistance in the form of a loan, the (Board/Committee) representing the State of Utah (the "State") may purchase Bonds or other legal obligations (the "Bonds") of various political subdivisions (interchangeably, as appropriate, the "Issuer" or "Sponsor") of the State only if the Bonds are accompanied by a legal opinion of recognized municipal bond counsel to the effect that the Bonds are legal and binding under applicable Utah law.

R199-9-2. Tax-Exempt Bonds.

In providing any financial assistance in the form of a loan, the (Board/Committee) may purchase either taxable or tax-exempt Bonds; provided that it shall be the general policy of the (Board/Committee) to purchase Bonds of the Issuer only if the Bonds are tax-exempt and are accompanied by a legal opinion of recognized municipal bond counsel to the effect that interest on the Bonds is exempt from federal income taxation. This does not apply for Bonds carrying a zero percent interest taxation. This tax opinion must be provided by the Issuer in the following circumstances:

a. When Bonds are issued and sold to the State to finance a project which will also be financed in part at any time by the proceeds of other Bonds, the interest on which is exempt from federal income taxation.

b. When (i) Bonds are issued which are no subject to the arbitrage rebate provision or Section 148 of the Internal Revenue Code of 1986 (or any successor provisions of similar intent) (the "Code"), including, without limitation, Bonds covered by the "small governmental units" exemption contained in Section 148 (f) (4) (c) of the Code, and (ii) when Bonds are issued which are not subject to arbitrage rebate because the gross proceeds from the loan will be completely expended within six months after the issuance of the Bonds.

Notwithstanding the above, the (Board/Committee) may purchase taxable Bonds if it determines, after evaluating all relevant circumstances including the Issuer's ability to pay, that the purchase of the taxable Bonds is in the best interests of the State and the Issuer.

R199-9-3. Parity Bonds.

In addition to the policy stated above, it is the general policy of the (Board/Committee) that Bonds purchased by the (Board/Committee) shall be full parity Bonds with other outstanding Bonds of the Issuer. Exceptions to this parity requirement may be authorized by the (Board/Committee) if the (Board/Committee) makes a determination that

(i) the revenues or other resources pledged as security for the repayment of the Bonds are adequate (in excess of 100% coverage) to secure all future payments on the Bonds and all debt having a lien superior to that of the Bonds and

(ii) the Issuer has covenanted not to issue additional Bonds having a lien superior to the Bonds owned by the (Board/Committee) without the prior written consent of the (Board/Committee), and

(iii) requiring the Issuer to issue parity bonds would cause undue stress on the financial feasibility of the project.

KEY: grants
1987 **63-52-3**
Notice of Continuation December 23, 1997

R199. Community and Economic Development, Community Development.
R199-10. Procedures in Case of Inability to Formulate Contract for Alleviation of Impact.
R199-10-1. Purpose.

A. The following procedures are promulgated and adopted by the Permanent Community Impact Fund Board ("Board") of the Department of Community and Economic Development of the State of Utah pursuant to Section 9-4-306(4), UCA 1953 as amended.

B. In the event a project entity or a candidate ("Complainant") submits a request for determination to the Board under Section 11-13-29, UCA 1953 as amended, the Board shall hold a hearing on the questions presented. These proceedings shall be conducted informally, in accordance with the requirements of the Utah Administrative Procedure Act ("Act"), Section 63-46b-4(1), UCA 1953 as amended, unless the Board at its discretion converts the proceeding to a formal proceeding, in accordance with Section 63-46b-4(3) UCA 1953 as amended, if such action is deemed to be in the public interest and does not unfairly prejudice the rights of any party.

C. The only grounds available for relief are those set forth in Section 11-13-29, UCA 1953 as amended, or those reasonably inferred therefrom.

R199-10-2. Commencement of the Procedure Requesting a Determination.

A. Commencement of the procedure to request a determination from the Board shall be conducted in conformity with Section 63-46b-3(3)(a).

1. A complainant requesting a determination from the Board must submit such a request:

a. In writing;

b. Signed by the person invoking the jurisdiction of the Board or by that person's representative; and

c. Including the following information:

1. The names and addresses of all parties to whom a copy of the request for a hearing is being sent;

2. The Board's file number or other reference number;

3. The name of the adjudicative proceeding, if known;

4. The date the request for the hearing was mailed;

5. A statement of the legal authority and jurisdiction under which action by the Board is requested;

6. A statement of relief sought from the Board; and

7. A statement of facts and reasons forming the basis for

relief.

B. The Complainant shall file the request for a determination with the Board and at the same time, shall serve a copy of the request upon the party complained against (the "Respondent"). The Complainant shall also mail a copy of the request to each person known to have a direct interest in the request for a determination by the Board.

C. The Respondent shall serve a response within fifteen (15) days after the request is served upon the Respondent. The Respondent may admit, deny or explain the point of view of Respondent as to each allegation in the request. Not to respond to any allegation is to admit that allegation. The Respondent may pose a counteroffer to Complainant's request for relief. Any counteroffer must be supported by reasons. Requests and responses may be directed at multiple parties.

R199-10-3. Notification of Parties.

A. The Board shall promptly give notice by mail to all parties that the hearing will be held, stating the following:

1. The Board's file number or other reference number;

2. The name of the proceedings;

3. Designate that the proceeding is to be conducted informally according to the provisions or rules enacted under Section 63-46b-4 and Section 63-46b-5, UCA 1953 as amended, with citation to Section 63-46b-4 authorizing the designation;

4. State the time and place of the scheduled hearing, the purpose for which the hearing is to be held, and that a party who fails to attend or participate may be held in default; and

5. Give the name, title, mailing address and telephone number of the presiding officer for the hearing.

B. At any time twenty (20) or more days before the hearing begins, either party may serve upon the adverse party an offer to agree to specific terms and payments. If, within ten (10) days after the service of the offer, the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance, together with proof of service thereof, and the Board shall enter a corresponding order. An offer not accepted shall be deemed withdrawn and evidence concerning it is not admissible except in a proceeding to determine costs. If the order finally obtained from the offeree is not more favorable than the offer, the offeree shall pay the costs incurred after the making of the offer, including a reasonable attorney's fee. The fact that an offer is made but not accepted does not preclude a subsequent offer.

R199-10-4. Informal Hearing Procedures.

A. Within forty (40) days after receiving a request for determination, the Board shall hold a public hearing on the questions at issue.

B. The Board may appoint an administrative law judge to preside in its stead at the hearing and to hear such preliminary motions and manage such ancillary matters as the Board deems necessary and appropriate.

C. In the hearing, the parties named in the request for determination shall be permitted to testify, present evidence, comment on the issues and bring forth witnesses who may be examined and cross-examined. The hearing may be adjourned from time to time in the interest of a full and fair investigation of the facts and the law.

D. Discovery is prohibited, and the Board may not issue subpoenas or other discovery orders.

E. All parties shall have access to information contained in the Board's files and to all materials and information gathered by any investigation to the extent permitted by the law.

F. Any intervention is prohibited.

G. All hearings shall be open to all parties.

H. Within twenty (20) days after the close of the hearing, the Board or the administrative law judge shall issue a signed order in writing that states:

1. The decision;

2. The reasons for the decision;

3. A notice of any right for administrative or judicial review available to the parties; and

4. The time limits for filing a request for reconsideration or judicial review.

I. The order issued by the Board or by the administrative law judge shall be based on the facts appearing in the Board's files and on the facts presented in evidence at the hearing.

J. Any determination order issued by the Board or by the administrative law judge shall specify:

1. The direct impacts, if any, or methods determining the direct impacts to be covered; and

2. The amounts, or methods of computing the amounts, of the alleviation payments, if any, or the means to provide for impact alleviation, provisions assuring the timely completion of the facilities and the furnishing of the service, if any; and

3. Other pertinent matters.

K. A copy of the Board's or the administrative law judge's order shall be promptly sent to all parties.

L. All hearings shall be recorded at the Board's expense. Any party, at his own expense, may have a reporter approved by the Board prepare a transcript from the Board's record of the hearing.

R199-10-5. Formal Hearing Procedures.

A. At any time prior to issuance of the final order, the Board at its discretion may convert the informal adjudicative hearing into a formal adjudicative hearing, as allowed in Section 63-46b-4(3). The procedures to be followed in such a formal adjudicative hearing are given below.

B. The Board may appoint an administrative law judge to preside in its stead at the hearing and to hear such preliminary motions and manage such ancillary matters as the Board deems necessary and appropriate.

C. A party may be represented by an officer or the party or by legal counsel.

D. In the hearing, the parties named in the request for determination shall be permitted to testify, present evidence, comment on the issues and bring forth witnesses who may be examined and cross-examined. The hearing may be adjourned from time to time in the interest of a full and fair investigation of the facts and the law.

E. Utah Rules of Evidence shall be in effect; however,

1. Copies of original documents may be introduced into evidence unless objected to for reasons of illegibility or tampering.

2. Hearsay will be considered for its weight but will not be conclusive in and of itself as to any matter subject to proof.

F. Discovery in formal proceedings shall be limited. Because negotiation between the parties shall have been proceeding prior to a request for determination being submitted, the Board or the administrative law judge shall assume that discovery is complete when a request is submitted. However, upon motion and sufficient cause shown, the Board or the administrative law judge may extend the period of discovery.

G. All parties shall have access to information contained in the Board's files and to all materials and information gathered by any investigation to the extent permitted by the law.

H. The Board or the administrative law judge may give a person not a party to the proceeding the opportunity to present oral or written statements at the hearing.

I. All testimony presented at the hearing, if offered as evidence to be considered in reaching a decision on the merits, shall be given under oath.

J. All hearings shall be open to all parties.

K. Intervention into the formal hearing will be allowed on the following basis:

1. Any person not a party may file a signed, written petition to intervene in a formal adjudicative hearing with the Board. The person who wishes to intervene shall mail a copy of the petition to each party. The petition shall include:

a. The Board's file number or other reference number;

b. The name of the proceeding;

c. A statement of facts demonstrating that the petitioner's legal rights or interests are substantially affected by the formal adjudicative hearing, or that the petitioner qualifies as an intervenor under any provision of law; and

d. A statement of the relief the petitioner seeks from the Board.

2. The Board or the administrative law judge shall grant a petition for intervention if it determines that:

a. The petitioner's legal interests may be substantially affected by the formal adjudicative hearing; and

b. The interests of justice and the orderly and prompt conduct of the adjudicative hearing will not be materially impaired by allowing the intervention.

3. Any order granting or denying a petition to intervene shall be in writing and sent by mail to the petitioner and each party.

4. An order permitting intervention may impose conditions on the intervenor's participation in the adjudicative hearing that are necessary for a just, orderly, and prompt conduct of that hearing. Such conditions may be imposed by the Board or the administrative law judge at any time after the intervention.

L. Within twenty (20) days after the close of the hearing, the Board or the administrative law judge shall issue a signed order in writing that states:

1. The decision based upon findings of fact and conclusions of law;

2. The reasons for the decision;

3. A notice of any right for administrative or judicial review available to the parties; and

4. The time limits for filing a request for reconsideration or judicial review.

M. The order issued by the Board or by the administrative law judge shall be based on the facts appearing in the Board's files and on the facts presented in evidence at the hearing.

N. Any determination order issued by the Board or by the administrative law judge shall specify:

1. The direct impacts, if any, or methods determining the direct impacts to be covered; and

2. The amounts, or methods of computing the amounts, of the alleviation payments, if any, or the means to provide for impact alleviation, provisions assuring the timely completion of the facilities and the furnishing of the service, if any; and

3. Other pertinent matters.

O. A copy of the Board's or the administrative law judge's order shall be promptly sent to all parties.

P. All hearings shall be recorded at the Board's expense. Any party, at his own expense, may have a reporter approved by the Board prepare a transcript from the Board's record of the hearing.

R199-10-6. Default.

A. The Board or the administrative law judge may enter an order of default against a party if that party fails to participate in the adjudicative proceedings.

B. The order shall include a statement of the grounds for default and shall be mailed to all parties.

C. A defaulted party may seek to have the Board set aside the default order according to procedures outlined in the Utah Rules of Civil Procedure.

D. After issuing the order of default, the Board or the administrative law judge 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 defaulted party.

R199-10-7. Reconsideration by the Board.

Within ten (10) days after the date that a final order is issued by the Board or the administrative law judge, any party may file a written request for reconsideration in accordance with the provisions of Section 63-46b-13, UCA 1953 as amended. Upon receipt of the request, the disposition by the Board of that written request shall be in accordance with Section 63-46b-13(3), UCA 1953 as amended. With the exception of reconsideration, all orders issued by the Board or the administrative law judge shall be final. There shall be no other review except for judicial review as provided below.

R199-10-8. Judicial Review.

An aggrieved party may also obtain judicial review of final orders issued by the Board or by the administrative law judge by filing a petition for judicial review of that order in compliance with the provisions and requirements of Section 63-46b-14 and Section 63-46b-15, UCA 1953 as amended.

KEY: impacted area programs
1988 **63-52-3.5(5)**
Notice of Continuation December 23, 1997 **11-13-29**

R202. Community and Economic Development, Community Development, Community Services.
R202-100. Community Services Block Grant Rules.
R202-100-1. Authority.

This rule is authorized under Section 9-4-202, U.C.A. 1953, which allows the Department of Community and Economic Development (DCED) to receive funds for and to administer federal aid programs.

R202-100-2. Purpose.

The purpose of this rule is to establish standards and procedures for the Community Services Block Grant (CSBG) authorized under the Omnibus Reconciliation Act of 1981 (Title XVII, Chapter 2, Sections 671 through 683), contracted to eligible entities (counties or combinations of counties and Community Action Programs) to provide a range of services and activities having a measurable and potentially major impact on causes of poverty in the local communities.

R202-100-3. Eligible Grantees for CSBG Programs and Projects.

A. Utah shall distribute at least 90 percent of available funds as pass-through grants to eligible entities (hereinafter referred to as local grantees) for them to administer directly or, at their option, to sub-contract (hereinafter referred to as local sub-grantees) for the performance of eligible activities. Eligibility for the 5 percent discretionary funds will be established by the state plan each fiscal year.

R202-100-4. Assurances Required by CSBG Act.

All grantees shall be required to submit a certification of assurances based on CSBG programmatic, administrative and financial requirements of the Act as outlined by Community Services Block Grant Program Directives prepared by the State Community Services Office (SCSO).

R202-100-5. Compliance.

Local grantees must maintain their eligibility to receive CSBG funds by being in compliance with applicable laws, regulations, and contractual agreements. The state reserves the right to examine all aspects of CSBG funded activities to ensure that this is the case.

R202-100-6. Qualifications.

Local grantees must demonstrate that they have in place, or shall have in place prior to undertaking CSBG funded program activities, management systems adequate to ensure that CSBG funds shall be spent efficiently and effectively. When activities are sub-contracted, the local grantee must have in place a system and assume the responsibility for monitoring and evaluating sub-contracts. Files must be retained containing such monitoring and evaluation results. In no case shall the state provide funds to a grantee if available evidence suggests that the grantee cannot fulfill its obligations under the terms of the assurances required by the CSBG Act and the state's plan for the use of CSBG funds.

R202-100-7. Program Participant Eligibility.

Income eligibility for program participation shall be based on the Office of Management and Budget official poverty guidelines as described in Section 673 of the CSBG Act.

R202-100-8. Funds Allocation.

A. CSBG funds shall be allocated on the basis of federal fiscal years beginning October 1 to local agencies by the following formula:

(1) All agencies selected for funding shall be awarded an equal, minimum base amount.

(2) The amount remaining after subtraction of the sum of the minimum base amount shall be allocated among the local grantees based on the census counts (or updates) of low-income residents and other related criteria such as long-term unemployment.

R202-100-9. Approval Process.

Criteria shall be used to review applications for CSBG funds and shall be distributed to eligible grantees as a SCSO Community Services Block Grant Program Directives. A panel will screen and give a numerical rating to every application submitted by an eligible grantee based on the criteria outlined. The Community Services Office will compile these ratings and will make a final determination as to proposals that will receive funding and as to the level of funding that will be provided. Proposals must score a minimum number of points to be considered eligible. Prospective CSBG grantees shall be notified of application status 30 days or less after the closing date of application submissions. Any application found to be incomplete or inadequate will be returned to the local grantee for appropriate changes. The Community Services Office will provide technical assistance to any eligible agency scoring below the minimum.

R202-100-10. Award Procedures.

The state shall enter into a contract with local grantees October 1 contingent upon Federal authorization and appropriation for CSBG. Once signed, this contract shall be binding on both parties.

R202-100-11. Fiscal Operations Procedures.

A. Each local grantee shall have an acceptable procedure describing functions of its fiscal office and including at a minimum:

(1) Purchasing procedure
(2) System of cash control
(3) Payroll system
(4) Internal and external reporting systems

B. Fiscal procedures shall be in compliance with applicable state and federal regulations and conform with generally accepted accounting procedures.

R202-100-12. Financial Reports and Reimbursements.

Financial reports (Form CSBG 611-D) are to be submitted on a monthly basis, no later than twenty (20) days following the end of each month. Local grantees shall receive reimbursement based on a monthly financial status report and certification of work program activities. All reports must have an authorized signature, i.e., the contract signatory or someone designated by the signatory, with a letter of designation filed with the state.

R202-100-13. Administrative Cost.

Administrative costs include allowable expenditures incurred to administer the CSBG through an indirect cost plan, approved by cognizant Federal Agency.

R202-100-14. Travel and Per Diem.

Travel, per diem and allowances for staff and board members shall be determined by approved local agency guidelines which establish rates of reimbursement.

R202-100-15. Purchasing, Receiving and Accounts Payable.

A. Grantee agencies shall develop and have approved procedures for handling purchasing, receiving, and accounts payable. (In the absence of a local procedure, the state procedure shall be followed.) These procedures should include:

(1) Pre-numbered purchase orders and/or vouchers for all items of cost and expense.

(2) Procedures to insure procurement at competitive prices.

(3) Receiving reports to control the receipt of merchandise.

(4) Effective review following prescribed procedures for program coding, pricing and extending vendors' invoices.

(5) Invoices matched with purchase orders and receiving reports.

(6) The local grantee must have adequate controls, such as checklists for statement - closing procedures to insure that open invoices and uninvolved amounts for goods and services are properly accrued or recorded in the books or controlled through worksheet entries.

(7) Adequate segregation of duties in that different individuals are responsible for:

(a) Purchase;

(b) Receipt of merchandise or services; and

(c) Voucher approval

B. A list of anticipated equipment purchases must accompany the application for funding. Purchases over $1,000 must receive written state approval.

R202-100-16. Property and Equipment.

A. Each local grantee shall develop procedures for control of property and equipment. These procedures should include; but are not limited to:

(1) An effective system of authorization and approval of equipment purchase;

(2) Accounting practices for recording assets;

(3) Detailed records of individual assets which are maintained and periodically balanced with the general ledger accounts;

(4) Effective procedures for authorizing and accounting for equipment disposal; and

(5) Secure storage of property and equipment.

R202-100-17. Purchase or Improvement of Land or Buildings.

Funds shall not be used for purchase or improvement of land, or the purchase, construction, or permanent improvement (other than low-cost residential weatherization or other energy related home repairs) of any building or other facility except as this prohibition may be waived under conditions described in Section 680 (b) of the CSBG act.

R202-100-18. Personnel Policies.

A. Each local grantee shall maintain written personnel policies, available for review, which should include:

(1) Classification and pay plan;

(2) Policies governing selection and appointment;

(3) Conditions of employment and employee performance;

(4) Employee benefits;

(5) Employee-management relations including procedures for filing and handling grievances, complaints and rights of appeal;

(6) Personnel records and payroll procedures;

(7) Job description for all positions;

(8) Drug Free Work Place Policy.

R202-100-19. Civil Rights.

A. All CSBG funded programs shall comply with the nondiscrimination provisions contained in Section 677 of the Community Services Act.

B. Local grantees shall be required to have, but not to submit, an affirmative action plan that describes what they will do to ensure that current and prospective employees and program participants are treated in a non-discriminatory manner. This plan shall also include a grievance procedure to deal with allegations of discrimination on the part of prospective and current staff members or program participants.

C. The provisions of this section shall apply to any and all grantees and sub-grantees, except where special conditions apply, i.e., Indians, migrants, or seasonal farm workers.

R202-100-20. Prohibition of Political Activities.

Each CSBG grantee shall be responsible for assuring adherence to political activity prohibitions contained in Sec. 675 (c) (6) and (7) of the CSBG Act. Monitoring of sub-grantees shall be required as a part of administrative responsibilities. A description of this process is to be available for state review during monitoring visits or upon request. Violations of the prohibitions are to be reported to the state CSO immediately along with reports of measures taken by the grantee to restore compliance.

R202-100-21. Audits and Inspection.

Each local grantee shall have performed by an independent certified public accounting firm an annual audit that conforms with the provisions and requirements of OMB Circular A-128 or A-133. The audit shall be due no later than one year following the end of the grantee's fiscal year.

R202-100-22. Suspension or Termination of Funds.

A. DCED may suspend funding to a local grantee if the monitors' reports or independent audit reports indicate continuing, substantial non-compliance with contract requirements, accounting procedures, or fiscal control requirements. If problems identified are not corrected within a reasonable length of time, but not to exceed 60 days, DCED may terminate its contract with local grantee and make the remaining funds available to other eligible entities. Action to suspend or terminate funding will not be taken, however, unless timely and reasonable communication with the local grantee fails to produce corrective action to DCED's satisfaction. The

local grantee shall not be relieved of liability to the state for funds expended for improper purpose or federal audit exceptions sustained by the state by virtue of any breach of the contract by the agency, and the state may withhold or recover any payments to the grantee for the purpose of setoff until such time as the exact amount of damage due the state from the grantee is determined.

B. Pursuant to the provisions of the contract between the state and local grantee, delegation of funds and activities to others may not be made without prior approval of DCED, SCSO.

R202-100-23. Transfer of Funds.

Because of the limited funds anticipated to be made available, DCED shall not transfer any of the CSBG to eligible entities under the Older Americans Act of 1965, Head Start, or Low-income Home Energy Assistance, nor consider a grantee in compliance if such transfers are made locally.

R202-100-24. Amendments/Waivers.

A. Prior approval for budget changes is required in the following instances:

(1) The dollar amount of transfers among budget categories exceeds or is expected to exceed $10,000 or five percent of the grant budget, whichever is greater, for grants of $100,000 or larger.

(2) For grants under $100,000, approval is required if transfers exceed or are expected to exceed five percent of the grant budget.

(3) Limited flexibility in budget adjustments will be allowed as follows (submit informational copies of adjusted CSBG forms to SCSO):

(a) Rebudgeted funds within the Personnel Services portion of their CSBG budget;

(b) Rebudgeted funds within the Supportive Services portion of their CSBG budget;

(c) On a one-time basis, allowable transfers from the Personnel Services budget to Supportive Services;

(d) On a one-time basis, allowable transfers from the Supportive Services budget to Personnel Services;

B. Program goals may be amended by submitting changes for approval on appropriate CSBG forms. At any point during the program year it appears that a goal may be achieved at less than 90%, a program and budget amendment must be submitted for approval.

C. Grantees may also request contract period end dates be extended for up to sixty (60) days in order to spend program or project carryover funds amounting to less than ten (10) percent, or an amount approved by the state, of the total contract amount.

R202-100-25. Project Monitoring and Evaluations.

A. Monitoring will be accomplished through review of the fiscal and progress reports and on-site. On-site visits shall automatically be initiated in response to a written complaint of financial or programmatic non-compliance.

B. Evaluation of CSBG funded programs shall be conducted either by the state or by the local CSBG grantees and shall be distinct from both compliance monitoring and the state's examination of CSBG grantees to ensure that they are eligible to receive CSBG funds and that they are in compliance with all CSBG related obligations. Monitoring will relate to grantee compliance with federal assurances and state requirements in program management and operation. Evaluation will involve an attempt to measure program performance project results, and to determine the impact a grantee's efforts have had on the causes of a problem being addressed and on the problem itself.

C. For the most part, CSBG evaluations will be a joint state/local effort, but the state does reserve the right to conduct evaluations of CSBG programs at any time for purposes it deems appropriate. In such cases, reasonable efforts will be made to accommodate the concerns of any local grantee that is involved.

R202-100-26. Program Reporting Requirements.

Local grantees shall be required to maintain client profile sheets on individual clients, households or groups of clients, if appropriate. A compiled report of the number and characteristics of clients served, by category, shall be submitted to SCSO on the prescribed CSBG Form thirty (30) days after the end of each quarter of the program period. The program progress report is also due at the same time.

R202-100-27. Appeals Procedure.

A. Grantees identified in the state plan as eligible to receive funding from the Community Services Block Grant can use the following procedure to appeal decisions made by the State Community Services Office in regards to program and funding.

B. The state requires local grantees to establish an appeals process including a hearing on the record for sub-grantees who meet the criteria described in Section 675(11) in the event of termination of funding based on a local grantee decision.

C. Any substantive decision of SCSO which a local grantee believes to be unfair or unreasonable and having a major adverse impact on the local program, may be appealed by the grantee. The appeal process is as follows:

(1) Within fifteen (15) days of receipt of a SCSO decision that is believed to be unfair or unreasonable, the grantee believing itself to be aggrieved must submit a letter to the executive director of DCED, approved and signed by its elected officials, setting forth:

(a) The decision that is being questioned;

(b) The date on which the grantee received notice of the decision;

(c) The rationale of the grantee for considering the decision to be substantial and unfair or unreasonable to the grantee;

(d) A request for a hearing, including a statement as to the desired outcome of such a hearing.

(2) Within ten (10) working days of the receipt of the grantee's request for a hearing, the executive director shall name a hearing officer, who shall schedule a hearing date no later than two (2) weeks after being so named and will notify the appellant grantee. The hearing officer will be independent of DCED.

(3) Prior to the scheduled hearing, the SCSO staff shall contact the local officials and the program director of the appellant grantee:

(a) To obtain additional information pertinent to the issue;

(b) To clarify any misunderstanding of fact or policy;

(c) To explore possible alternatives that would eliminate

the necessity for a hearing;

(d) To obtain a written withdrawal of the request for a hearing if the issue is resolved through negotiation.

(4) The hearing, should there be one, shall be conducted by the hearing officer. The appellant grantee may be represented by whomever it chooses at the hearing, but must notify DCED at least five (5) working days prior to the hearing who that person will be.

(5) The hearing officer shall review all testimony and evidence presented at the hearing and recommend a decision to the executive director who shall issue a written decision of the appeal no more than ten (10) working days after the hearing.

(6) The decision resulting from the hearing shall be final. Any necessary hearings shall be held in Salt Lake City or at a site more convenient to the appellant agency, at the discretion of the executive director of DCED.

R202-100-28. Citizen Participation.

A. The state requires citizen participation and supports maximum participation of all interested persons and groups in the development and implementation of the CSBG programs at the state and local level, in advisory or administering capacity.

B. Tripartite boards are required for governing boards of private, non-profit organizations and for the administering/advisory boards of public agencies and shall conform to the requirements outlined in Sec. 675 (c) (3). A description of the democratic selection process for representatives of the poor is to be available for review. minutes of meetings or letters of appointment on file for review. A memorandum of one-third of the board to represent low-income. Minutes of meetings or letters of appointment on file for review. One-third of the members of the board are elected public officials, currently holding office, or their representatives, except if not enough public officials are willing or available, appointed public officials may serve.

C. A description of the process used for selection of private sector representatives is to be available for review. The description should include a process for interested private sector groups to petition for membership and how the petition will be considered.

D. As a part of the problem assessment portion of the planning phase (conducted every three years), each local agency shall conduct public forums for low-income residents of the areas. These forums are to allow a discussion and listing of problems as viewed by the low-income and their suggestions for solutions.

R202-100-29. Federal Program Regulations.

The CSBG is subject to regulations periodically published in the Federal Register.

R202-100-30. Required Documentation and Forms.

The required application, budget and reporting forms shall be designated through SCSO Community Services Block Grant Program Directives.

R202-100-31. Application Process and Submission Timetable.

A. The grant application phase of CSBG for local grantees involves:

(1) A local poverty problem identification process developed under prescribed criteria outlined in a Community Services Block Grant Program Directives, problem analysis, ranking process, resource analysis service delivery system description, prioritization process and coordination policy process with appropriate documentation submitted to SCSO by May 15 every three (3) years, starting in 1998;

(2) The development of a work program for addressing problems identified and prioritized;

(3) Community review of draft work program;

(4) Approval of final plan by local boards;

(5) Submission to state office, not less than ninety two (92) days before the beginning date of the program period.

R202-100-32. Budget Estimate.

By May 1, the state shall make available to eligible applicants, an estimate of funding amounts for each geographical area, based on the formula contained in the State Plan.

R202-100-33. Public Review and Comment.

A. After the work program has been prepared, but before Board approval, the grantee must provide ample opportunity for its' review by low-income residents, the community as a whole, and relevant community organizations and agencies. Notice of the availability of the application for citizen review and comment shall be made by written notice to organizations and agencies, to the media, and posting of notice in public places convenient to low-income residents. The grantee must submit all of the comments of persons and organizations choosing to respond with the application to the state office of Community Services.

R202-100-34. Senate Bill 50 - Sales Tax Refund on Donated Food.

A. The State Community Services Office shall:

(1) Provide definitions for certification and de-certification of eligible agencies to receive the sales tax refund;

(2) Provide criteria for an organization to apply for recognition as a qualified emergency food agency;

(3) Provide procedures to be used in the certifying and de-certifying of agencies for Rules and Procedure infractions;

(4) Provide standards for determining and verifying the amount of the donated food;

(5) Certify organizations to receive the Sales Tax Refund to the State Tax Commission;

(6) Provide monitoring to insure certified agencies maintain required weighing capabilities and inventory records;

(7) Develop other procedures necessary to implement Senate Bill 50 in consultation with the State Tax Commission.

KEY: antipoverty programs, community organizations*, grants, poverty and social problems*
November 1, 1997 9-4-202
Notice of Continuation December 8, 1997

R203. Community and Economic Development, Community Development, Energy Services.
R203-1. Utah Clean Fuels Loan Program.
R203-1-1. Authority.

The promulgation of this rule is authorized under Subsection 9-1-706(1)(b).

R203-1-2. Purpose.

The purpose of this rule is to:

(1) Establish procedures for government agencies and private sector vehicle owners to convert vehicles to a clean fuel or to purchase or lease original equipment manufacturer vehicles as provided under Section 9-1-703.

(2) Establish procedures for government agencies and private sector vehicle owners to purchase or lease clean fuel refueling equipment for vehicles as provided under Section 9-1-703.

(3) Establish criteria and conditions for awarding program monies.

(4) Establish criteria and conditions for loan repayment and the collection of loans authorized by Section 9-1-703.

(5) Establish a loan repayment schedule, not to exceed ten years.

R203-1-3. Definitions.

(1) "Clean fuel" means propane, compressed natural gas (CNG), or electricity; other fuel the Utah Air Quality Board determines to be at least as effective as those fuels in reducing air pollution; or other fuel that meets the clean fuel vehicle standards in the federal Clean Air Act Amendments of 1990, 42 USC 7581(2), Pub. L. No. 101-549, Title II, Sec. 229(a), 104 Stat. 2511. Title II defines clean alternative fuels to mean..."any fuel including methanol, ethanol, or other alcohols, including any mixture thereof containing 85 percent or more by volume of alcohol with gasoline or other fuels; reformulated gasoline, diesel, natural gas, liquified petroleum gas, and hydrogen; or power source, including electricity.

(2) "A clean-fuel vehicle" means a vehicle in a class or category of vehicles which has been certified to meet, for any model year, the clean-fuel vehicle standards applicable under the federal Clean Air Act Amendments of 1990, 42 USC 7581(7), Pub. L. No. 101-549, Title II, Sec. 229(a), 104 Stat. 2511; or, a vehicle which meets the clean fuel vehicle standards as specified in Section 243 of the federal Clean Air Act Amendments of 1990. For the purposes of this definition, a vehicle is assumed to meet Section 243 standards if Federal Test Procedure documentation demonstrates the vehicle emissions following conversion to a clean fuel are less than, or equal to, the levels specified in Section 243 of the federal Clean Air Act Amendments of 1990, or as otherwise allowed for or defined in this rule.

(3) "Fund" means the Clean Fuels Vehicle Loan Program created in Section 9-1-703.

(4) "Government Vehicle" means a motor vehicle registered in Utah and owned and operated by the state, a public trust authority, a county, a municipality, a town or a city, including metropolitan rapid transit motor vehicles, buses, trucks, law enforcement vehicles and emergency vehicles.

(5) "Incremental Costs" means the difference between the cost of the original equipment manufacturer vehicle and the same vehicle model manufactured without the clean-fuel fueling system.

(6) "Original Equipment Manufacturer (OEM) Vehicle" means a vehicle manufactured by the original vehicle manufacturer or its contractor to use a clean fuel.

(7) "Private sector business vehicle" means one or more motor vehicles registered in Utah that are owned and operated solely in the conduct of a private business enterprise.

(8) "Refueling Equipment" means compressors when used separately, compressors used in combination with cascade tanks, and other equipment that constitute a central refueling system capable of dispensing vehicle fuel.

R203-1-4. Application.

All loan applicants who wish to receive a loan must do the following:

(1) Complete and file an application provided by the department. The following information, at a minimum, may be necessary:

(a) name of Applicant;

(b) address and phone number of Applicant;

(c) contact person;

(d) total fleet size;

(e) number of vehicles to be converted with description of each;

(f) monthly fuel consumption during previous 12 months for each vehicle to be converted if applicable;

(g) documentation of price paid per gallon, per purchase, during the previous 12 months if applicable;

(h) the number of estimated or planned fuelings per-vehicle per-week for the next 12 months;

(i) number of vehicle operating days per year;

(j) the name, brand or other identifying information including model and type of conversion kit or device to be installed on the Applicant's vehicles, if known;

(k) the name of the firm or individual who may perform the installation of the conversion kits or devices on the Applicant's vehicles, if known;

(l) the name, address, and phone number of the clean fuel supplier and current clean fuel price, if known;

(m) the amount of funds per conversion or purchase the Applicant is willing to provide, if any;

(n) emission data per vehicle, to be converted, for the previous 12 months or, if not available, a current emissions test result;

(o) number and description, including make, model, total purchase price, incremental cost, expected delivery date and vehicle weight, of OEM vehicles to be purchased with a program loan;

(p) estimated VMT for each converted or OEM vehicle for the next 12 months, and;

(q) supply the following information pertaining to vehicle refueling equipment;

(i) number of vehicles using the refueling equipment;

(ii) gallons (or equivalent) per vehicle per month;

(iii) total gallons (or equivalent) per month;

(iv) estimated refueling capacity required;

(v) estimated cost of refueling equipment;

(vi) source(s) of refueling equipment; and

(vii) cost per gallon (or equivalent) of fuel dispersed with the refueling equipment;

(2) Agree in writing, as a part of the application filed in Section 203-1-4, to comply with all aspects of the Program and this rule, as well as submit to the payback criteria detailed in Section 203-1-6.

(3) Agree to provide the Department with subsequent fuel consumption, cost data, and applicable Vehicle Miles Traveled (VMT) for the duration of the loan payback period as specified in this rule.

(4) Agree in writing, to use the clean fuel for which each vehicle converted or purchased using loan proceeds for a minimum of 60 percent of the VMT beginning from the time of conversion, lease or purchase of the vehicle.

(5) Agree to provide the Department with vehicle emissions test data for the duration of the loan payback period as specified in this rule.

(6) Agree to allow inspection, by the Program administrator or designee, of all completed conversions, OEM vehicle(s) purchased and refueling equipment installed as a result of loan funds advanced under the Program.

(7) Agree to provide to the Department as collateral the conversion equipment, devices and instruments purchased or acquired with loans from the Program. This collateral shall remain in effect for the duration of the payback period as established by this program or until the loan has been repaid to the Department, whichever is shorter.

(8) Agree to notify the Department of anticipated or planned OEM or converted vehicle turnover, if this should occur before the repayment period ends.

(9) Agree to notify the Department if refueling equipment or a vehicle converted or purchased under terms of the Program and this rule becomes inoperable through mechanical failure or accident. In the event that this should occur, the Applicant further agrees to pursue one of the following courses of action with approval from the Department:

(a) Repair the inoperable or damaged vehicle or equipment and return it to use as soon as practicable;

(b) If still operable, remove and reinstall, at Applicant's expense, the conversion kit or device on another vehicle in the Applicant's fleet;

(c) Continue to repay the loan whether or not the converted or OEM vehicle or refueling equipment is repairable. Should the converted or OEM vehicle or refueling equipment become inoperable or irreparable the loan shall be repaid at a rate to be determined by the Department based on the payback rate in effect at the time the vehicle or equipment becomes inoperable or irreparable. The Department may, upon receipt of a written request by the Applicant, reduce or adjust the payback rate under these circumstances subject to the limitations of the Program and this rule.

(10) Provide an affidavit signed by the Applicant assuring repayment of all loans provided under this Program and under the parameters of this rule.

R203-1-5. Approval Process.

(1) The Program administrator shall, upon the proper submission of an application, make a preliminary determination of eligibility no later than 30 days from receipt of the application. This decision shall be based upon the following:

(a) Applicant's compliance with all aspects of the application process; and

(b) Applicant's meeting of all program limitations defined in Section R203-1-7.

(2) All applications shall be numbered in order of their receipt by the Department and acted upon in that order. Resubmitted applications shall be numbered in order of their resubmission.

(3) All applications meeting the requirements of Subsections R203-1-6(1) and R203-1-6(2) shall be evaluated according to the criteria set forth in Section R203-1-6.

(a) All applications shall be submitted to the payback criteria for this Program as detailed in Section R203-1-6.

(b) If the application meets all Program criteria under Sections R203-1-6 and R203-1-7, the application may be granted preliminary approval and the applicant shall be notified according to Section R203-1-8.

(c) Upon notification by the Department of a preliminary approval, the Applicant shall submit a bid to the Department for conversion or purchase costs of approved vehicles and refueling equipment. This submission shall include a minimum of two independent bids. In the event two independent bids cannot be obtained by the Applicant, the Department shall have the discretion to accept or reject any sole source bid. This submission shall be provided to the Department no later than 15 days after the Applicant receives notification of preliminary approval from the Department.

(d) Any conversion kit or device to be used on a vehicle under this Program shall be certified by the Department as being in compliance with the U.S. Environmental Protection Agency "Mobile Source Enforcement Memorandum No. 1A." For the purposes of implementing this Program, the Department has final authority to determine whether a conversion device or kit is in compliance. Proposed use of a conversion kit not previously certified by the Department may be allowed upon certification by the Department. Certification may be made if the Applicant provides documentation to the Department that the proposed device or conversion kit has been tested by a national laboratory using the Federal Test Procedure (FTP), as defined in 40 CFR 85 and has been demonstrated capable of reducing carbon monoxide (CO) and reactive hydrocarbons (HC) by at least 25 percent and does not increase nitrous oxides (NO_X). Certification by the Department of any conversion kit may take into consideration the type of vehicle upon which the kit may be used. An application for certification of a vehicle-kit combination that has not been previously certified by any national laboratory using the FTP may be certified by the Department only after consultation and coordination with the Utah Division of Air Quality.

(e) If the Applicant's bid for conversion costs, OEM incremental purchase costs or refueling equipment costs are found acceptable to the Department according to the limitations in Section R203-1-7 and all other criteria of this rule have been met the application may be approved and the maximum loan amount established, subject to available funds as specified in Subsections R203-1-6(e) and R203-1-6(f).

(f) If the application does not meet the Program criteria or

limitations, the application may be denied and the Applicant notified of this, as provided in Section R203-1-8.

R203-1-6. Payback Criteria.

(1) Once an application has been submitted to the Department, it may be analyzed to determine whether it meets the Program criteria as specified in Sections R203-1-5, and R203-1-6. Concurrently, the application may be analyzed to determine whether it meets the program limitations as specified in Section R203-1-7. This analysis may provide the basis of preliminary and final application approval. Loans granted under this program will have zero interest applied.

(2) The data provided by the Applicant under Section R203-1-4 may be used by the Department to establish a payback period. The Department may request, at any time during the application approval process, additional information or data from the Applicant necessary for this evaluation.

(3) The Department shall be the final authority for determining the costs and prices of clean fuels used in this application process. The Department may use all current and relevant market price and cost information in applying this data to the application process as provided in this rule.

(4) In determining the payback period to be assessed the Applicant, the following data shall be identified and used:

(a) fuel prices used including the gasoline - clean fuel differential;

(b) available pre-conversion fuel consumption per vehicle on a daily, monthly, and annual basis;

(c) estimated conversion costs;

(d) annual estimated future fuel consumption for each converted or OEM vehicle purchased, for each fuel to be used, and estimated VMT;

(e) annual estimated future fuel expenditures for each fuel to be used;

(f) annual estimated fuel cost savings;

(g) the planned vehicle turnover of converted or OEM vehicle(s);

(h) OEM vehicle purchase price and calculated incremental cost; and

(i) refueling equipment purchase price and monthly operating costs.

(5) Submission of an application under this Program and this rule constitutes Applicants' acceptance of the criteria and procedures of this rule.

(6) The Department reserves the right under this rule to resubmit for review any application that is subject to adjustments or changes due to any change in information or circumstances in application criteria as specified in Sections R203-1-4 through 203-1-7.

(7) Payback criteria used to evaluate an application under this Program and this rule may be coordinated with and may comply with the applicable rules established by the Utah Department of Finance for the Fund.

R203-1-7. Program Limitations.

Under no circumstance shall the Program administrator approve an application if:

(1) it would result in the Department's inability to fulfill its obligations under this Program or this rule;

(2) the Applicant does not meet the application requirements of Section R203-1-4;

(3) there would be no practical improvement in exhaust emissions of the Applicant's vehicle(s);

(4) the amount to be loaned per vehicle may not exceed the actual cost of the vehicle conversion or the incremental cost of the purchase or lease of a OEM vehicle;

(5) the amount to be loaned for the purchase or lease of a vehicle refueling equipment may not exceed the actual cost of this refueling equipment;

(6) approval of the application would result in the Applicant having an outstanding loan balance of greater than $500,000 at any time;

(7) the Fund balance is zero;

(8) awarding a loan to an Applicant would result in the Fund balance being less than zero;

(9) the payback period would exceed the useful life of the converted or OEM vehicle or refueling equipment purchased with program funds.

R203-1-8. Notification.

After review of an application and determination of preliminary approval, final approval or rejection under this rule, the Program administrator shall notify that Applicant in writing.

(1) If preliminarily approved, the Applicant shall continue to comply with the provisions of this rule.

(2) If finally approved, the Applicant shall be notified of the maximum conversion loan amount approved and shall continue to comply with the provisions of this rule.

(3) If rejected at any stage of the process, the Applicant can file an application for reconsideration. An application for reconsideration may be reviewed only if it includes changes that correct or remove the reasons for denial of the original application.

R203-1-9. Fund Transfer Process.

Once an application has been approved to receive a loan under this Program, notice of approval is transmitted by the Department to the Division of Finance. A loan document is initiated and a warrant request for the amount of the loan sent to the Division of Finance. The Department issues the loan to the successful Applicant. A representative from the Department of Finance may be present for the loan closing.

R203-1-10. Loan Repayment.

(1) The loan payment shall be sent to the Division of Finance and credited to the approved applicant's account.

(2) Loans made for the fund for government vehicles shall be made at a zero interest rate.

(3) Loans made from the fund for private sector vehicles shall be made at an interest rate equal to the annual return earned in the state treasurer's Public Treasurer's Pool as determined the month immediately preceding the closing date of the loan.

(4) When the account balance reaches zero, the payment shall cease, and the vehicle or equipment then becomes the property of that Applicant.

(5) The Division of Finance is responsible for collection of and accounting for the loan's and has custody of all loan

documents, including all notes and contracts, including the indebtness of the fund.

R203-1-11. Review.

The Department reserves the right to review all data and Applicants for continuing compliance with this rule during the period the Applicant has an outstanding loan obligation. The Department further reserves the right to request supplemental information it may deem necessary from an Applicant in order to effectively administer the Program and this rule.

R203-1-12. Indemnification.

The state government of Utah, any subdivision, or any agent of state government with responsibility for, or obligation to the Program cannot be held liable for injury or damage to persons, vehicles or other property caused by or involved with any equipment or vehicle purchased or converted to use a clean fuel in this Program.

R203-1-13. Notices.

An application, notice, report or data submitted under the Program shall be addressed in the following manner:

Utah Department of Community Development
ATTN: Office of Energy Services
Utah Clean Fuels Loan Program
324 South State, Suite 500
Salt Lake City, Utah 84111
(801) 538-8690 or 1-800-662-3633

KEY: fuel, clean*, loan program*
December 30, 1997 9-1-706(1)(b)

R203. Community and Economic Development, Community Development, Energy Services.
R203-3. Utah Commercial/Industrial Energy Loan Program.
R203-3-1. Authority.

The promulgation of this rule is authorized under a negotiated settlement of litigation known as "In re The Department of Energy Stripper Well Exemption Litigation, 653 F. Supp. 108 (D. Kan. 1986)", which allows the State of Utah, Department of Community and Economic Development, Office of Energy Services to receive funds for and administer energy programs.

R203-3-2. Purpose.

The purpose of this rule is to:

(1) Establish procedures related to use of Office funds to promote commercial and industrial lighting and electric motor system retrofit projects.

(2) Establish criteria and conditions for advertisement of Program.

(3) Establish criteria and conditions for providing no-cost auditing services.

(4) Establish criteria and conditions for loan application and application review processes.

(5) Establish criteria and conditions for loan disbursement process.

(6) Establish criteria and conditions for loan repayment and collection processes.

(7) Establish criteria and procedures for project evaluation and reporting processes.

R203-3-3. Definitions.

(1) "Program" means the Utah Commercial/Industrial Energy Loan Program.

(2) "Fund" means the Revolving Industrial Loan Fund of $1,000,000 obligated under the Alternative Energy Tech Demo Stripper Fund Program.

(3) "Office" means the Utah Office of Energy Services, Utah Division of Community Development, Utah Department of Community and Economic Development.

(4) "Applicant" means any owner/manager/leaser, representing a private for-profit company or not-for-profit organization owning, managing or leasing a facility located within the boundaries of the state of Utah, that submits an application requesting Program funds.

(5) "Owner/Manager/Leaser" means an entity that owns, manages or leases a commercial or industrial building, plant or facility.

(6) "Loan Application" means the document submitted by an owner/manager/leaser to show interest in receiving a loan by notifying the Office in person, by postal service, by electronic mail, by FAX, or by telephone.

(7) "Efficient Lighting System" means state-of-the-art lighting technologies that are energy efficient without compromising the quality of lighting.

(8) "Lighting Audit" means a preliminary survey of a facility's existing lighting system that determines types and number of lighting technologies, including energy usage. The audit provides recommendations regarding installation of state-of-the-art technologies including energy savings.

(9) "Efficient Electric Motor System" means state-of-the-art energy efficient technology which pertains to electric motors/drives and related components.

(10) "Electric Motor Systems Audit" means a preliminary survey of a facility's existing motor systems and related components that determines the type, number, configuration and energy usage of related system. The audit provides recommendations regarding installation of state-of-the-art technologies including energy savings.

(11) "Project Design" means the plans for installing Efficient Lighting or Efficient Electric Motor technology.

R203-3-4. Announcement.

Office staff may notify Utah businesses of the availability of Program funds. This may be done in the following manner:

(1) by issuing a state-wide news release announcing availability of Program; and

(2) by issuing a direct mailing to Utah businesses found in the "Utah Directory of Businesses and Industry".

R203-3-5. Auditing Services.

(1) An Owner/Manager/Lesser shall make its interest in securing auditing services known by notifying the Program Manager. Notification shall be made in person, by postal services, by electronic mail, by FAX or by telephone. The

Office may log all requests based on date received.

(2) Auditing Services shall be available to all Owners/Managers of for-profit and not-for-profit organizations on a first-come-first-serve basis.

(3) Auditing Services shall be made available at least until November 1, 1997, and may continue to be available based on funding availability.

R203-3-6. Application.

All Owners/Managers/Lessers wishing to receive Program funds shall apply in the following manner:

(1) Complete and file an application provided by the Office. The following information may be necessary:

(a) name of Applicant;

(b) address phone and fax number of Applicant;

(c) contact person;

(d) cost of project;

(e) federal identification number;

(f) amount requested;

(g) estimated electric savings per year in dollars;

(h) estimated electric savings per year in KWH; and

(i) audit results.

R203-3-7. Application Review.

(1) The Program administrator shall, upon the proper submission of the application, make a determination of eligibility no later than 45 days from receipt of the application. This decision may be based upon the following:

(a) Applicant's compliance with all aspects of the application process; and

(b) Applicant's meeting of all project eligibility requirements defined in Section R203-3-8 and all program limitations defined in Section R203-3-9.

(2) All applications may be numbered in order of their receipt by the Office and may be acted upon in that order. Resubmitted applications may be numbered in order of their resubmission.

(3) If the application meets all Program criteria under Sections R203-3-8 and R203-3-9, the application may be granted approval and the Applicant shall be notified according to Section R203-3-10.

R203-3-8. Project Eligibility.

(1) Once an application has been submitted to the Office, it may be analyzed to determine whether it meets Program eligibility criteria. Concurrently, the application may be analyzed to determine whether it meets the program limitations as specified in Section R203-3-9. This analysis may provide the basis for application approval.

(2) The data provided by the Applicant under Section R203-3-6 may be used by the Office to establish program eligibility. Projected simple payback figures may be used to determine eligibility. Simple payback figures may be no longer than five years for lighting projects and five years for electric motor projects.

(3) In determining the maximum loan payback period, the following data may be identified and used:

(a) simple payback figures as determined by auditing figures.

(4) Eligible projects shall:

(a) reduce energy consumption; and

(b) maintain or increase the quality of performance.

(5) An Applicant may submit only one application and may be considered for only one loan per fiscal year. Multiple buildings or projects may be covered under one application.

(6) One loan may be used to fund a project consisting of both Energy Efficient Lighting Systems and Energy Efficient Motor Systems.

(7) Requested Loan amount may include Project Design costs and labor costs.

(8) A credit check may be made by the Office on all Applicants.

(9) The Office may request, at any time during the application approval process, additional information or data from the Applicant necessary for this evaluation.

(10) The loan interest rate shall be equal to the annual return earned in the Utah State Treasurer's Public Treasurer's Pool as determined the month immediately preceding the closing date of the loan.

R203-3-9. Program Limitations.

Under no circumstance shall the Program administrator approve an application if:

(1) it would result in the Office's inability to fulfill its obligations under this Program or this rule;

(2) the Applicant does not meet the application requirements of Section R203-3-8;

(3) there would be no practical improvement in quality of lighting or electric motor system performance;

(4) the total requested cost, including Project Design cost and labor cost, is less than $5,000 or exceeds $100,000;

(5) if the requested amount of the loan exceeds an aggregate limit of $400,000 awarded in any fiscal year.

(6) the Fund balance is $150,000 or less, or by awarding a loan to an Applicant would result in the Fund balance being equal to or less than $150,000.

R203-3-10. Finalization of Loan Contract/Notification.

After review of an application and determination of approval or rejection under this rule, the manager of the Office or the Program administrator shall notify that Applicant:

(1) If approved, the Applicant may be notified of the maximum loan amount approved and shall begin to comply with the provisions of this rule and assurances outlined in the State loan agreement/promissory note.

(2) If rejected at any stage of the process, the denied Applicant may file an application for reconsideration. An application for reconsideration may be reviewed only if it includes changes that correct or remove the reasons for denial of the original application.

(3) A loan agreement, including budget, assurances, promissory note and repayment schedule may be finalized and signed by authorized representatives of the Office and Applicant.

R203-3-11. Fund Transfer Process.

Once an application has been approved to receive a loan under this Program, notice of approval and loan document may

be transmitted by the Office to the Applicant. The Applicant must submit to the Office a request for payment or reimbursement. Subsequently, the Division may issue the loan to the successful Applicant.

R203-3-12. Loan Repayment.

(1) The annual energy savings computed under Subsection R203-3-8 may provide the basis for the quarterly loan repayment to the Division of Finance. Repayment period will be determined by adding 20-30 percent to the simple payback period estimated in the audit. Payment plus interest shall be sent to the Division of Finance and may be credited to the approved Applicant's account as provided in Section R203-3-11. The interest added to the quarterly payment may be determined based upon the annual return earned in the Utah State Treasurer's Public Treasurer's Pool as determined for the month immediately preceding the closing date of the loan.

(2) Upon an individual's reimbursement account balance reaching zero, the payment may cease.

(3) There may be no penalty for early repayment of the loan.

R203-3-13. Review.

The Office reserves the right to review all data and Applicants for continuing compliance with this rule during the period the Applicant has an outstanding loan obligation. The Office further reserves the right to request supplemental information it may deem necessary from an Applicant in order to effectively administer the Program and this rule.

R203-3-14. Indemnification.

The state government of Utah, any subdivision, or any agent of state government with responsibility for, or obligation to the Program, cannot be held liable for injury or damage to persons or property caused by or involved with any action related to retrofits in this Program.

R203-3-15. Notices.

An application, notice, report or data submitted under this Program may be addressed in the following manner:

Utah Office of Energy Services
ATT: Utah Commercial/Industrial Energy Loan Program
324 S. State, Suite 500
Salt Lake City, UT 84111
(801) 538-8690

KEY: commerical, industrial, loan program
December 30, 1997 653 F. Supp. 108 (D. Kan. 1986)

R203. Community and Economic Development, Community Development, Energy Services.
R203-4. Utah Public Building Energy Loan and Grant Programs.
R203-4-1. Authority.

The promulgation of this rule is authorized under a negotiated settlement of litigation known as "In re The Department of Energy Stripper Well Exemption Litigation, 653 F. Supp. 108 (D. Kan. 1986)", which allows the State of Utah, Department of Community and Economic Development, Office of Energy Services to receive funds for and administer energy programs.

R203-4-2. Purpose.

The purpose of this rule is to:

(1) Establish procedures related to use of Office funds to promote energy efficiency for public facilities.

(2) Establish criteria and conditions for advertisement of Programs.

(3) Establish criteria and conditions for providing no-cost or low-cost auditing services.

(4) Establish criteria and conditions for loan or grant application and application review processes.

(5) Establish criteria and conditions for loan or grant disbursement process.

(6) Establish criteria and conditions for loan repayment and collection processes.

(7) Establish criteria and procedures for project evaluation and reporting processes.

R203-4-3. Definitions.

(1) "Program" means the Utah Public Building Energy Loan and Grant Programs.

(2) "Fund" means $2,600,000 obligated under the petroleum violation escrow spending plan approved by the U.S. Department of Energy on August 12, 1996.

(3) "Office" means the Utah Office of Energy Services, Utah Division of Community Development, Utah Department of Community and Economic Development.

(4) "Applicant" means any unit of state and local government or other public non-profit organization, that submits an application requesting Program funds.

(5) "Payback means the average simple payback calculated by taking project costs divided by the estimated annual energy savings.

(6) "Loan or Grant Application" means the document submitted to the Office of Energy Services in person, by postal service, by electronic mail, by FAX, or by telephone and in response to an open solicitation/request for proposal from the Office of Energy Services.

(7) "Efficiency Measures" mean state-of-the-art energy efficiency technologies including energy management controls, lighting upgrades, chiller and boiler upgrades, and insulation.

(8) "Energy Audit" means a preliminary survey of a facility's existing energy using system that assesses energy consumption relative to other similar facilities, recommends operational and maintenance changes for energy savings, and investigates and ranks state-of-the-art energy technologies based upon payback.

R203-4-4. Announcement.

Office staff will notify Utah public institutions of the availability of Program loan or grant funds and specify targeted energy technologies and building/facility sectors. The notification will include a due date and a description of application processes. This may be done in the following manner:

(1) By issuing a state-wide news release announcing availability of Program; or

(2) By issuing a direct mailing.

R203-4-5. Auditing Services.

(1) An Applicant shall notify the Office regarding energy auditing needs. Notification shall be made in person, by postal services, by electronic mail, by FAX or by telephone. The Office may log and prioritize all requests based on date received.

(2) Auditing Services shall be provided by the Office only as staff time allows.

(3) Applicants will be encouraged to secure energy auditing service from utility companies, vendors and suppliers, and professional consulting engineers listed as "technical energy auditors" under the U.S. Department of Energy's Institutional Conservation Program. Applicants will also be encouraged to attend energy auditor training and complete energy audits with internal staff.

R203-4-6. Application.

All Applicants wishing to receive Program funds shall apply in the following manner:

(1) Complete and file an application provided by the Office. The following information may be necessary:

(a) name of Applicant;

(b) address and phone number of Applicant;

(c) contact person;

(d) name of facility/building

(e) cost of project;

(f) audit results and calculations including estimated energy and energy cost savings with simple payback;

(g) federal tax ID #;

(h) loan or grant amount requested (inclusive of project design costs if desired); and

(i) brief description of proposed energy efficiency measures.

R203-4-7. Application Review.

(1) The Program administrator shall, upon the proper submission of the application, make a determination of eligibility no later than 45 days from receipt of the application. This decision may be based upon the following:

(a) Applicant's compliance with all aspects of the application process; and

(b) Applicant's meeting of all project eligibility requirements defined in Section R203-4-8 and all program limitations defined in Section R203-4-9.

(2) All applications may be numbered in order of their receipt by the Office. This sequence may be used as a basis for prioritizing applicants for Program funding.

(3) If the application meets all Program criteria under Sections R203-4-8 and R203-4-9, the application may be granted approval and the Applicant shall be notified according to Section R203-4-10.

R203-4-8. Project Eligibility.

(1) Once an application has been submitted to the Office, it will be analyzed to determine Program eligibility. It should be noted that although an application is deemed "eligible", program limitations as specified in Section R203-4-9 may serve as the final basis for approving and obligating Program funds.

(2) The data provided by the Applicant under Section R203-4-6 may be used by the Office to establish program eligibility. Projected simple payback figures may be used to determine eligibility for grants and loans. Average simple payback figures may be no longer than eight years.

(3) In determining eligibility, the Office reserves the right to verify energy audit information and calculations used to calculate the payback period and to independently assess the appropriateness of technologies proposed by the Applicant:

(4) Eligible projects shall:

(a) reduce energy costs;

(b) increase building life; and

(c) improve the working or living environment within the facility.

(5) Where applications for funding exceed the Office's balance of available funds, an Applicant may only receive one loan or grant per fiscal year. Multiple buildings or projects can be covered under one application.

(6) Grant applications must include matching funds including in-kind and cash match of at least a 50-50 level. Hardship criteria set forth under the Institutional Conservation Program may allow for less than a 50-50 applicant match.

(7) Requested loan or grant amounts may include project design costs and labor costs.

(8) The Office may check the Applicant's history of energy project management and history of loan repayments. Instances of gross mismanagement and unreliability may disqualify an Applicant.

(9) The Office may request, at any time during the application approval process, additional information or data from the Applicant necessary for determining eligibility.

(10) The loan interest rate shall be zero percent. However, the Division of State Finance may charge interest for late repayments.

R203-4-9. Program Limitations.

Under no circumstance shall the Program administrator approve an application if:

(1) it would result in the Office's inability to fulfill its obligations under this Program or this rule;

(2) the Applicant does not meet the application requirements of Section R203-4-8;

(3) there is no energy cost savings from the measures funded with a loan or grant;

(4) the total requested loan amount, including project design cost and labor cost, is less than $5,000;

(5) the annual energy savings is insufficient to justify a loan repayment of eight years or less..

(6) the Fund balance is zero, or by awarding a loan to an Applicant, the Fund balance is overdrawn;

(7) the Applicant's request for loan or grant funds exceeds fifteen percent of the Office's available funds and funding to the Applicant would limit funding to other applicants.

R203-4-10. Notification of Award and Executing Loan or Grant Contracts.

After review of an application and approval or rejection under this rule, the director of the Office or the Program administrator shall notify the Applicant in writing.

(1) If approved, the Applicant may be notified of the maximum loan or grant amount approved.

(2) If rejected, the denied Applicant may file an application for reconsideration. An application for reconsideration may be reviewed only if it includes changes that correct or remove the reasons for denial of the original application.

The loan or grant agreement, including budget, assurances, scope of work and promissory note with repayment schedule (in the case of loan agreements) must be approved and signed by authorized representatives of the Utah Department of Community and Economic Devolvement, the Division of State Finance, the Office, and Applicant.

R203-4-11. Fund Transfer and Payment Process.

Once a loan or grant contract has been full executed, the Applicant may proceed with energy efficiency measures authorized by the agreement. Applicants may request up to a 30-day advance for anticipated expenses from the Office for completion of energy efficiency measures or may submit for requests for reimbursement of expenses. Full documentation of expenses must be provided to the Office. Advances and reimbursement payments will only be made to the Applicant, and cannot be assigned unless otherwise directed in writing by the Applicant.

R203-4-12. Loan Repayment.

(1) The annual energy savings computed under Subsection R203-4-8 shall serve as the basis for calculating quarterly loan repayment. The repayment period will be determined by dividing the total of funds advanced and reimbursed to the Applicant by the total anticipated annual energy cost savings. Repayments shall be sent to the Division of Finance and will be credited to the approved Applicant's loan account.

(2) As reimbursements occur and when an Applicant's loan account balance reaches zero, the repayments may cease, and the account closed.

(3) Loan recipients may make early repayment of loans or can renegotiate the terms of repayment upon the mutual consent of the Division of Finance and the Office.

R203-4-13. Review.

The Office reserves the right to review all data and monitor Applicant progress for compliance with these rules during the loan or grant contract period and for a period of three years after the loan or grant contract period has been closed. The Office further reserves the right to request supplemental information it may deem necessary from an Applicant in order to effectively administer the Program and to meet federal petroleum violation escrow account reporting requirements.

R203-4-14. Indemnification.

The state government of Utah, any subdivision, or any agent of state government with responsibility for, or obligation to the Program, cannot be held liable for injury or damage to persons or property caused by or involved with any action related to retrofits in this Program.

R203-4-15. Notices.

An application, notice, correspondence, payment requests, report or data submitted under this Program should be addressed in the following manner:

Utah Office of Energy Services
ATTN: Utah Public Energy Loan Program
324 S. State, Suite 500
Salt Lake City, UT 84111
(801) 538-8690

KEY: public building, energy loan, grant program
December 30, 1997 653 F. Supp. 108 (D. Kan. 1986)

R203. Community and Economic Development, Community Development, Energy Services.
R203-5. Utah Energy Technology Demonstration Program.
R203-5-1. Authority.

The promulgation of this rule is authorized under a negotiated settlement of litigation known as "Department of Energy Stripper Well Exemption Litigation, 653 F. Supp. 108 (D. Kan. 1986)", which allows the State of Utah, Department of Community and Economic Development, Office of Energy Services to receive funds for and administer energy programs.

R203-5-2. Purpose.

The purpose of this rule is to:

(1) Establish procedures related to use of Office funds to promote energy efficiency and the commercialization of new energy technologies.

(2) Establish criteria and conditions for advertisement of Programs.

(3) Establish criteria and conditions for providing technical support.

(4) Establish criteria and conditions for loan or grant application and application review processes.

(5) Establish criteria and conditions for loan or grant disbursement process.

(6) Establish criteria and conditions for loan repayment and collection processes.

(7) Establish criteria and procedures for project evaluation and reporting processes.

R203-5-3. Definitions.

(1) "Program" means the Utah Energy Technology Demonstration Program.

(2) "Fund" means $1,300,000 obligated under the petroleum violation escrow spending plan approved by the U.S. Department of Energy on August 12, 1996.

(3) "Office" means the Utah Office of Energy Services, Utah Division of Community Development, Utah Department of Community and Economic Development.

(4) "Applicant" means any unit public or private entity that submits an application requesting Program funds.

(5) "Payback means the average simple payback calculated by taking project costs divided by the estimated annual energy

savings.

(6) "Loan or Grant Application" means the document submitted to the Office of Energy Services in person, by postal service, by electronic mail, by FAX, or by telephone and in response to an open solicitation/request for proposal from the Office of Energy Services.

(7) "Energy Technology Demonstration" means state-of-the-art energy efficiency technologies including biomass to energy digesters, solar photovotaics, wind generation equipment, geothermal heat pumps, sulfur lamp technogy, cogeneration, and alternate transportation fuel technogloy. Program funding shall be limited to those new technologies that are readily commercially available and demonstratable.

(8) "Technology Support" means in-house or consulting engineering assistance to an Applicant in determining the applicability, reliablity, sizing, and integration of a new technology into the Applicant's operation or facilities.

R203-5-4. Announcement.

Office staff will notify Utah public and private entities of the availability of Program loan or grant funds and specify targeted energy technologies and sectors. The notification will include a due date and a description of application processes. This may be done in the following manner:

(1) by issuing a state-wide news release announcing availability of Program; or

(2) by issuing a direct mailing

R203-5-5. Technigcal Support Services.

(1) An Applicant shall notify the Office regarding technical support needs. Notification shall be made in person, by postal services, by electronic mail, by FAX or by telephone. The Office may log and prioritize all requests based on date received.

(2) Auditing Services shall be provided by the Office, its consultants, or other state agencies only as staff time and funding allows.

(3) Applicants will be encouraged to secure technical support service from utility companies, vendors and suppliers, federal laboraories, and professional consulting engineers.

R203-5-6. Application.

All Applicants wishing to receive Program funds shall apply in the following manner:

(1) Complete and file an application provided by the Office. The following information may be necessary:

(a) name of Applicant;

(b) address and phone number of Applicant;

(c) contact person;

(d) name of facility/operation

(e) cost of project;

(f) technical performance data and project economics including estimated energy and energy cost savings with savings-to-investment ratio;

(g) federal tax ID No.;

(h) loan or grant amount requested (inclusive of project design costs if desired); and

(i) brief description of proposed project.

R203-5-7. Application Review.

(1) The Program administrator shall, upon the proper submission of the application, make a determination of eligibility no later than 45 days from receipt of the application. This decision may be based upon the following:

(a) Applicant's compliance with all aspects of the application process; and

(b) Applicant's meeting of all project eligibility requirements defined in Section R203-5-8 and all program limitations defined in Section R203-5-9.

(2) All applications may be numbered in order of their receipt by the Office. This sequence may be used as a basis for prioritizing applicants for Program funding.

(3) If the application meets all Program criteria under Sections R203-5-8 and R203-5-9, the application may be granted approval and the Applicant shall be notified according to Section R203-5-10.

R203-5-8. Project Eligibility.

(1) Once an application has been submitted to the Office, it will be analyzed to determine Program eligibility. It should be noted that although an application is deemed "eligible", program limitations as specified in Section R203-5-9 may serve as the final basis for approving and obligating Program funds.

(2) The data provided by the Applicant under Section R203-5-6 may be used by the Office to establish program eligibility. Project economics may be used to determine eligibility for grants and loans. Project savings to investment ratios should exceed 1.0 by year eight of project operation.

(3) In determining eligibility, the Office reserves the right to review technical performance data and project economics and to independently assess the appropriateness and appliation of technologies proposed by the Applicant:

(4) Eligible projects shall:

(a) reduce energy costs;

(b) increase faciltiy life or improve operations; and

(c) contribute to a better Utah environment by reducing pollutants.

(5) Where applications for funding exceed the Office's balance of available funds, an Applicant may only receive one loan or grant per fiscal year.

(6) Grant applications must include matching funds including in-kind and cash match of at least a 50-50 level. The Office may require federal partnering as a condition for Program eligibility.

(7) Requested loan or grant amounts may include project design costs and labor costs.

(8) The Office may check the Applicant's history of energy project management and history of loan repayments. Instances of gross mismanagement and unreliability may disqualify an Applicant.

(9) The Office may request, at any time during the application approval process, additional information or data from the Applicant necessary for determining eligibility.

(10) The loan interest rate shall be determined by the Office in conjunction with the Division of State Finance. Additional interest may be charged late repayments.

R203-5-9. Program Limitations.

Under no circumstance shall the Program administrator approve an application if:

(1) it would result in the Office's inability to fulfill its obligations under this Program or this rule;

(2) the Applicant does not meet the application requirements of Section R203-5-8;

(3) there is no energy cost savings from the measures funded with a loan or grant;

(4) the total requested loan amount, including project design cost and labor cost, is less than $5,000;

(5) the annual energy cost savings is insufficient to justify a loan repayment of eight years or less..

(6) the Fund balance is zero, or by awarding a loan to an Applicant, the Fund balance is overdrawn;

(7) the Applicant's request for loan or grant funds exceeds fifteen percent of the Office's available funds and funding to the Applicant would limit funding to other applicants.

R203-5-10. Notification of Award and Executing Loan or Grant Contracts.

After review of an application and approval or rejection under this rule, the manager of the Office or the Program administrator shall notify the Applicant in writing.

(1) If approved, the Applicant may be notified of the maximum loan or grant amount approved.

(2) If rejected, the denied Applicant may file an application for reconsideration. An application for reconsideration may be reviewed only if it includes changes that correct or remove the reasons for denial of the original application.

The loan or grant agreement, including budget, assurances, scope of work and promissory note with repayment schedule (in the case of loan agreements) must be approved and signed by authorized representatives of the Utah Department of Community and Economic Devolvement, the Division of State Finance, the Office, and Applicant.

R203-5-11. Fund Transfer and Payment Process.

Once a loan or grant contract has been full executed, the Applicant may proceed with energy efficiency measures authorized by the agreement. Applicants may request up to a 30-day advance for anticipated expenses from the Office for completion of energy efficiency measures or may submit for requests for reimbursement of expenses. Full documentation of expenses must be provided to the Office. Advances and reimbursement payments will only be made to the Applicant, and cannot be assigned unless otherwise directed in writing by the Applicant.

R203-5-12. Loan Repayment.

(1) The annual energy savings computed under Subsection R203-5-8 shall serve as the basis for calculating quarterly loan repayment. The repayment period will be determined by dividing the total of funds advanced and reimbursed to the Applicant by the total anticipated annual energy cost savings. Repayments shall be sent to the Division of Finance and will be credited to the approved Applicant's loan account.

(2) As reimbursements occur and when an Applicant's loan account balance reaches zero, the repayments may cease, and the account closed.

(3) Loan recipients may make early repayment of loans or can renegotiate the terms of repayment upon the mutual consent of the Division of Finance and the Office.

R203-5-13. Review.

The Office reserves the right to review all data and monitor Applicant progress for compliance with these rules during the loan or grant contract period and for a period of three years after the loan or grant contract period has been closed. The Office further reserves the right to request supplemental information it may deem necessary from an Applicant in order to effectively administer the Program and to meet federal petroleum violation escrow account reporting requirements.

R203-5-14. Indemnification.

The state government of Utah, any subdivision, or any agent of state government with responsibility for, or obligation to the Program, cannot be held liable for injury or damage to persons or property caused by or involved with any action related to retrofits in this Program.

R203-5-15. Notices.

An application, notice, correspondence, payment requests, report or data submitted under this Program should be addressed in the following manner:

Utah Office of Energy Services
ATT: Utah Commercial/Industrial Energy Loan Program
324 S. State, Suite 500
Salt Lake City, UT 84111
(801) 538-8690

KEY: public building, energy loan, grant program
December 30, 1997 653 F. Supp. 108 (D. Kan. 1986)

R212. Community and Economic Development, Community Development, History.
R212-1. Adjudicative Proceedings.
R212-1-1. Scope and Applicability.

This rule is enacted in compliance with the Utah Administrative Procedures Act, Section 63-46b-1 et seq. and applies only to actions which are governed by the Act.

R212-1-2. Definitions.

A. Terms, used in this rule are defined in Section 63-46b-2.

B. In Addition:

1. "agency" means the Division of State History;

2. "applicability" means a determination if a statute, rule, or order should be applied, and if so, how the law stated should be applied to the facts;

3. "declaratory order" means an administrative interpretation or explanation of rights, status, and other legal relations under a statute, rule, or order;

4. "director" means the director of the Division of State History; and

5. "board" means the Board of State History.

R212-1-3. Designation.

The Agency designates all agency actions subject to the scope and applicability of the Utah Administrative Procedures Act, Section 63-46b-1 et seq. as formal proceedings.

R212-1-4. Petition to the Board.

Any person aggrieved by a decision by the Division of State History may petition the board for review.

R212-1-5. Request for Declarative Orders.

A. As required by Section 63-46b-21, this section 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. In order of importance, procedures governing declaratory orders are:

1. procedures specified in this rule pursuant to Chapter 46b of Title 63;

2. the applicable procedures of Chapter 46b of Title 63;

3. applicable procedures of other governing state and federal law;

4. the Utah Rules of Civil Procedure.

C. The petition, or request for agency action, shall be addressed and delivered to the director, who shall mark the petition with the date of receipt.

1. 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.

D. The agency will not issue a declaratory order that deals with a question or request that the director determines is:

1. Not within the jurisdiction and competence of the agency;

2. Trivial, irrelevant, or immaterial;

3. Not one that is ripe or appropriate for determination;

4. Currently pending or will be determined in an on-going judicial proceeding;

5. Not in the best interest of the division or the public to consider; or

6. Prohibited by state or federal law.

E. A person may file a petition for intervention under Section 63-46b-9 if delivered to the director within 20 days of the director's receipt of the declaratory order petition filed under Section 3 of this rule.

F. Petitions shall be reviewed under the following procedure:

1. The director shall promptly review and consider the petition and may:

a. meet with the petitioner;

b. consult with counsel or the Attorney General; and

c. take any action consistent with law that the agency deems necessary to provide the petition adequate review and due consideration.

d. the Petitioner shall be advised as to the status or procedures to be used concerning the Petitioner's request.

2. The director may issue an order in accordance with Section 63-46b-21(6).

3. The director may order that an adjudicative proceeding be held in accordance with Section 63-46b-21(6) in connection with review of a petition.

G. A petitioner may seek administrative review or reconsideration of a declaratory order by petitioning the Board of State History or the agency under the procedures of Sections 63-46b, 12 and 13.

KEY: administrative procedure, adjudicative proceedings*
1992 63-46b-1 et seq.
Notice of Continuation December 31, 1997

R251. Corrections, Administration.
R251-710. Search.
R251-710-1. Authority and Purpose.

(1) This rule is authorized under Sections 64-13-7, 64-13-10, and Subsections 64-13-14(1), and 64-13-17(2).

(2) The purpose of this rule is to provide the Department's policy, procedures, and requirements for conducting searches.

R251-710-2. Definitions.

"Exigent circumstances" means a situation wherein reasonable cause exists to believe that a clear and present danger to life and limb exists.

"Prison" means Utah State Prison in Draper and Central Utah Correctional Facility in Gunnison.

"Probable cause" means sufficient knowledge of articulable facts or circumstances to lead a reasonable person to conclude that another person has committed, is committing, or is about to commit a crime or a violation of a legally enforceable policy or rule.

"Public" means persons constituting the general population of a state.

"Reasonable suspicion" means sufficient knowledge of articulable facts or circumstances that would lead a reasonable person to suspect that there may be criminal activity and that the suspected person may be involved in that criminal activity.

"Statutory contraband" means any item or material prohibited on prison property by Utah Code Annotated, Section 76-6-311.3.

"Visitor" means members of the general public entering prison property.

R251-710-3. Policy.

(1) General Regulations

It is the policy of the Department that:

(a) search and seizure activities shall only be carried out by lawful means

(b) real property, places of business and residences, with legally recognized exceptions shall be searched only with a search warrant, or reasonable cause and voluntary consent.

(c) notice shall be posted at the entrance to the prison that persons, their property and vehicles are subject to search while on prison property;

(d) an officer may assume the driver of a vehicle is the proprietary possessor and has the authority to consent to a search of the vehicle;

(e) vendors, construction workers, Department personnel, or other visitors whose presence is necessary and important to prison operation may have statutory contraband confiscated and returned upon exiting prison property, may be asked to leave prison property, or may be arrested;

(f) all vehicles entering through a secure perimeter gate shall undergo a thorough search for contraband; discovery of contraband may result in arrest;

(g) mandatory searches shall be made of all vehicles accessing the double fence secure perimeters of the facilities;

(h) mandatory searches shall be conducted of all vehicles leaving the prison; vehicle trunks and compartments shall be searched prior to exit;

(i) the alert of a police service dog shall constitute probable cause for an arrest and an involuntary search may be legally conducted;

(j) an officer may search and seize contraband or evidence without a warrant, in any public place open to public view; and

(k) a visitor to the prison who has an outstanding warrant may be arrested and searched or refused entry to the prison.

(2) Visitor/Public Search.

It is the policy of the Department that:

(a) the person and property of visitors and members of the general public may be searched, and illegal contraband and evidence seized therefrom, by Department personnel pursuant to the following limitations:

(i) their person, personal property, vehicle and residence based upon reasonable suspicion coupled with voluntary consent;

(ii) their person, clothes, personal property immediately associated with their person, and vehicle may be involuntarily searched;

(A) based upon probably cause;

(B) incident to lawful arrest;

(C) pursuant to a search warrant;

(D) under exigent circumstances; or

(E) pursuant to a vehicle inventory incident to the lawful impound thereof;

(iii) their residence may be involuntarily searched;

(A) pursuant to a search warrant;

(B) in the form of a protective sweep under exigent circumstances; or

(C) at the time of, or incident to, a lawful arrest of the owner or occupant thereof, but only that portion of the residence and personal property therein which is in the immediate control of the arrestee at that time;

(b) any visitor who refuses to give consent to a search based upon reasonable suspicion may be denied entrance and required to leave the premises of the prison; and

(c) Department personnel shall, when appropriate, work in conjunction with local law enforcement agencies when effecting an arrest or conducting a search on the person or property of a member of the general public.

KEY: corrections, search and seizure, security measures, prisons

1993	**64-13-7**
Notice of Continuation December 11, 1997	**64-13-10**
	64-13-14(1)
	64-13-17(2)

R307. Environmental Quality, Air Quality.
R307-1. Utah Air Conservation Rules.
R307-1-1. Foreword and Definitions.

Chapter 19-2 and the rules adopted by the Air Quality Board constitute the basis for control of air pollution sources in the state. These rules apply and will be enforced throughout the state, and are recommended for adoption in local jurisdictions where environmental specialists are available to cooperate in implementing rule requirements.

National Ambient Air Quality Standards (NAAQS),

National Standards of Performance for New Stationary Sources (NSPS), National Prevention of Significant Deterioration of Air Quality (PSD) standards, and the National Emission Standards for Hazardous Air Pollutants (NESHAPS) apply throughout the nation and are legally enforceable in Utah.

Definitions contained in R307-1-1 are applicable to all rules adopted by the Air Quality Board.

"Abrasive Blasting" means the operation of cleaning or preparing a surface by forcibly propelling a stream of abrasive material against the surface.

"Abrasive Blasting Equipment" means any equipment utilized in abrasive blasting operations.

"Abrasives" means any material used in abrasive blasting operations including but not limited to sand, slag, steel shot, garnet or walnut shells.

"Accumulator" means the reservoir of a condensing unit receiving the condensate from the condenser.

"Actual Area of Nonattainment" means an area which is shown by monitored data or modeling actually to exceed the National Ambient Air Quality Standards (Boundaries are established in the Utah State Implementation Plan).

"Actual Emissions" means the actual rate of emissions of a pollutant from a source determined as follows:

1. In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the source actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operations. The Executive Secretary shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the source's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

2. The Executive Secretary may presume that source-specific allowable emissions for the source are equivalent to the actual emissions of the source.

3. For any source which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the source on that date.

"Acute Hazardous Air Pollutant" means any noncarcinogenic hazardous air pollutant for which a threshold limit value - ceiling (TLV-C) has been adopted by the American Conference of Governmental Industrial Hygienists in its "Threshold Limit Values for Chemical Substances and Physical Agents - Biological Exposure Indices, pages 13 - 38 (1996)."

"Adverse Impact on Visibility" means for purposes of subsection 3.11 of R307-1-3, visibility impairment which interferes with the management, protection, preservation, or enjoyment of the visitors visual experience of a mandatory Class I area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency and time of visibility impairments, and how these factors correlate with (1) times of visitor use of the mandatory Class I area, and (2) the frequency and timing of natural conditions that reduce visibility.

"Air Contaminant" means any particulate matter or any gas, vapor, suspended solid or any combination of them, excluding steam and water vapors (Section 19-2-102(1)).

"Air Contaminant Source" means any and all sources of emission of air contaminants whether privately or publicly owned or operated (Section 19-2-102(2)).

"Air Dried Coating" means coatings which are dried by the use of air or a forced warm air at temperatures up to 90 degrees C (194 degrees F).

"Air Pollution" means the presence in the ambient air of one or more air contaminants in such quantities and duration and under conditions and circumstances, as is or tends to be injurious to human health or welfare, animal or plant life, or property, or would unreasonably interfere with the enjoyment of life or use of property as determined by the standards, rules and regulations adopted by the Air Quality Board (Section 19-2-104).

"Air Quality Related Values" means, as used in analyses under R307-1-3.1.3, Public Notice, those special attributes of a Class I area, assigned by a federal Land Manager, that are adversely affected by air quality.

"Allowable Emissions" means the emission rate of a source calculated using the maximum rated capacity of the source (unless the source is subject to enforceable limits which restrict the operating rate, or hours of operation, or both) and the emission limitation established pursuant to R307-1-3.1.8.

"Ambient Air" means the surrounding or outside air (Section 19-2-102(4)).

"Application Area" means the area where the coating is applied by spraying, dipping, or flow coating techniques.

"Appropriate Authority" means the governing body of any city, town or county.

"Asphalt or Asphalt Cement" means the dark brown to black cementitious material (solid, semisolid, or liquid in consistency) of which the main constituents are bitumens which occur naturally or as a residue of petroleum refining.

"Asphalt Concrete" means a waterproof and durable paving material composed of dried aggregate which is evenly coated with hot asphalt cement.

"Atmosphere" means the air that envelops or surrounds the earth and includes all space outside of buildings, stacks or exterior ducts.

"Authorized Local Authority" means a city, county, city-county or district health department; a city, county or combination fire department; or other local agency duly designated by appropriate authority, with approval of the State Department of Health; and other lawfully adopted ordinances, codes or regulations not in conflict therewith.

"Average Monthly Storage Temperature" means the average daily storage temperature measured over a period of one month.

"Basecoat" means a primary flat wood coating or coloring of panels and normally should completely hide substrate characteristics.

"Baseline Area" means any intrastate area (and every part thereof) designated as attainment or unclassifiable under Section 107(d)(1)(D) or (E) of the federal Clean Air Act in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact equal to or greater than 1 ug/m^3 (annual average) of the pollutant for which the minor source baseline date is established.

1. Area redesignations under section 107(d)(1) (D) or (E)

of the federal Clean Air Act cannot intersect or be smaller than the area of impact of any major stationary source or major modification which:

(a) Establishes a minor source baseline date; or

(b) Is subject to 40 CFR 52.21 or subsection R307-1-3.6, and would be constructed in the same state as the state proposing the redesignation.

"Baseline Concentration" means that ambient concentration level which exists in the baseline area at the time of the applicable minor source baseline date.

"Baseline Date":

1. Major source baseline date means:

(a) In the case of particulate matter and sulfur dioxide, January 6, 1975, and

(b) In the case of nitrogen dioxide, February 8, 1988.

2. Minor source baseline date means the earliest date after the trigger date on which the first complete application under 40 CFR 52.21 or subsection R307-1-3.6 is submitted by a major source or major modification subject to the requirements of 40 CFR 52.21 or subsection R307-1-3.6. The minor source baseline is the date after which emissions from all new or modified sources consume or expand increment, including emissions from major and minor sources as well as any or all general commercial, residential, industrial, and other growth. The trigger date is:

(a) In the case of particulate matter and sulfur dioxide, August 7, 1977, and

(b) In the case of nitrogen dioxide, February 8, 1988.

"Batch Open Top Vapor Degreasing" means the batch process of cleaning and removing grease and soils from metal surfaces by condensing hot solvent vapor on the colder metal parts.

"Best Available Control Technology (BACT)" means an emission limitation and/or other controls to include design, equipment, work practice, operation standard or combination thereof, based on the maximum degree or reduction of each pollutant subject to regulation under the Clean Air Act and/or the Utah Air Conservation Act emitted from or which results from any emitting installation, which the Air Quality Board, on a case-by-case basis taking into account energy, environmental and economic impacts and other costs, determines is achievable for such installation through application of production processes and available methods, systems and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of each such pollutant. In no event shall applications of BACT result in emissions of any pollutants which will exceed the emissions allowed by Section 111 or 112 of the Clean Air Act.

"Board" means Air Quality Board. See Section 19-2-102(6)(a).

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

"Breakdown" means any malfunction or procedural error, to include but not limited to any malfunction or procedural error during start-up and shutdown, which will result in the inoperability or sudden loss of performance of the control equipment or process equipment causing emissions in excess of those allowed by approval order or the UACR.

"BTU" means British Thermal Unit, the quantity of heat necessary to raise the temperature of one pound of water one degree Fahrenheit.

"Calibration Drift" means the change in the instrument meter readout over a stated period of time of normal continuous operation when the VOC concentration at the time of measurement is the same known upscale value.

"Capture System" means the equipment (including hoods, ducts, fans, etc.) used to contain, capture, or transport a pollutant to a control device.

"Carbon Adsorption System" means a device containing adsorbent material (e.g., activated carbon, aluminum, silica gel), an inlet and outlet for exhaust gases, and a system for the proper disposal or reuse of all VOC adsorbed.

"Carcinogenic Hazardous Air Pollutant" means any hazardous air pollutant that is classified as a known human carcinogen (A1) or suspected human carcinogen (A2) by the American Conference of Governmental Industrial Hygienists in its "Threshold Limit Values for Chemical Substances and Physical Agents -Biological Exposure Indices, pages 13 - 38 (1996)."

"Chronic Hazardous Air Pollutant" means any noncarcinogenic hazardous air pollutant for which a threshold limit value - time weighted average (TLV-TWA) having no threshold limit value - ceiling (TLV-C) has been adopted by the American Conference of Governmental Industrial Hygienists in its "Threshold Limit Values for Chemical Substances and Physical Agents -Biological Exposure Indices, pages 13 - 38 (1996)."

"Class II Hard Board Paneling Finish" means finishes which meet the specifications of voluntary product standards PS-9-73 as approved by the American National Standards Institute.

"Clean Air Act" means Federal Clean Air Act as amended in 1990.

"Clear Coat" means a coating which lacks color and opacity.

"Clearing Index" means an indicator of the predicted rate of clearance of ground level pollutants from a given area. This number is calculated by the National Weather Service from daily measurements of temperature lapse rates and wind speeds from ground level to 10,000 feet. The State has been divided into three separate air quality areas for purposes of the clearing index system:

1. Area 1 includes those valleys below 6500 feet above sea level and west of the Wasatch Mountain Range and extending south through the Wasatch and Aquarius Plateaus to the Arizona border. Included are the Salt Lake, Utah, Skull and Escalante Valleys and valleys of the Sevier River Drainage.

2. Area 2 includes those valleys below 6500 feet above sea level and east of the Wasatch Mountain Range. Included are Cache Valley, the Uintah Basin, Castle Valley and valleys of the Green, Colorado, and San Juan Rivers.

3. Area 3 includes all valleys and areas above 6500 feet above sea level.

"Coating" means a protective, functional, or decorative film applied in a thin layer to a surface. This term often applies to paints such as lacquers or enamels, but is also used to refer to

films applied to paper, plastics, or foil.

"Coating Application System" means all operations and equipment which applies, conveys, and dries a surface coating, including, but not limited to, spray booths, flow coaters, flash off areas, air dryers and ovens.

"Cold Cleaning" means the batch process of cleaning and removing soils from metal surfaces by spraying, brushing, flushing or immersing while maintaining the solvent below its boiling point.

"Commence" as applied to construction of a major source or major modification means that the owner or operator has all necessary pre-construction approvals or permits and either has:

1. Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

2. Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

"Compliance Schedule" means a schedule of events, by date, which will result in compliance with these regulations.

"Condensor" means any device which removes condensable vapors by a reduction in the temperature of the captured gases.

"Confined Blasting" means any abrasive blasting conducted in an enclosure which significantly restricts air contaminants from being emitted to the ambient atmosphere, including but not limited to shrouds, tanks, drydocks, buildings and structures.

"Construction" means any physical change or change in the method of operation including fabrication, erection, installation, demolition, or modification of a source which would result in a change in actual emissions.

"Control Apparatus" means any device which prevents or controls the emission of any air contaminant directly or indirectly into the outdoor atmosphere.

"Control System" means any number of control devices, including condensors, which are designed and operated to reduce the quantity of VOC emitted to the atmosphere.

"Conveyorized Degreasing" means the continuous process of cleaning and removing greases and soils from metal surfaces by using either cold or vaporized solvents.

"Curtain Coating" means the application of a coating material to a wood substrate by means of a free-falling film of coating.

"Cutback Asphalt" means any asphalt which has been liquified by blending with petroleum solvents (diluents) or, in the case of some slow cure asphalts (road oils), which have been produced directly from the distillation of petroleum.

"Department" means Utah State Department of Environmental Quality. See Section 19-1-103(1).

"Dispersion Technique" means any technique which attempts to affect the concentration of a pollutant in the ambient air by:

1. Using that portion of a stack which exceeds good engineering practice stack height;

2. Varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant; or

3. Increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters, or combining exhaust gases from several existing stacks into one stack; or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise. The techniques described in this definition do not include:

A. The reheating of a gas stream following the use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream;

B. The merging of exhaust gas streams where:

(1) The source owner or operator demonstrates that the facility was originally designed and constructed with such merged gas streams;

(2) After July 8, 1985, such merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant. This exclusion from the definition of "dispersion techniques" shall apply only to the emission limitation for the pollutant affected by such change in operation; or

(3) Before July 8, 1985, such merging was part of a change in operation at the facility that included the installation emissions control equipment or was carried out for sound economic or engineering reasons. Where there was an increase in the emission limitation or, in the event that no emission limitation was in existence prior to the merging, an increase in the quantity of pollutants actually emitted prior to the merging, the Air Quality Board shall presume that merging was significantly motivated by an intent to gain emissions credit for greater dispersion. Absent a demonstration by the source owner or operator that merging was not significantly motivated by such intent, the Air Quality Board shall deny credit for the effects of such merging in calculating the allowable emissions for the source;

C. Smoke management in agricultural or silvicultural prescribed burning programs;

D. Episodic restrictions on residential wood-burning and open burning; or

E. Techniques under 1.49.3 which increase final exhaust gas plume rise where the resulting allowable emissions of sulfur dioxide from the facility do not exceed 5,000 tons per year.

"Dry Cleaning Facility" means a facility engaged in the cleaning of fabrics in an essentially nonaqueous solvent by means of one or more washes in solvent, extraction of excess solvent by spinning, drying, and tumbling in an airstream. The facility includes but is not limited to any washer, dryer, filter and purification systems, waste disposal systems, holding tanks, pumps, and attendant piping and valves.

"Emission" means the act of discharge into the atmosphere of an air contaminant or an effluent which contains or may contain an air contaminant; or the effluent so discharged into the atmosphere.

"Emissions Information" means, with reference to any source operation, equipment or control apparatus:

1. Information necessary to determine the identity, amount, frequency, concentration, or other characteristics related to air quality of any air contaminant which has been emitted by the source operation, equipment, or control apparatus;

2. Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any air contaminant which, under an applicable standard or limitation, the source operation was authorized to emit (including, to the extent necessary for such purposes, a description of the manner or rate of operation of the source operation), or any combination of the foregoing; and

3. A general description of the location and/or nature of the source operation to the extent necessary to identify the source operation and to distinguish it from other source operations (including, to the extent necessary for such purposes, a description of the device, installation, or operation constituting the source operation).

"Emission Limitation" means a requirement established by the Board or the Administrator, EPA, which limits the quantity, rate or concentration of emission of air pollutants on a continuous emission reduction including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction (Section 302(k), Clean Air Act).

"Emulsified Asphalt" means asphalt emulsions produced by combining asphalt with water that contains an emulsifying agent.

"Enforceable" means all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within the State Implementation Plan (including all sections within R307-1), any permit requirements established pursuant to 40 CFR 52.21 or section 3.1 of R307-1-3.

"EPA" means Environmental Protection Agency.

"Excessive Concentration" is defined for the purpose of determining good engineering practice stack height under 1.71.3 and means:

1. for sources seeking credit for stack height exceeding that established under 1.71.2, a maximum ground-level concentration due to emissions from a stack due in whole or in part to downwash, wakes, and eddy effects produced by nearby structures or nearby terrain features which individually is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and which contributes to a total concentration due to emissions from all sources that is greater than an ambient air quality standard. For sources subject to the prevention of significant deterioration program (subsection 3.6 of R307-1-3), an excessive concentration alternatively means a maximum ground-level concentration due to emissions from a stack due in whole or in part to downwash, wakes, or eddy effects produced by nearby structures or nearby terrain features which individually is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and greater than a prevention of significant deterioration increment. The allowable emission rate to be used in making demonstrations under subsection 3.8 of R307-1-3 shall be prescribed by the state approval order or the federal new source performance standard that is applicable to the source category, whichever is more stringent, unless the owner or operator demonstrates that this emission rate is infeasible. Where such demonstrations are approved by the Executive Secretary, an alternative emission rate shall be established in consultation with the source owner or operator. The allowable emission rate to be used in making demonstrations under subsection 3.8 of R307-1-3 for sources for which no federal new source performance standard or state approval order has been issued shall be established by the Executive Secretary in consultation with the source owner or operator.

2. for sources seeking credit after October 11, 1983, for increases in existing stack heights up to the heights established under 1.71.2 either,

A. a maximum ground-level concentration due in whole or part to downwash, wakes or eddy affects as provided in 1.55.1, except that the emission rate specified by any applicable State implementation plan (or, in the absence of such a limit, the actual emission rate) shall be used, or

B. the actual presence of a local nuisance caused by the existing stack, as determined by the authority administering the State implementation plan.

3. for sources seeking credit after January 12, 1983, for a stack height determined under 1.71.2 where the Executive Secretary requires the use of a field study or fluid model to verify GEP stack height, for sources seeking stack height credit after November 9, 1984, based on the aerodynamic influence of cooling towers, and for sources seeking stack height credit after December 31, 1970, based on the aerodynamic influence of structures not adequately represented by the equations in 1.71.2, a maximum ground-level concentration due in whole or in part to downwash, wakes, or eddy effects that is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects.

"Executive Director" means the Executive Director of the Utah Department of Environmental Quality. See Section 19-1-103(2).

"Executive Secretary" means the Executive Secretary of the Board.

"Existing Installation" means an installation, construction of which began prior to the effective date of any regulation having application to it.

"Exterior Single Coat" means the same as topcoat but is applied directly to the metal substrate omitting the primer application.

"Extreme Performance Coatings" means coatings designed for harsh exposure or extreme environmental conditions.

"Fabric Coating" means the coating or saturation of a textile substrate with a knife, roll or rotogravure coater to impart characteristics that are not initially present, such as strength, stability, water or acid repellency, or appearance.

"Facility" means machinery, equipment, structures of any part or accessories thereof, installed or acquired for the primary purpose of controlling or disposing of air pollution. It does not include an air conditioner, fan or other similar device for the comfort of personnel.

"Filler" means a type of coating used to fill pores, voids, and cracks in wood to provide a smooth surface. It can also be used to accentuate the grain of natural hardwood veneers.

"Fireplace" means all devices both masonry or factory built units (free standing fireplaces) with a hearth, fire chamber or similarly prepared device connected to a chimney which provides the operator with little control of combustion air, leaving its fire chamber fully or at least partially open to the room. Fireplaces include those devices with circulating

systems, heat exchangers, or draft reducing doors with a net thermal efficiency of no greater than twenty percent and are used for aesthetic purposes.

"Flat Wood Coating" means the surface coating of any flat wood products.

"Flexographic Printing" means the application of works, designs, and pictures to substrate by means of a roll printing technique in which the pattern to be applied is raised above the printing roll and the image carrier is made of rubber or other elastomeric materials.

"Freeboard Ratio" means the freeboard height divided by the width of the degreaser.

"Fugitive Dust" means particulate, composed of soil and/or industrial particulates such as ash, coal, minerals, etc., which becomes airborne because of wind or mechanical disturbance of surfaces. Natural sources of dust and fugitive emissions are not fugitive dust within the meaning of this definition.

"Fugitive Emissions" means emissions from an installation or facility which are neither passed through an air cleaning device nor vented through a stack or could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"Garbage" means all putrescible animal and vegetable matter resulting from the handling, preparation, cooking and consumption of food, including wastes attendant thereto.

"Gasoline" means any petroleum distillate, used as a fuel for internal combustion engines, having a Reid vapor pressure of 4 pounds or greater.

"Good Engineering Practice (GEP) Stack Height" means the greater of:

1. Sixty-five (65) meters, measured from the ground-level elevation at the base of the stack;

2. Where H_g=good engineering practice stack height measured from the ground-level elevation at the base of the stack; H=height of nearby structure(s) measured from the ground-level elevation at the base of the stack; L=lesser dimension (height or projected width) of nearby structure(s), and provided that the Executive Secretary may require the use of a field study or fluid model to verify GEP stack height for the source:

A. for stacks in existence on January 12, 1979, and for which the owner or operator had obtained all required air quality permits or approvals, $H_g = 2.5L$ provided the owner or operator produces evidence that this equation was actually relied on in establishing an emission limitation;

B. for all other stacks, $H_g = H+1.5L$; or

3. The height demonstrated by a fluid model or a field study approved by the Executive secretary, which ensures that the emissions from the stack do not result in excessive concentrations of air contaminants as a result of atmospheric downwash, wakes, or eddy effects created by the source itself, nearby structures or nearby terrain features.

"Groove Coat" means a flat wood coating which covers grooves cut into the panel to assure that the grooves are compatible with the final surface color.

"Hardwood Plywood" means plywood whose surface layer is a veneer of hardwood.

"Hazardous Air Pollutant (HAP)" means any pollutant listed by the EPA as a hazardous air pollutant in conformance with Section 112(b) of the Clean Air Act. A list of these pollutants is available at the Division of Air Quality.

"Heavy Fuel Oil" means a petroleum product or similar material with a boiling range higher than that of diesel fuel.

"Hot Well" means the reservoir of a condensing unit receiving the warm condensate consisting primarily of water from the condenser.

"Household Waste" means any solid or liquid material normally generated by the family in a residence in the course of ordinary day-to-day living, including but not limited to garbage, paper products, rags, leaves and garden trash.

"Hydroblasting" means any abrasive blasting using high pressure liquid as the propelling force.

"Incinerator" means a combustion apparatus designed for high temperature operation in which solid, semisolid, liquid, or gaseous combustible wastes are ignited and burned efficiently and from which the solid and gaseous residues contain little or no combustible material.

"Indirect Source" means a building, structure or installation which attracts or may attract mobile source activity that results in emission of a pollutant for which there is a national standard.

"Ink" means a flat wood coating used to put a decorative design on printed panels. It can also produce special appearances on natural hardwood plywood.

"Installation" means a discrete process with identifiable emissions which may be part of a larger industrial plant. Pollution equipment shall not be considered a separate installation or installations.

"Interior Single Coat" means a single film of coating applied to internal parts of large appliances that are not normally visible to the user.

"Knife Coating" means the application of a coating material to a substrate by means of drawing the substrate beneath a blade that spreads the coating evenly over the width of the substrate.

"Large Appliances" means doors, cases, lids, panels, and interior support parts of residential and commercial washers, dryers, ranges, refrigerators, freezers, water heaters, dishwashers, trash compactors, air conditioners, and other similar products.

"Lowest Achievable Emission Rate (LAER)", as defined in Section 173(2), Clean Air Act, means for any source, that rate of emissions which reflects:

1. The most stringent emission limitation which is contained in the implementation plan of any state for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable, or

2. The most stringent emission limitation which is achieved in practice by such class or category of source, whichever is more stringent.

In no event shall the application of this term permit a proposed new source to emit any pollutant in excess of the amount allowable under applicable new source standards of performance.

"Low Organic Solvent Coating" means coatings which contain less organic solvents than the conventional coatings used by industry. Low organic solvent coatings include water-borne, higher-solids, electrodeposition, and powder coatings.

"LPG" means liquified petroleum gas such as propane or butane.

"Magnet Wire Coating" means the process of applying coating of electrical insulating varnish or enamel to aluminum or copper wire for use in electrical machinery.

"Major Modification" means any physical change in or change in the method of operation of a major source that would result in a significant net emissions increase of any pollutant. A net emissions increase that is significant for volatile organic compounds shall be considered significant for ozone. Within Salt Lake and Davis Counties or any nonattainment area for ozone, a net emissions increase that is significant for nitrogen oxides shall be considered significant for ozone. Within areas of nonattainment for PM10, a significant net emission increase for any PM10 precursor is also a significant net emission increase for PM10. A physical change or change in the method of operation shall not include:

1. routine maintenance, repair and replacement;

2. use of an alternative fuel or raw material by reason of an order under section 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974, or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

3. use of an alternative fuel by reason of an order or rule under section 125 of the federal Clean Air Act;

4. use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

5. use of an alternative fuel or raw material by a source:

A. which the source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any enforceable permit condition; or

B. which the source is otherwise approved to use;

6. an increase in the hours of operation or in the production rate unless such change would be prohibited under any enforceable permit condition;

7. any change in ownership at a source.

"Major Source" means, to the extent provided by the federal Clean Air Act as applicable to these rules:

1. any stationary source of air pollutants which emits, or has the potential to emit, one hundred tons per year or more of any pollutant subject to regulation under the Clean Air Act; or

A. any source located in a nonattainment area for carbon monoxide which emits, or has the potential to emit, carbon monoxide in the amounts outlined in Section 187 of the federal Clean Air Act with respect to the severity of the nonattainment area as outlined in Section 187 of the federal Clean Air Act; or

B. any source located in Salt Lake or Davis Counties or in a nonattainment area for ozone which emits, or has the potential to emit, VOC or nitrogen oxides in the amounts outlined in Section 182 of the federal Clean Air Act with respect to the severity of the nonattainment area as outlined in Section 182 of the federal Clean Air Act; or

C. any source located in a nonattainment area for PM10 which emits, or has the potential to emit, PM10 or any PM10 precursor in the amounts outlined in Section 189 of the federal Clean Air Act with respect to the severity of the nonattainment area as outlined in Section 189 of the federal Clean Air Act.

2. any physical change that would occur at a source not qualifying under subpart 1 as a major source, if the change would constitute a major source by itself;

3. the fugitive emissions and fugitive dust of a stationary source shall not be included in determining for any of the purposes of this section whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

(a) Coal cleaning plants (with thermal dryers);

(b) Kraft pulp mills;

(c) Portland cement plants;

(d) Primary zinc smelters;

(e) Iron and steel mills;

(f) Primary aluminum or reduction plants;

(g) Primary copper smelters;

(h) Municipal incinerators capable of charging more than 250 tons of refuse per day;

(i) Hydrofluoric, sulfuric, or nitric acid plants;

(j) Petroleum refineries;

(k) Lime plants;

(l) Phosphate rock processing plants;

(m) Coke oven batteries;

(n) Sulfur recovery plants;

(o) Carbon black plants (furnace process);

(p) Primary lead smelters;

(q) Fuel conversion plants;

(r) Sintering plants;

(s) Secondary metal production plants;

(t) Chemical process plants;

(u) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British Thermal Units per hour heat input;

(v) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(w) Taconite ore processing plants;

(x) Glass fiber processing plants;

(y) Charcoal production plants;

(z) Fossil fuel-fired steam electric plants of more than 250 million British Thermal Units per hour heat input;

(aa) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the federal Clean Air Act.

"Major Source" means, for the purposes of Subsection R307-1-3.6:

1. any of the following sources of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation under the Clean Air Act: Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input, coal cleaning plants (with thermal dryers), kraft pulp mills, portland cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants, primary copper smelters, municipal incinerators capable of charging more than 250 tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production plants, chemical process plants, fossil fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input, petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels, taconite ore

processing plants, glass fiber processing plants, and charcoal production plants;

2. any other source which emits, or has the potential to emit, 250 tons per year or more of any air pollutant; or

3. a source which does not otherwise qualify as a major source as defined in this paragraph, but which is physically changed, which change itself would constitute a major source.

4. a source which is major for volatile organic compounds is major for ozone.

5. The fugitive emissions and fugitive dust of a stationary source shall not be included in determining for any of the purposes of this section whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

(a) Coal cleaning plants (with thermal dryers);

(b) Kraft pulp mills;

(c) Portland cement plants;

(d) Primary zinc smelters;

(e) Iron and steel mills;

(f) Primary aluminum ore reduction plants;

(g) Primary copper smelters;

(h) Municipal incinerators capable of charging more than 250 tons of refuse per day;

(i) Hydrofluoric, sulfuric, or nitric acid plants;

(j) Petroleum refineries;

(k) Lime plants;

(l) Phosphate rock processing plants;

(m) Coke oven batteries;

(n) Sulfur recovery plants;

(o) Carbon black plants (furnace process);

(p) Primary lead smelters;

(q) Fuel conversion plants;

(r) Sintering plants;

(s) Secondary metal production plants;

(t) Chemical process plants;

(u) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(v) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(w) Taconite ore processing plants;

(x) Glass fiber processing plants;

(y) Charcoal production plants;

(z) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;

(aa) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Federal Clean Air Act.

"Metal Furniture Coating" means the surface coating of any furniture made of metal or any metal part which will be assembled with other metal, wood fabric, plastic, or glass parts to form a furniture piece.

"Modification" means any planned change in a source which results in a potential increase of emission.

"Multiple Nozzles" means a group of two or more nozzles being used for abrasive cleaning of the same surface in such close proximity that their separate plumes are indistinguishable.

"National Ambient Air Quality Standards (NAAQS)" means the allowable concentrations of air pollutants in the ambient air specified by the Federal Government (Title 40, Code of Federal Regulations, Part 50).

"Natural Finish Hardwood Plywood Panels" means panels whose original grain pattern is enhanced by essentially transparent finishes frequently supplemented by fillers and toners.

"Nearby" as used in subpart 2 of the definition "Good Engineering Practice (GEP) Stack Height" is defined for a specific structure or terrain feature and

1. for the purpose of applying the formulae provided in subpart 1 of the definition "Good Engineering Practice (GEP) Stack Height", means that distance up to five times the lesser of the height or the width dimension of a structure, but not to be greater than 1/2 mile, and

2. for conducting demonstrations using subpart 3 of the definition "Good Engineering Practice (GEP) Stack Height", means not greater than 1/2 mile, except that the portion of terrain feature may be considered to be nearby which falls within a distance of up to 10 times the maximum height of the feature, not to exceed 2 miles if such a feature achieves a height 1/2 mile from the stack that is at least 40 percent of the GEP stack height determined by the formulae provided in subpart 2.B of the definition "Good Engineering Practice (GEP) Stack Height" of this part or 26 meters, whichever is greater, as measured from the ground-level elevation at the base of the stack. The height of the structure or terrain feature is measured from the ground-level elevation at the base from the stack.

"Net Emissions Increase" means the amount by which the sum of the following exceeds zero:

1. any increase in actual emissions from a particular physical change or change in method of operation at a source; and

2. any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable. For purposes of determining a "net emissions increase":

A. An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between the date five years before construction on the particular change commences; and the date that the increase from the particular change occurs.

B. An increase or decrease in actual emissions is creditable only if it has not been relied on in issuing a prior approval for the source which approval is in effect when the increase in actual emissions for the particular change occurs.

C. An increase or decrease in actual emission of sulfur dioxide, nitrogen oxides or particulate matter which occurs before an applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available. With respect to particulate matter, only PM10 emissions will be used to evaluate this increase or decrease.

D. An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

E. A decrease in actual emissions is creditable only to the extent that:

(1) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(2) It is enforceable at and after the time that actual construction on the particular change begins; and

(3) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(4) It has not been relied on in issuing any permit under Section R307-1-3.1 nor has it been relied on in demonstrating attainment or reasonable further progress.

F. An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

"New Installation" means an installation, construction of which began after the effective date of any regulation having application to it.

"Nonattainment Area" means for any pollutant, "an area which is shown by monitored data or which is calculated by air quality modeling (or other methods determined by the Administrator, EPA to be reliable) to exceed any National Ambient Air Quality Standard for such pollutant" (Section 171, Clean Air Act). Such term includes any area designated as nonattainment under Section 107, Clean Air Act.

"Offset" means an amount of emission reduction, by a source, greater than the emission limitation imposed on such source by these regulations and/or the State Implementation Plan.

"Opacity" means the capacity to obstruct the transmission of light, expressed as percent.

"Open Burning" means any burning of combustible materials resulting in emission of products of combustion into ambient air without passage through a chimney or stack.

"Open Top Vapor Degreaser" means the batch process of cleaning and removing soils from metal surfaces by condensing low solvent vapor on the colder metal parts.

"Owner or Operator" means any person who owns, leases, controls, operates or supervises a facility, an emission source, or air pollution control equipment.

"PSD" Area means an area designated as attainment or unclassifiable under section 107(d)(1)(D) or (E) of the federal Clean Air Act.

"Packaging Rotogravure Printing" means rotogravure printing upon paper, paper board, metal foil, plastic film, and other substrates, which are, in subsequent operations, formed into packaging products and labels.

"Paper Coating" means uniform distribution of coatings put on paper and pressure sensitive tapes regardless of substrate. Related web coating processes on plastic film and decorative coatings on metal foil are included in this definition. Paper coating covers saturation operations as well as coating operations. (Saturation means dipping the web into a bath).

"Particle Board" means a manufactured board made of individual particles which have been coated with a binder and formed into flat sheets by pressure.

"PM10 Particulate Matter" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by an EPA reference or equivalent method.

"PM10 Precursor" means any chemical compound or substance which, after it has been emitted into the atmosphere, undergoes chemical or physical changes that convert it into particulate matter, specifically PM10. It includes sulfur dioxide and nitrogen oxides.

"Part 70 Source" means any source subject to the permitting requirements of R307-15.

"Patch Mix" means a mixture of an asphalt binder and aggregate in which cutback or emulsified asphalts are used either as sprayed liquid or as a binder.

"Peak Ozone Season" means June 1 through August 31, inclusive.

"Penetrating Prime Coat" means an application of low-viscosity liquid asphalt to an absorbent surface in order to prepare it for paving with asphaltic concrete.

"Person" means an individual, trust, firm, estate, company, corporation, partnership, association, state, state or federal agency or entity, municipality, commission, or political subdivision of a state. (Subsection 19-2-103(4)).

"Petroleum Refinery Complex" means any source or installation engaged in producing gasoline, aromatics, kerosene, distillate fuel oils, residual fuel oils, lubricants, asphalt, or other products through distillation of petroleum or through redistillation, cracking, rearrangement, or reforming of unfinished petroleum derivatives.

"Potential to Emit" means the maximum capacity of a source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

"Pressure Head Coating" means the application of a coating material to a wood substrate by means of a pressure head coater where coating material is metered into a pressure head and forced through a calibrated slit between two knives.

"Prime Coat" means the first film of coating applied in a two-coat operation.

"Primer" means a flat wood coating used to protect the wood from moisture and to provide a good surface for further coating applications.

"Printed Interior Panels" means panels whose grain or natural surface is obscured by fillers or basecoats upon which a simulated grain or decorative pattern is printed.

"Process Drain" means any drain used in a refinery complex on equipment which processes, transfers a volatile organic compound or mixture of volatile organic compounds.

"Process Level" means the operation of a source, specific to the kind or type of fuel, input material, or mode of operation.

"Process Rate" means the quantity per unit of time of any raw material or process intermediate consumed, or product generated, through the use of any equipment, source operation, or control apparatus. For a stationary internal combustion unit or any other fuel burning equipment, this term may be expressed as the quantity of fuel burned per unit of time.

"Process Unit Turnaround" means the procedure of shutting a refinery unit down after a run to do necessary

maintenance and repair work and putting the unit back in operation.

"Production Equipment Exhaust System" means a device for collecting and directing out of the work area VOC fugitive emissions from reactor openings, centrifuge openings, and other vessel openings for the purpose of protecting employees from excessive VOC exposure.

"Publication of Rotogravure Printing" means rotogravure printing upon paper which is subsequently formed into books, magazines, catalogues, brochures, directories, newspaper supplements, and other types of printed materials.

"Reactor" means any vat or vessel, which may be jacketed to permit temperature control, designed to contain chemical reactions.

"Reasonable Further Progress" means annual incremental reductions in emission of an air pollutant which are sufficient to provide for attainment of the NAAQS by the date identified in the State Implementation Plan.

"Refuse" means solid wastes, such as garbage and trash.

"Residence" means a dwelling in which people live, including all ancillary buildings.

"Residential Solid Fuel Burning" device means any residential burning device except a fireplace connected to a chimney that burns solid fuel and is capable of, and intended for use as a space heater, domestic water heater, or indoor cooking appliance, and has an air-to-fuel ratio less than 35-to-1 as determined by the test procedures prescribed in 40 CFR 60.534. It must also have a useable firebox volume of less than 20 cubic feet, a minimum burn rate less than 5 kg/hr as determined by test procedures prescribed in 40 CFR 60.534, and weigh less than 800 kg. Appliances that are described as prefabricated fireplaces and are designed to accommodate doors or other accessories that would create the air starved operating conditions of a residential solid fuel burning device shall be considered as such. Fireplaces are not included in this definition for solid fuel burning devices.

"Roll Coating" means the application of a coating material to a substrate by means of hard rubber or steel rolls.

"Roll Printing" means the application of words, designs and pictures to a substrate usually by means of a series of hard rubber or steel rolls each with only partial coverage.

"Rotogravure Coating" means the application of a uniform layer of material across the entire width of the web to substrate by means of a roll coating technique in which the pattern to be applied is etched on the coating roll. The coating material is picked up in these recessed areas and is transferred to the substrate.

"Rotogravure Printing" means the application of words, designs, and pictures to a substrate by means of a roll printing technique which involves a recessed image area in the form of cells.

"Salvage Operation" means any business, trade or industry engaged in whole or in part in salvaging or reclaiming any product or material, including but not limited to metals, chemicals, shipping containers or drums.

"Sealer" means a type of coating used to seal off substances in the wood which may affect subsequent finishes as well as protect the wood from moisture.

"Secondary Emissions" means emissions which would occur as a result of the construction or operation of a major source or major modification, but do not come from the major source or major modification itself.

Secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the source or modification which causes the secondary emissions. Secondary emissions include emissions from any off-site support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

Fugitive emissions and fugitive dust from the source or modification are not considered secondary emissions.

"Separation Operation" means any process that separates a mixture of compounds and solvents into two or more components. Specific mechanisms include extraction, centrifugation, filtration, and crystallization.

"Significant" means:

1. In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Carbon monoxide: 100 ton per year (tpy)
Nitrogen oxides: 40 tpy
Sulfur dioxide: 40 tpy
PM10 Particulate matter: 15 tpy
Particulate matter: 25 tpy
Ozone: 40 tpy of volatile organic compounds
Lead: 0.6 tpy

2. For purposes of Section R307-1-3.6 it shall also additionally mean for:

a. A rate of emissions that would equal or exceed any of the following rates:

Asbestos: 0.007 tpy
Beryllium: 0.0004 tpy
Mercury: 0.1 tpy
Vinyl Chloride: 1 tpy
Fluorides: 3 tpy
Sulfuric acid mist: 7 tpy
Hydrogen Sulfide: 10 tpy
Total reduced sulfur (including H2S): 10 tpy
Reduced sulfur compounds (including H2S): 10 tpy

b. In reference to a net emissions increase or the potential of a source to emit a pollutant subject to regulation under the Clean Air Act not listed in 1 and 2 above, any emission rate.

c. Notwithstanding the rates listed in 1 and 2 above, any emissions rate or any net emissions increase associated with a major source or major modification, which would construct within 10 kilometers of a Class I area, and have an impact on such area equal to or greater than 1 ug/cubic meter, (24-hour average).

"Single Coat" means a single film of coating applied directly to the metal substrate omitting the primer application.

"Sole Source of Heat " means the residential solid fuel burning device is the only available source of heat for the entire residence, except for small portable heaters.

"Solid Fuel" means wood, coal, and other similar organic material or combination of these materials.

"Solvent" means organic materials which are liquid at standard conditions (Standard Temperature and Pressure) and which are used as dissolvers, viscosity reducers, or cleaning agents.

"Solvent Metal Cleaning" means the process of cleaning soils from metal surfaces by cold cleaning, open top vapor degreasers, or conveyorized degreasing.

"Source" means any structure, building, facility, or installation which emits or may emit any air pollutant subject to regulation under the Clean Air Act and which is located on one or more continuous or adjacent properties and which is under the control of the same person or persons under common control. A building, structure, facility, or installation means all of the pollutant-emitting activities which belong to the same industrial grouping. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e. which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (US Government Printing Office stock numbers 4101-0065 and 003-005-00176-0, respectively).

"Specialty Printing Operations" means all gravure and flexographic operations which print a design or image, excluding publication gravure and packaging gravure printing. Specialty printing operations include, among other things, printing on paper cups and plates, patterned gift wrap, wallpaper, and floor coverings.

"Stack" means any point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct but not including flares.

"Stack in Existence" means that the owner or operator had

1. begun, or caused to begin, a continuous program of physical on-site construction of the stack, or

2. entered into binding agreements or contractual obligations, which could not be canceled or modified without substantial loss to the owner or operator, to undertake a program of construction of the stack to be completed in a reasonable time.

"Stain" means a nonprotective flat wood coating which colors the wood surface without obscuring the grain.

"Standards of Performance for New Stationary Sources" means the Federally established requirements for performance and record keeping (Title 40 Code of Federal Regulations, Part 60).

"State" means Utah State.

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

"Synthesized Pharmaceutical Manufacturing" means the manufacture of pharmaceutical products by chemical synthesis.

"Temporary" means not more than 180 calendar days.

"Threshold Limit Value - Ceiling (TLV-C)" means the airborne concentration of a substance which may not be exceeded, as adopted by the American Conference of Governmental Industrial Hygienists in its "Threshold Limit Values for Chemical Substances and Physical Agents - Biological Exposure Indices (1996), pages 13 - 38."

"Threshold Limit Value - Time Weighted Average (TLV-TWA)" means the time-weighted airborne concentration of a substance adopted by the American Conference of Governmental Industrial Hygienists in its "Threshold Limit Values for Chemical Substances and Physical Agents - Biological Exposure Indices (1996), pages 13 -38."

"Tile Board" means paneling that has a colored waterproof surface coating.

"Total Suspended Particulate (TSP)" means minute separate particles of matter, collected by high volume sampler.

"Toxic Screening Level" means an ambient concentration of an air contaminant equal to a threshold limit value - ceiling (TLV- C) or threshold limit value -time weighted average (TLV-TWA) divided by a safety factor.

"Trash" means solids not considered to be highly flammable or explosive including, but not limited to clothing, rags, leather, plastic, rubber, floor coverings, excelsior, tree leaves, yard trimmings and other similar materials.

"Unconfined Blasting" means any abrasive blasting which is not confined blasting as defined above.

"Vacuum Producing System" means any reciprocating, rotary, or centrifugal blower or compressor, or any jet ejector or device that takes suction from a pressure below atmospheric and discharges against atmospheric pressure.

"Vertically Restricted Emissions Release" means the release of an air contaminant through a stack or opening whose flow is directed in a downward or horizontal direction due to the alignment of the opening or a physical obstruction placed beyond the opening, or at a height which is less than 1.3 times the height of an adjacent building or structure, as measured from ground level.

"Vertically Unrestricted Emissions Release" means the release of an air contaminant through a stack or opening whose flow is directed upward without any physical obstruction placed beyond the opening, and at a height which is at least 1.3 times the height of an adjacent building or structure, as measured from ground level.

"Vinyl Coating" means applying a decorative or protective top coat, or printing on vinyl coated fabric or vinyl sheets.

"Volatile Organic Compound (VOC)" as defined in 40 CFR Subsection 51.100(s)(1), in effect on November 7, 1996, is hereby adopted and incorporated by reference.

"Waste" means all solid, liquid or gaseous material, including, but not limited to, garbage, trash, household refuse, construction or demolition debris, or other refuse including that resulting from the prosecution of any business, trade or industry.

"Waxy, Heavy Pour Crude Oil" means a crude oil with a pour point of 50 degrees F or higher as determined by the American Society for Testing and Materials Standard D97-66, "Test for pourpoint of petroleum oils."

"Wet Abrasive Blasting" means any abrasive blasting using compressed air as the propelling force and sufficient water to minimize the plume.

"Zero Drift" means the change in the instrument meter readout over a stated period of time of normal continuous operation when the VOC concentration at the time of measurement is zero.

R307-1-2. General Requirements.

2.1 Air Pollution Prohibited. Emission of air contaminants in sufficient quantities to cause air pollution as defined in subsection 1.11 of R307-1-1 is prohibited. The State statute provides for penalties up to $50,000/day for violation of State statutes, regulations, rules or standards (See Section 19-2-115 for further details).

2.2 Periodic Reports of Emissions and Availability of Information. The owner or operator of any stationary air-contaminant source in Utah shall furnish to the Board the periodic reports required under Section 19-2-104(1)(c) and any other information as the Board may deem necessary to determine whether the source is in compliance with Utah and Federal regulations and standards. The information thus obtained will be correlated with applicable emission standards or limitations and will be available to the public during normal business hours at the Division of Air Quality.

2.3 Variances Authorized

2.3.1 Variance from these regulations may be granted by the Board as provided by law (See Section 19-2-113) unless prohibited by the Clean Air Act:

A. to permit operation of an air pollution source for the time period involved in installing or constructing air pollution control equipment in accordance with a compliance schedule negotiated by the Executive Secretary and approved by the Board.

B. to permit operation of an air pollution source where there is no practicable means known or available for adequate prevention, abatement or control of the air pollutants involved. Such a variance shall be only until the necessary means for prevention, abatement or control becomes known and available, subject to the use of substitute or alternate measures the Board may prescribe.

C. to permit operation of an air pollution source where the control measures, because of their extent or cost, must be spread over a considerable period of time.

2.3.2 Variance requests, as set forth in Section 19-2-113, may be submitted by the owner or operator who is in control of any plant, building, structure, establishment, process or equipment.

2.4 General Burning.

As provided in Section 19-2-114, the provisions of R307-1-2.4.1 through R307-1-2.4.5 below are not applicable to:

(1) burning incident to horticultural or agricultural operations of:

(a) prunings from trees, bushes, and plants; or

(b) dead or diseased trees, bushes, and plants, including stubble;

(2) burning of weed growth along ditch banks incident to clearing these ditches for irrigation purposes;

(3) controlled heating of orchards or other crops to lessen the chances of their being frozen so long as the emissions from this heating do not violate minimum standards set by the board; and

(4) the controlled burning of not more than two structures per year by an organized and operating fire department for the purpose of training fire service personnel when the United States Weather Service clearing index is above 500.

See also Section 11-7-1(2)(a).

2.4.1 Community Waste Disposal. No open burning shall be done at sites used for disposal of community trash, garbage and other wastes except as authorized through a variance or as authorized for a specific period of time by the Board on the basis of justifiable circumstances reviewed and weighed in terms of pollution effects and other relevant considerations at an appropriate hearing following written application.

2.4.2 General Prohibitions. No person shall burn any trash, garbage or other wastes, or shall conduct any salvage operation by open burning except in conformity with the provisions of Subsections R307-1-2.4.3 and R307-1-2.4.4.

2.4.3 Permissible Burning - Without Permit. When not prohibited by other laws or by other officials having jurisdiction and provided that a nuisance as defined in Section 76-10-803 is not created, the following types of open burning are permissible without the necessity of securing a permit:

A. in devices for the primary purpose of preparing food such as outdoor grills and fireplaces;

B. campfires and fires used solely for recreational purposes where such fires are under control of a responsible person;

C. in indoor fireplaces and residential solid fuel burning devices except as provided in Subsection R307-17-3 of these regulations;

D. properly operated industrial flares for combustion of flammable gases; and

E. burning, on the premises, of combustible household wastes generated by occupants of dwellings of four family units or less in those areas only where no public or duly licensed disposal service is available.

2.4.4 Permissible Burning - With Permit. Open burning is authorized by the issuance of a permit as specified in R307-1-2.4.4.B when not prohibited by other laws or other officials having jurisdiction, and when a nuisance as defined in Section 76-10-803 is not created.

A. Individual permits for the types of burning listed in R307-1-2.4.4.B may be issued by an authorized local authority under the "clearing index" system approved and coordinated by the Department of Environmental Quality.

B. Types of burning for which a permit may be granted are:

(1) open burning of tree cuttings and slash in forest areas where the cuttings accrue from pulping, lumbering, and similar operations, but excluding waste from sawmill operations such as sawdust and scrap lumber;

(2) open burning of trees and brush within railroad rights-of-way provided that dirt is removed from stumps before burning, and that tires, oil more dense than #2 fuel oil or other materials which can cause severe air pollution are not used to start fires or keep fires burning;

(3) open burning of solid or liquid fuels or structures for removal of hazards or eyesores;

(4) open burning, in remote areas, of highly explosive or other hazardous materials, for which there is no other known practical method of disposal;

(5) open burning of clippings, bushes, plants and prunings from trees incident to property clean-up activities provided that the following conditions have been met:

(a) in any area of the state, the local county fire marshall has established a 30 day period between March 30 and May 30

for such burning to occur and notified the executive secretary of the open burning period prior to the commencement of the 30 day period, or, in areas which are located outside of Salt Lake, Davis, Weber, and Utah Counties, the local county fire marshall has established, if allowed by the state forester under Section 65A-8-9, a 30 day period between September 15 and October 30 for such burning to occur and has notified the executive secretary of the opening burning period prior to the commencement of the 30 day period;

(b) such burning occurs during the period established by the local county fire marshall;

(c) materials to be burned are thoroughly dry;

(d) no trash, rubbish, tires, or oil are used to start fires or included in the material to be burned.

C. The Board may grant a permit for types of open burning not specified in R307-1-2.4.4.B on written application if the Board finds that the burning is not inconsistent with the State Implementation Plan.

2.4.5 Special Conditions. Open burning for special purposes, or under unusual or emergency circumstances, may be approved by the executive secretary.

2.5 Confidentiality of Information

Any person submitting information pursuant to these regulations may request that such information be treated as a trade secret or on a confidential basis, in which case the executive secretary and Board shall so treat such information. If no claim is made at the time of submission, the executive secretary may make the information available to the public without further notice. Information required to be disclosed to the public under State or Federal law may not be requested to be kept confidential. Justification supporting claims of confidentiality shall be provided at the time of submission on the information. Each page claimed "confidential" shall be marked "confidential business information" by the applicant and the confidential information on each page shall be clearly specified. Claims of confidentiality for the name and address of applicants for an approval order will be denied. Confidential information or any other information or report received by the executive secretary or Board shall be available to EPA upon request and the person who submitted the information shall be notified simultaneously of its release to EPA.

2.5.1 The following proceedings and actions are designated to be conducted either formally or informally as required by Section 63-46b-4:

A. Notices of Intent and Approval Orders shall be processed informally using the procedures identified in Section R307-1-3. Appeals of denials of or conditions in an approval order shall be conducted formally.

B. Issuance of Notices of Violations and Orders are exempt under Section 63-46b-1(2)(k). Appeals of Notices of Violation and Orders shall be processed as formal proceedings.

C. Requests for variances shall be processed informally using the procedures in Section 19-2-113 and Subsection R307-1-2.3.

D. Qualification for Tank Vapor Tightness Testing shall be conducted informally using the procedures identified in Section R307-3-4.

E. Certification of Asbestos Contractors shall be conducted informally using the procedures identified in Section R307-1-8.

F. Any other request or approvals for experiments, testing, control plans, etc., shall be conducted informally using the procedures identified in R307-1.

2.5.2 At any time before a final order is issued, the Board or appointed hearing officer may convert proceedings which are designated to be informal to formal, and proceedings which are designated as formal to informal if conversion is in the public interest and rights of all parties are not unfairly prejudiced.

2.5.3 Rules for conducting formal proceedings shall be as provided in Section 63-46b-3 and in Sections 63-46b-6 through 63-46b-13. In addition to the procedures referenced in Subsection R307-1-2.5.1 above, the procedures in Sections 63-46b-3 and 63-46b-5 apply to informal proceedings.

2.5.4 Declaratory Orders. In accordance with the provisions of Section 63-46b-21, any person may file a request for a declaratory order. The request shall be titled a petition for declaratory order and shall specifically identify the issues requested to be the subject of the order. Requests for declaratory order, if set for adjudicative hearing, will be processed informally using the procedures identified in Sections 63-46b-3 and 63-46b-5 unless converted to a formal proceeding under Subsection R307-1-2.5.2 above. No declaratory orders will be issued in the circumstances described in Subsection 63-46b-21(3)(a). Intervention rights and other procedures governing declaratory orders are outlined in Section 63-46b-21.

R307-1-3. Control of Installations.

3.1 Notice of Intent and Approval Order

3.1.1 Notice of Intent Required.

A. Except for the exemptions listed herein, any person intending to construct a new installation which will or might reasonably be expected to become a source or an indirect source of air pollution or to make modifications or relocate an existing installation which will or might reasonably be expected to increase the amount or change the effect of, or the character of, air contaminants discharged, so that such installation may be expected to become a source or indirect source of air pollution, or any person intending to install a control apparatus, or other equipment intended to control emission of air contaminants from a stationary source, shall submit to the executive secretary a notice of intent and receive an approval order prior to initiation of construction, modification or relocation. The notice of intent shall include the information described in R307-1-3.1.6 to determine whether the proposed construction, installation, modification, relocation or establishment will be in accord with applicable requirements of these rules. Within 30 days after receipt of a notice of intent, or any additional information necessary to the review, the executive secretary shall advise the applicant of any deficiency in the notice of intent or the information submitted. The executive secretary shall transmit to the Administrator, EPA, a copy of each notice of intent for each major source or major modification and provide notice to the Administrator, EPA, of every action related to the consideration of such permit.

B. Stationary sources that were in existence prior to November 29, 1969, that have not made any modifications or relocations since that date are not required to submit a notice of intent or to have an approval order; however, these sources are

subject to all other applicable requirements of Title R307 and actions taken by the executive secretary and the Board pursuant to existing statutory authorities.

3.1.2 Within 90 days of receipt of a complete application including all the information described in R307-1-3.1.6, the executive secretary shall either issue an order prohibiting the proposed construction, installation, modification, relocation or establishment if it is deemed that any part of it is inadequate to meet the applicable requirements of Title R307, or issue an order permitting the proposed construction, installation, modification, relocation, or establishment pursuant to the requirements of R307-1-3.1.4 and R307-1-3.1.8. If more time is needed to review the proposal, it shall not exceed three 30-day extensions.

3.1.3 Public Notice.

A. Issuing the Notice. Prior to issuing an approval or disapproval order, the executive secretary shall advertise intent to approve or disapprove in a newspaper of general circulation in the locality of the proposed construction, installation, modification, relocation or establishment. A copy of the notice of intent to approve or disapprove shall be sent to the applicant, the Administrator, EPA, and to officials and agencies having cognizance over the location where the proposed construction would occur as follows: any other state or local air pollution control agencies; the chief executives of the city and county where the source would be located; any comprehensive regional land use planning agency; and any state, Federal Land Manager, or Indian Governing body whose lands may be affected by emissions from the source or modification. Any expected consumption of the maximum allowable increases as stated in R307-1-3.6 and proposed emission limitations, emission amounts, and any operating limitations shall be included in the notice. The executive secretary shall consider any analysis performed by a Federal Land Manager and provided to the executive secretary within the public comment period. If the executive secretary concurs with a demonstration by the Federal Land Manager that the emissions from the proposed source or modification would have an adverse impact on the air quality related values (including visibility) in any Federal Class I area, notwithstanding that the change in air quality resulting from emissions from such source or modification would not cause or contribute to concentrations which would exceed the maximum allowable increases, the executive secretary shall not issue an approval order for the source or modification.

B. Opportunity for Review and Comment.

(1) At least one location will be provided where the information submitted by the owner or operator, the executive secretary's analyses of the notice of intent proposal, and the proposed approval order conditions will be available for public inspection.

(2) Public Comment Period.

(a) A 10-day public comment period shall be required before an approval order is issued for a new source or for an existing source proposing to modify or relocate, if the source, modification, or relocation is not:

(i) subject to the requirements of R307-1-3.6, Prevention of Significant Deterioration of Air Quality (PSD);

(ii) subject to the requirements of R307-15, Operating Permit Requirements;

(iii) a synthetic minor source in accordance with R307-15-4(6);

(iv) located in a nonattainment area or a maintenance area for any pollutant; or

(v) subject to any standard or requirement of 42 U.S.C. 7411 or 7412.

(b) A request to extend the length of the comment period, up to 30 days, may be submitted anytime within 10 days of the date a notice is published in a newspaper.

(c) Those sources not subject to the 10-day public comment period are subject to the requirement in R307-1-3.1.3.B(2)(d) below.

(d) For any notice of intent proposal not subject to R307-1-3.1.3.B(2)(a), a 30-day public comment period is required before an approval order is issued or denied.

(e) A request for a hearing on the executive secretary's proposed approval or disapproval order may be submitted anytime within 10 days or 15 days of the date of a notice in a newspaper under provisions of the appropriate rule, R307-1-3.1.3.B(2)(a)or(d). The hearing shall be held in the area of the proposed construction, installation, modification, relocation or establishment. Any comments or statements received shall be considered before an order is issued or denied.

(f) The public comment and hearing procedure shall not be required when an order is issued for the purpose of extending the time required by the executive secretary to review plans and specifications.

3.1.4 Whenever the executive secretary determines that the information submitted under provisions of R307-1-3.1.6, with such revisions as may be required, are in accord with applicable requirements, the executive secretary shall issue an order permitting the proposed construction, installation, modification, relocation or establishment, with the further stipulation that all required facilities be adequately and properly maintained. Receipt of an approval order does not relieve any owner or operator of the responsibility to comply with the provisions of Title R307 or the State Implementation Plan. To accommodate staged construction of a large source, the executive secretary may issue an order authorizing construction of an initial stage prior to receipt of detailed plans for the entire proposal provided that, through a review of general plans, engineering reports and other information the proposal is determined feasible by the executive secretary under the intent of Title R307. Subsequent detailed plans will then be processed as prescribed in this paragraph. For staged construction projects the previous determination under R307-1- 3.1.8 shall be reviewed and modified as appropriate at the earliest reasonable time prior to commencement of construction of each independent phase of the proposed source or modification.

3.1.5 Approval orders issued by the executive secretary in accordance with the provisions of R307-1- 3.1 shall be reviewed eighteen months after the date of issuance to determine the status of construction, installation, modification, relocation or establishment. If a continuous program of construction, installation, modification, relocation or establishment is not proceeding, the executive secretary may revoke the approval order.

3.1.6 The following information, where applicable, shall be submitted with the notice of intent:

A. A description of the nature of the processes involved; the nature, procedures for handling and quantities of raw materials; the type and quantity of fuels employed; and the nature and quantity of finished product.

B. Expected composition and physical characteristics of effluent stream both before and after treatment by any control apparatus, including emission rates, volume, temperature, air contaminant types, and concentration of air contaminants.

C. Size, type and performance characteristics of any control apparatus.

D. Location and elevation of the emission point and other factors relating to dispersion and diffusion of the air contaminant in relation to nearby structures and window openings, and other information necessary to appraise the possible effects of the effluent.

E. The location of planned sampling points and the tests of the completed installation to be made by the owner or operator when necessary to ascertain compliance.

F. The typical operating schedule.

G. A schedule for construction.

H. Any plans, specifications and related information which are in final form at the time of submission of notice of intent.

I. Any other information necessary to determine if the proposed source or modification will be in compliance with Title R307.

3.1.7 Exemptions and Special Provisions.

A. Small Source Exemption - De minimis Emissions.

(1) A new or existing stationary source is exempt from the notice of intent and approval order requirements of R307-1-3.1 if the following conditions are met:

(a) it is not regulated by any standard or requirement of 42 U.S.C. 7411 or 7412;

(b) its potential to emit does not make it a stationary major source or require emission offset provisions as required by R307-1-3.3.3 for a new or modified source;

(c) its actual emissions are less than 5 tons per year per air contaminant of any of the following air contaminants: sulfur dioxide (SO_2), carbon monoxide (CO), nitrogen oxides (NO_x), particulate matter (PM_{10}), ozone (O_3), or volatile organic compounds (VOCs);

(d) its actual emissions are less than 500 pounds per year of any hazardous air pollutant and less than 2000 pounds per year of any combination of hazardous air pollutants;

(e) its actual emissions are less than 500 pounds per year of any air contaminant not listed in R307-1-3.1.7.A(1)(c) or (d) and less than 2000 pounds per year of any combination of air contaminants not listed in R307-1-3.1.7.A(1)(c) or (d); and

(f) for purposes of determining applicability of R307-1-3.1.7.A, other air contaminants that are drawn from the environment through equipment in intake air and then are released back to the environment without chemical change, as well as carbon dioxide (CO_2), nitrogen (N_2), oxygen (O_2), argon (Ar), neon (Ne), helium (He), krypton (Kr), xenon (Xe) should not be included in emission calculations.

(2) Small Source Exemption - Registration Required in Nonattainment and Maintenance Areas. The owner or operator of a stationary source located in a nonattainment area or a maintenance area for the air contaminants, including ozone precursors, that is claiming an exemption under R307-1-3.1.7.A shall submit to the executive secretary a written registration notice. An existing source shall submit this registration notice no later than March 15, 1997. A new source shall submit the registration notice prior to commencing construction. The notice shall include the following minimum information:

(a) identifying information including company name and address, location of source, telephone number, and name of plant site manager or point of contact;

(b) a description of the nature of the processes involved, equipment, anticipated quantities of materials used, the type and quantity of fuel employed and nature and quantity of the finished product;

(c) identification of expected emissions;

(d) estimated annual emission rates;

(e) any control apparatus used; and

(f) typical operating schedule.

(3) The owner or operator of a temporary source that is claiming exemption under R307-1-3.1.7.A must still comply with the conditions of R307-1-3.1.9.

B. Flexibility Changes.

(1) A change to an existing stationary source is exempt from the notice of intent and approval order requirements of R307-1-3.1 if the source is covered by an approval order and the change satisfies the following conditions:

(a) the change is not regulated by any standard or requirement of 42 U.S.C. 7411 or 7412,

(b) the increases in allowable emissions from the change since the issuance of the current approval order for the source are less than:

(i) 5 tons per year per air contaminant of any of the following air contaminants: sulfur dioxide (SO2), carbon monoxide (CO), nitrogen oxides (NO_x), particulate matter (PM_{10}), ozone (O_3), or volatile organic compounds (VOCs);

(ii) 500 pounds per year of any hazardous air pollutant and 2000 pounds per year of any combination of hazardous air pollutants; and

(iii) 500 pounds per year of any air contaminant not listed in R307-1-3.1.7.B(1)(b)(i) or (ii) and 2000 pounds per year of any combination of air contaminants not listed in R307-1-3.1.7.B(1)(b)(i) or (ii);

(c) for purposes of determining applicability of R307-1-3.1.7.B, other air contaminants that are drawn from the environment through equipment in intake air and then are released back to the enviroment without chemical change, as well as carbon dioxide (CO_2), nitrogen (N_2), oxygen (O_2), argon (Ar), neon (Ne), helium (He), krypton (Kr), xenon (Xe) should not be included in emission calculations;

(d) the increase of allowable emissions from the change is accompanied by an equivalent or greater decrease of allowable emissions of the same air contaminants within the source at the time of the change, so long as the emissions decrease is enforceable in an approval order;

(e) the net emissions increase at the source, as defined in R307-1-1, as a result of the change shall not constitute a major modification, as defined in R307-1-1; and

(f) The owner or operator claiming an exemption pursuant to R307-1-3.1.7.B submits to the executive secretary a written notice prior to the change. The notice shall include the information specified in R307-1-3.1.7.A(2)(a) through (f) and

a description of where the owner or operator will reduce allowable emissions at least equal to any increase in emissions from the change.

(2) The approval order shall reflect emission increases and decreases of emitting units at the source resulting from the change.

(3) A source must go through the full Notice of Intent and Approval Order requirements of R307-1-3.1 to change any limitation which a source is relying on, either to avoid being classified as a major source, or to avoid having a change in emissions be considered a major modification.

(4) No comment period under R307-1-3.1.3 is required for this approval order change and update.

C. Other Exemptions. Sources listed in R307-1-3.1.7.C(1) through (6) are exempt from the notice of intent and approval order requirements of R307-1-3.1.

(1) Fuel-burning equipment in which combustion takes place at no greater pressure than one inch of mercury above ambient pressure with a rated capacity of less than five million BTU per hour using no other fuel than natural gas or LPG or other mixed gas that meets the standards of gas distributed by a utility in accordance with the rules of the Public Service Commission of the State of Utah is exempt, unless there are emissions other than combustion products.

(2) Comfort heating equipment such as boilers, water heaters, air heaters and steam generators with a rated capacity of less than one million BTU per hour if fueled only by fuel oil numbers 1 - 6 is exempt.

(3) Emergency heating equipment, using coal or wood for fuel, with a rated capacity less than 50,000 BTU per hour is exempt.

(4) Exhaust systems for controlling steam and heat that do not contain combustion products are exempt.

(5) New parking areas of less than 600 vehicles capacity or modified parking areas increasing capacity by less than 350 vehicles are exempt.

(6) Emissions of 1,1,1-trichloroethane, trichlorofluoromethane, dichlorodifluoromethane, chlorodifluoromethane, trifluoromethane, 1,1,2-trichloro-1,2,2-trifluoroethane, 1,2-dichloro-1,1,2,2-tetrafluoroethane, methane, ethane, and chloropentafluoroethane are exempt. However, the owner or operator of a source emitting 10 tons per year or more of any of these compounds must submit a notice of intent to the executive secretary prior to construction of the source and an annual report of emissions thereafter.

D. Exemptions from the Notice of Intent and Approval Order provisions of R307-1-3.1 for Replacement-in-Kind Equipment.

(1) Applicability. The owner or operator of a stationary source of air contaminants who modifies any process or replaces any control apparatus that is covered by an existing approval order, a previous approval order that has been superseded by an operating permit, or a requirement contained in a State Implementation Plan is exempt from the notice of intent and approval order requirements of R307-1-3.1, when the replacement-in-kind equipment meets all of the following conditions:

(a) potential to emit of the process equipment is the same or lower;

(b) the number of emission points or emitting units is the same or lower;

(c) no additional types of air contaminants are emitted as a result of the replacement;

(d) the control apparatus or process equipment is essentially the same as that being replaced and is not regulated by any standard or requirement of 42 U.S.C. 7411 or 7412;

(e) the replacement of the control apparatus or process equipment does not violate any other provision of Title R307.

(2) Replacement-in-Kind Procedures.

(a) In lieu of filing a notice of intent under R307-1-3.1, an owner or operator of a stationary source proposing to replace control apparatus or process equipment by in-kind equipment shall submit a written notification to the executive secretary for approval prior to initiation of replacement. The notification shall contain a description of the replacement-in-kind, to include the control capability of any control apparatus and a demonstration that the conditions of R307-1-3.1.7.D(1) are met.

(b) If the replacement-in-kind meets the conditions of R307-1-3.1.7.D(1), the executive secretary will update the appropriate approval order and notify the owner or operator. No public comment period under R307-1-3.1.3 is required.

E. Exemptions from Notice of Intent and Approval Order provisions of R307-1-3.1 for Reduction or Elimination of Air Contaminants.

(1) Applicability. The owner or operator of a stationary source of air contaminants covered by an existing approval order or a State Implementation Plan that reduces or eliminates air contaminants by changing, substituting, or eliminating process raw materials or process equipment, or uses a more efficient process design, is exempt from the notice of intent and approval order requirements of R307-1-3.1 when all the following are met:

(a) there is a permanent reduction of air contaminants per year that is enforceable by an approval order;

(b) there are no new air contaminants emitted as a result of the changes; and

(c) the changes do not violate any provision of Title R307 rules.

(2) Procedures for the Reduction or Elimination of Air Contaminants Exemption. In lieu of filing a notice of intent under R307-1-3.1, an owner or operator of a stationary source making changes as described in R307-1-3.1.7.E(1) shall submit a written description of the changes to the executive secretary no later than 60 days after the changes are made. The approval order will be updated by the executive secretary to reflect the reductions and other changes; no comment period under R307-1-3.1.3 is required.

F. Any owner or operator of a source submitting an inventory as required in R307-1-3.5 shall include in that inventory an estimate of all emissions from the above exempted activities, using appropriate emission factors and estimating techniques.

G. Any control apparatus installed on a source that is exempted under R307-1-3.1.7 shall be adequately and properly maintained. The owner or operator of any new or existing emission unit that is exempted under R307-1-3.1.7 is required to comply with all other applicable rules in Title R307.

H. If the executive secretary has reason to believe, after

completion of an appropriate analysis and evaluation in consultation with the source owner or operator, that the emissions from a source described in R307-1-3.1.7.A, B C, D, and E above are not meeting any specified approval order or State Implementation Plan limitation, or create an adverse impact to the environment, or would be injurious to human health or welfare, then the notice of intent and approval order provisions of R307-1-3.1 will apply.

3.1.8 The executive secretary shall issue an approval order if it is determined through plan review that the following conditions have been met:

A. The degree of pollution control for emissions, to include fugitive emissions and fugitive dust, is at least best available control technology except as otherwise provided in Title R307.

B. The proposed installation will be in accord with applicable requirements of: Utah Title R307; National Standards of Performance for New Stationary Sources; National Primary and Secondary Ambient Air Quality Standards; National Emission Standards for Hazardous Air Pollutants; new source review criteria; maximum allowable increase and maximum allowable concentration requirements for Prevention of Significant Deterioration; the State Implementation Plan for the area, if the area is classified as a nonattainment or maintenance area; and new source requirements for nonattainment areas under the Federal Clean Air Act.

C. The executive secretary shall issue an approval order under R307-1-3.6.5 for a major source or major modification which consumes more than 50% of the increments in R307-1-3.6.3 only after receiving the approval of the Board.

3.1.9 The owner or operator of a source previously approved under R307-1-3.1 or in a State Implementation Plan may temporarily relocate and operate the source at any site for up to 180 working days in any calendar year not to exceed 365 consecutive days, starting from the initial relocation date. The executive secretary shall evaluate the expected emissions impact at the site and compliance with applicable Title R307 rules as the bases for determining if approval for temporary relocation may be granted. Records of the working days at each site, consecutive days at each site, and actual production rate shall be sent to the executive secretary at the end of each 180 calendar days. These records shall also be kept on site by the owner or operator for the entire project, and be made available for review to the executive secretary as requested. To issue a written approval or disapproval, the executive secretary is not required to submit the temporary relocation proposal for public comment.

3.1.10 The owner or operator of a major new source or major modification to be located in a nonattainment or maintenance area or which would impact a nonattainment or maintenance area must, in addition to the requirements in R307-1-3.1, submit with the notice of intent an adequate analysis of alternative sites, sizes, production processes, and environmental control techniques for such proposed source which demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification. The executive secretary shall review the analysis. The analysis and the executive secretary's comments shall be subject to public comment as required by R307-1-3.1.3. The preceding shall also apply in Salt Lake and Davis Counties for new major sources or modifications which are considered major for precursors of ozone, including volatile organic compounds and nitrogen oxides.

3.1.11 At a time that a source or modification becomes a major source or major modification because of a relaxation of any enforceable limitation which was established after August 7, 1980, on the capacity of a source or modification otherwise to emit a pollutant, such as a restriction on the hours of operation, then the preconstruction requirements shall apply to the source as though construction had not yet commenced on the source or modification.

3.1.12 Low Oxides of Nitrogen Burner Technology.

A. All sources excluding non-commercial residential dwellings shall install oxides of nitrogen control/low oxides of nitrogen burners or controls resulting from application of an equivalent technology, as determined by the Executive Secretary, whenever existing fuel combustion burners are replaced, unless such replacement is not physically practical or cost effective. The request for an exemption shall be presented to the Executive Secretary for review and approval.

B. Contingency Requirement for Ozone Nonattainment Areas and Salt Lake and Davis Counties. If the Contingency Requirements for nitrogen oxides are triggered as outlined in Section IX.D.2.h(2) of the State Implementation Plan, all existing sources excluding non-commercial residential dwellings shall install either low oxides of nitrogen burner technology as described in R307-1-3.1.12(a), unless such requirement is not physically practical or cost effective, or controls resulting from application of an equivalent technology, both of which shall be determined by the executive secretary. All sources required to install new controls under R307-1-3.1.12.B shall submit, within two months after the trigger date, either a schedule for installing the equipment or a request for an exemption. The required equipment shall be operational as soon as practicable or within a reasonable time agreed upon by the source and the executive secretary.

3.2 Nonattainment Area Requirements And PM10 Nonattainment Area Requirements - Existing Sources.

3.2.1 Particulate Emission Limitations And Operating Parameters (TSP).

A. Existing sources located in or affecting areas of nonattainment shall use reasonably available control measures to the extent necessary to insure the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS). The emission limitations specified in this paragraph constitute, in the judgment of the Board, reasonably available control measures necessary to insure attainment and maintenance of the NAAQS as of the date of promulgation of these regulations. Specific limitations for installations within a source listed below which are not specified will be set by order of the Board. Specific limitations for installations within a source listed below may be adjusted by order of the Board provided the adjustment does not adversely affect achieving the applicable NAAQS.

B. The owner or operator of any source listed in this paragraph shall not allow exceedance of the emission limitation or violation of any other listed requirement (See schedule for compliance listed in paragraph 3.2.2). The requirements listed for the sources in Weber County apply unless modified by an

approval order or compliance order issued after February 16, 1982.

TABLE 1

IDENTIFICATION OF SOURCE (SOURCES 25 TONS/YEAR OR GREATER ACTUAL EMISSIONS)	EMISSION LIMITATIONS
WEBER COUNTY (TSP)	
1. Farmers Grain Coop unloading/loading/ cleaning and grinding stacks/vents	20% opacity each stack/vent
2. Fife Rock Products Asphalt Plant (Hot mix dryer)	0.040 gr/dscf, 20% opacity (stack and fugitive emissions)
3. Interpace Corporation - 4/2/81 Grinding and screening	20% opacity (vents and fugitive emissions)
4. Parsons Asphalt Plant	0.040 gr/dscf, 20% opacity (stack and fugitive emissions)
5. Pillsbury Co. Loading, milling, unloading	20% opacity each vent
6. Teledyne Incinerator	0.080 gr/dscf, 20% opacity
7. Gibbons and Reed Asphalt Plant - 4/2/81	0.030 gr/dscf, 20% opacity

3.2.2 Compliance Schedule (TSP). The owner or operator of an existing installation which is a source of a pollutant in a nonattainment area for the pollutant, or which has significant impact (Based on the increment levels in subparagraph 3.3.2.A) upon a nonattainment area, is required to achieve the established emission limitation or other requirements established by these regulations as expeditiously as practicable but no later than December 31, 1982, or such later date as may be specified by Congress or EPA under the Clean Air Act. Within 180 days after the effective date of a regulation establishing a standard of pollutant control pursuant to an emission limitation under paragraph 3.2.1 or paragraph 4.1.1 of R307-1-4, the owner or operator of an existing installation not meeting these requirements must submit a notice of intent as outlined in subsection 3.1 together with a compliance schedule. The compliance schedule shall contain proposed interim measures to control and identify the degree of emission reduction to be achieved by each such interim measure of control.

3.2.3 Compliance Testing (TSP)

A. Testing Methodology. Except as otherwise provided in this paragraph 3.2.3, compliance testing for gravimetric emission limitations for particulate shall be pursuant to EPA reference Method 5 or EPA reference Method 17 where appropriate and approved by the Executive Secretary. Where EPA reference Method 5 is used for compliance testing, determination of compliance with gravimetric emission limitations shall be made through the use of front half catch. The Executive Secretary may require that Method 5 full train analysis be conducted and that back half data also be submitted but only for information purposes. Such information shall not be used to determine compliance with gravimetric emission limitations. EPA reference Method 1 shall be used to select the sampling site and number of traverse sampling points. Where necessary for determination of stack gas velocities, EPA reference Method 2 shall be used. Where necessary for determination of dry molecular weight, EPA reference Method 3 shall be used. Where necessary for determination of moisture content in stack gases EPA reference Method 4 shall be used. All EPA reference methods referred to in this paragraph 3.2.3 are those found in 40 CFR Part 60 Appendix A.

Except as provided below in these regulations any alternate test methods or sampling methods may be used with the approval of the Executive Secretary, provided, however, that if such reference tests or sampling methods are used to test compliance with federal law they may be used only if approved, in writing, by the Administrator of EPA or his representative.

B. Special Sampling and Compliance Testing Requirements for Fossil-Fuel Fired Power Plants. Method 5 or EPA reference Method 17 where appropriate (only when stack temperatures do not exceed 320 degrees F) and approved by the Executive Secretary shall be run for fossil-fuel fired power plants as modified by 40 CFR, Part 60, subpart D or Da whichever is applicable. Method 9 shall be run for opacity.

C. Exceptions for Special Sampling and Testing Conditions for Performance for Incinerators. Method 5 shall be run for incinerators as modified by 40 CFR, Part 60, Subpart E.

D. Special Conditions for Sampling for Portland Cement Plants. Method 5 or EPA Reference Method 17 where appropriate and approved by the Executive Secretary shall be run for Portland Cement Plants. If compliance is tested by use of Method 5, Method 5 shall be modified as provided in 40 CFR, Part 60, Subpart F.

3.2.4 Particulate Emission Limitations and Operating Parameters (PM10)

All sources with emissions of 25 tons per year or more (combinations of sulfur dioxide, oxides of nitrogen, and PM10) in areas located in or affecting PM10 Nonattainment Areas in Salt Lake and Utah Counties shall meet the emission limitations and operating parameters contained in Section IX, Part H, of the Utah State Implementation Plan (SIP). Existing sources located in or affecting PM10 Nonattainment Areas shall use reasonably available control measures to the extent necessary to insure the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS). The emission limitations specified in the SIP constitute, in the judgment of the Board, reasonably available control measures necessary to insure attainment and maintenance of the NAAQS not later than December 31, 1994. Specific limitations for installations within a source listed in the SIP which are not specified will be set by order of the Board. Specific limitations for installations within a source may be adjusted by order of the Board provided the adjustment does not adversely affect achieving the applicable NAAQS.

3.2.5 Compliance Testing (PM10). Compliance testing for the PM10, sulfur dioxide, and oxides of nitrogen emission limitations shall be done in accordance with Section IX, Part H of the SIP. PM10 compliance shall be determined from the results of EPA test method 201 or 201a. A backhalf analysis shall be performed for each PM10 compliance test in accordance with a method approved by the Executive Secretary for inventory purposes. For sources not requiring changes to their process or air pollution control devices to achieve

compliance with the emission limitations contained in these regulations, compliance testing shall be scheduled with the Executive Secretary within three months after promulgation of this Section 3.2.5. For Utah County sources listed in Section IX, Part H.1 of the SIP which need to make major changes to comply, a construction/installation schedule for demonstration of compliance with limitations contained in the SIP, shall be submitted by the owner/operator by February 15, 1991. Those sources located in Salt Lake and Davis County listed in Section IX, Part H.2 of the SIP which need to make major changes to comply shall submit to the Executive Secretary a construction/installation schedule for demonstration of compliance with limitations contained in the SIP within three months after the effective date of this Section 3.2.5. for approval. Those sources making major changes of process equipment or air pollution control equipment shall submit a notice in accordance with Section 3.1, UACR, for the purpose of meeting the emissions limitations contained in Section IX, Part H of the SIP and receive approval from the Executive Secretary. The schedule indicated above shall result in demonstration of compliance with the limitations by December 31, 1992, unless an alternate schedule has been approved by the Executive Secretary. The alternate schedule shall be approved by the Executive Secretary if the owner/operator demonstrates that the schedule or implementation of control measures is as expeditious as practicable, but extends beyond December 31, 1992. Any submittal requesting an alternate schedule shall be done in accordance with the requirements of the Federal Clean Air Act, and shall be consistent with the SIP demonstration of attainment by December 31, 1994.

3.2.6 Compliance Schedule (PM10). The owner or operator of an existing installation listed in the SIP is required to achieve the emission limitation or other requirements established by the SIP as expeditiously as practicable, but no later than December 31, 1992. For those sources granted an alternate schedule in accordance with Section 3.2.5, compliance with the limitations shall be demonstrated as provided in the approved schedule. Until the time a source is required to demonstrate compliance with the limitations in the SIP, the source shall comply with the applicable provisions of the existing TSP limitations and operating parameters listed in the Utah Air Conservation Regulations dated April 1, 1990, or existing approval orders.

3.2.7 Salting and Sanding.

A. Any person who applies salt, crushed slag, or sand to roads in Salt Lake, Davis or Utah Counties shall maintain records of the material applied. For salt, the records shall include the quantity applied, the percent by weight of insoluble solids in the salt, and the percentage of the material that is sodium chloride. For sand or crushed slag the records shall include the quantity applied and the percent by weight of fine material which passes the number 200 sieve in a standard gradation analysis. All records shall be maintained for a period of at least two years, and the records shall be made available to the Executive Secretary or his designated representative upon request.

B. After October 1, 1993, any salt applied to roads in Salt Lake, Davis, or Utah Counties must be at least 92% sodium chloride (NaCl).

C. After October 1, 1993, any person who applies crushed slag, sand, or salt that is less than 92% sodium chloride to roads in Salt Lake, Davis, or Utah Counties must either:

1. demonstrate to the Board that the material applied has no more PM10 emissions than salt which is at least 92% sodium chloride; or

2. vacuum sweep every arterial roadway (principle and minor) to which the material was applied within three days of the end of the storm for which the application was made. For the purpose of this rule, the term "arterial roadway" shall have the meaning outlined in U.S. DOT Federal Highway Administration Publication No. FHWA-ED-90-006, Revised March 1989, "Highway Functional Classification: Concepts, Criteria, and Procedures" as interpreted by Utah Department of Transportation and shown in the following maps: Salt Lake Urbanized Area, Provo-Orem Urbanized Area, and Ogden Urbanized Area (1992 or later).

3. In the interest of public safety, any person who applies crushed slag and/or sand to arterial roadways because salt alone would not ensure safe driving conditions due to steepness of grade, extreme weather, or other reasons, may petition the Board for a variance from the sweeping requirements in R307-1-3.2.7.C.2. Specifically excluded from these sweeping requirements are all canyon roads and the portion of Interstate 15 near Point of the Mountain.

3.3 Requirements for Nonattainment Areas and Salt Lake City and Ogden Maintenance Areas for Carbon Monoxide - New and Modified Sources.

3.3.1 Emission Limitations. Any source constructed in an actual area of nonattainment, or in the Salt Lake City and Ogden maintenance areas for carbon monoxide, or in an area which will impact on an actual area of nonattainment or on the Salt Lake City and Ogden maintenance areas for carbon monoxide must meet all applicable emission requirements of R307-1, Utah Air Conservation Regulations, and R307-2, Utah State Implementation Plan. A proposed source which is not a major source may be approved without further analysis provided such source meets all such applicable emission limitations and offset requirements listed in paragraph 3.3.3. The emission limitations shall be stated as a condition of the approval order.

3.3.2 Review of Major Sources of Air Quality Impact. Every major new source or major modification must be reviewed by the Executive Secretary to determine if a source will cause or contribute to a violation of the NAAQS. The determination of whether a source will cause or contribute to a violation of the NAAQS will be made by the Executive Secretary as of the new source's projected start-up date. He will make an analysis of the proposed new source's operation data using the best information and analytical techniques available.

A. If the owner or operator of a source proposes to locate the source outside an area of nonattainment where the source will not cause an increase greater than the following increments in actual areas of nonattainment or in the Salt Lake City and Ogden maintenance areas for carbon monoxide and the source otherwise meets the requirements of these regulations, such source shall be approved.

TABLE 2

MAXIMUM ALLOWABLE MICROGRAM/CUBIC METER IMPACT
BY AVERAGING TIME

Pollutant	Annual	24-Hr	8-Hr	3-Hr	1-Hr
SULFUR DIOXIDE	1.0	5		25	
PM10	1.0	3			
CO			500		2000

B. If the Executive Secretary finds that the emissions from a proposed source would cause a new violation of the NAAQS but would not contribute to an existing violation, the Executive Secretary shall approve the proposed source if and only if:

(1) the new source is required to meet a more stringent emission limitation, sufficient to avoid a new violation of the NAAQS and

(2) the new source has acquired sufficient offset to avoid a new violation of the NAAQS and

(3) the new emission limitations for the proposed source and for any affected existing sources are enforceable.

C. If the Executive Secretary finds that the emissions from a proposed source in a nonattainment area would contribute to an existing violation of a national ambient air quality standard at the time of the source's proposed start-up date, approval shall be granted if and only if:

(1) the new source meets an emission limitation which is the Lowest Achievable Emission Rate (LAER) for such source and

(2) the applicant has certified that all existing major sources in the State, owned or controlled by the owner or operator (or by any entity controlling, controlled by or under common control with such owner or operator) of the proposed source, are in compliance with all applicable Utah Air Conservation Regulations and Utah Implementation Plan requirements or are in compliance with an approved schedule and timetable for compliance under the Utah Implementation Plan, the Utah regulations, or an enforcement order, and that the source is complying with all requirements and limitations as expeditiously as practicable.

(3) emission offsets to the extent provided in paragraph 3.3.3 are sufficient such that there will be reasonable further progress toward attainment of the applicable NAAQS.

(4) the emission offsets provide a positive net air quality benefit in the affected area of nonattainment.

(5) there is an approved implementation plan in effect for the pollutant to be emitted by the proposed source.

D. A source which is locating outside a nonattainment area or the Salt Lake City and Ogden maintenance areas for carbon monoxide and which causes the significant increments in subparagraph 3.3.2.A to be exceeded in the nonattainment or maintenance area is subject to the requirements of subparagraph 3.3.2.C.

3.3.3 Offset Requirements.

A. General Requirements.

(1) Emission offsets must be obtained from the same source or other sources in the same nonattainment area except that the owner or operator of a source may obtain emission offsets in another nonattainment area if:

(a) the other area has an equal or higher nonattainment classification than the area in which the source is located; and

(b) emissions from such other area contribute to a violation of the national ambient air quality standard in the nonattainment area in which the source is located or which is impacted by the source.

(2) Any emission offsets shall be enforceable by the time a new or modified source commences construction, and, by the time a new or modified source commences operation, any emission offsets shall be in effect and enforceable and shall assure that the total tonnage of increased emissions of the air pollutant from the new or modified source shall be offset by an equal or greater reduction, as applicable, in the actual emissions of such air pollutant from the same or other sources in the area.

(3) Emission reductions otherwise required by the federal Clean Air Act or the Utah Air Conservation Rules and State Implementation Plan shall not be creditable as emission reductions for purposes of any offset requirement. Incidental emission reductions which are not otherwise required by federal or state law shall be creditable as emission reductions if such emission reductions meet the requirements of paragraphs 3.3.3.A(1) and (2).

(4) Sources shall be allowed to offset, by alternative or innovative means, emission increases from rocket engine and motor firing, and cleaning related to such firing, at an existing or modified major source that tests rocket engines or motors under the conditions outlined in Section 173(e)(1) through Section 173(e)(4) of the federal Clean Air Act as amended in 1990.

B. PM10 Nonattainment Areas.

New sources which have a potential to emit, or modified sources which would produce an emission increase equal to or exceeding the tonnage total of combined PM10, sulfur dioxide, and oxides of nitrogen listed below which are located in or impact a PM10 Nonattainment Area as defined in R307-1-3.3.3.B(1) below, shall obtain an enforceable offset as defined in R307-1-3.3.3.B(2) and R307-1-3.3.3.B(3).

(1) For the purpose of determining whether the owner or operator which proposes to locate a source outside a nonattainment area is required to obtain offsets, the maximum allowable impact on any nonattainment area is 1.0 microgram/cubic meter for a one-year averaging period and 3.0 micrograms/cubic meter for a 24-hour averaging period for any combination of PM10, sulfur dioxide and nitrogen dioxide.

(2) For a total of 50 tons/year or greater, an offset of 1.2:1 of the emission increase is required.

(3) For a total of 25 tons/year but less than 50 tons/year, an offset of 1:1 of the emission increase is required.

For the offset determinations, PM10, sulfur dioxide, and oxides of nitrogen shall be considered on an equal basis. In areas which are nonattainment for both PM10 and ozone, the most stringent emission offset ratio for oxides of nitrogen required by R307-1-3 shall apply.

C. Ozone Nonattainment Areas and Davis and Salt Lake Counties. New sources and modifications to existing sources as defined and outlined in Section 182 of the Clean Air Act shall meet the offset requirements and conditions listed in that section for the applicable classified area and for the identified pollutants. As outlined in Section 182 of the federal Clean Air Act, for moderate areas, the emission offset ratio must be at least 1.15:1.

(1) Ozone Maintenance Plan; Salt Lake and Davis

Counties. In the event that the contingency measures described in Section IX, Part D.2.h.(3) and of the State Implementation Plan are triggered, the offset requirement in R307-1-3.3.3.C(2) shall apply to emissions of both volatile organic compounds and oxides of nitrogen.

(2) The emission offset ratio must be at least 1.2:1, and offset must be obtained for the same pollutant for which the source or modification has been deemed "major". For the purposes of R307-1-3.3.3.C(2), the term "major" shall mean: any stationary source or group of sources located within a contiguous area and under common control that emits, or has the potential to emit, at least 50 tons per year of either volatile organic compounds or oxides of nitrogen; or a modification to an existing source if the net emissions increase in either volatile organic compounds or oxides of nitrogen is at least 25 tons per year.

3.3.4 Construction in Stages. When a source is constructed or modified in stages which individually do not have the potential to emit more than 100 tons per year, the allowable emission from all such stages shall be added together in determining the applicability of subsection 3.3 of these regulations.

3.3.5 Baseline for Determining Credit for Emission and Air Quality Offsets. The baseline to be used for determination of credit for emission and air quality offsets will be the emission limitations and/or other requirements in the State Implementation Plan (SIP), revised in accordance with the Clean Air Act or subsequent revisions thereto in effect at the time the application to construct or modify a source is filed.

3.3.6 Banking of Emission Offset Credit. Banking of emission offset credit will be permitted to the fullest extent allowed by applicable Federal Law as identified in EPA's document "Emissions Trading Policy Statement" published in the Federal Register on December 4, 1986, and 40 CFR 51.165(a)(3)(ii)(c) as amended on June 28, 1989, and 40 CFR 51.165, Appendix S. To preserve banked emission reductions, the Executive Secretary must identify them in either the Utah SIP or an order issued pursuant to Subsection 3.1 of these rules and shall provide a registry to identify the person, private entity or governmental authority that has the right to use or allocate the banked emission reductions, and to record any transfers of, or liens on these rights.

3.4 Emission Testing

3.4.1 Emission testing will be required of all sources with established emission limitations at least once every five years. For sources located in nonattainment areas, emission testing will be required at least once every five years or more frequently as specified in Section IX, Part H of the Utah State Implementation Plan (SIP) adopted by the Air Quality Board, or by the Executive Secretary if he has reason to believe that the source is not meeting its emission limitation. Sources approved in accordance with subsection 3.1 will be tested within six months of start-up. Sources for which emission limitations are established pursuant to paragraph 3.2.1 which do not require modification will be tested within one year of the effective date of these regulations. In addition, if the Executive Secretary has reason to believe that an applicable emission limitation is being exceeded (i.e., through visible emission observations and monitoring data, etc.) he may require the owner or operator to perform such emission testing as is necessary to determine actual compliance status. The Board may grant exceptions to the mandatory testing requirements of this paragraph 3.4.1 which are not inconsistent with the purposes of these regulations.

3.4.2 At least 30 days prior to conducting any emission testing required under any part of these regulations, the owner or operator shall notify the Executive Secretary of the date, time and place of such testing and, if determined necessary by the Executive Secretary, the owner or operator shall attend a pretest conference.

3.4.3 All tests shall be conducted while the source is operating at the maximum production or combustion rate at which such source will be operated. During the tests, the source shall burn fuels or combustion of fuels, use raw materials, and maintain process conditions representative of normal operations, and shall operate under such other relevant conditions as the Executive Secretary shall specify.

3.4.4 The Executive Secretary may reject emissions test data if they are determined to be incomplete, inadequate, not representative of operating conditions specified for the test, or if the State was not provided an opportunity to have an observer present at the test.

3.5 Emission Inventories.

3.5.1 Criteria Pollutant Inventory.

A. General Reporting Requirements.

(1) Inventory Required Annually. The owner or operator of the following stationary sources of air pollution shall submit an annual emissions inventory report:

(a) any Part 70 source located in a nonattainment or maintenance area;

(b) any Part 70 source located in an attainment area, except a temporary source, with 25 tons per year or more of combined allowable emissions of PM10, sulfur dioxide, oxides of nitrogen, volatile organic compounds and carbon monoxide;

(c) any temporary Part 70 source located in an attainment area;

(d) stationary sources located in Davis, Salt Lake, Utah and Weber counties with emissions of PM10, sulfur oxides or nitrogen oxides of 25 tons per year or more;

(e) stationary sources in Salt Lake and Davis Counties with emissions of volatile organic compounds of 10 tons per year or more;

(f) stationary sources in Salt Lake, Davis and Utah Counties with carbon monoxide emissions of 100 tons per year or more.

(2) Inventory Required Every Fifth Year. The owner or operator of a Part 70 source with less than 25 tons per year of combined allowable emissions of PM10, sulfur dioxide, oxides of nitrogen, volatile organic compounds and carbon monoxide shall submit an emissions inventory every fifth year, or more frequently on request from the executive secretary. The first inventory shall be due in 1997.

(3) Federal Requirement. The owner or operator of a stationary source of air pollution that meets the following criteria is required to submit on an annual basis the information necessary for the State to meet the reporting requirements 40 CFR 51.321 to 51.322:

(a) any source that actually emits 100 tons per year or

more of PM_{10}, sulfur oxides, VOC, carbon monoxide or nitrogen oxides; or

(b) any source that actually emits 5 tons per year or more of lead.

(4) Due Date. Emission inventories shall be submitted on or before April 15 of each calendar year following any calendar year in which the source is subject to R307-1-3.5.

(5) Reports. Emission inventory reports shall include the rate and period of emission, excess or breakdown emissions, specific plant source of air pollution, composition of air contaminant, type and efficiency of air pollution control equipment and other information necessary to quantify operation and pollution emission, and to evaluate pollution control.

3.5.2 Hazardous Air Pollutant Inventory. The owner or operator of a stationary source, either "major source" or "area source" as defined in the Federal Clean Air Act (Title I, Part A, Section 112), which emits one or more hazardous air pollutant shall submit, at the request of the Executive Secretary, but not more than once per year, a Hazardous Air Pollutant Inventory. The inventory shall be submitted no later than July 1 each year, shall be limited to hazardous air pollutants and shall include a report of the rate and period of emission, excess or breakdown emissions, the specific plant source of the emissions, the composition of the emission, the type and efficiency of air pollution control equipment, and any other information determined necessary by the Executive Secretary for the issuance of permits, the verification of compliance, and the determination of the effectiveness of control technology relative to the source's maximum achievable control technology (MACT).

3.5.3. Emission Statement Inventory.

A. Applicability. The owner or operator of a stationary source of either VOC or NOx that is located in Salt Lake or Davis Counties or a nonattainment area for ozone and which emits or has the potential to emit at least 25 tons per year of either VOC or NOx is required to submit annually an emission statement for the emissions released directly or indirectly into the outdoor atmosphere during the previous calendar year. Such emission statement shall include information concerning both VOC and NOx even if the source's emissions or its potential to emit equalled or exceeded 25 tons per year for only VOC or NOx. Compliance with the emission statement requirements does not relieve any owner or operator of a source from the responsibility to comply with any other applicable reporting requirements set forth in any federal or state law or in the conditions of approval of any order or certificate in effect.

B. Procedure for submitting an emission statement. Emission statements shall be submitted in accordance with the following provisions:

(1) Emission statements shall be submitted on or before April 15 of each calendar year following any calendar year in which the source is subject to this rule.

(2) Emission statements shall be submitted to the Division of Air Quality on a form obtainable from the Division of Air Quality.

C. Required contents of an emission statement. Any person who submits an emission statement shall include, as an integral part of the report:

(1) Certification, signed by the highest ranking individual with direct knowledge and overall responsibility for the information contained in the certified documents, that the information provided is true, accurate and complete. Such certification should be submitted with the understanding that submittal of false, inaccurate or incomplete information is subject to civil and criminal penalties.

(2) The date of the signature of certification and the telephone number of the certifying individual shall be included.

(3) The following source identification information shall be included:

(a) full name of the source;

(b) parent company name, if applicable;

(c) physical location of the source (i.e., the street address);

(d) mailing address of the source;

(e) SIC code(s) of the source;

(f) UTM coordinates or latitude and longitude of the source; and

(g) the calendar year of the emissions.

(4) The following operating data for each source operation which has the potential to emit VOC or NOx shall be included:

(a) annual and peak ozone season throughput;

(b) average days of operation per week;

(c) average hours of operation per day; and

(d) total hours of operation for the year.

(5) The following information at the process level for NOx (expressed as molecular weight of NO_2) and VOC shall be included:

(a) Emissions information, including:

(i) the actual emissions of VOC and NOx in tons per year;

(ii) the average actual emissions of VOC and NOx in pounds per day of operation during the peak ozone season;

(iii) the code for the method used to quantify the actual emissions (from Table 1 included with the filing form in R307-1-3.5.3.B(2)); and

(iv) any emission factor used to determine actual emissions.

(b) Control apparatus information, including current primary and secondary control apparatus identification codes (from Table 2 included with the filing form in R307-1-3.5.3.B(2)); and the actual control efficiency achieved by the control apparatus. If the actual control efficiency is unavailable, the control apparatus design efficiency shall be used.

(c) Process rate data, including the annual process rate and the average process rate per day of operation during the peak ozone season.

(6) In place of the information required in R307-1-3.5.3.C(4) and R307-1-3.5.3.C(5), any source which has the potential to emit less than one ton per year of either VOC or nitrogen oxides but which is subject to this rule shall include:

(a) a description of each source operation and actual emissions of each air contaminant emitted from each source operation shall be estimated at one ton per year, or

(b) a description of each source operation; estimated actual emission in tons per year; the code for the method used to quantify the actual emissions (from Table 1 included with the filing form in R307-1-3.5.3.B(2)); and any emission factor used to determine actual emissions.

(7) Emission statements shall include cumulative total fugitive emissions for the stationary source for all fugitive

emissions that cannot be reported in the information pursuant to R307-1-3.5.3.C(4) through R307-1-3.5.3.C(6) above. Such fugitive emissions shall be expressed in tons per year and in average pounds per day of operation during the peak ozone season.

(8) The method used for quantifying actual emissions for a source operation for use in preparing emission information required in R307-1-3.5.3.C(5)(a) or R307-1-3.5.3.C(6)(b) above shall be the method which is reasonably available and which best estimates the actual emissions from the source operation, unless an operating permit pursuant to Title V of the federal Clean Air Act has been issued for the stationary source. In such case, the method used shall be the method specified in the operating permit.

D. Recordkeeping requirements.

(1) Each owner or operator of a stationary source subject to this rule shall maintain for a period of two years from the due date of each emission statement a copy of the emission statement submitted to the Division of Air Quality and records indicating how the information submitted in the emission statement was determined, including any calculations, data, measurements, and estimates used.

(2) Upon the request of the Executive Secretary, the owner or operator of the stationary source shall make these records available at the stationary source for inspection by any representative of the Division of Air Quality during normal business hours.

3.6 Prevention of Significant Deterioration of Air Quality (PSD).

3.6.1 Area Designations. All areas of the State shall be designated as Class I, II, or III.

A. Pursuant to section 162(a) of the federal Clean Air Act the following areas are designated as mandatory Class I:

(1) Arches National Park

(2) Bryce Canyon National Park

(3) Canyonlands National Park

(4) Capitol Reef National Park

(5) Zion National Park

B. Pursuant to section 162(b) of the federal Clean Air Act, all other areas of the State are designated as Class II unless redesignated as provided in R307-1-3.6.2 or are designated as nonattainment areas.

3.6.2 Area Redesignation.

A. Within the restrictions and requirements of this paragraph, the Board may submit to the Governor for decision a recommendation to redesignate areas from any class to any other class.

B. In accordance with Section 162(a) of the federal Clean Air Act, areas designated as Class I under R307-1-3.6.1.A may not be redesignated.

C. In accordance with Section 164(a) of the federal Clean Air Act, the following areas may be redesignated only as Class I or II.

(1) An area which as of August 7, 1977, exceeded 10,000 acres in size and was a national monument, a national primitive area, a national preserve, a national recreation area, a national wild and scenic river, a national wildlife refuge, a national lakeshore or seashore; and

(2) A national park or national wilderness area established after August 7, 1977, which exceeds 10,000 acres in size.

D. Except as provided in R307-1-3.6.2.B, C, and F, the Board may submit to the Governor for decision a recommendation to redesignate areas of the State as Class III if:

(1) There has been compliance with the requirements of R307-1-3.6.2.E;

(2) Such redesignation will not cause, or contribute to, concentrations of any air pollutant which exceed any maximum allowable increase permitted under the classification of any other area or any national ambient air quality standard; and

(3) Any permit application for any major source or major modification which could receive an approval order only if the area in question were redesignated as Class III, and any material submitted as part of that notice of intent were available, insofar as practicable, prior to any public hearing or redesignation.

In accordance with Section 164 of the federal Clean Air Act, redesignations to Class III may be approved by the Governor only after consultation with appropriate committees of the legislature and if units of local government representing a majority of the residents of the proposed area to be redesignated enact ordinances concurring in the redesignation.

E. Prior to submittal to the Governor of a recommendation to redesignate any area:

(1) Notice shall be published in each daily newspaper in the affected area and written notice shall be made to local government units, other states, Indian governing bodies, Federal Land Managers whose lands may be affected by the proposed redesignation and public hearings shall be conducted in the affected areas. Such notice shall be made at least 30 days prior to the public hearing and include a statement of the availability of the discussion outlined in R307-1-3.6.2.E(2). Prior to the issuance of a notice under this paragraph respecting the redesignation of any Federal lands, a written notice shall be given to the appropriate Federal Land Manager who shall be afforded opportunity (not to exceed 60 days) to confer with the Board respecting the redesignation and to submit written comments and recommendations. In recommending redesignation of any area with respect to which a Federal Land Manager has submitted comments the Board shall publish a list of any inconsistency between such redesignation and such comments and recommendations together with the reasons for recommending such redesignation against the recommendation of the Federal Land Manager; and

(2) A discussion of the reasons for the proposed redesignation, including a satisfactory description and analysis of the health, environmental, economic and social and energy effects of the proposed redesignation, will be prepared and made available for public inspection at least 30 days prior to the hearing. Any person who petitions the Board for redesignation of an area may be required to prepare and submit to the Board the analysis required by R307-1-3.6.2.E(2).

F. Lands within the exterior boundaries of reservations of federally recognized Indian Tribes may be redesignated only by the appropriate Indian body as provided in Section 164 of the Clean Air Act.

3.6.3 Increments and Ceilings.

A. In Class I, II, or III areas, the maximum allowable increases in concentrations of sulfur dioxide, nitrogen dioxide and particulate matter over baseline concentrations of such

pollutants are limited to the following:

TABLE 3

(1)Maximum Allowable Increase (ug/m^3)

Pollutant	Class I	Class II	Class III
PM10:			
Annual Arithmetic Mean	4	17	34
24-hr. Maximum	8	30	60
Sulfur Dioxide:			
Annual Arithmetic Mean	2	20	40
24-hr. Maximum	5	91	182
3-hr. Maximum	25	512	700
Nitrogen Dioxide:			
Annual Arithmetic Mean	2.5	25	50

(1) At any one location, the maximum allowable increase for other than the annual period may be exceeded once each year. For any period other than the annual period, the applicable maximum allowable increase may be exceeded during one such period per year at any one location.

B. Variances to Class I areas will be allowed only after compliance with the requirements of and within the increments provided in Section 165 of the federal Clean Air Act, or in the case of PM10 increments, only after compliance with the Title 40 of the Code of Federal Regulations, Section 51.166(p)(4) (as amended-see the June 3, 1993 Federal Register notice, 58 FR 31637) which is hereby incorporated by reference.

C. In any area, no resultant concentration of any air pollutant shall exceed the concentration permitted under either the national secondary or primary ambient air quality standard whichever concentration is lowest for the pollutant for a period of exposure.

D. Exclusions from increment consumption. The following concentrations shall be excluded in determining compliance with a maximum allowable increase:

(1) Concentrations attributable to the increase in emissions from sources which have converted from:

(a) the use of petroleum products, natural gas, or both by reason of an order in effect under sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974; or

(b) using natural gas by reason of a natural gas curtailment plan in effect pursuant to the Federal Power Act, over the emissions from such sources before the effective date of such an order or plan.

No exclusion of such concentrations shall apply more than five years after the effective date of the order or the plan. If both an order and plan are applicable, no such exclusion shall apply more than five years after the later of such effective dates.

(2) Concentrations of PM10 attributable to the increase in emissions from construction or other temporary emission-related activities.

(3) Concentrations attributable to the temporary increase in emissions of sulfur dioxide, nitrogen oxides or PM10 from sources which are affected by plan revisions approved by EPA as meeting the criteria specified in 40 CFR 51.166(f)(4).

3.6.4 Baseline Concentration and Date.

A. Baseline concentration. A baseline concentration is determined for each pollutant for which a minor source baseline date is established and shall include:

(1) The actual emissions representative of sources in existence on the applicable minor source baseline date except as provided in R307-1-3.6.4.B;

(2) The allowable emissions of major sources which commence construction before the major source baseline date, but were not in operation by the applicable minor source baseline date.

B. The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s):

(1) actual emissions from any major source on which construction commenced after the major source baseline date, and

(2) actual emissions increases and decreases at any source occurring after the minor source baseline date.

C. Baseline date. The minor source baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

(1) the area in which the proposed source or modification would construct is designated as attainment or unclassifiable under section 107(d)(i)(D) or (E) of the federal Clean Air Act for the pollutant on the date of its complete application under 40 CFR 52.21, or R307-1-3.6; and

(2) in the case of a major source the pollutant would be emitted in significant amounts, or, in the case of a major modification, there would be a significant net emissions increase of the pollutant. With respect to particulate matter, significant shall mean significant for PM10.

D(1) Any minor source baseline date established originally for increments of total suspended particulates shall remain in effect and shall apply for purposes of determining the amount of available PM10 increments, except that the executive secretary may rescind any such minor source baseline date where it can be shown to the executive secretary's satisfaction that the emissions increase from the major stationary source or the net emissions increase from the major modification responsible for triggering that date did not result in a significant amount of PM10 emissions.

(2) Any baseline area established originally for the increments of total suspended particulates shall remain in effect and shall apply for purposes of determining the amount of available PM10 increments, except that such baseline area shall not remain in effect if the executive secretary rescinds the corresponding minor source baseline date in accordance with R307-1-3.6.4.D(1).

3.6.5 PSD Areas - New Sources and Modifications.

A. Emission Limitations. Any source constructed or modified in a PSD area must meet all applicable emissions requirements of R307-1 and the Utah State Implementation Plan. A proposed source or modification which is not a major source or major modification may be approved without meeting the requirements in R307-1-3.6.5.B, provided such source meets all other applicable requirements of these regulations. The emission limitations shall be stated as conditions of the approval order.

B. Major Source and Major Modification Review. Every new major source or major modification must be reviewed by the Executive Secretary to determine the air quality impact of the source to include a determination whether the source will

cause or contribute to a violation of the maximum allowable increases or the NAAQS in any area. The determination of air quality impact will be made as of the source's projected start-up date. Such determination shall take into account all allowable emissions of approved sources or modifications whether constructed or not, and, to the extent practicable, the cumulative effect on air quality of all sources and growth in the affected area.

(1) In addition to meeting all other requirements of these regulations, any major source or major modification which would be constructed in a PSD area, shall:

(a) Provide the following additional information with the notice of intent required pursuant to R307-1-3.1:

(i) An analysis of the air quality impact of the source or modification and a demonstration that allowable emissions increases from the source or modification, in conjunction with all other applicable emissions increases or reductions (including secondary emissions), will not cause or contribute to a violation of any maximum allowable increase over the baseline concentration in any area or any NAAQS in any area.

(ii) An analysis of ambient air quality in the affected area for each pollutant that a new source would have the potential to emit in a significant amount, and for each pollutant for which a modification would result in a significant net emissions increase. With respect to any such pollutant for which no NAAQS exists, the analysis shall contain such air quality monitoring data as the Executive Secretary determines is necessary to assess ambient air quality for that pollutant in any area that the emissions of that pollutant would affect. With respect to any such pollutant (other than non-methane hydrocarbons) for which such a NAAQS does exist, the analysis shall contain continuous air quality monitoring data gathered for purposes of determining whether emissions of that pollutant would cause or contribute to a violation of the standard or any maximum allowable increase in any area that the emissions of that pollutant would affect. In general, the continuous air quality monitoring data that is required shall have been gathered over a period of at least one year and shall represent at least the year preceding receipt of the notice of intent, except that, if the Executive Secretary determines that a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than one year (but not to be less than four months), the data that is required shall have been gathered over at least that shorter period. Any data used in the analysis must be gathered using EPA reference methods or equivalent and quality assurance procedures equivalent to 40 CFR Part 58, Appendix B. A monitoring plan will be submitted to the Executive Secretary for approval prior to data collection. The Executive Secretary may grant exceptions or modifications to these monitoring requirements when not inconsistent with federal law.

(iii) Upon request of the Executive Secretary, the air quality impact of the source or modification, including meteorological and topographical data necessary to estimate such impact; and the air quality impact of any or all general commercial residential, industrial, and other growth which has occurred since the minor source baseline date in the area the source or modification would affect.

(iv) An analysis of the air quality related impact of the source or modification including an analysis of the impairment to visibility, soils, and vegetation and the projected air quality impact from general commercial, residential, industrial, and other growth associated with the source or modification. The owner or operator need not provide an analysis of the impact on vegetation having no significant commercial or recreational value.

(b) After construction of the source or modification, conduct such ambient air quality monitoring as the Executive Secretary determines may be necessary to establish the effect which the emissions from the source or modification may have on the air quality in any area.

(2) If the Executive Secretary finds that the emissions from a proposed major source or major modification would cause a violation of any maximum allowable increase over the baseline concentration in any area, the Executive Secretary shall approve the proposed source if and only if:

(a) the new source or modification is required to meet a more stringent emission limitation sufficient to avoid a violation of the maximum allowable increase and/or

(b) the new source or modification has acquired sufficient offset to avoid a violation of the maximum allowable increase, and

(c) the new emission limitations for the proposed source and for any affected existing sources are enforceable.

(3) If the Executive Secretary finds that the emissions from a proposed major source or major modification would contribute to a known violation of any maximum allowable increase over the baseline concentration in any area, the Executive Secretary shall approve the proposed source if and only if:

(a) the new source or modification has acquired sufficient emission offset so as to provide a positive net air quality benefit in the affected area, and

(b) any new emission limitations for affected existing sources are enforceable.

C. The requirements of R307-1-3.6.5.B(1) shall not apply to a major source or major modification if:

(1) The source is a portable stationary source which has previously received a permit under this paragraph, and

(a) The owner or operator proposes to relocate the source and emissions of the source at the new location would be temporary; and

(b) The emissions from the source would not exceed its allowable emissions; and

(c) The emissions from the source would impact no Class I area and no area where an applicable increment is known to be violated;

(2) The source or modification would be a non-profit health or non-profit educational institution and the Board approves a request that it be exempt from those requirements.

(3) The source or modification would be a major source or major modification only if fugitive emission and fugitive dust, to the extent quantifiable, are considered in calculating the potential to emit of the source or modification and the source does not belong to any of the following categories:

(a) Coal cleaning plants (with thermal dryers);

(b) Kraft pulp mills;

(c) Portland cement plants;

(d) Primary zinc smelters;

(e) Iron and steel mills;

(f) Primary aluminum or reduction plants;

(g) Primary copper smelters;

(h) Municipal incinerators capable of charging more than 250 tons of refuse per day;

(i) Hydrofluoric, sulfuric, or nitric acid plants;

(j) Petroleum refineries;

(k) Lime plants;

(l) Phosphate rock processing plants;

(m) Coke oven batteries;

(n) Sulfur recovery plants;

(o) Carbon black plants (furnace process);

(p) Primary lead smelters;

(q) Fuel conversion plants;

(r) Sintering plants;

(s) Secondary metal production plants;

(t) Chemical process plants;

(u) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(v) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(w) Taconite ore processing plants;

(x) Glass fiber processing plants;

(y) Charcoal production plants;

(z) Fossil fuel-fired steam electric plants of more than 250 million British thermal units

per hour heat input;

(aa) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the federal Clean Air Act.

(4) With respect to a particular pollutant, the allowable emissions of that pollutant from the source, or the net emissions increase of that pollutant from the modification:

(a) would impact no Class I area and no area where an applicable increment is known to be violated, and

(b) would be temporary.

D. The requirements of R307-1-3.6.5.B(1) as they relate to any maximum allowable increase for a Class II area shall not apply to a major modification at a source that was in existence on March 1, 1978, if the net increase in allowable emissions for each pollutant from the modification after the application of best available control technology would be less than 50 tons per year.

E.(1) The requirements of R307-1-3.6.5.B(1)(a)(i) pertaining to the impact analysis shall not apply to a source or modification with respect to any maximum allowable increase for nitrogen oxides if the owner or operator of the source or modification submitted a notice of intent before October 15, 1990, and the Executive Secretary subsequently determined that the notice of intent as submitted before that date was complete.

(2) The requirements of R307-1-3.6.5.B(1)(a)(i) concerning an analysis of the maximum allowable increase over the baseline concentration shall not apply to a stationary source or modification with respect to any maximum allowable increase for PM10 if the owner or operator of the source or modification submitted an application for a permit before December 15, 1994, and the executive secretary subsequently determined that the application as submitted before that date was complete. Instead, the applicable requirements shall be with respect to the maximum allowable increases for total suspended particulates as in effect on the date the application was submitted. These increments were, for the annual geometric mean: 5, 19, and 37 micrograms/cubic meter for Class I, II and III areas respectively and, for the 24-hour maximum: 10, 37 and 75 micrograms/cubic meter for Class I, II and III areas respectively.

F. Exemption - Monitoring Requirement

(1) The Executive Secretary may grant exceptions or modifications to the monitoring requirements in R307-1-3.6.5.B(1)(a)(ii) which are not inconsistent with federal law.

(2) The Executive Secretary may exempt a stationary source or modification from the requirements of R307-1-3.6.5.B(1)(a)(ii) with respect to monitoring for a particular pollutant if:

(a) The emissions increase of the pollutant from the new source or the net emissions increase of the pollutant from the modification would cause, in any area, air quality impacts less than the following amounts:

Carbon monoxide - 575 ug/m^3, 8-hour average;

Nitrogen dioxide - 14 ug/m^3, annual average;

PM10 - 10 micrograms/cubic meter, 24-hour average;

Sulfur dioxide - 13 ug/m^3, 24-hour average;

Lead - 0.1 ug/m^3, 24-hour average;

Mercury - 0.25 ug/m^3, 24-hour average;

Beryllium - 0.0005 ug/m^3, 24-hour average;

Ozone - No de minimis air quality level is provided for ozone. However, any proposed source or modification subject to PSD with net increase of 100 tons per year or more of volatile organic compounds subject to PSD would be required to perform an ambient impact analysis including the gathering of ambient air quality data;

Fluorides - 0.25 ug/m^3, 24-hour average;

Vinyl chlorides - 15 ug/m^3, 24-hour average;

Total reduced sulfur - 10 ug/m^3, 1-hour average;

Hydrogen sulfide - 0.04 ug/m^3, 1-hour average;

Reduced sulfur compounds - 10 ug/m^3, 1-hour average; or

(b) The concentrations of the pollutant in the area that the source or modification would affect are less than the concentrations listed in R307-1-3.6.5.F(2)(a), or the pollutant is not listed in R307-1-3.6.5.F(2)(a).

3.6.6 Increment Violations.

Where the Board determines that an increment under R307-1-3.6.3 is violated, the Board shall promulgate a plan and implement regulations to eliminate the violation.

3.6.7 Banking of Emission Offset Credit in PSD Areas. Banking of emission offset credits in PSD areas will be permitted. To preserve banked emission reductions the Executive Secretary must identify them in either the Utah SIP or an order and shall provide a registry to identify the person, private entity, or government authority that has the right to use or allocate the banked emission reduction and to record any transfer of or lien on these rights.

3.7 Air Quality Modeling.

3.7.1 Use of Dispersion models. All estimates of ambient concentrations derived in meeting the requirements of these rules shall be based on appropriate air quality models, data bases, and other requirements specified in 40 CFR Part 51, Appendix W, (Guideline on Air Quality Models). Where an air quality model specified in the Guideline on Air Quality Models

or other EPA approved guidance documents is inappropriate, the Executive Secretary may authorize the modification of the model or substitution of another model. In meeting the requirements of federal law, any modification or substitution will be made only with the written approval of the Administrator, EPA.

3.7.2 Modeling of Criteria Pollutant Impacts in Attainment Areas. Prior to receiving an approval order, a new source in an attainment area with a total controlled emission rate per pollutant greater than or equal to amounts specified in Table 4, or a modification to an existing source located in an attainment area which increases the total controlled emission rate per pollutant of the source in an amount greater than or equal to those specified in Table 4, shall conduct air quality modeling, as identified in R307-1-3.7.1, to estimate the impact of the new or modified source on air quality unless previously performed air quality modeling for the source indicates that the addition of the proposed emissions increase would not violate a National Ambient Air Quality Standard or a Prevention of Significant Deterioration increment, as determined by the Executive Secretary.

TABLE 4

POLLUTANT	EMISSIONS
sulfur dioxide	40 tons per year
oxides of nitrogen	40 tons per year
PM10 - fugitive emissions and fugitive dust	5 tons per year
PM10 - non-fugitive emissions or non-fugitive dust	15 tons per year
carbon monoxide	As required under R307-1-3.6.5.B
lead	0.6 tons per year

3.7.3 Documentation of Ambient Air Impacts for Hazardous Air Pollutants. Prior to receiving an approval order under R307-1-3.1, a source shall provide documentation of increases in emissions of hazardous air pollutants as required under R307-1-3.7.3.C. for all installations not exempt under R307-1-3.7.3.A.

A. Exempted Installations.

(1) The requirements of R303-1-3.7.3. do not apply to installations which are subject to or are scheduled to be subject to an emission standard promulgated under 42 U.S.C. 7412 at the time a notice of intent is submitted, except as defined in R307-1-3.7.3.A(2). This exemption does not affect requirements otherwise applicable to the source, including requirements under R307-1-3.1.

(2) The executive secretary may, upon making a written determination that the delay in the implementation of an emission standard under 40 CFR Part 63 might reasonably be expected to pose an unacceptable risk to public health, require, on a case-by-case basis, notice of intent documentation of emissions consistent with R307-1-3.7.3.C.

(a) The executive secretary shall notify the source in writing of the preliminary decision to require some or all of the documentation as listed in R307-1-3.7.3.C.

(b) The source may respond in writing within thirty days of receipt of the notice, or such longer period as the executive secretary approves.

(c) In making a final determination, the executive secretary shall document objective bases for the determination, which may include public information and studies, documented public comment, the applicant's written response, the physical and chemical properties of emissions, and ambient monitoring data.

B. Lead Compounds Exemption. The requirements of R307-1-3.7.3. do not apply to emissions of lead compounds. Lead compounds shall be evaluated pursuant to requirements of R307-1-3.7.2.

C. Submittal Requirements.

(1) Each applicant's notice of intent shall include:

(a) the estimated maximum pounds per hour emission rate increase from each affected installation,

(b) the type of release, whether the release flow is vertically restricted or unrestricted, the maximum release duration in minutes per hour, the release height measured from the ground, the height of any adjacent building or structure, the shortest distance between the release point and any area defined as "ambient air" under 40 CFR 50.1(e) for each installation for which the source proposes an emissions increase,

(c) the emission threshold value, calculated to be the applicable threshold limit value - time weighted average (TLV-TWA) or the threshold limit value - ceiling (TLV-C) multiplied by the appropriate emission threshold factor listed in Table 5, except in the case of arsenic, benzene, beryllium, and ethylene oxide which shall be calculated using chronic emission threshold factors, and formaldehyde, which shall be calculated using an acute emission threshold factor. For acute hazardous air pollutant releases having a duration period less than one hour, this maximum pounds per hour emission rate shall be consistent with an identical operating process having a continuous release for a one-hour period.

TABLE 5 EMISSION THRESHOLD FACTORS FOR HAZARDOUS AIR POLLUTANTS
(cubic meter pounds per milligram hour)

VERTICALLY-RESTRICTED AND FUGITIVE EMISSION RELEASE POINTS

DISTANCE TO PROPERTY BOUNDARY	ACUTE	CHRONIC	CARCINOGENIC
20 Meters or less	0.038	0.051	0.017
21 - 50 Meters	0.051	0.066	0.022
51 - 100 Meters	0.092	0.123	0.041
Beyond 100 Meters	0.180	0.269	0.090

VERTICALLY-UNRESTRICTED EMISSION RELEASE POINTS

DISTANCE TO PROPERTY BOUNDARY	ACUTE	CHRONIC	CARCINOGENIC
50 Meters or less	0.154	0.198	0.066
51 - 100 Meters	0.224	0.244	0.081
Beyond 100 Meters	0.310	0.368	0.123

(2) A source with a proposed maximum pounds per hour emissions increase equal to or greater than the emissions threshold value shall include documentation of a comparison of the estimated ambient concentration of the proposed emissions with the applicable toxic screening level specified in R307-1-3.7.3.D.

(3) A source with an estimated ambient concentration equal to or greater than the toxic screening level shall provide additional documentation regarding the impact of the proposed emissions. The executive secretary may require such documentation to include, but not be limited to:

(a) a description of symptoms and adverse health effects that can be caused by the hazardous air pollutant,

(b) the exposure conditions or dose that is sufficient to cause the adverse health effects,

(c) a description of the human population or other biological species which could be exposed to the estimated concentration,

(d) an evaluation of land use for the impacted areas,

(e) the environmental fate and persistency.

D. Toxic Screening Levels and Averaging Periods.

(1) The toxic screening level for an acute hazardous air pollutant is 1/10th the value of the TLV-C, and the applicable averaging period shall be:

(a) one hour for emissions releases having a duration period of one hour or greater,

(b) one hour for emission releases having a duration period less than one hour if the emission rate used in the model is consistent with an identical operating process having a continuous release for a one-hour period or more, or

(c) the dispersion model's shortest averaging period when using an applicable model capable of estimating ambient concentrations for periods of less than one hour.

(2) The toxic screening level for a chronic hazardous air pollutant is 1/30th the value of the TLV-TWA, and the applicable averaging period shall be 24 hours.

(3) The toxic screening level for all carcinogenic hazardous air pollutants is 1/90 the value of the TLV-TWA, and the applicable averaging period shall be 24 hours, except in the case of formaldehyde which shall be evaluated consistent with R307-1-3.7.3.D(1) and arsenic, benzene, beryllium, and ethylene oxide which shall be evaluated consistent with R307-1-3.7.3.D(2).

3.8 Stack Heights and Dispersion Techniques. The degree of emission limitation required of any source for control of any air contaminant to include determinations made under 3.1, 3.3, and 3.6 must not be affected by so much of any source's stack height that exceeds good engineering practice or by any other dispersion technique except as provided in paragraph 3.8.1 of these regulations. This paragraph does not restrict, in any manner, the actual stack height of any source.

1. The provisions in this subsection 3.8 shall not apply to:

A. stack heights in existence, or dispersion techniques implemented on or before December 31, 1970, except where pollutants are being emitted from such stacks or using such dispersion techniques by sources which were constructed or reconstructed, or for which major modifications were carried out after December 31, 1970; or

B. coal-fired steam electric generating units subject to the provisions of Section 118 of the Clean Air Act, which commenced operation before July 1, 1957, and whose stacks were constructed under a construction contract awarded before February 8, 1974.

2. The Executive Secretary may require the source owner or operator to provide a demonstration that the source stack height meets good engineering practice as required by this subsection 3.8.

3.9 Fees - Major Sources. The owner and operator of each new major source or major modification is required to pay a fee to the Department sufficient to cover the reasonable costs of reviewing and acting upon the notice of intent required pursuant to subsection 3.1 for each new major source or major modification and implementing and enforcing requirements placed on such source by any approval order issued pursuant to such notice (not including any court costs associated with any enforcement action).

A. The Executive Secretary will provide the owner or operator of each new major source or major modification with an itemized bill for services upon issuance of an approval order. Such a bill for services shall represent the actual costs to the Department for reviewing and acting upon the notice of intent and shall be due and payable upon receipt.

B. The Executive Secretary shall provide the owner or operator of each new major source or major modification with an itemized bill for services upon completion of an initial compliance inspection and/or source testing and/or any enforcement action brought about by the issuance of an approval order. Such bill shall represent the actual costs to the Department for the inspection, testing and/or enforcement action and shall be due and payable upon receipt.

C. A request for review or reconsideration of the bill provided by the Executive Secretary to the owner or operator of a source affected by this subsection 3.9 may be filed by the owner or operator of said source with the Executive Secretary within 20 days of receipt. The Board shall consider the request for review and determine the appropriateness of the bill.

3.10 Visibility

1. The Executive Secretary shall review any new major source or major modification proposed in either an attainment area or area of nonattainment area for the impact of its emissions on visibility in any mandatory Class I area. As a condition of any approval order issued to a source under subsection 3.1 of these regulations, the Executive Secretary shall require the use of air pollution control equipment, technologies, methods or work practices deemed necessary to mitigate visibility impacts in Class I areas that would occur as a result of emissions from such source. The Executive Secretary shall take into consideration as a part of the review and control requirements:

A. the costs of compliance;

B. the time necessary for compliance;

C. the energy usage and conservation;

D. the non air quality environmental impacts of compliance;

E. the useful life of the source; and

F. the degree of visibility improvement which will be provided as a result of control.

In determining visibility impact by a major new source or major modification, the Executive Secretary shall use, the procedures identified in the EPA publication "Workbook For Estimating Visibility Impacts" (EPA 450-4-80-031) November 1980, or equivalent.

The Executive Secretary shall insure that source emissions will be consistent with making reasonable progress toward the national visibility goal referred to in 40 CFR, 51.300(a).

2. The Executive Secretary shall notify the Federal Land Manager having jurisdiction over any mandatory Class I area of any proposed new major source or major modification that may reasonably be expected to affect visibility in that mandatory

Class I area. Such notification shall be in writing and shall include a copy of all information relevant to the Notice of Intent and visibility impact analysis submitted by the source. The notification shall be made within thirty (30) days of receipt of the completed Notice of Intent and at least sixty (60) days prior to any public hearing or the commencement of any public comment period, held in accordance with R307-1-3.1 of these regulations, on the proposal. The Executive Secretary shall consider, as a part of the new or modified source review required by R307-1-3.10, any analysis performed by the Federal Land Manager that such proposed new major source or major modification may have an adverse impact on visibility in any mandatory Class I area, provided such analysis is submitted to the Executive Secretary within sixty (60) days of the notification to the Federal Land Manager as required by this paragraph. If the Executive Secretary determines that the major source or major modification will have an adverse impact on visibility in any mandatory Class I area, the Executive Secretary shall not issue the approval order. Where the Executive Secretary determines that such analysis does not demonstrate that adverse impact on visibility will result in a mandatory Class I area, the Executive Secretary will, in the notice of any public hearing held on the new major source or major modification proposal, explain the decision or give notice where the explanation can be obtained.

Where the Executive Secretary receives advance notification or early consultation with a major new source or major modification which may affect visibility prior to the submission of a Notice of Intent to Construct for the major new source or major modification, the Executive Secretary will notify the affected Federal Land Manager within thirty (30) days of such advance notification.

3. If the analysis required by R307-1-3.10.1 predicts that an adverse impact on visibility may reasonably be expected to occur in a mandatory Class I area, the Executive Secretary may require a proposed new major source or major modification to perform pre-construction and/or post-construction visibility monitoring in any mandatory Class I area as deemed necessary and appropriate to assess the impact of the proposed source or modification on visibility. Such monitoring shall be conducted in accordance with a monitoring plan prepared by the owner or operator of the source or his representative and approved by the Executive Secretary.

4. The Executive Secretary will consider in review and permitting of a new major source or major modification to an existing source, any visibility monitoring data provided by the Federal Land Manager which may reasonably be expected to be impacted by the proposed new major source or major modification.

5. The Executive Secretary may perform oversight audits of any network collecting visibility data which may be used as a part of the permitting process as determined necessary.

R307-1-4. Emissions Standards.

Section R307-1-3 may require more stringent controls than listed herein, in which case the requirements of R307-1-3 must be met.

4.1 Visible Emissions. Opacity limitations in R307-1-4.1 shall not apply to any sources for which emission limitations are assigned pursuant to R307-1-3.2. The provisions of R307-1-4.1.7 through R307-1-4.1.9 shall apply to such sources except as otherwise provided in R307-1-3.2.

4.1.1 In PM10 Nonattainment Areas, visible emissions from existing installations except gasoline powered internal combustion engines, shall be of a shade or density no darker than 20% opacity. Installations in other areas of the State which were constructed before April 25, 1971, except internal combustion engines, shall be of a shade or density no darker than 40% opacity except as provided in these regulations.

4.1.2 Visible emissions from installations constructed after April 25, 1971, except internal combustion engines, or any incinerator shall be of a shade or density no darker than 20% opacity, except as otherwise provided in these regulations.

4.1.3 No owner or operator of a gasoline powered engine or vehicle shall allow, cause or permit the emissions of visible contaminants except for starting motion no farther than 100 yards, or for stationary operation not exceeding 3 minutes in any hour.

4.1.4 Emissions from diesel engines manufactured after January 1, 1973, shall be of a shade or density no darker than 20% opacity, except for starting motion no farther than 100 yards or for stationary operation not exceeding 3 minutes in any hour.

4.1.5 Emissions from diesel engines manufactured before January 1, 1973, shall be of a shade or density no darker than 40% opacity, except for starting motion no farther than 100 yards or for stationary operation not exceeding 3 minutes in any hour.

4.1.6 Upon application, exceptions to paragraphs 4.1.4 and 4.1.5 may be granted by the Board on a case by case basis for diesel locomotives operating above 6000 feet MSL.

4.1.7 Visible emissions exceeding the opacity standards for short time periods as the result of initial warm-up, soot blowing, cleaning of grates, building of boiler fires, cooling, etc., caused by start-up or shutdown of a facility, installation or operation, or unavoidable combustion irregularities which do not exceed three minutes in length (unavoidable combustion irregularities which exceed three minutes in length must be handled in accordance with R307-1-4.7), shall not be deemed in violation provided that the executive secretary finds that adequate control technology has been applied. The owner or operator shall minimize visible and non-visible emissions during start-up or shutdown of a facility, installation, or operation through the use of adequate control technology and proper procedures.

4.1.8 Compliance Method. Emissions shall be brought into compliance with these requirements by reduction of the total weight of contaminants discharged per unit of time rather than by dilution of emissions with clean air.

4.1.9 Opacity Observation. Opacity observations of emissions from stationary sources shall be conducted in accordance with EPA Method 9, "Visual Determination of Opacity of Emissions from Stationary Sources", 40 CFR Part 60, Appendix A. Opacity observers of mobile sources and intermittent sources shall use procedures similar to Method 9, but the requirement for observations to be made at 15 second intervals over a 6-minute period shall not apply.

4.2 Sulfur Content of Fuels.

4.2.1 Any coal, oil, or mixture thereof, burned in any fuel burning or process installation not covered by New Source Performance Standards for sulfur emissions shall contain no more than 1.0 pound sulfur per million gross BTU heat input for any mixture of coal nor .85 pounds sulfur per million gross BTU heat input for any oil.

A. In the case of fuel oil, it shall be sufficient to record the following specifications for each purchase of fuel oil from the vendor: 1) Weight Percent Sulfur 2) Gross Heating Value (btu per unit volume) and 3) Density. These parameters shall be ascertained in accordance with the methods of the American Society for Testing and Materials.

B. In the case of coal, it shall be necessary to obtain a representative grab sample for every 24 hours of operation and the sample shall be tested in accordance with the methods of the American Society for Testing and Materials.

C. All sources located in the SO_2 nonattainment area covered by Section IX, Part H of the Utah State Implementation Plan which are required to comply with specific fuel (oil or coal) sulfur content limitations must demonstrate compliance with their limitations in accordance with paragraphs A and B above.

D. Records of fuel sulfur content shall be kept for all periods when the plant is in operation and shall be made available to the executive secretary upon request, and shall include a period of two years ending with the date of the request.

E. If the owner/operator of the source can demonstrate to the executive secretary that the inherent variability of the coal they are receiving from the vendor is low enough such that the testing requirements outlined above may be deemed excessive, then an alternative testing plan may be approved for use with the same source of coal.

F. Any person may apply to the executive secretary for approval of an alternative test method, an alternative method of control, an alternative compliance period, an alternative emission limit, or an alternative monitoring schedule. The application must include a demonstration that the proposed alternative produces an equal or greater air quality benefit than that required by R307-1-4.2, or that the alternative test method is equivalent to that required by these rules. The executive secretary shall obtain concurrence from EPA when approving an alternative test method, an alternative method of control, an alternative compliance period, an alternative emission limit, or an alternative monitoring schedule.

4.2.2 Any person engaged in operating fuel burning equipment using coal or fuel oil, which is not covered by New Source Performance Standards for sulfur emissions, may apply for an exemption from the sulfur content restrictions of R307-1-4.2.1. The applicant shall furnish evidence, that the fuel burning equipment is operating in such a manner as to prevent the emission of sulfur dioxide in amounts greater than would be produced under the limitations of R307-1-4.2.1. Control apparatus to continuously prevent the emission of sulfur greater than provided by R307-1-4.2.1 must be specified in the application for an exemption.

4.2.3 In case an exemption is granted, the operator shall install continuous emission monitoring devices approved by the executive secretary. The operator shall provide the executive secretary with a monthly summary of the data from such monitors. This summary shall be such as to show the degree of compliance with R307-1-4.2.1. It shall be submitted no later than the calendar month succeeding its recording. When exemptions from R307-1-4.2.1 are granted, the source's application for such exemption must specify the test method for determining sulfur emissions. The test method must agree with the NSPS test method for the same industrial category.

4.2.4 Methods for determining sulfur content of coal and fuel oil shall be those methods of the American Society for Testing and Materials.

A. For determining sulfur content in coal, ASTM Methods D3177-75 or D4239-85 are to be used.

B. For determining sulfur content in oil, ASTM Methods D2880-71 or D4294-89 are to be used.

C. For determining the gross calorific (or BTU) content of coal, ASTM Methods D2015-77 or D3286-85 are to be used.

4.4 Automobile Emission Control Devices. Any person owning or operating any motor vehicle or motor vehicle engine registered in the State of Utah on which is installed or incorporated a system or device for the control of crankcase emissions or exhaust emissions in compliance with the Federal motor vehicle rules, shall maintain the system or device in operable condition and shall use it at all times that the motor vehicle or motor vehicle engine is operated. No person shall remove or make inoperable within the State of Utah the system or device or any part thereof, except for the purpose of installing another system or device, or part thereof, which is equally or more effective in reducing emissions from the vehicle to the atmosphere.

4.5 Provisions for fugitive emissions and fugitive dust have been renumbered to R307-12.

4.6 Provisions for continuous emission monitoring systems have been renumbered to R307-13.

4.7 Unavoidable Breakdown. This applies to all regulated pollutants including those for which there are National Ambient Air Quality Standards. Except as otherwise provided in R307-1-4.7, emissions resulting from an unavoidable breakdown will not be deemed a violation of these regulations. If excess emissions are predictable, they must be authorized under the variance procedure in R307-1-2.3. Breakdowns that are caused entirely or in part by poor maintenance, careless operation, or any other preventable upset condition or preventable equipment breakdown shall not be considered unavoidable breakdown.

4.7.1 Reporting. A breakdown for any period longer than 2 hours must be reported to the executive secretary within 3 hours of the beginning of the breakdown if reasonable, but in no case longer than 18 hours after the beginning of the breakdown. During times other than normal office hours, breakdowns for any period longer than 2 hours shall be initially reported to the Environmental Health Emergency Response Coordinator, Telephone (801) 536-4123. Within 7 calendar days of the beginning of any breakdown of longer than 2 hours, a written report shall be submitted to the executive secretary which shall include the cause and nature of the event, estimated quantity of pollutant (total and excess), time of emissions and steps taken to control the emissions and to prevent recurrence. The submittal of such information shall be used by the executive secretary in determining whether a violation has occurred and/or the need of further enforcement action.

4.7.2 Penalties. Failure to comply with the reporting procedures of R307-1-4.7.1. will constitute a violation of these regulations.

4.7.3 The owner or operator of an installation suffering an unavoidable breakdown shall assure that emission limitations and visible emission limitations are exceeded for only as short a period of time as reasonable. The owner or operator shall take all reasonable measures which may include but are not limited to the immediate curtailment of production, operations, or activities at all installations of the source if necessary to limit the total aggregate emissions from the source to no greater than the aggregate allowable emissions averaged over the periods provided in the source's approval orders or the UACR. In the event that production, operations or activities cannot be curtailed so as to so limit the total aggregate emissions without jeopardizing equipment or safety or measures taken would result in even greater excess emissions, the owner or operator of the source shall use the most rapid, reasonable procedure to reduce emissions. The owner or operator of any installation subject to a SIP emission limitation pursuant to these rules shall be deemed to have complied with the provisions of R307-1-4.7 if the emission limitation has not been exceeded.

4.7.4 Failure to comply with curtailment actions required by R307-1-4.7.3 will constitute a violation of these rules.

4.8 In accordance with paragraph 110(a)(6), Clean Air Act as amended August 1977, owners or operators may not temporarily reduce the pay of any employee by reason of the use of a supplemental or intermittent or other dispersion dependent control system for the purposes of meeting any air pollution requirement adopted pursuant to the Clean Air Act as amended August 1977.

4.9 Requirements for ozone nonattainment areas and Davis and Salt Lake Counties have been renumbered to R307-14.

4.10 Abrasive Blasting.

4.10.1 Visible Emission Standards.

A. No person shall, if he complies with performance standards outlined in R307-1-4.10.3 or if he is not located in an area of nonattainment for particulates, discharge into the atmosphere from any abrasive blasting any air contaminant for a period or periods aggregating more than three minutes in any one hour which is a shade or density darker than 40% opacity.

B. No person shall, if he is not complying with an applicable performance standard in R307-1-4.10.3 and is in an area of nonattainment, discharge into the atmosphere from any abrasive blasting any air contaminant for a period or periods aggregating more than three minutes in any one hour which is of a shade or density no darker than 20% opacity.

4.10.2 Visible Emission Evaluation Techniques. Visible emission evaluation of abrasive blasting operations shall be conducted in accordance with the following provisions:

A. Emissions from unconfined blasting shall be read at the densest point of the emission after a major portion of the spent abrasive has fallen out, at a point not less than five feet nor more than twenty-five feet from the impact surface from any single abrasive blasting nozzle.

B. Emissions from unconfined blasting employing multiple nozzles shall be judged as a single source unless it can be demonstrated by the owner or operator that each nozzle, evaluated separately, meets the emission and performance standards provided for in R307-1-4.10.

C. Emissions from confined blasting shall be read at the densest point after the air contaminant leaves the enclosure.

4.10.3 Performance Standards.

A. To satisfy the requirements of R307-1-4.10.1, any abrasive blasting operation may use at least one of the following performance standards:

(1) Confined blasting;

(2) Wet abrasive blasting;

(3) Hydroblasting; or

(4) Unconfined blasting using abrasives as defined in R307-1-4.10.3.B.

B. Abrasives. Abrasives used for dry unconfined blasting referenced in R307-1-4.10.3.A shall comply with the following performance standards:

(1) Before blasting the abrasive shall not contain more than 1% by weight material passing a #70 U.S. Standard sieve.

(2) After blasting the abrasive shall not contain more than 1.8% by weight material 5 micron or smaller.

Abrasives reused for dry unconfined blasting are exempt from R307-1-4.10.3.B(2), but must conform with R307-1-4.10.3.B(1).

C. Abrasive Certification. Sources using the performance standard of R307-1-4.10.3.A(4) to meet the requirements of R307-1-4.10.1 must demonstrate they have obtained abrasives from persons which have certified (submitted test results) to the executive secretary at least annually that such abrasives meet the requirements of R307-1-4.10.3.B.

4.12 Emission standards for residential solid fuel burning devices and fireplaces have been renumbered to R307-17.

R307-1-5. Emergency Controls.

5.1 Air Pollution Emergency Episodes.

5.1.1 Determination of an episode and its extent or stage shall be made by the Executive Secretary taking into consideration the levels of pollutant concentrations contained at 40 CFR Section 51.151 and 40 CFR Section 51, Appendix L, and summarized in the table below:

TABLE

AIR POLLUTION EPISODE CRITERIA
(values in micrograms/cubic meter unless stated otherwise)

POLLUTANT	ALERT	WARNING	EMERGENCY	NEVER TO BE EXCEEDED
SULFUR DIOXIDE 24-hour average	800 (0.3 ppm)	1,600 (0.6 ppm)	2,100 (0.8 ppm)	2,620 (1.0 ppm)
PM10 24-hour average	350	420	500	600
CARBON MONOXIDE				
8-hour average	17,000 (15 ppm)	34,000 (30 ppm)	46,000 (40 ppm)	57,500 (50 ppm)
4-hour average				86,300 (75 ppm)
1-hour average				144,000 (125 ppm)
OZONE				
1-hour average	400 (0.2 ppm)	800 (0.4 ppm)	1,000 (0.5 ppm)	

2-hour average				1,200 (0.6 ppm)
NITROGEN DIOXIDE 1-hour average	1130 (0.6 ppm)	2,260 (1.2 ppm)	3,000 (1.6 ppm)	3,750 (2.0 ppm)
NITROGEN DIOXIDE 24-hour average	282 (0.15 ppm)	565 (0.3 ppm)	750 (0.4 ppm)	938 (0.5 ppm)

An air pollution alert, air pollution warning, or air pollution emergency will be declared when any one of the above pollutants reaches the specified levels at any monitoring site.

In addition to the levels listed for the above pollutants, meteorological conditions are such that pollutant concentrations can be expected to remain at the above levels for twelve (12) or more hours or increase, or in the case of ozone, the situation is likely to reoccur within the next 24-hours unless control actions are taken.

ALERT The Alert level is that concentration at which first stage control action is to begin.

WARNING The warning level indicates that air quality is continuing to degrade and that additional control actions are necessary.

EMERGENCY The emergency level indicates that air quality is continuing to degrade toward a level of significant harm to the health of persons and that the most stringent control actions are necessary.

5.1.2 The Executive Secretary shall also take into consideration, to determine an episode and its extent, rate of change of concentration, meteorological forecasts, and the geographical area of the episode, including a consideration of point and area sources of emission, where applicable.

5.1.3 If an episode is determined to exist, the Executive Director, with concurrence of the Governor shall:

A. Make public announcements pertaining to the existence, extent and area of the episode.

B. Require corrective measures as necessary to prevent a further deterioration of air quality.

5.1.4 Episode termination shall be announced by the Executive Director, with concurrence of the Governor, once monitored pollutant concentration data and meteorological forecasts determine the crisis is over.

R307-1-6. Eligibility of Pollution Control Expenditures for Sales Tax Exemption and Income Tax Credit.

6.1 Eligibility of Pollution Control Expenditures for Sales Tax Exemption.

6.1.1 Application for certification shall be made on forms provided by the State Department of Environmental Quality, and shall include all information requested thereon and such additional reasonably necessary information as is requested by the executive secretary of the Air Quality Board or the executive secretary of the Water Quality Board.

6.1.2 Certification shall be made only for taxpayers who are owners, operators (under a lease) or contract purchasers of a trade or business that utilizes Utah property with a pollution control facility to prevent or minimize pollution.

6.1.3 Date of filing shall be date of receipt of the final item of information requested and this filing date shall initiate the 120-day review period.

6.1.4 All materials, equipment and structures (or part thereof) purchased, leased or otherwise procured and services utilized for construction or installation in a water or air pollution control facility shall be eligible for certification, provided:

A. such materials, equipment, structures (or part thereof), and services installed, constructed, or acquired result in a demonstrated reduction of pollutant discharges or emission pollutant levels, and

B. the primary purpose of such materials, equipment, structures (or part thereof), and services is preventing, controlling, reducing, or disposing of water or air pollution.

The above includes expenditures which reduce the amount of pollutants produced as well as expenditures which result in removal of pollutants from waste streams. The materials, equipment, structures (or part thereof), and services that are necessary for the proper functioning of air or water pollution control facilities meeting the requirements of Subsections R307-1-6.1.4.A and R307-1-6.1.4.B, including equipment required for compliance monitoring, shall be eligible for certification.

6.1.5 Applications for certification shall be certified by the executive secretary of the Air Quality Board or the executive secretary of the Water Quality Board after consultation with the State Tax Commission and only if:

A. Air Quality

(1) the air pollution control facility in question has been reviewed and approved by the executive secretary of the Air Quality Board for those air pollution sources needing review in accordance with Section R307-1-3.1 of these rules, or

(2) the air pollution control facilities installed, constructed, or acquired are the result of the requirements of these rules (permits by rule) or the State Implementation Plan.

B. Water Quality

(1) plans for the water pollution control facility in question require review and approval by the Water Quality Board and have been so approved, or

(2) the water pollution control facility is specifically required by the Water Quality Board, including facilities constructed for pretreatment of wastes prior to discharge to a public sewerage system in accordance with Subsection R317-8-8.1, but excluding facilities which are permitted by rule under Subsection R317-6-6.2 (Ground Water Discharge Permit by Rule) unless required to obtain an individual permit by the Water Quality Board, or

(3) the water pollution control facility is required and permitted by another statutory board within the Department of Environmental Quality, or

(4) the water pollution control facility eliminates or reduces the discharge of pollutants which would be regulated by the Water Quality Board, if such pollutants were discharged.

6.1.6 The following items are specifically not eligible for certification:

A. materials and supplies used in the normal operation or maintenance of the water or air pollution control facilities;

B. materials, equipment, and services used to monitor ambient air or water, unless required for a permit or approval from a statutory board within the Department of Environmental Quality;

C. materials, equipment, and services for collection,

treatment, and disposal of human wastes, unless the primary purpose of such materials, equipment and services is the treatment of industrial wastes;

D. materials, equipment and services used in removal, treatment, or disposal of pollutants from contaminated ground water, if the applicant caused the ground water contamination by failing to comply with applicable permits, approvals, rules, or standards existing at the time the contamination occurred; and

E. air conditioners.

6.1.7 Upon determination that facilities described in any application under Subsection R307-1-6.1.1 satisfy the requirements of these rules and Sections 19-2-123 through 19-2-127 the executive secretary of the Air Quality Board or the executive secretary of the Water Quality Board shall issue a certification of pollution control facility to the applicant.

6.1.8 If the application is rejected, the applicant may appeal to the appropriate Board within 20 days for an informal hearing. The Board's decision will be final and conclusive on all parties unless appealed.

6.1.9 Revocation of prior certification shall be made for any of the circumstances prescribed in Section 19-2-126, after consultation with the State Tax Commission.

6.2 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.

6.2.1 Definitions. The following definitions apply only to R307-1-6.2.

A. "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 R307-1-6.2.1.A(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.

B. "Certified by the Board" is defined in Utah Code 59-7-605(1)(b) and 59-10-127(1)(b).

C. "Special Fuel Mobile Equipment" is defined in Utah Code 59-7-605(1)(d) and 59-10-127(1)(d).

D. "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.

6.2.2 As specified in Sections 59-7-, and 59-10-127 for tax years beginning January 1, 1997, and ending December 31, 2001, there is a credit against tax otherwise due in an amount equal to:

A. 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;

B. 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

C. 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.

6.2.3 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.

6.2.4 Proof of purchase of an item for which a credit specified in R307-1-6.2.2.A is allowed shall be made by submitting to the executive secretary:

A. a copy of the Manufacturer's Statement of Origin;

B. an original or copy of the purchase order, customer invoice, or receipt including the vehicle identification number (VIN); and

C.(1) a copy of the Manufacturer's Suggested Retail Price document that includes a clean fuel option on the equipment list for that vehicle or

(2) 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 (TLVE, LEV, ULEV, or ZEV) (specify motorcycles, passenger cars, light-duty trucks, medium-duty diesel engines, as applicable)."

6.2.5.A. Proof of purchase of an item for which a credit specified in R307-1-6.2.2.B or C is allowed shall be made by submitting to the executive secretary a copy of the purchase order, customer invoice, or receipt.

B. The proof of purchase specified in Subsection R307-1-6.2.5.A must be completed and signed by the person that converted the vehicle or the special fuel mobile equipment, and must include the following information:

(1) owner's name;

(2) owner's social security number or taxpayer identification number;

(3) vehicle VIN or identification number of the special fuel mobile equipment;

(4) fuel type before conversion;

(5) fuel type after conversion;

(6) conversion system manufacturer;

(7) conversion system model number;

(8) date of the conversion;

(9) name, address, and phone number of the person that converted the vehicle or the special fuel mobile equipment;

(10) 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;

(11) 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 R307-6.2.6; and

(12) 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.

6.2.6 Procedures for Obtaining Certification by the Board for Fuel Conversion Systems.

A. For vehicles.

(1) 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:

(a) description of each conversion system, fuel used, vehicle certification class (including vehicle type and vehicle weight class), and engine type;

(b) Federal Test Procedure (FTP) mass emissions test data which:

(i) 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;

(ii) 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;

(iii) is tested on two vehicles for each vehicle certification class which have accumulated at least 4,000 miles each;

(c) system engineering specifications.

(2) 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.

(3) Special provisions.

(a) 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.

(b) The executive secretary may waive the requirement for testing to be conducted at high altitude, specified in R307-1-6.2.6.A(1)(b)(i), if the manufacturer demonstrates that the conversion system provides an equivalent emission reduction.

(c) 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.

(d) Vehicle conversions must comply with EPA Mobile Source Enforcement Memorandum No. 1A., dated June 25, 1974.

B. For special fuel mobile equipment.

(1) 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:

(a) description of each conversion system, fuel used, and mobile equipment engine type;

(b) 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

(c) system engineering specifications.

(2) 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.

(3) 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.

C. Certification by other states may be accepted by the executive secretary if it meets the requirements specified in R307-1-6.2.6.A and B.

D. 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.

6.2.7 The executive secretary will acknowledge receipt of proofs specified in R307-1-6.2 by signing the relevant written statement provided on forms prescribed by the State Tax Commission.

6.3 Eligibility of Expenditures for Purchase and Installation Costs of Fireplaces and Wood Stoves that Use Cleaner Burning Fuels.

6.3.1 Definitions. The following definitions apply only to Subsection R307-1-6.3.

A. 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.

6.3.2 As specified in Subsection 59-7-110.8, and Section 59-10-128 for tax years beginning January 1, 1992, and ending December 31, 1997, 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:

A. the purchase price or

B. both the purchase price and installation cost of each approved fireplace or wood stove.

6.3.3 Proof of purchase of an item for which a credit specified in Subsection R307-1-6.3.2 is allowed shall be made by submitting to the executive secretary, or representative appointed by the executive secretary:

A. a copy of the sales receipt clearly stating the make, model, and price paid for the equipment and installation, and

B. a completed copy of the "Clean Fuel Alternative Tax

Credit Stoves/Fireplaces" form identifying the:

(1) owner's name and address;

(2) owner's social security number or taxpayer identification number;

(3) dealer's name and address;

(4) fireplace make and model;

(5) fireplace serial number;

(6) purchase price;

(7) installer's name and company name; and

(8) installation cost.

6.3.4 An authorized representative of the executive secretary will acknowledge receipt of proofs specified in Subsection R307-1-6.3.3 by signing the relevant written statement provided on the State Tax Commission "Clean Fuel Alternative Tax Credit Stoves/Fireplaces" form.

R307-1-8. Asbestos Certification, Asbestos Work Practices, and Implementation of Toxic Substances Control Act, Title II.

8.1 Definitions: The definitions in this subsection apply only to R307-1-8.

"Adequately wet" means to sufficiently mix or penetrate with liquid to prevent the release of particulate. If visible emissions are observed coming from asbestos containing material, then that material has not been adequately wetted. However, the absence of visible emissions is not sufficient evidence of being adequately wet.

"AHERA" means the federal Asbestos Hazard Emergency Response Act of 1986 and the Environmental Protection Agency implementing regulations, 40 CFR Part 763, Subpart E - Asbestos-Containing Materials in Schools.

"Airlock" means a system for allowing access to an area with minimum air movement through the system. The airlock typically consists of two curtained doorways separated by a distance of at least 3 feet such that personnel pass through one doorway into the airlock, allowing the doorway sheeting to overlap and close off the opening before proceeding through the second doorway, thereby preventing flow-through of contaminated air.

"Amended water" means a mixture of water and a chemical surfactant or a wetting agent that provides equivalent control of asbestos fiber release.

"Asbestos" means the asbestiform varieties of serpentine (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite (amosite), anthophyllite, and actinolite-tremolite.

"Asbestos-containing material" means any material containing more than one percent (1%) asbestos as determined using the method specified in Appendix A, Subpart F, 40 CFR Part 763 Section 1, Polarized Light Microscopy. If the asbestos content is less than 10% as determined by a method other than point counting using polarized light microscopy (PLM), verify the asbestos content by point counting using PLM.

"Asbestos contractor" means any person who contracts for hire to perform an asbestos project or an asbestos inspection.

"Asbestos Inspection" means an activity undertaken to determine the presence or location, or to assess the condition of, asbestos-containing material or suspected asbestos-containing material, whether by visual or physical examination, or by taking samples of the material. This term includes reinspections of the type described in AHERA, 40 CFR 763.85(b), of known or assumed asbestos-containing material which has been previously identified. The term does not include the following:

1. periodic surveillance of the type described in AHERA, 40 CFR 763.92(b), solely for the purpose of recording or reporting a change in the condition of known or assumed asbestos-containing material;

2. inspections performed by employees or agents of federal, state, or local government solely for the purpose of determining compliance with applicable statutes or regulations; or

3. visual inspections of the type described in AHERA, 40 CFR 763.90(i), solely for the purpose of determining completion of response actions.

"Asbestos project" means any activity, involving the removal, encapsulation, enclosure, renovation, repair, demolition, salvage, disposal, or other disturbance of friable asbestos-containing material.

"Asbestos project operator" means any asbestos contractor, any person responsible for the persons performing an asbestos project in an area to which the general public has unrestrained access, or any LEA responsible for the persons performing an asbestos project in a school building subject to AHERA.

"Asbestos removal" means the stripping of asbestos-containing materials from surfaces or components of a structure and to take out structural components that contain or are covered with friable asbestos-containing material from a structure.

"Asbestos waste" means mill tailings or any waste that contains commercial asbestos and is generated by a source subject to R307-1-8. This term includes filters from control devices, friable asbestos-containing waste material, and bags or other similar packaging contaminated with commercial asbestos. As applied to demolition and renovations, this term includes materials contaminated with asbestos including disposable equipment and clothing.

"Asbestos worker" means a person who,in a nonsupervisory capacity, performs an asbestos project.

"CFR" means Code of Federal Regulations.

"Certification" means an authorization issued by the executive secretary to persons who engage in asbestos projects or who act as asbestos workers, supervisors, inspectors, project designers, or management planners.

"Clean room" means an uncontaminated area or room which is part of the worker decontamination system and which has provisions for storage of workers' street clothes and clean protective equipment.

"Consultant" means a person who acts as an inspector, management planner, project designer, or any combination thereof.

"Delegated local agency" means a public agency having a memorandum of agreement with the Utah Department of Environmental Quality, Utah Air Quality Board, that assigns designated responsibilities for the administration of NESHAP Subpart M and/or R307-1-8 to the public agency.

"Demolition" means the wrecking or removal of any load-supporting structural member of a structure together with any related handling operations or the intentional burning of any structure.

"Emergency renovation operation" means any asbestos project which was not planned but results from a sudden, unexpected event that, if not immediately attended to, presents a safety or public health hazard, is necessary to protect equipment from damage, or is necessary to avoid imposing an unreasonable financial burden. This term includes operations necessitated by nonroutine failure of equipment.

"Encapsulation" means the application of an encapsulating agent to asbestos-containing materials to control the release of asbestos fibers into the air.

"Encapsulating agent" means a coating applied to the surface of friable asbestos-containing materials for the purpose of preventing the release of asbestos fibers. The encapsulating agent creates a membrane over the surface (bridging encapsulant) or penetrates the material and binds its components together (penetrating encapsulant).

"Enclosure" means an airtight, impermeable, permanent barrier around asbestos containing material to prevent the release of asbestos fibers into the air.

"Equipment room" means a contaminated area or room which is part of the asbestos worker decontamination system with provisions for storage of contaminated clothing and equipment.

"Friable asbestos-containing material" means any asbestos-containing material that hand pressure can crumble, pulverize, or reduce to powder when dry.

"HEPA filtration" means the high efficiency particulate air filtration found in respirators and vacuum systems capable of filtering particles greater than 0.3 micron in diameter with 99.97% efficiency, for use in asbestos-contaminated environments.

"Inspector" means a person who performs an asbestos inspection.

"LEA" means a local education agency as defined in AHERA.

"Management planner" means a person who prepares a management plan for a school building subject to AHERA.

"Minor fiber release episode" means any uncontrolled or unintentional disturbance of asbestos-containing material resulting in a visible emission which involves the falling or dislodging of three square or linear feet or less of friable asbestos-containing material.

"Model Accreditation Plan" means 40 CFR Part 763, Subpart E, Appendix C, Asbestos Model Accreditation Plan.

"NESHAP" means the National Emission Standards for Hazardous Air Pollutants, 40 CFR Part 61, Subpart M, the National Emission Standard for Asbestos.

"NESHAP size asbestos project" means any asbestos project that involves at least:

(a) 260 linear feet (80 meters) of pipe covered with friable asbestos-containing material;

(b) 160 square feet (15 square meters) of friable asbestos-containing material used to cover or coat any duct, boiler, tank, reactor, turbine, equipment, structure, structural member, or structural component; or

(c) 35 cubic feet (one cubic meter) of friable asbestos-containing material removed from structural members or components where the length and area could not be measured previously.

"OSHA" means Occupational Safety and Health Administration.

"Planned asbestos project" means asbestos projects in which the amount of asbestos-containing material to be removed, stripped, or otherwise disturbed within a calendar year, January 1 through December 31, is the NESHAP size. This term includes nonscheduled renovation operations necessitated by the routine failure of equipment, which is expected to occur within a given period based on past operating experience.

"Project designer" means a person who designs an asbestos project other than:

1. a small-scale, short duration asbestos project; or
2. an asbestos project necessitated by a minor fiber release episode.

"Public and commercial building" means the interior space of any building which is not a school building, except that the term does not include any residential apartment building of fewer than 10 units or detached single-family homes.

"Public agency" means any federal or state department, bureau, institution or agency thereof, any municipal corporation, county, city, or other political or taxing subdivision of the state.

"Renovation" means altering in any way one or more structural components. Operations in which load-supporting structural members are wrecked or taken out are excluded.

"Response Action" means a method, including removal, encapsulation, enclosure, repair, and operation and maintenance, that protects human health and the environment from friable asbestos-containing material.

"Shower room" means a room between the clean room and equipment room in the worker decontamination system with hot and cold or warm running water controllable at the tap and suitably arranged for complete showering during worker decontamination.

"Single family residential dwelling" means any structure or portion of a structure whose primary use is for housing of one family. Residential portions of multi-unit dwellings such as apartment buildings, condominiums, duplexes and triplexes are also considered to be, for the purposes of R307-1-8, single family residential dwellings; common areas such as hallways, entryways, and boiler rooms are not single family residential dwellings.

"Site supervisor" means a person who meets the definition of a "competent person" as cited in 29 CFR 1926.1101 (OSHA) and has the authority to act as the agent of the asbestos project operator at the asbestos project work site.

"Small-scale, short-duration asbestos project" means an asbestos project such as, but not limited to:

(1) removal of asbestos-containing insulation on pipes;

(2) removal of small quantities of asbestos-containing insulation on beams or above ceilings;

(3) replacement of an asbestos-containing gasket on a valve;

(4) installation or removal of a small section of drywall;

(5) installation of electrical conduits through or proximate to asbestos-containing materials. Small-scale, short-duration asbestos projects can further be defined by the following considerations:

(6) removal and/or repair of small quantities of asbestos-containing materials only if required in the performance of

another maintenance activity not intended as asbestos abatement;

(7) removal of asbestos-containing thermal system insulation not to exceed amounts greater than those which can be contained in a single glove bag;

(8) minor repairs to damaged thermal system insulation which do not require removal;

(9) repairs to a piece of asbestos-containing wallboard;

(10) repairs, involving removal, encapsulation or enclosure, to small amounts of friable asbestos-containing material only if required in the performance of emergency or routine renovation activity not intended solely as asbestos abatement. Such work may not exceed amounts greater than those which can be contained in a single prefabricated mini-enclosure. Such an enclosure shall conform spatially and geometrically to the localized work area, in order to perform its intended containment function.

"Strip" means to take off asbestos containing material from any part of a structure or structural component.

"Structural component" means any pipe, duct, boiler, tank, reactor, turbine, or furnace at or in a structure or any structural member of the structure.

"Structural member" means any load-supporting member of a structure, such as beams and load-supporting walls or any non-load-supporting member, such as ceilings and non-load-supporting walls.

"Structure" means, for the purposes of R307-1-8: any institutional, commercial, residential, or industrial building, equipment, building component, installation, or other construction.

"Supervisor" means a person who carries out or oversees an asbestos project.

"TSCA accreditation" means successful completion of training as an inspector, management planner, project designer, contractor/supervisor, or worker, as specified in the Toxic Substances Control Act, Title II.

"TSCA Title II" means 15 U.S.C. 2641 through 2656, Toxic Substances Control Act, Subchapter II - Asbestos Hazard Emergency Response, and 40 CFR Part 763, Subpart E - Asbestos-Containing Materials in Schools, including appendices.

"Waste generator" means any owner or operator of a source covered by R307-1-8 whose act or process produces asbestos waste.

"Waste shipment record" means the shipping document, that the waste generator originates and signs, and is used to track and substantiate the disposition of asbestos waste.

"Worker decontamination system" means an enclosed area, isolated from areas which are not contaminated with asbestos, consisting of a clean room, shower room, and equipment room, each separated from the other by airlocks and accessible through doorways protected with two overlapping polyethylene sheets.

"Working day" means Monday through Friday and includes holidays that fall on any of the days Monday through Friday.

8.2 Applicability.

8.2.1 Certification and Accreditation Requirements.

A. Asbestos project in a structure.

(1) The following persons shall be certified, as specified under Subsection R307-1-8.3, prior to conducting an asbestos project in a structure:

(a) asbestos contractors; and

(b) inspectors.

(2) The asbestos project operator shall ensure the following persons are trained or accredited, as specified in Subsection R307-1-8.4, prior to conducting an asbestos project:

(a) supervisors;

(b) asbestos workers; and

(c) persons who disturb any amount of friable asbestos-containing material in areas to which the general public has unrestrained access.

B. Asbestos activity subject to TSCA Title II. The following persons shall be certified, as specified in Subsection R307-1-8.3, prior to conducting an asbestos activity subject to TSCA Title II:

(1) asbestos contractors;

(2) supervisors;

(3) asbestos workers;

(4) inspectors;

(5) management planners; and

(6) project designers.

8.2.2 Work Practice Requirements.

The work practice requirements of Section R307-1-8 apply to any asbestos project operator who performs an asbestos project; persons who disturb any amount of friable asbestos-containing material in an area where the general public has unrestrained access; and to asbestos workers, supervisors, and consultants who perform work on an asbestos project.

8.2.3 The requirements of R307-10-1 (NESHAP 40 CFR Part 61 Subpart M, the National Emission Standard for Asbestos) apply to asbestos projects subject to R307-1-8.

8.3 Certification and Accreditation Requirements

8.3.1 Asbestos Contractor, Supervisor, and Consultant Certification Requirements.

A. Certificate required.

(1) The following persons shall obtain a certificate:

(a) Asbestos contractors, prior to engaging in an asbestos project in a structure;

(b) inspectors, prior to contracting for hire to perform an asbestos inspection, performing an asbestos inspection in an area to which the general public has unrestrained access, or performing an asbestos inspection in a building subject to TSCA Title II (public and commercial building);

(c) supervisors, asbestos workers, and project designers, prior to engaging in an asbestos project subject to the accreditation requirements of TSCA Title II; and

(d) management planners, prior to preparing a management plan for a school building subject to AHERA.

(2) The requirements of R307-1-8.3.1.A shall not apply to a person who performs an asbestos project on a single family residential dwelling that is his primary residence.

B. Application for certification. Asbestos contractors, supervisors, asbestos workers, and consultants required to be certified under Subsection R307-1-8.3.1.A(1) shall:

(1) submit a completed application to the executive secretary on forms provided by the executive secretary;

(2) pay the authorized certification fee to the Division of Air Quality; and

(3) provide evidence that they have complied with the

requirements of the applicable Subsections R307-1-8.3.2, R307-1-8.3.3, R307-1-8.3.4, or R307-1-8.3.5, respectively, and any additional information requested by the executive secretary.

8.3.2 Asbestos Contractor.

(A) In order to be certified as required under Subsection R307-1-8.3.1.A(1), an asbestos contractor shall submit:

(1) a master plan that describes in detail how the contractor will comply with Section R307-1-8 during asbestos projects or asbestos inspections, including the setup procedures, work practices, decontamination and cleanup practices, and equipment that will be typically used during asbestos projects;

(2) copies of medical surveillance records of employees and the contractor's respiratory protection program as required by 29 CFR 1926.1101 (OSHA);

(3) a list of the other states where the asbestos contractor is licensed or certified for asbestos project work, if applicable; and a list of all previous names used by the asbestos contractor;

(4) a description of past compliance history relating to asbestos activities, if applicable;

(5) evidence that all asbestos workers and supervisors who conduct work on an asbestos project:

(a) subject to TSCA Title II are certified as specified in the applicable Subsections of R307-1-8.3; and

(b) in a structure are TSCA accredited or passed a training course approved in accordance with Subsection R307-1-8.4.5; and

(6) evidence that all asbestos inspectors are certified as specified in Subsection R307-1-8.3.

B. Certificate transfer prohibited. The transfer of an asbestos contractor certificate is prohibited. Whenever there is a change in the controlling interest of the legal entity certified, a new certificate is required.

8.3.3 Supervisor.

In order to be certified as a supervisor as required under Subsection R307-1-8.3.1.A, supervisors shall submit certificates of initial and current contractor/supervisor TSCA accreditation in a state that has a Contractor Accreditation Program that meets the Model Accreditation Plan or from a training course approved in accordance with Subsection R307-1-8.4.5.

8.3.4 Asbestos Worker.

In order to be certified as an asbestos worker as required under Subsection R307-1-8.3.1.A, asbestos workers shall submit certificates of initial and current asbestos worker TSCA accreditation in a state that has a Contractor Accreditation Program that meets the Model Accreditation Plan or from a training course approved in accordance with Subsection R307-1-8.4.5.

8.3.5 Consultant and Consultant-in-training.

A consultant may be certified to perform asbestos-related activities in one or more of the following disciplines: inspector; management planner; or project designer. A consultant-in-training may be certified in one or more of the following disciplines: inspector in training; management planner in training; or project designer in training.

A. Certified Consultant.

(1) In order to be certified as a consultant, an applicant shall submit:

(a) evidence from employers of the appropriate hours of experience as specified in R307-1-8.3.5.A(2), (3) (4) and (5) in performing the duties outlined for the specific discipline in Subsection R307-1-8.3.5.B.; and

(b) certificates of initial and current TSCA accreditation for the specific discipline in a state that has a Contractor Accreditation Program that meets the Model Accreditation Plan or from a training course approved in accordance with Subsection R307-1-8.4.5.

(2) The experience requirements specified under Subsection R307-1-8.3.5.A(1)(a) may be gained working as a TSCA accredited consultant, by being responsible for persons accredited as consultants,by being under the direct supervision of a TSCA accredited consultant, or by working as a consultant-in-training under the direct supervision of a certified consultant, for the specific discipline.

(3) An applicant with a bachelor's degree in engineering, architecture, industrial hygiene, science or a related field must have at least 1,000 hours experience as specified under Subsection R307-1-8.3.5.A(1)(a).

(4) An applicant with a two year associate degree in a field related to engineering, architecture, industrial hygiene, science, or a similar field must have at least 2,000 hours experience as specified under Subsection R307-1-8.3.5.A(1)(a).

(5) An applicant with a high school degree must have at least 4,000 hours experience as specified under Subsection R307-1-8.3.5.A(1)(a).

B. Applicable experience.

(1) Inspector: experience performing the field work portion of asbestos inspections, including collecting bulk samples, categorizing asbestos containing material, assessing asbestos containing material, and preparing inspection reports;

(2) Management Planner.

(1) In order to be a consultant certified as a management planner, an applicant shall submit:

(a) evidence from employers of experience evaluating inspection reports, selecting response actions, analyzing the cost of response actions, ranking response actions, preparing operations and maintenance plans, and preparing management plans. The inspector experience requirements as specified under Subsection R307-1-8.3.5.B(1) may be substituted for Subsection R307-1-8.3.5.B(2) to meet the management planner experience requirements.

(3) Project Designer: experience designing, preparing, and evaluating specifications for asbestos abatement projects; preparing bidding documents, architectural drawings and schematic drawings of asbestos project work sites; determining the methods of asbestos abatement; and assessing the health hazards associated with asbestos containing material in structures. Registration as a professional engineer, licensed architect, or certified industrial hygienist may be substituted for experience as a project designer to meet the project designer experience requirements.

C. Consultant-in-training Certification. In order to be certified as a consultant-in-training, an applicant shall submit:

(1) certificates of initial and current TSCA accreditation for the specific discipline in a state that has a Contractor Accreditation Program that meets the Model Accreditation Plan or from a training course approved in accordance with Subsection 8.4.5; and

(2) the name and certification number of the certified

consultant(s) who will directly supervise and review the performance of all duties listed in Subsection R307-1-8.3.5.B for the specific discipline.

8.3.6 Exemption of Supervisors from Certification as an Asbestos Worker. A certified supervisor may perform the duties of an asbestos worker without being certified or accredited as an asbestos worker.

8.3.7 Action on an Application.

A. Response to Application. Within 30 calendar days after receiving a completed application, including all additional information requested, the executive secretary will issue certification or deny the application.

B. Denial of Application.

(1) The executive secretary may deny an application if the executive secretary determines that the applicant has not demonstrated compliance and/or the ability to comply with the applicable requirements, procedures, and standards established by Sections R307-1-8 and R307-10-1 (NESHAP Subpart M, the National Emission Standard for Asbestos).

(2) Upon being denied certification, the applicant may request a hearing before the Utah Air Quality Board as provided by law.

8.3.8 Suspension and Revocation.

The executive secretary may revoke or suspend any certification based upon violations of any requirement stated herein or in Section R307-10-1 (NESHAP). Justifications for suspension or revocation may include, but are not limited to: falsification or knowing omission of any written submittals required as part of Section R307-1-8, omission or improper use of work practices, improper disposal of friable asbestos-containing materials, spread of asbestos beyond the containment area, use of untrained or unaccredited workers for asbestos projects, or use of improper respirators. Certification may be revoked or suspended if the certified person fails to have his certification at the work site, permits the duplication or use of his own certification or TSCA accreditation by another, performs work for which certification or TSCA accreditation has not been received, or obtains TSCA accreditation from a training provider that does not have approval for the specific discipline in accordance with the Model Accreditation Plan.

8.3.9 Duration and Renewal of Certification.

A. Duration. Unless revoked or suspended, a certification shall remain in effect:

(1) for a period of one year from the date of issuance of certification as an asbestos contractor, or

(2) until the expiration date of the current certificate of TSCA accreditation submitted with an asbestos worker's, supervisor's, or consultant's application for certification or recertification.

B. Renewal. The executive secretary shall renew a certification annually if:

(1) the asbestos contractor:

(a) submits a completed application for renewal on forms provided by the executive secretary not sooner than 90 days nor later than 30 days from the date of expiration;

(b) has complied with all applicable requirements and rules.

(2) the consultant:

(a) submits a completed application for renewal on a form provided by the executive secretary no later than one year from the date of expiration of previous certification, and

(b) submits a certificate of TSCA accreditation for initial or refresher training in the specific discipline.

8.3.10 Procedure for Obtaining a Duplicate Certificate.

The executive secretary may issue a duplicate certificate to replace a lost, stolen, or mutilated certificate. The certificate holder shall submit a completed application for a duplicate certificate on a form provided by the executive secretary. A duplicate certificate shall have "duplicate" stamped on the face and shall bear the same number and expiration date as the original certificate.

8.4 Training.

8.4.1 Asbestos Worker Training.

Each asbestos project operator shall ensure that each asbestos worker assigned to perform work on an asbestos project for the operator has had initial and annual review training at a course approved by the executive secretary. Asbestos workers on projects subject to TSCA Title II must have the appropriate TSCA accreditation. Training courses for TSCA accreditation shall meet the specifications for a worker course in the Model Accreditation Plan, including course length, instructor qualifications, hands-on training, and written examination. Training courses other than TSCA accreditation courses shall cover the following topics:

A. Initial Training. The initial training course for asbestos workers shall provide a minimum of 16 hours of training covering the topics specified below:

(1) physical characteristics of asbestos (fiber size, aerodynamics);

(2) methods of recognizing and identifying asbestos;

(3) health effects of asbestos exposure and methods used to recognize asbestos-related diseases;

(4) relationship between smoking and asbestos exposure in producing lung cancer;

(5) use of personal hygiene and protective equipment, storage and laundering of launderable clothing;

(6) purpose, proper use, fitting instructions, and limitations of respirators in accordance with OSHA 29 CFR 1926.1101;

(7) state-of-the-art work practices for performing asbestos abatement activities, including the purpose, proper construction, and maintenance of barriers and decontamination enclosure systems; posting of warning signs; electrical and ventilation system lockout; proper working techniques for minimizing fiber release; use of wet methods and surfactants; use of negative pressure ventilation equipment; use of glove bags; use of HEPA vacuums; and proper cleanup and disposal procedures;

(8) OSHA medical surveillance program requirements;

(9) OSHA air monitoring procedures and requirements;

(10) review of R307-1-8, NESHAP, and OSHA requirements, including information disclosure requirements, and how to contact the agencies responsible for enforcing them;

(11) individual instruction consisting of an individual qualitative respirator fit test and an opportunity to use respirators; and

(12) additional safety hazards encountered during abatement activities and how to deal with them, including electrical hazards, heat stress, air contaminants other than

asbestos, fire and explosion hazards, slips, trips, and falls, and confined spaces.

B. Annual Training. Asbestos workers shall attend refresher training annually. The annual refresher course must be approved by a state that has a Contractor Accreditation Program that meets the Model Accreditation Plan or be approved in accordance with Subsection R307-1-8.4.5. The training course shall meet the specifications for a worker refresher course in the Model Accreditation Plan.

8.4.2 Supervisor Training:

A. Initial Training. Supervisors shall complete a contractor/supervisor TSCA accreditation course in a state that has a Contractor Accreditation Program that meets the Model Accreditation Plan or from a training course approved in accordance with Subsection R307-1-8.4.5. The training course shall meet the specifications for a contractor/supervisor course in the Model Accreditation Plan, including course length, instructor qualifications, hands-on training, and written examination.

B. Annual Training. Supervisors shall attend a 1-day refresher training course annually. The annual refresher course must be approved by a state that has a Contractor Accreditation Program that meets the Model Accreditation Plan or be approved in accordance with Subsection R307-1-8.4.5. The training course shall meet the specifications for a contractor/supervisor refresher course in the Model Accreditation Plan.

8.4.3 TSCA Accreditation.

Each person seeking TSCA accreditation shall complete the initial and refresher training outlined in the Model Accreditation Plan.

8.4.4 Examination Required.

A. The asbestos project operator shall ensure that each person who has completed the initial training specified in Subsection R307-1-8.4 has taken and passed a written closed book examination that adequately covers the topics included in the training course. A passing score for the examination is 70 percent or above. The person conducting the training course shall administer the examination.

B. Each person seeking TSCA accreditation shall pass a written closed book examination as specified in the Model Accreditation Plan. The accreditation examination required for any course approved under this subsection shall be administered by the person conducting the training course.

8.4.5 Approval of Training Courses.

A. Initial Training Courses: Persons desiring approval of courses conducted for the purpose of providing the initial training required under Section R307-1-8 shall submit the following to the executive secretary for review:

(1) name, address, phone number, and institutional affiliation of person sponsoring the course;

(2) a list of States that currently approve the training course;

(3) the course curriculum;

(4) a letter that clearly indicates how the course meets the applicable Model Accreditation Plan and Subsection R307-1-8 requirements for:

(a) length of training in hours or days, as applicable;

(b) amount and type of hands-on training, if applicable;

(c) examinations (length, format, example of examination or questions, and passing scores);

(d) topics covered in the course;

(5) a copy of all course materials (student manuals, instructor notebooks, handouts, etc.);

(6) a detailed statement about the development of the examination used in the course;

(7) names and qualifications of all course instructors, who must have academic credentials and/or field experience in asbestos abatement; and

(8) description and an example of numbered certificates issued to students who attend the course and pass the examination. The numbered certificate shall include a unique certificate number, the name of the student and the course completed, the dates of the course and the examination, an expiration date 1 year from the date the student completed the course and examination, the name, address, and telephone number of the training provider that issued the certificate, and a statement that the person receiving the certificate has completed the requisite training for TSCA accreditation.

B. Refresher training. Persons desiring approval of refresher training courses shall send the following information to the executive secretary:

(1) length of training;

(2) topics covered in the course;

(3) a copy of all course materials;

(4) names and qualifications of all course instructors;

(5) description and an example of numbered certificates issued to students who attend the course. The numbered certificate shall include a unique number, the name of the student, the course completed, the date of the course, and an expiration date 1 year from the date the student completed the course, the name, address, and telephone number of the training provider that issued the certificate, and a statement that the person receiving the certificate has completed the requisite training for TSCA accreditation.

C. The executive secretary shall issue approval of a training course if the person conducting the course:

(1) submits the written notification required in Subsections R307-1-8.4.5.A or R307-1-8.4.5.B above;

(2) demonstrates to the satisfaction of the executive secretary that the course provides the minimum training specified in the applicable subsections of R307-1-8.4.1, R307-1-8.4.2, and R307-1-8.4.3;

(3) agrees to:

(a) provide the executive secretary with the names, social security numbers, and certificate numbers of all persons successfully completing the course;

(b) provide the executive secretary with an up-to-date course schedule stating all times and locations at which the course will be presented;

(c) provide the executive secretary with the name and qualifications of any new course instructor prior to the new instructor presenting a training course;

(d) keep the records specified for training providers in the Model Accreditation Plan; and

(e) permit the executive secretary or his authorized representative to attend, evaluate and monitor any training course without receiving advance notice from the executive

secretary and without charge to the executive secretary.

D. The executive secretary may revoke or suspend approval of a training course if the course does not provide training that meets the requirements of Section R307-1-8 or the Model Accreditation Plan.

E. Training courses shall be reviewed annually by the executive secretary to determine their acceptability for continued approval.

F. Training obtained from a course which has not been approved by the executive secretary may be accepted if the executive secretary determines that the course provided training equivalent to that required in R307-1-8. TSCA accreditation courses already approved in a state that has a Contractor Accreditation Program that meets the TSCA Title II Appendix C Model Plan, or approved by EPA under TSCA Title II are considered to be equivalent to the TSCA accreditation training required in Section R307-1-8.

8.4.6 Approval of New Training Course Instructors.

A. Each course provider approved under Subsection R307-1-8.4.5 shall obtain approval for any course instructor not included in the initial course approval. To obtain approval of an instructor, the course provider shall submit:

(1) the name and qualifications of the course instructor, who must have academic credentials and/or field experience in the discipline for which they are an instructor; and

(2) a list of the courses and specific topics which will be taught by the instructor.

B. Each course instructor must be approved by the executive secretary before teaching any course for TSCA accreditation purposes.

8.5 Notification.

8.5.1 NESHAP Size Asbestos Projects.

After November 20, 1990, an asbestos project operator shall submit a written notification, in accordance with this subsection, for each NESHAP size asbestos project he performs.

A. If the NESHAP size asbestos project will be performed at a location:

(1) that is within the jurisdiction of a delegated local agency, submit the written notification and pay the appropriate notification fee to the delegated local agency; or

(2) that is not within the jurisdiction of a delegated local agency, submit the written notification to the executive secretary and pay the authorized notification fee to the Division of Air Quality.

B. Send original and revised written notices by U.S. Postal Service, commercial delivery service, or hand delivery.

C. Postmark or deliver the written notice within the following time periods:

(1) If the operation is a NESHAP size asbestos project, notify the appropriate agency at least ten working days before disturbing asbestos containing material.

(2) If the operation is a planned asbestos project, notify the appropriate agency at least ten working days before the beginning of the calendar year, January 1, during which the project(s) will occur.

(3) If the operation is an emergency asbestos project, notify the appropriate agency as early as possible, but not later than, the following working day.

D. Update the written notice, as necessary, including when the amount of asbestos affected changes by at least 20 percent.

E. Written notifications must include the following information:

(1) the type of notification: original or revised;

(2) the name, address, and telephone number of the owner of the structure, removal contractor, and any other contractor working on the project, and the removal contractor identification number;

(3) the type of operation: demolition or renovation;

(4) a description of the structure that includes:

(a) the size (in square feet or square meters);

(b) the number of floors;

(c) the age; and

(d) the present and prior uses;

(5) the procedures, including analytical methods, used to inspect for the presence of asbestos containing material when the asbestos project is performed in a structure subject to NESHAP;

(6) an estimate of the approximate amount of asbestos containing material to be stripped using the appropriate units;

(7) an estimate of the amount of nonfriable asbestos containing material in the affected part of the structure that will not be removed before demolition;

(8) the location and address, including building number or name and floor or room number, if appropriate, street address, city, county, state, and zip code of the structure being demolished or renovated;

(9) the scheduled starting and completion dates of asbestos removal work in a renovation or demolition, with the exception of government ordered demolitions;

(10) the beginning and ending dates of the report period for planned renovation operations;

(11) a description of procedures for handling the finding of unexpected asbestos containing material or nonfriable asbestos containing material that has become friable;

(12) a description of planned demolition or renovation work including the demolition and renovation techniques to be used and a description of the affected structural components;

(13) a description of work practices and engineering controls to be used to prevent emissions of asbestos at the demolition or renovation work site;

(14) the name and location of the waste disposal site where the asbestos waste will be deposited, including the name and telephone number of waste disposal site contact; and

(15) the name, address, person to contact, and telephone number of the waste transporter;

(16) If the structure will be demolished under an order of a state or local government agency, include in the written notification the name, title, and authority of the government representative ordering the demolition, the date the order was issued, the date the demolition was ordered to commence. Attach a copy of the order to the notification.

(17) If an emergency asbestos project will be performed, include in the written notification the date and hour the emergency occurred, a description of the event and an explanation of how the event has caused unsafe conditions or would cause equipment damage, or unreasonable financial burden.

8.5.2 Other Asbestos Projects:

A. If an asbestos project operator performs demolition activities in a structure involving asbestos containing material in a quantity less than the NESHAP size, even if no asbestos is present, submit a written notification in accordance with Subsections R307-1-8.5.1.A, R307-1-8.5.1.B, R307-1-8.5.1.D, R307-1-8.5.1.E(1) through (8), R307-1-8.5.1.E(10), and R307-1-8.5.1.E(11) at least ten days before commencement of the demolition.

B. If demolition of a structure is ordered by a state or local government agency because the structure is unsound and in danger of imminent collapse, submit written notification in accordance with Subsections R307-1-8.5.1.A, R307-1-8.5.1.B, and R307-1-8.5.1.E as early as possible, but not later than, the following working day.

8.5.3 Change in Notification Date.

A. If a NESHAP size asbestos project, except for a planned asbestos project, will commence on a date other than the date submitted in the original written notification, notify the appropriate agency of the new starting date according to the following schedule:

(1) If the new starting date is later than the original starting date, provide notice by telephone as soon as possible before the original starting date and submit a revised notice in accordance with Section R307-1-8.5.1.B as soon as possible before, but no later than, the original starting date.

(2) If the new starting date is earlier than the original starting date,submit a written notice in accordance with Subsection R307-1-8.5.1.B at least ten working days before the NESHAP size asbestos project commences.

B. If a demolition operation as specified in Subsection R307-1-8.5.2.A commences on a date other than the date submitted in the original written notification, notify the appropriate agency at least ten working days before commencing of the demolition of the structure.

C. In no event shall an asbestos project covered by this subsection commence on a date other than the new starting date submitted in the revised written notice.

8.6 Work Practice Requirements.

8.6.1 NESHAP Size Asbestos Projects.

After September 1, 1987 each asbestos project operator conducting a NESHAP size asbestos project shall comply with the following work practice requirements:

A. General (including removal, demolition, renovation, encapsulation and enclosure)

(1) Remove friable asbestos-containing materials before commencing any activity which would break up the materials or prevent access to them for subsequent removal.

(2) Ensure that a site supervisor trained in accordance with Subsection R307-1-8.4 is responsible for the construction of the containment, supervision, and inspection of each asbestos project conducted by an asbestos project operator.

(3) Maintain a sufficient inventory of equipment and supplies at the project work site to ensure ability to continuously comply with Section R307-1-8.

(4) Provide barriers to isolate contaminated areas from uncontaminated areas. Barriers shall be constructed of polyethylene sheeting, or equivalent, attached securely in place, and sealed with waterproof tape or equivalent.

(a) Provide a worker decontamination system. Enter and leave asbestos contaminated work areas only through the worker decontamination system.

(b) Repair tears in the isolation barriers immediately.

(5) Provide protective outerwear to all asbestos workers and others entering asbestos contaminated areas.

(a) Remove protective outerwear and leave in a contaminated part of the work area, such as the equipment room, before leaving the contaminated area.

(b) Place nondisposable protective outerwear in a labeled, sealed impermeable plastic bag, or equivalent container, before removing it from the work area.

(c) Treat disposable protective outerwear as asbestos waste.

(6) Provide respiratory protection to all asbestos workers and others entering asbestos contaminated areas. Respiratory protection shall consist of a half-mask air-purifying respirator equipped with HEPA filters, or other appropriate respirator specified in OSHA 29 CFR 1926.1101(h).

(7) Display caution signs in accordance with OSHA 29 CFR 1926.1101 at all approaches to any location where airborne asbestos fiber levels can be expected to exceed background levels.

(8) Adequately wet all asbestos waste before sealing into containers for disposal.

(9) Place asbestos waste in sealed, leak-tight impermeable containers for disposal, using one of the following containment methods:

(a) If asbestos waste contains sharp edged components, use metal or fiber drums with locking-ring tops.

(b) Double polyethylene bags, each of at least 6-mil thickness and which can be securely sealed, may be used for asbestos waste, provided it does not contain sharp edged components.

(c) Large components or structural members covered or coated with friable asbestos-containing materials may be removed intact and wrapped in two layers of 6-mil polyethylene sheeting secured with tape for disposal.

(d) Alternative containment methods may be used if written approval is obtained in advance from the executive secretary.

(10) All drums, bags, and wrapped components specified in Subsection R307-1-8.6.1.A(9) shall be labeled as follows:

DANGER
CONTAINS ASBESTOS FIBERS
AVOID CREATING DUST
CANCER AND LUNG DISEASE HAZARD.

(a) The warning labels as specified above shall be printed in letters of sufficient size and contrast so as to be readily visible and legible; and

(b) for asbestos waste transported off the structure site, label all drums, bags, and wrapped components with the name of the waste generator and the location where the waste was generated.

(11) Clean asbestos contamination from the outside of disposal containers before removing them from the work area. Clean asbestos from other objects to be removed from the work area, or contain the objects to prevent release of asbestos fibers

when removed from the area.

(12) Attach permanent asbestos hazard warning labels to salvaged structural components or members which are covered or coated with friable asbestos-containing materials.

(13) Filter all asbestos containing waste water to five micrometers prior to discharging to a sewer system.

(14) Apply a coating of encapsulating agent to friable asbestos-containing materials exposed but not removed during renovation, and to porous surfaces that have been stripped of asbestos-containing materials.

(15) Following asbestos abatement and before dismantling isolation barriers, drop cloths and/or at least one layer of floor and wall sheeting, perform cleanup procedures using HEPA vacuuming and wet cleaning techniques. Perform wet cleaning, using an amended water solution, followed by HEPA vacuuming after the surfaces have been allowed to dry. Repeat the sequence of wet cleaning and HEPA vacuuming until no visible asbestos residue is observed in the work area.

B. Asbestos Removal.

(1) Adequately wet all friable asbestos-containing material prior to removal.

(2) Whenever practicable, remove structural components which are coated or covered with friable asbestos-containing material intact or in large sections and carefully lower them to the floor or ground.

(3) Remove asbestos-containing material in small sections and containerize while wet. Do not allow asbestos-containing material to accumulate and become dry before containerizing.

(4) Wet structural components thoroughly with amended water prior to wrapping in polyethylene sheeting for disposal in accordance with Subsection R307-1-8.6.1.A(9)(c).

(5) Do not drop or throw asbestos-containing materials to the floor or ground level. Asbestos-containing material may be dropped to a raised scaffold or containerized at elevated levels for disposal. Drop asbestos materials removed at greater than 15 feet above the floor onto inclined chutes or scaffolding or containerize at elevated levels for eventual disposal. If friable asbestos-containing materials are removed or stripped more than 50 feet above floor or ground level, transport to the floor or ground level via dust-tight chutes or containers.

C. Renovation. Unless specifically excluded, the provisions of this section apply to encapsulation (Subsection R307-1-8.6.1.D) and enclosure (Subsection R307-1-8.6.1.E) projects as well as other renovation projects.

(1) Remove all movable objects from the work area. Perform cleaning of items and surfaces contaminated with asbestos. Cover all nonmovable objects in the work area with 4-mil polyethylene sheeting secured into place. Seal all openings between the work area and uncontaminated areas, as required in Subsection R307-1-8.6.1.A(4).

(2) Shut down and lock out all HVAC equipment servicing the work area. Seal all intake and exhaust openings and any seams in system components with 6-mil polyethylene sheeting or equivalent, and/or tape. Replace all system filters at the completion of the asbestos project and dispose of old filters as asbestos waste. Clean asbestos-contaminated ventilation system ductwork interiors.

(3) Cover floors with at least 2 layers of 6-mil polyethylene sheeting or equivalent, securely attached with waterproof duct tape or equivalent. Floor sheeting shall extend up walls at least 12 inches and be sized to minimize seams. No seams shall be located at wall/floor joints.

(4) Cover walls and other surfaces with at least 2 layers of 4-mil polyethylene sheeting or equivalent, securely attached and sealed with waterproof duct tape or equivalent. Wall sheeting shall be installed to minimize joints and shall overlap the floor sheeting at least 12 inches. No seams shall be located at wall/wall joints.

(5) Operate negative pressure ventilation units with HEPA filtration in sufficient numbers to provide one workplace air change every 15 minutes continuously from the time barrier construction is completed through the time final cleanup is completed in accordance with Subsection R307-1-8.6.1.A(15) and the barriers can be dismantled. These units shall exhaust filtered air to the outside of the building wherever practicable. Procedures for operation as detailed in EPA document No. EPA 560/5-85-024 "Guidance for Controlling Asbestos-Containing Materials in Buildings" (the purple book) Appendix J, shall be utilized.

D. Encapsulation.

(1) Prior to application of an encapsulating agent, remove loose and hanging friable asbestos-containing material in accordance with Subsection R307-1-8.6.1.B.

(2) Filler material applied to gaps in existing material shall contain no asbestos, adhere well to the substrate, and provide an adequate base for the encapsulating agent.

(3) Apply sprayed-on encapsulating agents using airless spray equipment with nozzle pressure adjusted to minimize disturbance of friable asbestos-containing materials.

(4) After encapsulation, use signs, labels, color coding, or some other mechanism to indicate the presence of encapsulated friable asbestos-containing materials.

(5) Encapsulating agents shall not be applied to friable asbestos-containing materials which are water damaged or structurally deteriorating, show poor adhesion to the surface to which they are applied, or which are in locations subject to frequent physical damage.

E. Enclosures. Enclosures constructed for the purpose of permanently containing and protecting friable asbestos-containing materials shall be specially designated by signs, labels, color coding, or some other mechanism to warn individuals who may be required to enter or disturb the enclosure of the presence of asbestos.

F. Demolition.

(1) Remove all friable asbestos-containing materials according to the requirements of Subsections R307-1-8.6.1.A (General) and R307-1-8.6.1.B (Removal) before demolition of any structure or portion of a structure which contains structural members or components composed of or covered by friable asbestos-containing material. Friable asbestos-containing materials must be removed before commencing any activity which would break up the materials or preclude access for subsequent removal.

(2) Before beginning asbestos removal seal off all doors, windows, floor drains, vents, and other openings to the outside of the building, and to areas within the building that do not contain asbestos materials, with 6-mil polyethylene sheeting and waterproof tape or equivalent that is acceptable to the executive

secretary.

(3) If a structure is to be partially demolished, HVAC equipment in the demolition area or passing through it but servicing areas of the building which will remain, shall be shut down and locked out and thoroughly sealed with 6-mil polyethylene sheeting and waterproof tape.

(4) Use a disposable drop cloth to catch asbestos waste if the physical condition of the ground or other collection surface is such that it cannot be cleaned of visible asbestos residue. Dispose of the drop cloth as asbestos waste.

(5) Removal of friable asbestos-containing material prior to demolition is not required if:

(a) The asbestos is encased in concrete or similar material, or

(b) A structure is being demolished under an order of a state or local governmental agency issued because the structure is unsound and in danger of imminent collapse.

(6) If friable asbestos-containing material is not removed before demolition, adequately wet the portion of the structure containing the asbestos before demolition, and keep adequately wet during subsequent demolition, handling, and disposal.

G. Outdoor Work.

(1) The provisions of Subsections R307-1-8.6.1.A and R307-1-8.6.1.B apply to asbestos projects conducted outdoors, with the following exceptions:

(a) Construction of barriers to isolate asbestos projects performed outdoors is not required if friable asbestos-containing materials are adequately wetted during removal, handling, and disposal.

(b) In lieu of constructing a worker decontamination system, workers' outerwear may be removed, wet cleaned or HEPA vacuumed before the workers leave the work area. Outerwear removed for cleaning or disposal shall be transported from the work area in a sealed, impermeable plastic bag or equivalent container labeled in accordance with Subparagraph 8.6.1.A(10).

(2) Access to the work area shall be restricted by use of a physical obstruction to limit traffic through the area.

(3) A disposable drop cloth shall be used to catch asbestos waste if the physical condition of the ground or other collection surface is such that it cannot be cleaned of visible asbestos residue. Dispose of the drop cloth as asbestos waste.

H. Disposal.

(1) Transport and dispose of asbestos waste in a manner that will not permit the release of asbestos fibers into the air.

(2) Dispose of asbestos waste at a location approved for handling asbestos waste by the appropriate authority having jurisdiction over the chosen landfill.

(3) Ensure that friable asbestos waste not containerized in accordance with Subsection R307-1-8.6.1.A(9) is buried immediately upon deposit at the disposal site.

(4) If asbestos waste is transported by vehicle to a disposal site, mark the transport vehicle with clearly visible signs during the loading and unloading of the asbestos waste. The signs shall be securely attached and displayed in such a manner and location that a person can easily read the legend. The signs shall conform to the requirements specified in 29 CFR 1910.145(d)(4).

(5) For off structure site disposal, provide a copy of the waste shipment record as specified under Subsection R307-1-8.7.1.A(5), to the disposal site owner or operator at the same time as the asbestos waste is delivered to the disposal site.

I. Planned Asbestos Projects: Planned asbestos projects for which a NESHAP notification is required, but which consist of individual, nonscheduled abatements each of which is smaller than a NESHAP sized asbestos project, occurring during an extended period of time, may be conducted according to the provisions of Subsection R307-1-8.6.2 below if approved by the executive secretary.

8.6.2 Work Practices for Other Asbestos Projects.

After September 1, 1987 each asbestos project operator shall comply with the following work practices:

A. Any asbestos project operator conducting a less than NESHAP size asbestos project shall take precautions to prevent the release of asbestos fibers to the environment. Precautions shall include but not be limited to the following measures:

(1) Construct barriers to contain asbestos fibers released within the work area.

(2) Adequately wet friable asbestos-containing materials with amended water prior to and during removal. Keep the asbestos-containing materials adequately wet until containerized.

(3) Use a disposable drop cloth to collect asbestos waste if the physical condition of the floor or collection surface is such that the work area cannot be cleaned of visible asbestos residue. Dispose of the drop cloth as asbestos waste.

(4) Glove bags may be used instead of the barriers and drop cloths specified in Subsections R307-1-8.6.2.A(1) and R307-1-8.6.2.A(3).

(5) Use HEPA vacuum equipment and wet cleaning techniques to clean up the work area until no visible asbestos residue remains. Perform cleanup before dismantling asbestos fiber containment barriers.

(6) Promptly place asbestos waste in appropriately labeled sealed impermeable containers (polyethylene sheeting, bags and/or fiber or metal drums).

(7) Clean visible asbestos residue from the outside of containers before removing them from the work area. Clean asbestos off other objects to be removed from the work area, or contain them to prevent release of asbestos fibers when removed from the area.

(8) Prevent the discharge of visible amounts of asbestos to any sewer.

(9) Apply an encapsulating agent to friable asbestos-containing materials exposed but not removed during renovation, and to porous surfaces from which friable asbestos-containing materials have been stripped.

(10) Remove, wet clean, or HEPA vacuum workers' outerwear before workers leave the work area. Seal outerwear removed in the work area into impermeable plastic bags, labeled in accordance with Subsection R307-1-8.6.1.A(10), before taking away from the work area. Treat disposable outerwear as asbestos waste.

(11) Transport and dispose of asbestos waste as specified under Subsection R307-1-8.6.1(H).

(12) If removal of friable asbestos-containing materials is not practicable before demolition, adequately wet the asbestos materials or the structure containing the asbestos materials

before demolition and keep it adequately wet during subsequent handling and disposal.

(13) Permanently attach asbestos hazard warning labels to salvaged structural components which are covered or coated with friable asbestos-containing materials.

B. Construction of barriers to contain asbestos fibers is not required for asbestos projects conducted outdoors if the friable asbestos-containing material is adequately wetted and access to the work area is limited to asbestos workers only.

C. Asbestos Inspection.

Persons taking samples for the purpose of identification of asbestos-containing materials shall comply with the following requirements:

(1) Minimize contamination of the surrounding area by use of a sampling method which will minimize disturbance of friable materials, such as sampling at places where the material is exposed or damaged, wetting the material to be sampled, or using a drop cloth or other provision for catching gross contamination.

(2) Promptly clean the sampling area using wet methods or HEPA vacuuming so that no visible friable materials remain.

(3) Apply an encapsulating agent or otherwise seal friable materials exposed during sampling.

(4) Place samples in containers and tightly seal them. Wet wipe the exterior surfaces of the containers. Place sample containers in plastic bags.

(5) After sample collection, place protective clothing, wet wipes, rags, cartridge filters, drop cloths, and other disposable equipment in a 6-mil polyethylene bag that is labeled as specified under Subsection R307-1-8.6.1.A(10).

(6) If laboratory analysis reports one or more samples as asbestos containing material, dispose of all material described in Subsection R307-18.6.2.C(5) as asbestos waste at a state approved landfill.

(7) Ensure that samples are analyzed by a method approved by the executive secretary.

(8) Any person required to be certified as an inspector in training under Subsection R307-1-8.3 shall work under the direct supervision of an inspector certified in accordance with Subsection R307-1-8.3.5.A.

8.6.3 Asbestos Projects Performed in a Single Family Residential Dwelling:

Persons who perform an asbestos project in a single family residential dwelling which is his primary residence, shall comply with Subsections R307-1-8.6.1.A(9), R307-1-8.6.1.A(10), R307-1-8.6.1.H(1), and R307-1-8.6.1.H(2).

8.6.4 Alternative Procedures.

The executive secretary may approve in writing an alternative procedure for control of emissions from an asbestos project provided that:

A. the asbestos project operator submits the alternative procedure to the executive secretary in writing;

B. the operator demonstrates to the satisfaction of the executive secretary that compliance with the prescribed procedures is not practical or not feasible or that the proposed alternative procedures provide equivalent control of asbestos; and

C. the executive secretary determines that the procedure will minimize the emission of asbestos fibers.

8.6.5 Asbestos Projects Subject to TSCA Title II.

Asbestos project operators or other persons who perform an asbestos project subject to TSCA Title II must ensure that at least one certified site supervisor is present at the work site at all times while the asbestos project is in progress. Asbestos workers must have access to certified supervisors throughout the duration of the asbestos project.

8.6.6 Activities Subject to Certification Requirements.

A. Each person required under Subsection R307-1-8.3 to have TSCA accreditation and to obtain certification shall be in physical possession of their certification card whenever performing work for which the certification is required.

B. Any person who does not have current, unexpired certification shall not perform work for which TSCA accreditation and certification under Subsection R307-1-8.3 is required.

8.7 Records.

8.7.1 Records Required.

A. Certified asbestos project contractors shall maintain records of all asbestos projects that he performs and shall make these records available to the executive secretary upon request. The records shall be retained for at least two years. Information recorded shall include the following:

(1) names and social security numbers of the asbestos workers and supervisors who performed the project;

(2) location and description of the project and amount of friable asbestos-containing material removed or area encapsulated or enclosed;

(3) starting and completion dates of the asbestos project;

(4) summary of the procedures used to comply with applicable requirements including copies of all notifications; and

(5) waste shipment records maintained in accordance with 40 CFR Part 61, Subpart M, NESHAP.

B. Each person conducting a training course approved in accordance with Subsection R307-1-8.4.5 shall maintain records of:

(1) training course materials: copies of all course materials;

(2) instructor qualifications: instructor resumes, documents from the executive secretary approving each instructor, and the instructors who taught each particular course and the dates the instructor taught;

(3) examinations: document that each person who receives initial accreditation has achieved a passing score on the examination, the date of the examination, the training course and discipline for which the examination was given, the name of the person who proctored the exam, a copy of the exam, and the name and test score of each person taking the exam;

(4) accreditation certificates: document all persons who have been awarded certificates, their certificate numbers, their accredited disciplines, training and expiration dates, and the training location. The records must be maintained in a manner that allows verification by telephone.

(5) records access: records required in Subsection R307-1-8.7.1 shall be made available to the executive secretary upon request. The records shall be retained for at least three years. If a course provider ceases to provide training, the course provider shall contact the executive secretary and give the

executive secretary the opportunity to take possession of all asbestos training records.

8.8 Implementation of TSCA Title II.

8.8.1 Adoption of TSCA Title II.

A. The provisions of TSCA Title II are adopted and incorporated herewith by reference. The accreditation provisions of the Model Accreditation Plan are also adopted and incorporated herewith by reference as mandatory requirements.

B. Implementation of the provisions 40 CFR Part 763, Subpart E, except for the Model Accreditation Plan, shall be limited to those provisions for which the EPA has waived its requirements in accordance with 40 CFR Subpart 763.98, Waiver; delegation to State, as published at 52 FR 41826, (October 30, 1987).

8.8.2 Review and Disapproval of Management Plans.

A. Unless a deferral request under Subsection R307-1-8.8.2.B has been approved by the executive secretary, each LEA shall submit the asbestos management plans required by AHERA to the executive secretary on or before October 12, 1988. A "Required Elements for LEA Asbestos Management Plan" shall be completely filled out and submitted by the LEA with each management plan.

B. The executive secretary may approve a request by an LEA for deferral of submittal of a management plan until May 9, 1989 if the LEA submits a complete request for deferral as required by AHERA. The executive secretary shall approve or disapprove a deferral request, and explain why any request was disapproved, within 30 days of receipt of a deferral request.

C. The executive secretary shall review each management plan and return comments to the LEA within 90 days of receipt of the plan. The executive secretary may disapprove a management plan if the plan does not meet the requirements of AHERA or if the "Required Elements for LEA Asbestos Management Plans" form is not completely filled out and submitted with the plan.

D. The LEA shall revise any management plan disapproved by the executive secretary and resubmit the plan within 30 days after receipt of a notice of disapproval. The LEA may request that the Executive Secretary extend the 30-day plan revision period to 90 days, provided the plan is revised and submitted before July 9, 1989.

KEY: air pollution, motor vehicles, major sources*

January 1, 1998	**19-2-104**
Notice of Continuation June 2, 1997	**19-2-109**
	19-2-124

R309. Environmental Quality, Drinking Water.
R309-103. Water Quality Maximum Contaminant Levels (MCLs).
R309-103-1. General.

Maximum contaminant levels (MCLs) and treatment techniques are herein established for those routinely measurable substances which may be found in water supplies. "Primary" standards and treatment techniques are established for the protection of human health. "Secondary" regulations are established to provide guidance in evaluating the aesthetic qualities of drinking water.

The applicable "Primary" standards and treatment techniques must be met by all public drinking water systems. The "Secondary" standards are recommended levels which should be met in order to avoid consumer complaint.

The methods used to determine compliance with these maximum contaminant levels and treatment techniques are given in R309-104. Analytical techniques which must be followed in making the required determinations shall be as given in 40 CFR 141 as published on July 1, 1993 by the Office of the Federal Register.

Unless otherwise required by the Board, the effective dates on which new analytical methods shall be initiated are identical to the dates published in 40 CFR 141 on July 1, 1993 by the Office of the Federal Register.

R309-103-2. Primary Drinking Water Standards.

2.1 Inorganic Contaminants.

a. The maximum contaminant levels (MCLs) for antimony, arsenic, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, selenium, sodium, thallium and total dissolved solids are applicable to community and non-transient non-community water systems.

b. The MCLs for nitrate, nitrite, and total nitrate, nitrite and sulfate are applicable to community, non-transient non-community, and non-community water systems.

c. The maximum contaminant levels for inorganic chemicals are listed in Table 103-1.

TABLE 103-1
PRIMARY INORGANIC CONTAMINANTS

Contaminant	Maximum Contaminant Level
1. Antimony	0.006 mg/l
2. Arsenic	0.05 mg/l
3. Asbestos	7 Million Fibers/liter (longer than 10 um)
4. Barium	2 mg/l
5. Beryllium	0.004 mg/l
6. Cadmium	0.005 mg/l
7. Chromium	0.1 mg/l
8. Cyanide (as free Cyanide)	0.2 mg/l
9. Fluoride	4.0 mg/l
10. Mercury	0.002 mg/l
11. Nickel	--- (see Note 1 below)
12. Nitrate	10 mg/l (as Nitrogen) (see Note 4 below)
13. Nitrite	1 mg/l (as Nitrogen)
14. Total Nitrate and Nitrite	10 mg/l (as Nitrogen)
15. Selenium	0.05 mg/l
16. Sodium	--- (see Note 1 below)
17. Sulfate	1000 mg/l (see Note 2 below)
18. Thallium	0.002 mg/l
19. Total Dissolved Solids	2000 mg/l (see Note 3 below)

NOTE:

(1) No maximum contaminant level has been established for nickel and sodium. However, these contaminant must be monitored and reported in accordance with the requirements of R309-104-4.1.3.

(2) If the sulfate level of a public (community, NTNC and non-community) water system is greater than 500 mg/l, the supplier must satisfactorily demonstrate that:

(a) No better quality water is available, and

(b) The water shall not be available for human consumption from commercial establishments.

In no case shall the Board allow the use of water having a sulfate level greater than 1000 mg/liter.

(3) If TDS is greater than 1000 mg/l, the supplier shall satisfactorily demonstrate to the Board that no better water is available. The Board shall not allow the use of an inferior source of water if a better source of water (i.e. lower in TDS) is available.

(4) In the case of a non-community water systems which exceed the MCL for nitrate, the Executive Secretary may allow, on a case-by-case basis, a nitrate level not to exceed 20 mg/l if the supplier can adequately demonstrate that:

(a) such water will not be available to children under 6 months of age as may be the case in hospitals, schools and day care centers; and

(b) there will be continuous posting of the fact that nitrate levels exceed 10 mg/l and the potential health effect of exposure; and

(c) the water is analyzed in conformance to R309-104-4.1.4; and

(d) that no adverse health effects will result.

2.2 Lead and copper.

a. The lead action level is exceeded if the concentration of lead in more than 10 percent of tap water samples collected during any monitoring period conducted in accordance with R309-104-4.2.3 is greater than 0.015 mg/L (i.e., if the "90th percentile" lead level is greater than 0.015 mg/L).

b. The copper action level is exceeded if the concentration of copper in more than 10 percent of tap water samples collected during any monitoring period conducted in accordance with R309-104-4.2.3 is greater than 1.3 mg/L (i.e., if the "90th percentile" copper level is greater than 1.3 mg/L).

c. The 90th percentile lead and copper levels shall be computed as follows:

1. The results of all lead or copper samples taken during a monitoring period shall be placed in ascending order from the sample with the lowest concentration to the sample with the highest concentration. Each sampling result shall be assigned a number, ascending by single integers beginning with the number 1 for the sample with the lowest contaminant level. The number assigned to the sample with the highest contaminant level shall be equal to the total number of samples taken.

2. The number of samples taken during the monitoring period shall be multiplied by 0.9.

3. The contaminant concentration in the numbered sample yielded by the calculation in paragraph c.2 above is the 90th percentile contaminant level.

4. For water systems serving fewer than 100 people that collect 5 samples per monitoring period, the 90th percentile is computed by taking the average of the highest and second highest concentrations.

2.3 Organic Contaminants.

The following are the maximum contaminant levels for organic chemicals. For the purposes of R309-101 through R309-113, organic chemicals are divided into three categories: Pesticides/PCBs/SOCs, volatile organic contaminants (VOCs) and total trihalomethanes.

a. Pesticides/PCBs/SOCs - The MCLs for organic contaminants list in Table 103-2 are applicable to community water systems and non-transient, non-community water systems.

TABLE 103-2
PESTICIDE/PCB/SOC CONTAMINANTS

Contaminant	Maximum Contaminant Level
1. Alachlor	0.002 mg/l
2. Aldicarb	(see Note 1 below)
3. Aldicarb sulfoxide	(see Note 1 below)
4. Aldicarb sulfone	(see Note 1 below)
5. Atrazine	0.003 mg/l
6. Carbofuran	0.04 mg/l
7. Chlordane	0.002 mg/l
8. Dibromochloropropane	0.0002 mg/l
9. 2,4-D	0.07 mg/l
10. Ethylene dibromide	0.00005 mg/l
11. Heptachlor	0.0004 mg/l
12. Heptachlor epoxide	0.0002 mg/l
13. Lindane	0.0002 mg/l
14. Methoxychlor	0.04 mg/l
15. Polychlorinated biphenyls	0.0005 mg/l
16. Pentachlorophenol	0.001 mg/l
17. Toxaphene	0.003 mg/l
18. 2,4,5-TP	0.05 mg/l
19. Benzo(a)pyrene	0.0002 mg/l
20. Dalapon	0.2 mg/l
21. Di(2-ethylhexyl)adipate	0.4 mg/l
22. Di(2-ethylhexyl)phthalate	0.006 mg/l
23. Dinoseb	0.007 mg/l
24. Diquat	0.02 mg/l
25. Endothall	0.1 mg/l
26. Endrin	0.002 mg/l
27. Glyphosate	0.7 mg/l
28. Hexachlorobenzene	0.001 mg/l
29. Hexachlorocyclopentadiene	0.05 mg/l
30. Oxamyl (Vydate)	0.2 mg/l
31. Picloram	0.5 mg/l
32. Simazine	0.004 mg/l
33. 2,3,7,8-TCDD (Dioxin)	0.00000003 mg/l

Note 1: The MCL for this contaminant is under further review, however, this contaminant shall be monitored in accordance with R309-104-4.3.1.

b. Volatile organic contaminants - The maximum contaminant levels for organic contaminants listed in Table 103-3 apply to community and non-transient non-community water systems.

TABLE 103-3
VOLATILE ORGANIC CONTAMINANTS

Contaminant	Maximum Contaminant Level
1. Vinyl chloride	0.002 mg/l
2. Benzene	0.005 mg/l
3. Carbon tetrachloride	0.005 mg/l
4. 1,2-Dichloroethane	0.005 mg/l
5. Trichloroethylene	0.005 mg/l
6. para-Dichlorobenzene	0.075 mg/l
7. 1,1-Dichloroethylene	0.007 mg/l
8. 1,1,1-Trichloroethane	0.2 mg/l
9. cis-1,2-Dichloroethylene	0.07 mg/l
10. 1,2-Dichloropropane	0.005 mg/l
11. Ethylbenzene	0.7 mg/l
12. Monochlorobenzene	0.1 mg/l
13. o-Dichlorobenzene	0.6 mg/l
14. Styrene	0.1 mg/l
15. Tetrachloroethylene	0.005 mg/l
16. Toluene	1 mg/l
17. trans-1,2-Dichloroethylene	0.1 mg/l
18. Xylenes (total)	10 mg/l
19. Dichloromethane	0.005 mg/l
20. 1,2,4-Trichlorobenzene	0.07 mg/l
21. 1,1,2-Trichloroethane	0.005 mg/l

c. Total Trihalomethanes - The following maximum contaminant level applies to community water systems serving a population of 10,000 or more.

The MCL for total trihalomethane (TTHM) compounds for community water systems serving a population of 10,000 or more shall be either of the following:

1. The running average of analyses of quenched TTHM samples for four consecutive calendar quarters shall not exceed 100 micrograms per liter.

2. The single sample Total Trihalomethane Formation Potential (THMFP) shall not exceed 100 micrograms per liter. Approval is needed from the Executive Secretary to substitute this test for TTHM samples and may only be used for groundwater sources. Compliance for each source is based on measurement of this sample.

2.4 Radiologic Chemicals - applies to community water systems.

a. Radium-226, Radium-228 and gross alpha particle radioactivity in community water systems:

The following are the maximum contaminant levels for Radium-226, Radium-228, and gross alpha particle radioactivity:

1. Combined Radium-226 and Radium-228: 5 pCi/l.

2. Gross alpha particle activity (including Radium-226 but excluding Radon and Uranium): 15 pCi/l.

b. Beta particle and photon radioactivity from man-made radionuclides in community water systems:

1. The average annual concentration of beta particle and photon radioactivity from man-made radionuclides in drinking water shall not produce an annual dose equivalent to the total body or any internal organ greater than four millirem/year.

2. Except for the radionuclides listed in Table 103-4, the concentration of man-made radionuclides causing four mrem total body or organ dose equivalents shall be calculated on the basis of a two liter per day drinking water intake using the 168 hour data listed in "Maximum Permissible Body Burden and Maximum Permissible Concentration of Radionuclides in Air or Water or Occupational Exposure", NBS Handbook 69 as amended August 1963, U.S. Department of Commerce. If two or more radionuclides are present, the sum of their annual dose equivalent to the total body or to any organ shall not exceed four millirem/year.

TABLE 103-4
MAN-MADE RADIONUCLIDE CONTAMINANTS

Average annual concentrations assumed to produce a total body or organ dose of four mrem/year.

Radionuclide	Critical Organ	pCi per liter
Tritium	Total Body	20,000
Strontium-90	Bone Marrow	8

2.5 TURBIDITY

a. Surface water sources or ground water sources under the direct influence of surface water:

1. The following turbidity limit applies to finished water from water treatment facilities providing water to all public water systems whether community, non-transient non-community or non-community.

2. The limit for turbidity in drinking water from treatment facilities which utilize surface water sources or ground water sources under the direct influence of surface water is 0.5 NTU in at least 95 percent of the samples as required by R309-104-4.5.1.c for conventional complete treatment and direct filtration. If the Executive Secretary determines that the system is capable of achieving at least 99.9 percent removal and inactivation of Giardia lamblia cysts at some turbidity level higher than 0.5 NTU in at least 95 percent of the measurements, the Executive Secretary may substitute this higher turbidity limit for that system. However, in no case may the Executive Secretary approve a turbidity limit that allows more than 1.0 NTU in more than 5 percent of the samples taken each month, measured as specified in R309-104-4.5.1.c and d.

The turbidity limit for slow sand filtration and diatomaceous earth filtration must be less than or equal to 1.0 NTU in at least 95 percent of the measurements taken each month, measured as specified in R309-104-4.5.1.c and d. For slow sand filtration only, if the Executive Secretary determines that the system is capable of achieving 99.9 percent removal and inactivation of Giardia lamblia cysts at some turbidity level higher than 1.0 NTU in at least 95 percent of the measurements, the Executive Secretary may substitute this higher turbidity limit for that system.

The turbidity level of representative samples must at no time exceed 5.0 NTU for any treatment technique, measured as specified in R309-104-4.5.1.c and d.

The Executive Secretary may allow the higher turbidity limits for the above treatment techniques only if the supplier of water can demonstrate to the Executive Secretary's satisfaction that the higher turbidity does not do any of the following:

(a) Interfere with disinfection;

(b) Prevent maintenance of an effective disinfectant agent throughout the distribution system;

(c) Interfere with microbiological determinations; or

(d) Interfere with a treatment technique's ability to achieve the required log removal/inactivation of pathogens or virus as required by R309-108-5(2)(a) and (b).

b. Ground water sources not under the direct influence of surface water:

1. The following turbidity limit applies to community water systems only.

2. The limit for turbidity in drinking water from ground water sources not contaminated by surface sources is 5.0 NTU based on an average for two consecutive days pursuant to R309-104-4.5.3.

2.6 MICROBIOLOGICAL QUALITY

a. The maximum contaminant level (MCL) for microbiological contaminants for all public water systems is:

1. For a system which collects less than 40 total coliform samples per month, no more than one sample per month may be total coliform-positive.

2. For a system which collects 40 or more total coliform samples per month, no more than 5.0 percent of the samples collected during a month may be total coliform-positive.

b. Any fecal coliform-positive or Escherichia coliform (E. coli)-positive repeat sample or any total coliform-positive repeat sample following a fecal coliform positive or E. coli-positive routine sample constitutes a violation of the MCL for total coliforms. For the purposes of public notification requirements in R309-104-7 this is a violation that may pose an acute risk to health.

c. For NTNC and non-community systems that are required to sample at a rate of less than one per month, compliance with paragraphs a. or b. of this subsection shall be determined for the month in which the sample was taken.

2.7 DISINFECTION

Continuous disinfection is recommended for all water sources. It shall be required of all ground water sources which do not consistently meet standards of bacteriologic quality. Surface water sources or ground water sources under direct influence of surface water must be disinfected and continuously monitored for disinfection residual during the course of required conventional complete treatment for systems serving greater than 3,300 people. Disinfection shall not be considered a substitute for inadequate collection or filtration facilities.

Successful disinfection assures 99.9 percent inactivation of Giardia lamblia cysts and 99.99 percent inactivation of enteric viruses. Both filtration and disinfection are considered treatment techniques to protect against the potential adverse health effects of exposure to Giardia lamblia, viruses, Legionella, and heterotrophic bacteria in water. Minimum disinfection levels are set by "CT" values as defined in R309-103-5.

a. Each public water system that provides filtration treatment must provide disinfection treatment as follows:

1. The disinfection treatment must be sufficient to ensure that the total treatment processes of the system achieve at least 99.9 percent (3-log) inactivation and/or removal of Giardia lamblia cysts and at least 99.99 percent (4-log) inactivation and/or removal of viruses, as determined by the Executive Secretary.

2. The residual disinfectant concentration in the water entering the distribution system cannot be less than 0.2 mg/l for more than 4 hours.

3. The residual disinfectant concentration in the distribution system, measured as combined chlorine or chlorine dioxide, cannot be undetectable in more than 5 percent of the samples each month, for any two consecutive months that the system serves water to the public. Water in the distribution system with a heterotrophic bacteria concentration less than or equal to 500/ml, measured as heterotrophic plate count (HPC) is deemed to have a detectable disinfectant residual for purposes of determining compliance with this requirement. Thus, the value "V" in the following formula cannot exceed 5 percent in one month, for any two consecutive months.

$V = ((c + d + e) / (a + b)) \times 100$ where:

a = number of instances where the residual disinfectant concentration is measured;

b = number of instances where the residual disinfectant concentration is not measured but heterotrophic bacteria plate count (HPC) is measured;

c = number of instances where the residual disinfectant concentration is measured but not detected and no HPC is measured;

d = number of instances where no residual disinfectant concentration is detected and where HPC is greater than 500/ml;

e = number of instances where the residual disinfectant concentration is not measured and HPC is greater than 500/ml.

b. If the Executive Secretary determines, based on site-specific considerations, that a system has no means for having a sample transported and analyzed for HPC by a certified laboratory under the requisite time and temperature conditions specified in Heterotrophic Plate Count (Pour Plate Method) as set forth in the latest edition of Standard Methods for the Examination of Water and Wastewater, 1985, American Public Health Association et al. (Method 907A in the 16th edition) and that the system is providing adequate disinfection in the distribution system, the requirements of R309-103-2.7a(3) do not apply.

c. If a system utilizes a combination of sources, some surface water influenced (requiring filtration and disinfection treatment) and others deemed ground water (not requiring any treatment, even disinfection), the Executive Secretary may, based on site-specific considerations, allow sampling for residual disinfectant or HPC at locations other than those specified by total coliform monitoring required by R309-104-4.6.

R309-103-3. Secondary Drinking Water Standards for Community, Non-Transient Non-Community and Non-Community Water.

The Secondary Maximum Contaminant Levels for public water systems deals with substances which affect the aesthetic quality of drinking water. They are presented here as recommended limits or ranges and are not grounds for rejection. The taste of water may be unpleasant and the usefulness of the water may be impaired if these standards are significantly exceeded.

TABLE 103-5
SECONDARY INORGANIC CONTAMINANTS

Contaminant	Level
Aluminum	0.05 to 0.2 mg/l
Chloride	250 mg/l
Color	15 Color Units
Copper	1 mg/l
Corrosivity	Non-corrosive
Fluoride	2.0 mg/l (see Note below)
Foaming Agents	0.5 mg/l
Iron	0.3 mg/l
Manganese	0.05 mg/l
Odor	3 Threshold Odor Number
pH	6.5-8.5
Silver	0.1 mg/l
Sulfate	250 mg/l (see Note below)
TDS	500 mg/l (see Note below)
Zinc	5 mg/l

Note: Maximum allowable Fluoride, TDS and Sulfate levels are given in the Primary Drinking Water Standards, R309-103-2.1. They are listed as secondary standards because levels in excess of these recommended levels will likely cause consumer complaint.

R309-103-4. Unregulated Contaminants.

No MCLs are established herein for unregulated contaminants; viruses, protozoans and other chemical and biological substances. Some unregulated contaminants must be monitored for in accordance with R309-104-5. The Board has determined that the minimum level of treatment as described in R309-107 and R309-108 herein or its equivalent is required for surface water sources and ground water contaminated by surface sources.

R309-103-5. Definitions.

The following definitions are applicable to Section 103:

Action Level - is the concentration of lead or copper in water specified in R309-103-2.2 which determines, in some cases, the corrosion control treatment, public education and lead line replacement requirements that a water system is required to complete.

Board - means the Drinking Water Board.

Community Water System - means a public water system which serves at least fifteen service connections used by year-round residents or regularly serves at least twenty-five year-round residents.

Contaminant - means any physical, chemical, biological, or radiological substance or matter in water.

CT or CTcalc - is the product of "residual disinfectant concentration" (C) in mg/l determined before or at the first customer, and the corresponding "disinfectant contact time" (T) in minutes, i.e., "C" x "T". If a public water system applies disinfectant at more than one point prior to the first customer, it must determine the CT of each disinfectant sequence before or at the first customer to determine the total percent inactivation or "total inactivation ratio". In determining the total inactivation ratio, the public water system must determine the residual disinfectant concentration of each disinfection sequence and corresponding contact time before any subsequent disinfection application point(s). "$CT_{99.9}$" is the CT value required for 99.9 percent (3-log) inactivation of Giardia lamblia cysts. $CT_{99.9}$ for a variety of disinfectants and conditions appear in Tables 1.1-1.6, 2.1, and 3.1 of Section 141.74(b)(3) of the Federal Register, Vol. 54, No. 124, Thursday, June 29, 1989, pages 27532 through 27534 (also available from the Division of Drinking Water). CTcalc/$CT_{99.9}$ is the inactivation ratio. The sum of the inactivation ratios, or total inactivation ratio shown as "Summation sign (CTcalc)/($CT_{99.9}$)" is calculated by adding together the inactivation ratio for each disinfection sequence. A total inactivation ratio equal to or greater than 1.0 is assumed to provide a 3-log inactivation of Giardia lamblia cysts.

Disinfection - means a process which inactivates pathogenic organisms in water by chemical oxidants or equivalent agents.

Disinfectant contact time ("T" in CT calculations) - means the time in minutes that it takes for water to move from the point of disinfectant application or the previous point of disinfectant residual measurement to a point before or at the point where

residual disinfectant concentration ("C") is measured. Where only one "C" is measured, "T" is the time in minutes that it takes for water to move from the point of disinfectant application to a point before or at where residual disinfectant concentration ("C") is measured. Where more than one "C" is measured, "T" is (a) for the first measurement of "C", the time in minutes that it takes for water to move from the first or only point of disinfectant application to a point before or at the point where the first "C" is measured and (b) for subsequent measurements of "C", the time in minutes that it takes for water to move from the previous "C" measurement point to the "C" measurement point for which the particular "T" is being calculated. Disinfectant contact time in pipelines must be calculated based on "plug flow" by dividing the internal volume of the pipe by the maximum hourly flow rate through that pipe. Disinfectant contact time within mixing basins and storage reservoirs must be determined by tracer studies or an equivalent demonstration.

Dose Equivalent - means the product of the absorbed dose from ionizing radiation and such factors as account for differences in biological effectiveness due to the type of radiation and its distribution in the body as specified by the International Commission on Radiological Units and Measurements (ICRU).

Executive Secretary - means the Executive Secretary of the Drinking Water Board.

Gross Alpha Particle Activity - means the total radioactivity due to alpha particle emission as inferred from measurements on a dry sample.

Gross Beta Particle Activity - means the total radioactivity due to beta particle emission as inferred from measurements on a dry sample.

Ground Water Sources - means a source of culinary water captured underground. This term includes wells and springs.

Legionella - means a genus of bacteria, some species of which have caused a type of pneumonia called Legionnaires Disease.

Man-Made Beta Particle And Photon Emitters - means all radionuclides emitting beta particles and/or photons listed in Maximum Permissible Body Burdens and Maximum Permissible Concentration of Radionuclides in Air or Water for Occupational Exposure, NBS Handbook 69, except the daughter products of thorium-232, uranium-235 and uranium-238.

Maximum Contaminant Level - The maximum permissible level of a contaminant in water which is delivered to any user of a public water system.

Non-Community Water System - means a public water system that is not a community water system or a non-transient non-community water system.

Non-Transient, Non-Community Water System - means a public water system that is not a community water system and that regularly serves at least 25 of the same persons for more than six months per year. Examples are separate systems serving workers and schools.

PCBs - means a group of chemicals that contain polychlorinated biphenyl.

Picocurie (pCi) - means that quantity of radioactive material producing 2.22 nuclear transformations per minute.

Point of disinfectant application - is the point where the disinfectant is applied and water downstream of that point is not subject to recontamination by surface water runoff.

Public Water System - means a system, either publicly or privately owned, providing water for human consumption and other domestic uses which has at least fifteen service connections, or regularly serves an average of at least twenty-five individuals for at least sixty days out of the year. Such term includes collection, treatment, storage and distribution facilities under control of the operator and used primarily in connection with the system. Additionally, the term includes collection, pretreatment or storage facilities used primarily in connection with system but not under such control.

Rem - means the unit of dose equivalent from ionizing radiation to the total body or any internal organ or organ system. A "millirem" (mrem)" is 1/1000 of a rem.

Residual disinfectant concentration ("C" in CT calculations) - means the concentration of disinfectant measured in mg/l in a representative sample of water.

Shall - means that a particular action is obliged and has to be accomplished.

Should - means that a particular action is recommended but does not have to be accomplished.

Secondary Maximum Contaminant Level - means the advisable maximum level of contaminant in water which is delivered to any user of a public water system.

SOCs - means synthetic organic chemicals.

Surface Water Sources - means a source of culinary water which lies or travels on the surface prior to its capture for use in a culinary water system.

Total Trihalomethanes (TTHM) - means the MCL for trihalomethanes. This is the sum of four of the ten possible isomers of chlorine/bromine/methane compounds, all known as trihalomethanes (THM). TTHM is defined as the arithmetic sum of the concentrations in micro grams per liter of only four of these, i.e. of chloroform, bromodichloromethane dibromochloromethane, and bromoform, rounded to two significant figures. This measurement is made by samples which are "quenched", meaning that a chlorine neutralizing agent has been added, preventing further THM formation in the samples.

Trihalomathanes (THM) - means any one or all members of this class of organic compounds.

Trihalomathane Formation Potential (THMFP) - these samples are collected just following disinfection and measure the highest possible TTHM value to be expected in the water distribution system. The formation potential is measured by not neutralizing the disinfecting agent at the time of collection, but storing the sample seven days at 25 degrees C prior to analysis. A chlorine residual must be present in these samples at the end of the seven day period prior to analysis for the samples to be considered valid for this test. Samples without a residual at the end of this period must be resampled if this test is desired.

Turbidity Unit - means that unit of measurement used in the nephelometric method of water analysis. This method is Nephelometric Method - Nephelometric Turbidity Unit as set forth in the latest edition of Standard Methods for Examination of Water and Wastewater, 1985, American Public Health Association et al., (Method 214A, pp. 134-136 in the 16th edition).

Unregulated Contaminant - A known or suspected disease

causing contaminant for which no maximum contaminant level has been established.

Virus - means a virus of fecal origin which is infectious to humans by waterborne transmission.

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R309. Environmental Quality, Drinking Water.
R309-200. Facility Design and Operation: Definitions.
R309-200-1. Purpose.

The purpose of this rule is to define certain terms and expressions that are utilized throughout rules R309-201 through R309-211. Collectively, those rules govern the design, construction, operation and maintenance of public drinking water system facilities.

R309-200-2. Authority.

This rule is promulgated by the Drinking Water Board as authorized by Title 19, Environmental Quality Code, Chapter 4, Safe Drinking Water Act, Subsection 104(1)(a)(ii) of the Utah Code Annotated and in accordance with 63-46a of the same, known as the Administrative Rulemaking Act.

R309-200-3. Definitions.

"Drinking Water Glossary: A Dictionary of Technical and Legal Terms Related to Drinking Water," USEPA publication number 810-B-94-006 is hereby incorporated by refernce. Copies are available from the Office of Water, United States, Environmental Protection Agency, (4601), Washington, DC 20460 or from the Division.

As used in R309-201 through R309-211:

(1) "AF" means acre foot and is the volume of water required to cover an acre to a depth of one foot (one AF is equivalent to 325,851 gallons).

(2) "ANSI/NSF" refers to the American National Standards Institute and NSF International. NSF International has prepared at least two health effect standards dealing with treatment chemicals added to drinking water and system components that will come into contact with drinking water, these being Standard 60 and Standard 61. The American National Standards Institute acts as a certifying agency, and determines which laboratories may certify to these standards.

(3) "Average Yearly Demand" means the amount of water delivered to consumers by a public water system during a typical year, generally expressed in MG or AF.

(4) "AWWA" refers to the American Water Works Association located at 6666 West Quincy Avenue, Denver, Colorado 80235. Reference within these rules is generally to a particular Standard prepared by AWWA and which has completed the ANSI approval process such as ANSI/AWWA Standard C651-92 (AWWA Standard for Disinfecting Water Mains).

(5) "Board" means the Drinking Water Board.

(6) "C" is short for "Residual Disinfectant Concentration."

(7) "cfs" means cubic feet per second and is one way of expressing flowrate (one cfs is equivalent to 448.8 gpm).

(8) "Coagulation" is the process of destabilization of the charge (predominantly negative) on particulates and colloids suspended in water. Destabilization lessens the repelling character of particulates and colloids and allows them to become attached to other particles so that they may be removed in subsequent processes. The particulates in raw waters (which contribute to color and turbidity) are mainly clays, silt, viruses, bacteria, fulvic and humic acids, minerals (including asbestos, silicates, silica, and radioactive particles), and organic particulate.

(9) "Community Water System" (CWS) means a public water system which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.

(10) "Conventional Surface Water Treatment" means a series of processes including coagulation, flocculation, sedimentation, filtration and disinfection resulting in substantial particulate removal and inactivation of pathogens.

(11) "CT" or "CT_{calc}" is the product of "residual disinfectant concentration" (C) in mg/l determined before or at the first customer, and the corresponding "disinfectant contact time" (T) in minutes, i.e., "C" x "T." If a public water system applies disinfectant at more than one point prior to the first customer, the summation of each CT value for each disinfectant sequence before or at the first customer determines the total percent inactivation or "Total Inactivation Ratio." In determining the Total Inactivation Ratio, the public water system must determine the residual disinfectant concentration of each disinfection sequence and corresponding contact time before any subsequent disinfection application point(s).

(12) "$CT_{req'd}$" is the CT value required when the log reduction credit given the filter is subtracted from the (3-log) inactivation requirement for Giardia lamblia or the (4-log) inactivation requirement for viruses (see R309-104-4.7.6 for the nominal credit given to certain filtration processes).

(13) "$CT_{99.9}$" is the CT value required for 99.9 percent (3-log) inactivation of Giardia lamblia cysts. $CT_{99.9}$ for a variety of disinfectants and conditions appear in Tables 1.1-1.6, 2.1, and 3.1 of Section 141.74(b)(3) in the code of Federal Regulations (also available from the Division).

(14) "Desired Design Discharge Rate" means the flowrate which the design engineer wishes to have the Division consider as the firm yield available from a drinking water well source. As described in section R309-204-6(10)(b)(iii) the constant-rate yield and drawdown test is conducted at 1.5 times this desired flowrate. This means the "desired design discharge rate" is 67% of the constant-rate used to test the well. Common usage of terms such as "firm yield" or "yield" are synonymous with desired design discharge rate.

(15) "Direct Filtration" means a series of processes including coagulation and filtration, but excluding sedimentation, resulting in substantial particulate removal.

(16) "Disinfectant Contact Time" ("T" in CT calculations) means the time in minutes that it takes water to move from the point of disinfectant application or the previous point of disinfectant residual measurement to a point before or at the point where residual disinfectant concentration ("C") is

measured. Where only one "C" is measured, "T" is the time in minutes that it takes water to move from the point of disinfectant application to a point before or at where residual disinfectant concentration ("C") is measured. Where more than one "C" is measured, "T" is (a) for the first measurement of "C," the time in minutes that it takes water to move from the first or only point of disinfectant application to a point before or at the point where the first "C" is measured and (b) for subsequent measurements of "C," the time in minutes that it takes for water to move from the previous "C" measurement point to the "C" measurement point for which the particular "T" is being calculated. Disinfectant contact time in pipelines must be calculated based on "plug flow" by dividing the internal volume of the pipe by the maximum hourly flow rate through that pipe. Disinfectant contact time within mixing basins and storage reservoirs must be determined by tracer studies or an equivalent demonstration.

(17) "Disinfection" means a process which inactivates pathogenic organisms in water by chemical oxidants or equivalent agents (see also Primary Disinfection and Secondary Disinfection).

(18) "Division" means the Utah Division of Drinking Water, who acts as staff to the Board and is also part of the Utah Department of Environmental Quality.

(19) "Drinking Water" means water that is fit for human consumption and meets the quality standards of R309-103. Common usage of terms such as culinary water or finished water are synonymous with drinking water.

(20) "Emergency Storage" means that storage tank volume which provides water during emergency situations, such as pipeline failures, major trunk main failures, equipment failures, electrical power outages, water treatment facility failures, source water supply contamination, or natural disasters.

(21) "Engineer" means a person licensed under the Professional Engineers and Land Surveyors Licensing Act, 58-22 of the Utah Code Annotated, as a "professional engineer" as defined therein.

(22) "Equalization Storage" means that storage tank volume which stores water during periods of low demand and releases the water under periods of high demand. Equalization storage provides a buffer between the sources and distribution for the varying daily water demands. Typically, water demands are high in the early morning or evening and relatively low in the middle of the night. A rule-of-thumb for equalization storage volume is that it should be equal to one average day's use.

(23) "Equivalent Residential Connection" (ERC) is a term used to evaluate service connections to consumers other than the typical residential domicile. Public water system management is expected to review metered drinking water volumes delivered to non-residential connections and estimate the equivalent number of residential connections that these represent. This information is utilized in evaluation of the system's source and storage capacities (refer to R309-203).

(24) "Executive Secretary" means the Executive Secretary of the Board as appointed and with authority outlined in 19-4-106 of the Utah Code Annotated.

(25) "Filtration" means a process for removing particulate matter from water by passage through porous media.

(26) "Fire Suppression Storage" means that storage tank volume allocated to fire suppression activities. It is generally determined by the requirements of the local fire marshal, expressed in gallons, and determined by the product of a minimum flowrate in gpm and required time expressed in minutes.

(27) "Flash Mix" is the physical process of blending or dispersing a chemical additive into an unblended stream. Flash Mixing is used where an additive needs to be dispersed rapidly (within a period of one to ten seconds). Common usage of terms such as "rapid mix" or "initial mix" are synonymous with flash mix.

(28) "Floc" means flocculated particles or agglomerated particles formed during the flocculation process. Flocculation enhances the agglomeration of destabilized particles and colloids toward settleable (or filterable) particles (flocs). Flocculated particles may be small (less than 0.1 mm diameter) micro flocs or large, visible flocs (0.1 to 3.0 mm diameter).

(29) "Flocculation" means a process to enhance agglomeration of destabilized particles and colloids toward settleable (or filterable) particles (flocs). Flocculation begins immediately after destabilization in the zone of decaying mixing energy (downstream from the mixer) or as a result of the turbulence of transporting flow. Such incidental flocculation may be an adequate flocculation process in some instances. Normally flocculation involves an intentional and defined process of gentle stirring to enhance contact of destabilized particles and to build floc particles of optimum size, density, and strength to be subsequently removed by settling or filtration.

(30) "fps" means feet per second and is one way of expressing the velocity of water.

(31) "G" is used to express the energy required for mixing and for flocculation. It is a term which is used to compare velocity gradients or the relative number of contacts per unit volume per second made by suspended particles during the flocculation process. Velocity gradients G may be calculated from the following equation: G = square root of the value(550 times P divided by u times V). Where: P = applied horsepower, u = viscosity, and V = effective volume.

(32) "gpd" means gallons per day and is one way of expressing average daily water demands experienced by public water systems.

(33) "gpm" means gallons per minute and is one way of expressing flowrate.

(34) "gpm/sf" means gallons per minute per square foot and is one way of expressing flowrate through a surface area.

(35) "ground water of high quality" means a well or spring producing water deemed by the Executive Secretary to be of sufficiently high quality that no treatment is required. Such sources shall have been designed and constructed in conformance with these rules, have been tested to establish that all applicable drinking water quality standards (as given in rule R309-103) are reliably and consistently met, have been deemed not vulnerable to natural or man-caused contamination, and the public water system management have established adequate protection zones and management policies in accordance with rule R309-113.

(36) "ground water of low quality" means a well or spring which, as determined by the Executive Secretary, cannot reliably and consistently meet the drinking water quality

standards described in R309-103. Such sources shall be deemed to be a low quality ground water source if any of the conditions outlined in subsection R309-202-7(1) exist. Ground water that is classified "UDI" is a subset of this definition and requires "conventional surface water treatment" or an acceptable alternative.

(37) "Ground Water Under the Direct Influence of Surface Water" or "UDI" means any water beneath the surface of the ground with (1) significant occurrence of insects or other macro organisms, algae, or large-diameter pathogens such as Giardia lamblia, or (2) any significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH which closely correlate to climatological or surface water conditions. Direct influence will be determined for individual sources in accordance with criteria established by the Executive Secretary. The determination of direct influence may be based on site-specific measurements of water quality and/or documentation of well or spring construction and geology with field evaluation.

(38) "Hotel, Motel or Resort" shall include tourist courts, motor hotels, resort camps, hostels, lodges, dormitories and similar facilities, and shall mean every building, or structure with all buildings and facilities in connection, kept, used, maintained as, advertised as, or held out to the public to be, a place where living accommodations are furnished to transient guests or to groups normally occupying such facilities on a seasonal or short term basis.

(39) "Labor Camp" shall mean one or more buildings, structures, or grounds set aside for use as living quarters for groups of migrant laborers or temporary housing facilities intended to accommodate construction, industrial, mining or demolition workers.

(40) "Legionella" means a genus of bacteria, some species of which have caused a type of pneumonia called Legionnaires Disease.

(41) "MG" means million gallons and is one way of expressing a volume of water.

(42) "MGD" means million gallons per day and is one way of expressing average daily water demands experienced by public water systems or the capacity of a water treatment plant.

(43) "mg/l" means milligrams per liter and is one way of expressing the concentration of a chemical in water. At small concentrations, mg/l is synonymous with "ppm" (parts per million).

(44) "Modern Recreation Camp" means a campground accessible by any type of vehicular traffic. The camp is used wholly or in part for recreation, training or instruction, social, religious, or physical education activities or whose primary purpose is to provide an outdoor group living experience. The site is equipped with permanent buildings for the purpose of sleeping, a drinking water supply under pressure, food service facilities, and may be operated on a seasonal or short term basis. These types of camps shall include but are not limited to privately owned campgrounds such as youth camps, church camps, boy or girl scout camps, mixed age groups, family group camps, etc.

(45) "Non-Community Water System" (NCWS) means a public water system that is not a community water system. There are two types of NCWS's: transient and non-transient.

(46) "Non-Transient Non-Community Water System" (NTNCWS) means a public water system that regularly serves at least 25 of the same nonresident persons per day for more than six months per year. Examples of such systems are those serving the same individuals (industrial workers, school children, church members) by means of a separate system.

(47) "NTU" means Nephelometric Turbidity Units and is an acceptable method for measuring the clarity of water utilizing an electronic nephelometer (see "Standard Methods for Examination of Water and Wastewater").

(48) "Operating Permit" means written authorization from the Executive Secretary to actually start utilizing a facility constructed as part of a public water system.

(49) "Package Plants" refers to water treatment plants manufactured and supplied generally by one company which are reportedly complete and ready to hook to a raw water supply line. Caution, some plants do not completely comply with all requirements of these rules and will generally require additional equipment.

(50) "Peak Day Demand" means the amount of water delivered to consumers by a public water system on the day of highest consumption, generally expressed in gpd or MGD. This peak day will likely occur during a particularly hot spell in the summer. In contrast, some systems associated with the skiing industry may experience their "Peak Day Demand" in the winter.

(51) "Peak Instantaneous Demand" means calculated or estimated highest flowrate that can be expected through any water mains of the distribution network of a public water system at any instant in time, generally expressed in gpm or cfs (refer to section R309-203-9).

(52) "Plan Approval" means written approval, by the Executive Secretary, of contract plans and specifications for any public drinking water project which have been submitted for review prior to the start of construction (see also R309-201-6).

(53) "Plug Flow" is a term to describe when water flowing through a tank, basin or reactors moves as a plug of water without ever dispersing or mixing with the rest of the water flowing through the tank.

(54) "Point of Disinfectant Application" is the point where the disinfectant is applied and water downstream of that point is not subject to re-contamination by surface water runoff.

(55) "Point-of-Entry Treatment Device" means a treatment device applied to the drinking water entering a house or building for the purpose of reducing contaminants in the drinking water distributed throughout the house or building.

(56) "Point-of-Use Treatment Device" means a treatment device applied to a single tap used for the purpose of reducing contaminants in drinking water at that one tap.

(57) "Political Subdivision" means any county, city, town, improvement district, metropolitan water district, water conservancy district, special service district, drainage district, irrigation district, separate legal or administrative entity created under Title 11, Chapter 13, Interlocal Cooperation Act, or any other entity constituting a political subdivision under the laws of Utah.

(58) "ppm" means parts per million and is one way of expressing the concentration of a chemical in water. At small concentrations generally used, ppm is synonymous with "mg/l"

(milligrams per liter).

(59) "Primary Disinfection" means the adding of an acceptable primary disinfectant during the treatment process to provide adequate levels of inactivation of bacteria and pathogens. The effectiveness is measured through "CT" values and the "Total Inactivation Ratio." Acceptable primary disinfectants are, chlorine, ozone, and chlorine dioxide (see also "CT" and "$CT_{99.9}$").

(60) "Public Drinking Water Project" means construction, addition to, or modification of any facility of a public water system which may affect the quality or quantity of the drinking water (see also section R309-201-5).

(61) "Public Water System" (PWS) means a system providing water for human consumption and other domestic uses, which has at least 15 service connections or serves an average of at least 25 individuals daily at least 60 days out of the year and includes collection, treatment, storage, or distribution facilities under the control of the operator and used primarily in connection with the system, or collection, pretreatment or storage facilities used primarily in connection with the system but not under his control (see 19-4-102 of the Utah Code Annotated). All public water systems are further categorized into three different types, community (CWS), non-transient non-community (NTNCWS), and transient non-community (TNCWS). These categories are important with respect to required monitoring and water quality testing found in R309-104 (see also definition of "water system").

(62) "Raw Water" means water that is destined for some treatment process that will make it acceptable as drinking water. Common usage of terms such as lake or stream water, surface water or irrigation water are synonymous with raw water.

(63) "Recreational Home Developments" are subdivision type developments wherein the dwellings are not intended as permanent domiciles.

(64) "Recreational Vehicle Park" means any site, tract or parcel of land on which facilities have been developed to provide temporary living quarters for individuals utilizing recreational vehicles. Such a park may be developed or owned by a private, public or non-profit organization catering to the general public or restricted to the organizational or institutional member and their guests only.

(65) "Regionalized Water System" means any combination of water systems which are physically connected or operated or managed as a single unit.

(66) "Residual Disinfectant Concentration" ("C" in CT calculations) means the concentration of disinfectant, measured in mg/l, in a representative sample of water.

(67) "Roadway Rest Stop" shall mean any building, or buildings, or grounds, parking areas, including the necessary toilet, hand washing, water supply and wastewater facilities intended for the accommodation of people using such facilities while traveling on public roadways. It does not include scenic view or roadside picnic areas or other parking areas if these are properly identified

(68) "scfm/sf" means standard cubic foot per minute per square foot and is one way of expressing flowrate of air at standard density through a filter or duct area.

(69) "Secondary Disinfection" means the adding of an acceptable secondary disinfectant to assure that the quality of the water is maintained throughout the distribution system. The effectiveness is measured by maintaining detectable disinfectant residuals throughout the distribution system. Acceptable secondary disinfectants are chlorine, chloramine, and chlorine dioxide.

(70) "Sedimentation" means a process for removal of solids before filtration by gravity or separation.

(71) "Semi-Developed Camp" means a campground accessible by any type of vehicular traffic. Facilities are provided for both protection of site and comfort of users. Roads, trails and campsites are defined and basic facilities (water, flush toilets and/or vault toilets, tables, fireplaces or tent pads) are provided. These camps include but are not limited to National Forest campgrounds, Bureau of Reclamation campgrounds, and youth camps.

(72) "Service Factor" means a rating on a motor to indicate an increased horsepower capacity beyond nominal nameplate capacity for occasional overload conditions.

(73) "Stabilized Drawdown" means the drawdown measurements taken during a constant-rate yield and drawdown test as outlined in subsection R309-204-6(10)(b) are constant (no change).

(74) "Surface Water" means all water which is open to the atmosphere and subject to surface runoff (see also section R309-204-5(1)).

(75) "T" is short for "Contact Time" and is generally used in conjunction with either the residual disinfectant concentration (C) in determining CT or the velocity gradient (G) in determining mixing energy GT.

(76) "Ten State Standards" refers to the Recommended Standards For Water Works, 1992 by the Great Lakes Upper Mississippi River Board of State Public Health and Environmental Managers available from Health Education Services, A Division of Health Research Inc., P.O. Box 7126, Albany, New York 12224, (518)439-7286.

(77) "Total Inactivation Ratio" is the sum of all the inactivation ratios calculated for a series of disinfection sequences, and is indicated or shown as: "Summation sign $(CT_{calc})/(CT_{req'd})$." A total inactivation ratio equal to or greater than 1.0 is assumed to provide the required inactivation of Giardia lamblia cysts. $CT_{calc}/CT_{99.9}$ equal to 1.0 provides 99.9 percent (3-log) inactivation, whereas CT_{calc}/CT_{90} equal to 1.0 only provides 90 percent (1-log) inactivation.

(78) "Transient Non-Community Water System" (TNCWS) means a non-community public water system that does not serve 25 of the same nonresident persons per day for more than six months per year. Examples of such systems are those serving a campground, RV park, diner or convenience store where the permanent nonresident staff number less than 25, but the number of people served exceeds 25.

(79) "UDI" means under direct influence (see also "Ground Water Under the Direct Influence of Surface Water").

(80) "Virus" means a virus of fecal origin which is infectious to humans.

(81) "Waterborne Disease Outbreak" means the significant occurrence of acute infectious illness, epidemiologically associated with the ingestion of water from a public water system, as determined by the appropriate local or State agency.

(82) "Water System" means all lands, property, rights,

rights-of-way, easements and related facilities owned by a single entity, which are deemed necessary or convenient to deliver drinking water from source to the service connection of a consumer(s). This includes all water rights acquired in connection with the system, all means of conserving, controlling and distributing drinking water, including, but not limited to, diversion or collection works, springs, wells, treatment plants, pumps, lift stations, service meters, mains, hydrants, reservoirs, tanks and associated appurtenances within the property or easement boundaries under the control of or controlled by the entity owning the system.

In accordance with R309-104-2, certain water systems may be exempted from monitoring requirements, but such exemption does not extend to submittal of plans and specifications for any modifications considered a public drinking water project as outlined in R309-201-5.

(83) "Zone of Influence" corresponds to area of the upper portion of the cone of depression as described in "Groundwater and Wells," second edition, by Fletcher G. Driscoll, Ph.D., and published by Johnson Division, St. Paul, Minnesota.

KEY: drinking water, definitions
January 1, 1998 19-4-104

R309. Environmental Quality, Drinking Water.
R309-201. Facility Design and Operation: Plan Review, Operation and Maintenance Requirements.
R309-201-1. Purpose.

The purpose of this rule is to describe plan review procedures and requirements, clarify projects requiring review, and inspection requirements for drinking water projects. It is intended to be applied in conjunction with rules R309-201 through R309-211. Collectively, these rules govern the design, construction, operation and maintenance of public drinking water system facilities. These rules are intended to assure that such facilities are reliably capable of supplying adequate quantities of water which consistently meet applicable drinking water quality requirements and do not pose a threat to general public health.

R309-201-2. Authority.

This rule is promulgated by the Drinking Water Board as authorized by Title 19, Environmental Quality Code, Chapter 4, Safe Drinking Water Act, Subsection 104(1)(a)(ii) of the Utah Code Annotated and in accordance with 63-46a of the same, known as the Administrative Rulemaking Act.

R309-201-3. Definitions.

Definitions for certain terms used in this rule are given in R309-200.

R309-201-4. General.

(1) Construction and Operation of New Facilities.

As authorized in 19-4-106(3) of the Utah Code Annotated, the Executive Secretary may review plans, specifications, and other data pertinent to proposed or expanded water supply systems to insure proper design and construction.

Plans and specifications shall be submitted to the Executive Secretary for any new water systems or previously un-reviewed water systems unless acceptable data can be presented that the proposed or existing water system will not become a "public water system" as defined in 19-4-102 of the Utah Code Annotated or in R309-200.

Construction of new facilities for public water systems or existing facilities of previously un-reviewed public drinking water systems shall conform with rules R309-201 through R309-211.

Construction of a public drinking water project shall not begin until complete plans and specifications have been approved in writing by the Executive Secretary unless waivers have been issued as allowed by R309-201-6(3). This approval shall be referred to as the Plan Approval.

Furthermore, no new public drinking water facility shall be put into operation until written approval to do so has been given by the Executive Secretary or this requirement waived. This approval is referred to as the Operating Permit.

(2) Existing Facilities.

All existing public drinking water systems shall be capable of reliably delivering water which meets the minimum current standard of drinking water quantity and quality rules. The Executive Secretary may require modification of existing systems in accordance with R309-201 through R309-211 when such modifications are needed to reliably achieve minimum quantity and quality requirements.

(3) Operation and Maintenance of Existing Facilities.

Public drinking water system facilities shall be operated and maintained in a manner which protects the public health. As a minimum, the operation and maintenance procedures of R309-201 through R309-211 shall be adhered to.

R309-201-5. Public Drinking Water Project.

(1) Definition.

A public drinking water project is any of the following:

(a) The construction of any facility for a proposed drinking water system (see 19-4-106(3) of the Utah Code Annotated or R309-201-4(1) above describing the authority of the Executive Secretary).

(b) Any addition to, or modification of, the facilities of an existing public drinking water system which may affect the quality or quantity of water delivered.

(c) Any activity, other than on-going operation and maintenance procedures, which may affect the quality or quantity of water delivered by an existing public drinking water system. Such activities include:

(i) the interior re-coating or re-lining of any raw or drinking water storage tank, or water storage chamber within any treatment facility,

(ii) the "in-situ" re-lining of any pipeline,

(iii) a change or addition of any primary coagulant water treatment chemical (excluding filter, floc or coagulant aids) when the proposed chemical does not appear on a list of chemicals pre-approved by the Executive Secretary for a specific treatment facility, and

(iv) the re-development of any spring or well source or replacement of a well pump with one of different capacity.

(2) On-going Operation and Maintenance Procedures.

On-going operation and maintenance procedures are not considered public drinking water projects and, accordingly, are not subject to the plan approval and operating permit requirements of this rule. However, these activities shall be carried out in accordance with all operation and maintenance requirements contained in R309-201 through R309-212 and specifically the disinfection, flushing and bacteriological sampling and testing requirements of ANSI/AWWA C651-92 for pipelines, ANSI/AWWA C652-92 for storage facilities, and ANSI/AWWA C654-87 for wells before they are placed back into service. The following activities are considered to be on-going operation and maintenance procedures:

(a) pipeline leak repair,

(b) replacement of existing deteriorated pipeline where the new pipeline segment is the same size as the old pipeline,

(c) distribution pipeline additions where the pipeline size is the same as the main supplying the addition, the length is less than 500 feet and contiguous segments of new pipe total less than 1000 feet in any fiscal year,

(d) entry into a drinking water storage facility for the purposes of cleaning and maintenance, and

(e) replacement of equipment or pipeline appurtenances with the same type, size and rated capacity (fire hydrants, valves, pressure regulators, meters, service laterals, chemical feeders and booster pumps including deep well pumps).

R309-201-6. Plan Approval Procedure.

(1) Project Notification.

The Division shall be notified prior to the construction of any "public drinking water project" as defined in R309-201-5(1) above. The notification may be prior to or simultaneous with submission of construction plans and specifications as required by R309-201-6(2) below. Notification shall be made on a form provided by the Division. Information required by this form shall be determined by the Division and may include:

(a) whether the project is for a new or existing public drinking water system,

(b) the professional engineer, registered in the State of Utah, designing the project and his/her experience designing public drinking water projects within the state,

(c) the individual(s) who will be inspecting the project during construction and whether such inspection will be full-time or part time,

(d) whether required approvals or permits from other governmental agencies (e.g. local planning commissions, building inspectors, Utah Division of Water Rights)are awaiting approval by the Executive Secretary, the agency's name and contact person,

(e) the fire marshall, fire district or other entity having legal authority to specify requirements for fire suppression in the project area,

(f) for systems serving more than 800 individuals or treating surface water, the name of the certified operator who is, or will be, in direct responsible charge of the water system,

(g) whether the water system has a registered professional engineer employed, appointed or designated as being directly responsible for the entire system design and his or her name,

(h) the anticipated construction schedule, and

(i) a description of the type of legal entity responsible for the water system (i.e. corporation, political subdivision, mutual ownership, individual ownership, etc.) and the status of the entity with respect to the rules of the Utah Public Service Commission.

(2) Pre-Construction Requirements.

All of the following shall be accomplished before construction of any public drinking water project commences:

(a) Contract documents, plans and specifications for a public drinking water project shall be submitted to the Division at least 30 days prior to the date on which action is desired. This shall include engineering reports, pipe network hydraulic analyses, water consumption data, supporting information, evidence of rights-of-way and master plans pertinent to the project, along with a description of a program for keeping existing water works facilities in operation during construction so as to minimize interruption of service.

(b) Plans and specifications shall be prepared for every anticipated public water system project. The design utilized shall conform to the requirements of R309-201 through R309-211. Furthermore, the plans and specification shall be sufficiently detailed to assure that the project shall be properly constructed. Drawings shall be compatible with Division's document storage and microfilming practice. Drawings which are illegible or of unusual size shall not be accepted for review. Drawing size shall not exceed 30" x 42" nor be less than 8-1/2" x 11".

(c) The plans and specifications shall be stamped and signed by a licensed professional engineer in accordance with Section 58-22-602(2) of the Utah Code Annotated.

(d) Plans and specifications shall be reviewed for conformance with R309-201 through R309-211. No work shall commence on a public water system project until a plan approval has been issued by the Executive Secretary. If construction or the ordering of substantial equipment has not commenced within one year, a renewal of the Plan Approval shall be obtained prior to proceeding with construction.

(e) If, in the judgment of the Executive Secretary, alternate designs or specific solutions can protect the public health to the same or greater extent as achieved in R309-201 through R309-211, the Executive Secretary may grant an exception thereto (see R309-102-2.2).

(f) Novel equipment or treatment techniques may be developed which are not specifically addressed by these rules. These may be accepted by the Executive Secretary if it can be shown that:

(i) the technique will produce water meeting the requirements of R309-103 of these rules,

(ii) the Executive Secretary has determined that it will protect public health to the same extent provided by comparable treatment processes outlined in these rules, and

(iii) the Executive Secretary has determined the technique is as reliable as any comparable treatment process outlined is these rules.

(3) Waiving of Plan Submittal Requirement.

The plan submittal requirement may be waived for certain projects. In these instances, in lieu of plans and specifications, a "certification of rule conformance" shall be submitted, signed by the professional engineer identified to Executive Secretary in (b) or, if the system has not employed, appointed, or designated

such, the registered professional engineer who prepared the items in (a). Projects eligible for this waiving of plan submittal are:

(a) distribution system improvements which conform to a "master plan" previously reviewed and approved by the Executive Secretary and installed in accordance with the "system's standard drawings," also previously reviewed and approved by the Executive Secretary, or

(b) distribution system improvements consisting solely of pipelines and pipeline appurtances (excluding pressure reducing valve stations and in-line booster pump stations);

(i) less than or equal to 4 inches in diameter in water systems (without fire hydrants) serving solely a residential population less than 3,300;

(ii) less than or equal to 6 inches in diameter in water systems (with fire hydrants) providing water for mixed use (commercial, industrial, agricultural and/or residential) to a population less than 3,300;

(iii) less than or equal to 12 inches in diameter in water systems(with fire hydrants) providing water for mixed use to a population between 3,300 and 50,000;

(iv) less than or equal to 16 inches in diameter in water systems (with fire hydrants) providing water for mixed use to a population greater than 50,000.

Additionally, the above systems shall employ, appoint or designate a registered professional engineer who is directly responsible for the entire public water system design and identify this individual to the Executive Secretary before being eligible for waiving of plan submittal requirements.

R309-201-7. Inspection During Construction.

Staff from the Division, or the appropriate local health department, after reasonable notice and presentation of credentials may make visits to the work site to assure compliance with these rules.

R309-201-8. Change Orders.

Any deviations from approved plans or specifications affecting capacity, hydraulic conditions, operating units, the functioning of water treatment processes, or the quality of water to be delivered, shall be reported to the Executive Secretary. If deemed appropriate, the Executive Secretary may require that revised plans and specifications be submitted for review. Revised plans or specifications shall be submitted to the Division in time to permit the review and approval of such plans or specifications before any construction work, which will be affected by such changes, is begun.

R309-201-9. Issuance of Operating Permit.

The Division shall be informed when a public drinking water project, or a well-defined phase thereof, is at or near completion. The new or modified facility shall not be used until an "Operating Permit" is issued, in writing, by the Executive Secretary. This permit shall not be issued until all of the following items are submitted and found to be acceptable for all projects with the exception of distribution lines (including in-line booster pump stations or pressure reducing stations), which may be placed into service prior to submittal of all items if the professional engineer responsible for the entire system, as identified to the Executive Secretary, has received items (1) and (4):

(1) a statement from a registered professional engineer that all conditions of Plan Approval were accomplished,

(2) as-built drawings,

(3) confirmation that a copy of the as-built drawings has been received by the water system owner,

(4) evidence of proper flushing and disinfection in accordance with the appropriate ANSI/AWWA Standard,

(5) where appropriate, water quality data

(6) a statement from the Engineer indicating what changes to the project were necessary during construction, and certification that all of these changes were in conformance with these rules,

(7) all other documentation which may have been required during the plan review process, and

(8) confirmation that the water system owner has been provided with an Operation and Maintenance manual for the new facility.

R309-201-10. Adequacy of Wastewater Disposal.

Plans and specifications for new water systems, or facilities required as a result of proposed subdivision additions to existing water systems, shall only be approved if the method(s) of wastewater disposal in the affected area have been approved, or been determined to be feasible, by the Utah Division of Water Quality or the appropriate local health agency.

R309-201-11. Financial Viability.

Owners of new or existing water systems are encouraged to develop realistic financial strategies for recouping the costs of constructing and operating their systems. Plans for water system facilities shall not be approved when it is obvious that public health will eventually be threatened because the anticipated usage of the system will not generate sufficient funds to insure proper operation and maintenance of the system.

R309-201-12. Fee Schedule.

The Division may charge a fee for the review of plan and specifications. A fee schedule is available from the Division.

R309-201-13. Other Permits.

Local, county or other state permits may also be necessary before beginning construction of any drinking water project.

R309-201-14. Reference Documents.

All references made in R309-201 through R309-211 are available for inspection at the Division's office.

R309-201-15. Violations of These Rules.

Violations of rule contained in R309-201 through R309-211 are subject to the provisions of the Utah Safe Drinking Water Act (Title 19, Chapter 4 Section 109 of the Utah Code) and may be subject to fines and penalties.

KEY: drinking water, plan review, operation and maintenance requirements, permits
January 1, 1998 19-4-104

R309. Environmental Quality, Drinking Water.
R309-202. Facility Design and Operation: Minimum Treatment Requirements.
R309-202-1. Purpose.

This rule specifies the type and degree of treatment which must be applied to the various types of water sources found in Utah. It is intended to be applied in conjunction with rules R309-201 through R309-211. Collectively, these rules govern the design, construction, operation and maintenance of public drinking water system facilities. These rules are intended to assure that such facilities are reliably capable of supplying adequate quantities of water which consistently meet applicable drinking water quality requirements and do not pose a threat to general public health.

R309-202-2. Authority.

This rule is promulgated by the Drinking Water Board as authorized by Title 19, Environmental Quality Code, Chapter 4, Safe Drinking Water Act, Subsection 104(1)(a)(ii) of the Utah Code Annotated and in accordance with Title 63, Chapter 46a of the same, known as the Administrative Rulemaking Act.

R309-202-3. Definitions.

Definitions for certain terms used in this rule are given in R309-200.

R309-202-4. Pre-design Consultation.

The type and degree of treatment which shall be given a public drinking water source depends upon the nature of the source and the chemical and biological characteristics of the water it produces. Prior to the design of any water treatment facility, the Executive Secretary shall be consulted and concur that the contemplated treatment method is appropriate for the source being treated.

R309-202-5. Drinking Water Quality Standards.

Drinking water provided for human consumption by public drinking water systems must meet all water quality standards as specified in R309-103. Sources of water which do not meet applicable standards, or may not meet such standards due to the proximity of contamination sources, shall be appropriately treated as specified herein or physically disconnected from the drinking water system.

R309-202-6. Surface Water Sources.

(1) Determination of Surface Water Source.

A surface water source is any water source which rests or travels above ground for any period of time. Such sources include rivers, streams, creeks, lakes, reservoirs, ponds or impoundments.

(2) Treatment of a Surface Water Source.

(a) As a minimum, surface water sources shall be given complete treatment as specified in R309-206 or R309-207.

(b) All surface waters shall be treated to assure:

(i) at least 99.9 percent (3-log) removal and/or inactivation of Giardia lamblia cysts between a point where the raw water is not subject to recontamination by surface water runoff and a point downstream before or at the first customer;

(ii) at least 99.99 percent (4-log) removal and/or inactivation of viruses between a point where the raw water is not subject to recontamination by surface water runoff and a point downstream before or at the first customer; and

(iii) removal of substances, as needed, to comply with the quality requirements of R309-103.

(c) A public water system using a surface water source is considered to be in compliance with the requirements in subsection (b), above, if the treatment technique utilized produces water meeting the quality provisions of R309-103, provided that all monitoring required by R309-104 has been accomplished.

R309-202-7. Low Quality Ground Water Sources.

(1) Determination of a Low Quality Ground Water Source.

(a) A low quality ground water source is any well or spring which, as determined by the Executive Secretary, cannot reliably and consistently meet the drinking water quality standards described in R309-103. A water source shall be deemed to be a low quality ground water source if any of the following conditions exist:

(i) It is determined by the Executive Secretary that the source is Ground Water Under the Direct Influence of Surface Water.

(A) Classification of existing ground water sources, as to whether or not they are under direct influence of surface water, shall be made by the Executive Secretary. Such classification for non-community ground water sources shall be made by June 29,1999.

(B) Frequent monitoring of turbidity, temperature, pH and conductivity of source water, in conjunction with similar monitoring of nearby surface waters may, if properly documented, provide sufficient evidence that the source is not influenced.

(C) Classification of existing sources shall be based upon evaluation of part or all of the following:

(I) Records review; including review of plans and specifications used for construction of collection facilities as submitted for review and approval prior to construction; review of as-built plans as submitted after construction, especially where springs are concerned; review of previous sanitary surveys; and review of any system bacteriological violations which may be linked directly to a source.

(II) Results of written survey form.

(III) On-site inspection by Division personnel.

(IV) Special tests such as Microscopic Particulate Analysis (MPA), dye tracer studies, or time of travel studies done in conjunction with the source protection program. Because of critical timing for tests such as the MPA, accelerated monitoring and reporting of water characteristics as mentioned in R309-104-4.5.3 may be required prior to MPA sampling.

(b) Testing for microbiological, chemical or radiologic contaminants determines that the drinking water quality requirements of R309-103 cannot be reliably or consistently met.

(c) The location, design or construction of the well or spring makes it, in the judgement of the Executive Secretary, vulnerable to natural or man-caused contamination.

(2) Treatment of a Low Quality Ground Water Source.

Low quality ground water sources shall be treated to assure that all chemical and biological contaminants are reduced to the levels which are reliably and consistently below MCL's prescribed in R309-103. If a source is determined to be ground water under the direct influence of surface water the following is required:

(a) Upon determination that a ground water source is under the direct influence of surface water, conventional surface water treatment, as specified in R309-206, or an approved equivalent, as specified in R309-207, shall be installed within 18 months or the source must be abandoned as a source of drinking water and physically disconnected from the drinking water system.

(b) Systems which must retain use of ground water sources classified as under direct influence of surface water shall start disinfection immediately on those sources and monitor in accordance with R309-104-4.7.4 as well as maintain satisfactory "CT" values in accordance with R309-103-2.7 during the 18 month interim period before conventional surface water treatment, or an approved equivalent, is installed. Chlorine, chlorine dioxide, chloramine, and ozone are considered capable of attaining required levels of disinfection.

(c) Once a ground water source is classified as under the influence of surface water, it must be considered to be a surface water source. Thus, all requirements in these rules which pertain to surface water sources also pertain to ground water under the direct influence of surface water.

R309-202-8. High Quality Ground Water Sources.

(1) Determination of a High Quality Ground Water Source.

A well or spring shall be deemed to be a high quality ground water source if the following conditions are met:

(a) The design and construction of the source are in conformance with these rules.

(b) Testing establishes that all applicable drinking water quality standards, as given in R309-103, are met, and can be expected to be met in the future.

(c) The source is not vulnerable to natural or man-caused contamination and, furthermore, adequate protection zones and management areas have been established in accordance with R309-113

(2) Treatment of a High Quality Ground Water Source.

A high quality ground water source requires no treatment.

R309-202-9. Best Available Technologies (BATs).

EPA has identified Best Available Technologies (BATs) in national regulations regarding drinking water. BATs include Activated Alumina, Coagulation/Filtration, Direct Filtration, Diatomite Filtration, Electrodialysis Reversal, Corrosion Control, Granulated Activated Carbon, Ion Exchange, Lime Softening, Reverse Osmosis, Polymer Addition and Packed Tower Aeration. Where a BAT is used to reduce the concentration of a contaminant:

(a) the requirements of R309-201 through R309-211 shall govern if the BAT is included in these rules.

(b) if the BAT is not included in R309-201 through R309-211, review of plans and specifications for a project will be governed by R309-207-9, New Treatment Processes or Equipment.

R309-202-10. Point-of-Entry Treatment Devices.

Where drinking water does not meet the quality standards of R309-103 and the available water system treatment methods are determined to be unreasonably costly or otherwise undesirable, the Executive Secretary may permit the public water supplier to install and maintain point-of-entry treatment devices which have been proven to be appropriate, safe and effective as determined through testing and compliance with protocols established by the Association of State Drinking Water Administrators (ASDWA) or the applicable ANSI/NSF Standard(s). The installation and maintenance of such devices shall be the sole responsiblity of the public water supplier and service contracts shall make this clear.

R309-202-11. Temporary Use of Bottled Water or Point-of-Use Treatment Devices.

Initially the use of bottled water, or point-of-use treatment devices, may be allowed on a temporary basis by the Executive Secretary. Their continued use shall be reviewed at least annually and only allowed after the Executive Secretary is satified that the PWS has made reasonable attempts since the last reivew to provide acceptable treatment of a more permanent nature without success. Point-of-use treatment devices used shall only be those proven to be appropriate,safe and effective as determined through testing and compliance with protocols established by the Association of State Drinking Water Administrators (ASDWA) or the applicable ANSI/NSF Standard(s). Their installation and maintenance shall be under the control of a public water system and this made clear in service contracts between the consumer and the PWS.

KEY: drinking water, surface water treatment, low quality ground water, high quality ground water
January 1, 1998 19-4-104

R309. Environmental Quality, Drinking Water.
R309-203. Facility Design and Operation: Minimum Sizing Requirements.
R309-203-1. Purpose.

This rule specifies requirements for the sizing of public drinking water facilities such as sources (along with their associated treatment facilities), storage tanks, and pipelines. It is intended to be applied in conjunction with R309-201 through R309-211. Collectively, these rules govern the design, construction, operation and maintenance of public drinking water system facilities. These rules are intended to assure that such facilities are reliably capable of supplying adequate quantities of water which consistently meet applicable drinking water quality requirements and do not pose a threat to general public health.

R309-203-2. Authority.

This rule is promulgated by the Drinking Water Board as authorized by Title 19, Environmental Quality Code, Chapter 4, Safe Drinking Water Act, Subsection 104(1)(a)(ii) of the Utah

Code Annotated and in accordance with 63-46a of the same, known as the Administrative Rulemaking Act.

R309-203-3. Definitions.

Definitions for certain terms used in this rule are given in R309-200.

R309-203-4. General.

This rule provides estimations which shall be used in the sizing of water sources, storage facilities and pipelines. Within each of these three broad categories, the designer shall ascertain the contributions on demand from the indoor use of water, the outdoor use of water, and fire suppression activities (if required by local authorities). These components must be added together to determine the total demand on a given facility.

R309-203-5. Reduction of Requirements.

If acceptable data are presented, at or above the 90% confidence level, showing that the requirements made herein are excessive for a given project, the requirements may be appropriately reduced on a case by case basis by the Executive Secretary. In the case of Recreational Home Developments, in order to qualify for a quantity reduction, not only must the actual water consumption be less than quantities required by rule (with the confidence level indicated above) but enforceable policy restrictions must have been approved which prevent the use of such dwellings as a permanent domicile and these restrictions shall have been consistently enforced.

R309-203-6. Water Conservation.

This rule is based upon typical current water consumption patterns in the State of Utah. They may be excessive in certain settings where legally enforceable water conservation measures exist. In these cases the requirements made in this section may be reduced on a case-by-case basis by the Executive Secretary.

R309-203-7. Source Sizing.

(1) Peak Day Demand and Average Yearly Demand.

Sources shall legally and physically meet water demands under two separate conditions. First, they shall meet the anticipated water demand on the day of highest water consumption. This is referred to as the peak day demand. Second, they shall also be able to provide one year's supply of water, the average yearly demand.

(2) Estimated Indoor Use.

In the absence of firm water use data, Tables 203-1 and 203-2 shall be used to estimate the peak day demand and average yearly demand for indoor water use.

TABLE 203-1
Source Demand for Community Water Systems
(Indoor Use)

Type of Connection	Peak Day Demand	Average Yearly Demand
Residential	800 gpd/conn	146,000 gal./conn
Other	800 gpd/ERC	146,000 gal./ERC

TABLE 203-2
Source Demand for Non-Community Water Systems[a]
(Indoor Use)

Type of Establishment	Peak Day Demand (gpd)
Airports	
a. per passenger	3
b. per employee	15
Boarding Houses	
a. for each resident boarder and employee	50
b. for each nonresident boarders	10
Bowling Alleys, per alley	
a. with snack bar	100
b. with no snack bar	85
Churches, per person	5
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, per person	1
Fire Stations, per person	
a. with full-time employees and food prep.	70
b. with no full-time employees and no food prep.	5
Gyms	
a. per participant	25
b. per spectator	4
Hairdresser	
a. per chair	50
b. per operator	35
Hospitals, per bed space	250
Industrial Buildings, per 8 hour shift, per employee (exclusive of industrial waste)	
a. with showers	35
b. with no showers	15
Launderette, per washer	580
Movie Theaters	
a. auditorium, per seat	5
b. drive-in, per car space	10
Nursing Homes, per bed space	280
Office Buildings and Business Establishments, per shift, per employee (sanitary wastes only)	
a. with cafeteria	25
b. with no cafeteria	15
Picnic Parks, per person (toilet wastes only)	5
Restaurants	
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
Rooming House, per person	40
Schools, per person	
a. boarding	75
b. day, without cafeteria, gym or showers	15
c. day, with cafeteria, but no gym or showers	20
d. day, with cafeteria, gym and showers	25
Service Stations[b] ,per vehicle served	10
Skating Rink, Dance Halls, etc., per person	
a. no kitchen wastes	10
b. Additional for kitchen wastes	3
Ski Areas, per person (no kitchen wastes)	10
Stores	
a. per public toilet room	500
b. per employee	11
Swimming Pools and Bathhouses[c] ,per person	10
Taverns, Bars, Cocktail Lounges, per seat	20
Visitor Centers, per visitor	5

NOTES FOR TABLE 203-2:

1. Source capacity must at least equal the peak day demand of the system. Estimate this by assuming the facility is used

to its maximum.

2. Generally, storage volume must at least equal one average day's demand.

3. Peak instantaneous demands may be estimated by fixture unit analysis as per the Uniform Plumbing Code.

(a) When more than one use will occur, the multiple use shall be considered in determining total demand. Small industrial plants maintaining a cafeteria and/or showers and club houses or motels maintaining swimming pools and/or laundries are typical examples of multiple uses. Uses other than those listed above shall be considered in relation to established demands from known or similar installations.

(b) or 250 gpd per pump,

(c) 20 x {Water Area (Ft^2) / 30} + Deck Area (Ft^2)

(3) Estimated Outdoor Use.

In the absence of firm water use data, Table 203-3 shall be used to estimate the peak day demand and average yearly demand for outdoor water use. The following procedure shall be used:

(a) Determine the location of the water system on the map entitled Irrigated Crop Consumptive Use Zones and Normal Annual Effective Precipitation, Utah as prepared by the Soil Conservation Service (available from the Division). Find the numbered zone, one through six, in which the water system is located (if located in an area described "non-arable" find nearest numbered zone).

(b) Determine the net number of acres which may be irrigated. This is generally done by starting with the gross acreage, then subtract out any area of roadway, driveway, sidewalk or patio pavements along with housing foundation footprints that can be reasonably expected for lots within a new subdivision or which is representative of existing lots. Before any other land area which may be considered "non-irrigated" (e.g. steep slopes, wooded areas, etc.) is subtracted from the gross area, the Division shall be consulted and agree that the land in question will not be irrigated.

(c) Refer to Table 203-3 to determine peak day demand and average yearly demand for outdoor use.

(d) The results of the indoor use and outdoor use tables shall be added together and source(s) shall be legally and physically capable of meeting this combined demand.

TABLE 203-3
Source Demand for Irrigation
(Outdoor Use)

Map Zone	Peak Day Demand (gpm/irrigated acre)	Average Yearly Demand (AF/irrigated acre)
1	2.26	1.17
2	2.80	1.23
3	3.39	1.66
4	3.96	1.87
5	4.52	2.69
6	4.90	3.26

(4) Accounting for Variations in Source Yield.

The design engineer shall consider whether flow from the source(s) may vary. Where flow varies, as is the case for most springs, the minimum flowrate shall be used in determining the number of connections which may be supported by the source(s). Where historical records are sufficient, and where peak flows from the source(s) correspond with peak demand periods, the Executive Secretary may grant an exception to this requirement.

R309-203-8. Storage Sizing.

(1) General.

Each storage facility shall provide:

(a) equalization storage volume, to satisfy peak day demands for water for indoor use as well as outdoor use,

(b) fire suppression storage volume, if the water system is equipped with fire hydrants and intended to provide fire fighting water, and

(c) emergency storage, if deemed appropriate by the water supplier or the Executive Secretary, to meet demands in the event of an unexpected emergency situation such as a line break or a treatment plant failures.

(2) Equalization Storage.

(a) All public drinking water systems shall be provided with equalization storage. The amount of equalization storage which must be provided varies with the nature of the water system, the extent of outdoor use and the location of the system.

(b) Required equalization storage for indoor use is provided in Table 203-4. Storage requirements for non-community systems which are not listed in this table shall be determined by calculating the average day demands from the information given in Table 203-2.

TABLE 203-4
Storage Volume for Indoor Use

Type	Volume Required (gallons)
Community Systems	
Residential;	
per single resident service connection	400
Others;	
per Equivalent Residential Connection (ERC)	400
Non-Community Systems	
Modern Recreation Camp; per person	30
Semi-Developed Camp; per person	
a. with Pit Privies	2.5
b. with Flush Toilets	10
Hotel, Motel and Resort; per unit	75
Labor Camp; per unit	25
Recreational Vehicle Park; per pad	50
Roadway Rest Stop; per vehicle	3.5
Recreational Home Development; per connection	400

(c) Where the drinking water system provides water for outdoor use, such as the irrigation of lawns and gardens, the equalization storage volumes estimated in Table 203-5 shall be added to the indoor volumes estimated in Table 203-4. The procedure for determining the map zone and acreage for using Table 203-5 is outlined in Section R309-203-7(3).

TABLE 203-5
Storage Volume for Outdoor Use

Map Zone	Volume Required (gallons/irrigated acre)
1	1,782
2	1,873
3	2,528
4	2,848
5	4,081
6	4,964

(3) Fire Suppression Storage.

Fire suppression storage shall be required if the water system is intended to provide fire fighting water as evidenced by fire hydrants connected to the piping. The design engineer shall consult with the local fire suppression authority regarding needed fire flows in the area under consideration. This information shall be provided to the Division. Where no local fire suppression authority exists, needed fire suppression storage shall be assumed to be 120,000 gallons (1000 gpm for 2 hours).

(4) Emergency Storage.

Emergency storage shall be considered during the design process. The amount of emergency storage shall be based upon an assessment of risk and the desired degree of system dependability. The Executive Secretary may require emergency storage when it is warranted to protect public health and welfare.

R309-203-9. Distribution System Sizing.

(1) General Requirements.

The distribution system shall be designed to insure that a minimum of 20 psi exists at all points within the system during peak instantaneous demand conditions. If the distribution system is equipped with fire hydrants, the system shall be designed to insure that a minimum of 20 psi exists at all points within the system when needed fire flows are imposed upon the peak day demand flows of the system.

(2) Indoor Use, Estimated Peak Instantaneous Demand.

(a) For community water systems and large non-community systems, the peak instantaneous demand for each pipeline shall be assumed for indoor use as:

$Q = 10.8 \times N^{0.64}$

where N equals the total number of ERC's, and Q equals the total flow (gpm) delivered to the total connections served by that pipeline.

For Recreational Vehicle Parks, the peak instantaneous flow for indoor use shall be based on the following:

TABLE 203-6
Peak Instantaneous Demand for Recreational Vehicle Parks

Number of Connections	Formula
0 to 59	$Q = 4N$
60 to 239	$Q = 80 + 20N^{0.5}$
240 or greater	$Q = 1.6N$

NOTES FOR TABLE 203-6:

Q is total peak instantaneous demand (gpm) and N is the maximum number of connections. However, if the only winter use is via service buildings the peak instantaneous demand shall be calculated for the number of fixture units as presented in the Uniform Plumbing Code.

(b) For small non-community water systems the peak instantaneous demand to be estimated for indoor use shall be calculated on a per-building basis for the number of fixture units as presented in the Uniform Plumbing Code.

(3) Outdoor Use, Estimated Peak Instantaneous Demand.

Peak instantaneous demand to be estimated for outdoor use is given in Table 203-7. Refer to Section R309-203-7(3) for guidance on how to apply this table.

TABLE 203-7
Peak Instantaneous Demand for Outdoor Use

Map Zone	Peak Instantaneous Demand (gpm/irrigated acre)
1	4.52
2	5.60
3	6.78
4	7.92
5	9.04
6	9.80

(4) Fire Flows.

(a) Distribution systems shall be designed to deliver needed fire flows if fire hydrants are provided. The design engineer shall consult with the local fire suppression authority regarding needed fire flows in the area under consideration. This information shall be provided to the Division. Where no local fire suppression authority exists, needed fire flows shall be assumed to be 1000 gpm.

(b) If a distribution system is equipped with fire hydrants, the system shall be designed to insure that a minimum of 20 psi exists at all points within the system when fire flows are added to the peak day demand of the system. Refer to Section R309-203-7 for information on determining the peak day demand of the system.

KEY: drinking water, minimum sizing, water conservation
January 1, 1998 19-4-104

R309. Environmental Quality, Drinking Water.
R309-204. Facility Design and Operation: Source Development.
R309-204-1. Purpose.

This rule specifies requirements for public drinking water sources. It is intended to be applied in conjunction with R309-201 through R309-211. Collectively, these rules govern the design, construction, operation and maintenance of public drinking water system facilities. These rules are intended to assure that such facilities are reliably capable of supplying adequate quantities of water which consistently meet applicable drinking water quality requirements and do not pose a threat to general public health.

R309-204-2. Authority.

This rule is promulgated by the Drinking Water Board as authorized by Title 19, Environmental Quality Code, Chapter 4, Safe Drinking Water Act, Subsection 104(1)(a)(ii) of the Utah Code Annotated and in accordance with Title 63, Chapter 46a of the same, known as the Administrative Rulemaking Act.

R309-204-3. Definitions.

Definitions for certain terms used in this rule are given in R309-200.

R309-204-4. General.

(1) Issues to be Considered.

The selection, development and operation of a public drinking water source must be done in a manner which will protect public health and assure that all required water quality standards, as described in R309-103, are met.

(2) Communication with the Division.

Because of the issues described above in (1), engineers are advised to work closely with the Division to help assure that sources are properly sited, developed and operated.

(3) Number of Sources and Quantity Requirements.

Community water systems established after January 1, 1998 serving more than 100 connections shall have a minimum of two sources, except where served by a water treatment plant. Community Water Systems established prior to that date, currently serving more than 100 connections, shall obtain a separate source no later than January 1, 2000. For all systems, the total developed source capacity(ies) shall equal or exceed the peak day demand of the system. Refer to R309-203-5 of these rules for procedure to estimate the peak day demand.

(4) Quality Requirements.

In selecting a source of water for development, the designing engineer shall demonstrate to the satisfaction of the Executive Secretary that the source(s) selected for use in public water systems are of satisfactory quality, or can be treated in a manner so that the quality requirements of R309-103 can be met.

(5) Initial Analyses.

All new drinking water sources, unless otherwise noted below, shall be analyzed for the following:

(a) All the primary and secondary inorganic contaminants listed in R309-103, Table 103-1 and Table 103-5 (excluding Asbestos unless it would be required by R309-104-4.1.2),

(b) Ammonia as N; Boron; Calcium; Chromium, Hex as Cr; Copper; Lead; Magnesium; Potassium; Turbidity, as NTU; Specific Conductivity at 25 degrees Celsius, u mhos/cm; Bicarbonate; Carbon Dioxide; Carbonate; Hydroxide; Phosphorous, Ortho as P; Silica, dissolved as SiO_2; Surfactant as MBAS; Total Hardness as $CaCO_3$; and Alkalinity as $CaCO_3$,

(c) Pesticides, PCB's and SOC's as listed in R309-103-2.3a, Table 103-2 unless the system is a transient non-community pws or, if a community pws or non-transient non-community pws, they have received waivers in accordance with R309-104-4.3.1f. The following six constituents have been excused from monitoring in the State by the EPA, dibromochloropropane, ethylene dibromide, Diquat, Endothall, glyphosate and Dioxin,

(d) VOC's as listed in R309-103-2.3b, Table 103-3 unless the system is a transient non-community pws, and

(e) Radiologic chemicals as listed in R309-103-2.4 unless the system is a non-transient non-community pws or a transient non-community pws.

(f) Unregulated contaminants as listed in R309-104-5.1.1 list A and list B, unless a transient non-coummity pws.

All analyses shall be performed by a certified laboratory as required by R309-104-3 (Specially prepared sample bottles are required),

(6) Source Classification.

Subsection R309-202-7(1)(a)(i) provides information on the classification of water sources. The Executive Secretary shall classify all existing or new sources as either:

(a) Surface water or ground water under direct influence of surface water which will require conventional surface water treatment or an approved equivalent, or as

(b) Ground water not under the direct influence of surface water.

(7) Latitude and Longitude.

The latitude and longitude, to at least the nearest second, or the location by section, township, range, and course and distance from an established outside section corner or quarter corner of each point of diversion shall be submitted to the Executive Secretary prior to source approval.

R309-204-5. Surface Water Sources.

(1) Definition.

A surface water source, as is defined in R309-200, shall include, but not be limited to tributary systems, drainage basins, natural lakes, artificial reservoirs, impoundments and springs or wells which have been classified as being directly influenced by surface water. Surface water sources will not be considered for culinary use unless they can be rendered acceptable by conventional surface water treatment or other equivalent treatment techniques acceptable to the Executive Secretary.

(2) Pre-design Submittal.

The following information must be submitted to the Executive Secretary and approved in writing before commencement of design of diversion structures and/or water treatment facilities:

(a) A copy of the chemical analyses required by R309-103 and described in R309-204-4(5) above, and

(b) A survey of the watershed tributary to the watercourse along which diversion structures are proposed. The survey shall include, but not be limited to:

(i) determining possible future uses of impoundments or reservoirs,

(ii) the present stream classification by the Division of Water Quality, any obstacles to having stream(s) reclassified 1C, and determining degree of watershed control by owner or other agencies,

(iii) assessing degree of hazard to the supply by accidental spillage of materials that may be toxic, harmful or detrimental to treatment processes,

(iv) obtaining samples over a sufficient period of time to assess the microbiological, physical, chemical and radiological characteristics and variations of the water,

(v) assessing the capability of the proposed treatment process to reduce contaminants to applicable standards, and

(vi) consideration of currents, wind and ice conditions, and the effect of tributary streams at their confluence.

(3) Pre-construction Submittal.

Following approval of a surface water source, the following additional information must be submitted for review and approval prior to commencement of construction:

(a) Evidence that the water system owner has a legal right to divert water from the proposed source for domestic or municipal purposes;

(b) Documentation regarding the minimum firm yield which the watercourse is capable of producing (see R309-204-5(4)(a) below; and

(c) Complete plans and specifications and supporting documentation for the proposed treatment facilities so as to ascertain compliance with R309-206 or R309-207.

(4) Quantity.

The quantity of water from surface sources shall:

(a) Be assumed to be no greater than the low flow of a 25 year recurrence interval or the low flow of record for these sources when 25 years of records are not available;

(b) Meet or exceed the anticipated peak day demand for water as estimated in R309-203-7 and provide a reasonable surplus for anticipated growth; and

(c) Be adequate to compensate for all losses such as silting, evaporation, seepage, and sludge disposal which would be anticipated in the normal operation of the treatment facility.

(5) Diversion Structures.

Design of intake structures shall provide for:

(a) Withdrawal of water from more than one level if quality varies with depth;

(b) Intake of lowest withdrawal elevation located at sufficient depth to be kept submerged at the low water elevation of the reservoir;

(c) Separate facilities for release of less desirable water held in storage;

(d) Occasional cleaning of the inlet line;

(e) A diversion device capable of keeping large quantities of fish or debris from entering an intake structure; and

(f) Suitable protection of pumps where used to transfer diverted water (refer to R309-209-5).

(6) Impoundments.

The design of an impoundment reservoir shall provide for, where applicable:

(a) Removal of brush and trees to the high water level;

(b) Protection from floods during construction;

(c) Abandonment of all wells which may be inundated (refer to applicable requirements of the Division of Water Rights); and

(d) Adequate precautions to limit nutrient loads.

R309-204-6. Ground Water - Wells.

(1) Required Treatment.

If properly developed, water from wells may be suitable for culinary use without treatment. A determination as to whether treatment may be required can only be made after the source has been developed and evaluated.

(2) Standby Power.

Water suppliers, particularly community water suppliers, should assess the capability of their system in the event of a power outage. If gravity fed spring sources are not available, one or more of the system's well sources should be equipped for operation during power outages. In this event:

(a) To ensure continuous service when the primary power has been interrupted, a power supply should be provided through connection to at least two independent public power sources, or portable or in-place auxiliary power available as an alternative; and

(b) When automatic pre-lubrication of pump bearings is necessary, and an auxiliary power supply is provided, the pre-lubrication line should be provided with a valved by-pass around the automatic control, or the automatic control shall be wired to the emergency power source.

(3) The Utah Division of Water Rights.

The Utah Division of Water Rights (State Engineer's Office) regulates the drilling of water wells. Before the drilling of a well commences, the well driller must receive a start card from the State Engineer's Office.

(4) Source Protection.

Public drinking water systems are responsible for protecting their sources from contamination. The selection of a well location shall only be made after consideration of the requirements of R309-113. Sources shall be located in an area which will minimize threats from existing or potential sources of pollution.

If certain precautions are taken, sewer lines may be permitted within a public drinking water system's source protection zones at the discretion of the Executive Secretary. When sewer lines are permitted in protection zones both sewer lines and manholes shall be specially constructed as follows:

(a) sewer lines shall be ductile iron pipe with mechanical joints or fusion welded high density polyethylene plastic pipe (solvent welded joints shall not be accepted);

(b) lateral to main connection shall be shop fabricated or saddled with a mechanical clamping watertight device designed for the specific pipe;

(c) the sewer pipe to manhole connections shall made using a shop fabricated sewer pipe seal ring cast into the manhole base (a mechanical joint shall be installed within 12 inches of the manhole base on each line entering the manhole, regardless of the pipe material);

(d) the sewer pipe shall be laid with no greater than 2 percent deflection at any joint;

(e) backfill shall be compacted to not less than 95 percent of maximum laboratory density as determined in accordance with ASTM Standard D-690;

(f) sewer manholes shall meet the following requirements:

(i) the manhole base and walls, up to a point at least 12 inches above the top of the upper most sewer pipe entering the manhole, shall be shop fabricated in a single concrete pour.

(ii) the manholes shall be constructed of reinforced concrete.

(iii) all sewer lines and manholes shall be air pressure tested after installation.

(5) Outline of Well Approval Process.

(a) Well drilling shall not commence until both of the following items are submitted and receive a favorable review:

(i) a Preliminary Evaluation Report on source protection issues as required by R309-113-13(2), and

(ii) engineering plans and specifications governing the well drilling.

(b) Grouting Inspection During Well Construction.

An engineer from the Division, or the appropriate district engineer of the Department of Environmental Quality, shall be contacted at least three days before the anticipated beginning of the well grouting procedure (see R309-204-6(6)(i)). The well grouting procedure shall be witnessed by one of these individuals or their designee.

(c) After completion of the well drilling the following information shall be submitted and receive a favorable review before water from the well can be introduced into a public water system:

(i) a copy of the "Report of Well Driller" as required by the State Engineer's Office which is complete in all aspects and has been stamped as received by the same;

(ii) a copy of the letter from the engineer described in

R309-204-6(5)(b) above, indicating inspection and confirmation that the well was grouted in accordance with the well drilling specifications and the requirements of this rule;

(iii) a copy of the pump test including the yield vs. drawdown test as described in R309-204-6(10)(b);

(iv) a copy of the chemical analyses required by R309-204-4(5);

(v) documentation indicating that the water system owner has a right to divert water for domestic or municipal purposes from the well source;

(vi) a copy of complete plans and specifications covering well equipment and diversion piping necessary to introduce water from the well into the distribution system; and

(vii) a bacteriological analysis of water obtained from the well after installation of permanent equipment, disinfection and flushing.

(d) An Operation Permit shall be obtained in accordance with R309-201-9 before any water from the well is introduced into a public water system.

(6) Well Materials, Design and Construction.

(a) ANSI/NSF Standards 60 and 61 Certification.

All interior surfaces must consist of products complying with ANSI/NSF Standard 61. This requirement applies to casings, drop pipes, well screens, coatings, adhesives, solders, fluxes, pumps, switches, electrical wire, sensors, and all other equipment or surfaces which may be contact the drinking water.

All substances introduced into the well during construction or development shall be certified to comply with ANSI/NSF Standard 60. This requirement applies to drilling fluids (biocides, clay thinners, defoamers, foamers, loss circulation materials, lubricants, oxygen scavengers, viscosifiers, weighting agents) and regenerants. This requirement also applies to well grouting and sealing materials which may come in direct contact with the drinking water.

(b) Permanent Steel Casing Pipe shall:

(i) be new single steel casing pipe meeting AWWA Standard A-100, ASTM or API specifications and having a minimum weight and thickness as given in Table 1 found in R655-4-7.2 of the Utah Administrative Code (Administrative Rules for Water Well Drillers, adopted January 19, 1995, Division of Water Rights);

(ii) have additional thickness and weight if minimum thickness is not considered sufficient to assure reasonable life expectancy of the well;

(iii) be capable of withstanding forces to which it is subjected;

(iv) be equipped with a drive shoe when driven;

(v) have full circumferential welds or threaded coupling joints; and

(vi) project at least 18 inches above the anticipated final ground surface and at least 12 inches above the anticipated pump house floor level. At sites subject to flooding the top of the well casing shall terminate at least three feet above the 100 year flood level or the highest known flood elevation, whichever is higher.

(c) Non-Ferrous Casing Material.

The use of any non-ferrous material for a well casing shall receive prior approval of the Executive Secretary based on the ability of the material to perform its desired function. Thermoplastic water well casing pipe shall meet ANSI/ASTM Standard F480-76 and shall bear the logo NSF-wc indicating compliance with NSF Standard 14 for use as well casing.

(d) Disposal of Cuttings.

Cuttings and waste from well drilling operations shall not be discharged into a waterway, lake or reservoir. The rules of the Utah Division of Water Quality must be observed with respect to these discharges.

(e) Packers.

Packers, if used, shall be of material that will not impart taste, odor, toxic substances or bacterial contamination to the well water. Lead, or partial lead packers are specifically prohibited.

(f) Screens.

The use of well screens is recommended where appropriate and, if used, they shall:

(i) be constructed of material resistant to damage by chemical action of groundwater or cleaning operations;

(ii) have size of openings based on sieve analysis of formations or gravel pack materials;

(iii) have sufficient diameter to provide adequate specific capacity and low aperature entrance velocities;

(iv) be installed so that the operating water level remains above the screen under all pumping conditions; and

(v) be provided with a bottom plate or washdown bottom fitting of the same material as the screen.

(g) Plumbness and Alignment Requirements.

Every well shall be tested for plumbness and vertical alignment in accordance with AWWA Standard A100. Plans and specifications submitted for review shall:

(i) have the test method and allowable tolerances clearly stated in the specifications. and

(ii) clearly indicate any options the design engineer may have if the well fails to meet the requirements. Generally wells may be accepted if the misalignment does not interfere with the installation or operation of the pump or uniform placement of grout.

(h) Casing Perforations.

The placement of perforations in the well casing shall:

(i) be so located to permit as far as practical the uniform collection of water around the circumference of the well casing, and

(ii) be of dimensions and size to restrain the water bearing soils from entrance into the well.

(i) Grouting Techniques and Requirements.

All permanent well casing for public drinking water wells shall be grouted to a depth of at least 100 feet below the ground surface unless an "exception" is issued by the Executive Secretary (see R309-102-2.2).

If a well is to be considered in a protected aquifer the grout seal shall extend from the ground surface down to at least 100 feet below the surface, and through the protective layer, as described in R309-113-6(1)(v).

The following applies to all drinking water wells:

(i) Consideration During Well Construction.

(A) Sufficient annular opening shall be provided to permit a minimum of two inches of grout between the permanent casing and the drilled hole, taking into consideration any joint couplings. If a carrier casing is left in place, the minimum

clearances above shall pertain to both annular openings (between casings and between carrier casing and the drilled hole), the carrier casing shall be adequately perforated so as to ensure grout contact with the native formations, and the carrier casing shall be withdrawn at least five feet during grouting operations.

(B) Additional information is available from the Division for recommended construction methods for grout placement.

(C) The casing(s) must be provided with sufficient guides welded to the casing to permit unobstructed flow and uniform thickness of grout.

(ii) Grouting Materials.

(A) Neat Cement Grout.

Cement, conforming to ASTM Standard C150, and water, with no more than six gallons of water per sack of cement, shall be used for two inch openings. Additives may be used to increase fluidity subject to approval by the Executive Secretary.

(B) Concrete Grout.

Equal parts of cement conforming to ASTM Standard C150, and sand, with not more than six gallons of water per sack of cement may be used for openings larger than two inches.

(C) Clay Seal.

Where an annular opening greater than six inches is available a clay seal of clean local clay mixed with at least ten percent swelling bentonite may be used when approved by the Executive Secretary.

(iii) Application.

(A) When the annular opening is less than four inches, grout shall be installed under pressure, by means of a positive displacement grout pump, from the bottom of the annular opening to be filled.

(B) When the annular opening is four or more inches and 100 feet or less in depth, and concrete grout is used, it may be placed by gravity through a grout pipe installed to the bottom of the annular opening in one continuous operation until the annular opening is filled.

(C) All temporary construction casings should be removed but shall be withdrawn at least five feet during the grouting operation to ensure grout contact with the native formations.

(D) When a "well in a protected aquifer" classification is desired, the grout seal shall extend from the ground surface down to at least 100 feet below the surface, and through the protective clay layer (see R309-113-6(1)(v)). If the clay layer starts below 100 feet, grout shall extend from the ground surface to a depth of at least 100 feet, grout or native fill may be utilized from there to the top of the clay layer, and then grout placed completely through the protective clay layer. If the clay layer starts and ends above 100 feet, grout shall extend from the ground surface down to and completely through the protective clay layer.

(E) After cement grouting is applied, work on the well shall be discontinued until the cement or concrete grout has properly set; usually a period of 72 hours.

(j) Water Entered Into Well During Construction.

Any water entering a well during construction shall not be contaminated and should be obtained from a chlorinated municipal system. Where this is not possible the water must be dosed to give a 100 mg/l free chlorine residual. Refer also to the administrative rules of the Division of Water Rights in this regard.

(k) Gravel Pack Wells.

The following shall apply to gravel packed wells:

(i) the gravel pack material is to be of well rounded particles, 95 percent siliceous material, that are smooth and uniform, free of foreign material, properly sized, washed and then disinfected immediately prior to or during placement,

(ii) the gravel pack is placed in one uniform continuous operation,

(iii) refill pipes, when used, are Schedule 40 steel pipe incorporated within the pump foundation and terminated with screwed or welded caps at least 12 inches above the pump house floor or concrete apron,

(iv) refill pipes located in the grouted annular opening be surrounded by a minimum of 1.5 inches of grout,

(v) protection provided to prevent leakage of grout into the gravel pack or screen, and

(vi) any casings not withdrawn entirely meet requirements of R309-204-6(6)(b) or R309-204-6(6)(c).

(7) Well Development.

(a) Every well shall be developed to remove the native silts and clays, drilling mud or finer fraction of the gravel pack.

(b) Development should continue until the maximum specific capacity is obtained from the completed well.

(c) Where chemical conditioning is required, the specifications shall include provisions for the method, equipment, chemicals, testing for residual chemicals, and disposal of waste and inhibitors.

(d) Where blasting procedures may be used the specifications shall include the provisions for blasting and cleaning. Special attention shall be given to assure that the grouting and casing are not damaged by the blasting.

(8) Capping Requirements.

(a) A welded metal plate or a threaded cap is the preferred method for capping a well.

(b) At all times during the progress of work the contractor shall provide protection to prevent tampering with the well or entrance of foreign materials.

(9) Well Abandonment.

(a) Test wells and groundwater sources which are to be permanently abandoned shall be sealed by such methods as necessary to restore the controlling geological conditions which existed prior to construction or as directed by the Utah Division of Water Rights.

(b) Wells to be abandoned shall be sealed to prevent undesirable exchange of water from one aquifer to another. Prefernce shall be given to using a neat cement grout. Where fill materials are used, which are other than cement grout or concrete, they shall be disinfected and free of foreign materials. When an abandoned will is filled with cement- grout or concrete, these materials shall be applied to the well- hole through a pipe, tremie, or bailer.

(10) Well Assessment.

(a) Step Drawdown Test.

Preliminary to the constant-rate test required below, it is recommended that a step-drawdown test (uniform increases in pumping rates over uniform time intervals with single drawdown measurements taken at the end of the intervals) be conducted to determine the maximum pumping rate for the

desired intake setting.

(b) Constant-Rate Test.

A "constant-rate" yield and drawdown test shall:

(i) be performed on every production well after construction or subsequent treatment and prior to placement of the permanent pump,

(ii) have the test methods clearly indicated in the specifications,

(iii) have a test pump with sufficient capacity that when pumped against the maximum anticipated drawdown, it will be capable of pumping at least 1.5 times the desired design discharge rate,

(iv) provide for continuous pumping for at least 24 hours or until stabilized drawdown has continued for at least six hours when test pumped at a "constant-rate" equal to 1.5 times the desired design discharge rate,

(v) provide the following data:

(A) capacity vs. head characteristics for the test pump (manufacturer's pump curve),

(B) static water level (in feet to the nearest tenth, as measured from an identified datum; usually the top of casing),

(C) depth of test pump intake,

(D) time and date of starting and ending test(s),

(vi) For the "constant-rate" test provide the following at time intervals sufficient for at least ten essentially uniform intervals for each log cycle of the graphic evaluation required below:

(A) record the time since starting test (in minutes),

(B) record the actual pumping rate,

(C) record the pumping water level (in feet to the nearest tenth, as measured from the same datum used for the static water level),

(D) record the drawdown (pumping water level minus static water level in feet to the nearest tenth),

(E) provide graphic evaluation on semilogarithmic graph paper by plotting the drawdown measurements on the arithmetic scale at locations corresponding to time since starting test on the logarithmic scale, and

(vii) Immediately after termination of the constant-rate test, and for a period of time until there are no changes in depth to water level measurements for at least six hours, record the following at time intervals similar to those used during the constant-rate pump test:

(A) time since stopping pump test (in minutes),

(B) depth to water level (in feet to the nearest tenth, as measured from the same datum used for the pumping water level).

(11) Well Disinfection.

Every new, modified, or reconditioned well including pumping equipment shall be disinfected before being placed into service for drinking water use. These shall be disinfected according to AWWA Standard C654 published by the American Water Works Association as modified to incorporate the following as a minimum standard:

(i) the well shall be disinfected with a chlorine solution of sufficient volume and strength and so applied that a concentration of at least 50 parts per million is obtained in all parts of the well and comes in contact with equipment installed in the well. This solution shall remain in the well for a period of at least eight hours, and

(ii) a satisfactory bacteriologic water sample analysis shall be obtained prior to the use of water from the well in a public water system.

(12) Well Equipping.

(a) Naturally Flowing Wells.

Naturally flowing wells shall:

(i) have the discharge controlled by valves,

(ii) be provided with permanent casing and sealed by grout,

(iii) if erosion of the confining bed adjacent to the well appears likely, special protective construction may be required by the Division.

(b) Line Shaft Pumps.

Wells equipped with line shaft pumps shall:

(i) have the casing firmly connected to the pump structure or have the casing inserted into the recess extending at least 0.5 inches into the pump base,

(ii) have the pump foundation and base designed to prevent fluids from coming into contact with joints between the pump base and the casing,

(iii) be designed such that the intake of the well pump is at least ten feet below the maximum anticipated drawdown elevation,

(iv) avoid the use of oil lubrication for pumps with intake screens set at depths less than 400 feet (see R309-102-4.7 for additional requirements of lubricants).

(c) Submersible Pumps.

Where a submersible pump is used:

(i) The top of the casing shall be effectively sealed against the entrance of water under all conditions of vibration or movement of conductors or cables.

(ii) The electrical cable shall be firmly attached to the riser pipe at 20 foot intervals or less.

(iv) The intake of the well pump must be at least ten feet below the maximum anticipated drawdown elevation.

(d) Pitless Well Units and Adapters.

Pitless well units and adapters shall:

(i) not be used unless the specific application has been approved by the Executive Secretary,

(ii) terminate at least 18 inches above final ground elevation or three feet above the highest known flood elevation whichever is greater,

(iii) be approved by NSF International or the Pitless Adapter Association or other appropriate Review Authority,

(iv) have suitable access to the interior of the casing in order to disinfect the well,

(v) have a suitable sanitary seal or cover at the upper terminal of the casing that will prevent the entrance of any fluids or contamination, especially at the connection point of the electrical cables,

(vi) have suitable access so that measurements of static and pumped water levels in the well can be obtained,

(vii) allow at least one check valve within the well casing,

(viii) be furnished with a cover that is lockable or otherwise protected against vandalism or sabotage,

(ix) be shop-fabricated from the point of connection with the well casing to the unit cap or cover,

(x) be of watertight construction throughout,

(xi) be constructed of materials at least equivalent to and having wall thickness compatible to the casing,

(xii) have field connection to the lateral discharge from the pitless unit of threaded, flanged or mechanical joint connection,

(xiii) be threaded or welded to the well casing. If the connection to the casing is by field weld, the shop assembled unit must be designed specifically for field welding to the casing. The only field welding permitted on the pitless unit will be that needed to connect a pitless unit to the casing, and

(xiv) have an inside diameter as great as that of the well casing, up to and including casing diameters of 12 inches, to facilitate work and repair on the well, pump, or well screen.

(e) Well Discharge Piping.

The discharge piping shall:

(i) be designed so that the friction loss will be low,

(ii) have control valves and appurtenances located above the pump house floor when an above-ground discharge is provided,

(iii) be protected against the entrance of contamination,

(iv) be equipped with (in order of placement from the well head) a smooth nosed sampling tap, a check valve, a pressure gauge, a means of measuring flow and a shutoff valve,

(v) where a well pumps directly into a distribution system, be equipped with an air release vacuum relief valve located upstream from the check valve, with exhaust/relief piping terminating in a down-turned position at least six inches above the floor and covered with a No. 14 mesh corrosion resistant screen. An exception to this requirement will be allowed provided specific proposed well head valve and piping design includes provisions for pumping to waste all trapped air before water is introduced into the distribution system,

(vi) have all exposed piping valves and appurtenances protected against physical damage and freezing,

(vii) be properly anchored to prevent movement, and

(f) Water Level Measurement.

(i) Provisions shall be made to permit periodic measurement of water levels in the completed well.

(ii) Where permanent water level measuring equipment is installed it shall be made using corrosion resistant materials attached firmly to the drop pipe or pump column and installed in such a manner as to prevent entrance of foreign materials.

(g) Observation Wells.

Observation wells shall be:

(i) constructed in accordance with the requirements for permanent wells if they are to remain in service after completion of a water supply well, and

(ii) protected at the upper terminal to preclude entrance of foreign materials.

(h) Electrical Protection.

Sufficient electrical controls shall be placed on all pump motors to eliminate electrical problems due to phase shifts, surges, lightning, etc.

(13) Well House Construction.

The use of a well house is strongly recommended, particularly in installations utilizing above ground motors.

In addition to applicable provisions of R309-209, well pump houses shall conform to the following:

(a) Casing Projection Above Floor.

The permanent casing for all ground water wells shall project at least 12 inches above the pump house floor or concrete apron surface and at least 18 inches above the final ground surface. However, casings terminated in underground vaults may be permitted if the vault is provided with a drain to daylight sized to handle in excess of the well flow and surface runoff is directed away from the vault access.

(b) Floor Drain.

Where a well house is constructed the floor surface shall be at least six inches above the final ground elevation and shall be sloped to provide drainage. A "drain-to-daylight" shall be provided unless highly impractical.

(c) Earth Berm .

Sites subject to flooding shall be provided with an earth berm terminating at an elevation at least two feet above the highest known flood elevation or other suitable protection as determined by the Executive Secretary.

(d) Well Casing Termination at Flood Sites.

The top of the well casing at sites subject to flooding shall terminate at least 3 feet above the 100 year flood level or the highest known flood elevation, whichever is higher (refer to R309-204-6(6)(b)(vi)).

(e) Miscellaneous.

The well house shall be ventilated, heated and lighted in such a manner as to assure adequate protection of the equipment (refer to R309-209-5(2) (a) through (h)

(f) Fencing.

Where necessary to protect the quality of the well water the Executive Secretary may require that certain wells be fenced in a manner similar to fencing required around spring areas.

(g) Access.

An access shall be provided either through the well house roof or sidewalls in the event the pump must be pulled for replacement or servicing the well.

R309-204-7. Ground Water - Springs.

(1) General.

Springs vary greatly in their characteristics and they should be observed for some time prior to development to determine any flow and quality variations. Springs determined to be "under the direct influence of surface water" will have to be given "surface water treatment".

(2) Source Protection.

Public drinking water systems are responsible for protecting their spring sources from contamination. The selection of a spring should only be made after consideration of the requirements of R309-204-4. Springs must be located in an area which shall minimize threats from existing or potential sources of pollution. A Preliminary Evaluation Report on source protection issues is required by R309-113-13(2). If certain precautions are taken, sewer lines may be permitted within a public drinking water system's source protection zones at the discretion of the Executive Secretary. When sewer lines are permitted in protection zones both sewer lines and manholes shall be specially constructed as described in R309-204-6(4).

(3) Surface Water Influence.

Some springs yield water which has been filtered underground for years, other springs yield water which has been filtered underground only a matter of hours. Even with proper development, the untreated water from certain springs may

exhibit turbidity and high coliform counts. This indicates that the spring water is not being sufficiently filtered in underground travel. If a spring is determined to be "under the direct influence of surface water", it shall be given "conventional surface water treatment" (refer to R309-202-6).

(4) Pre-construction Submittal

Before commencement of construction of spring development improvements the following information must be submitted to the Executive Secretary and approved in writing.

(a) Detailed plans and specifications covering the development work.

(b) A copy of an engineer's statement indicating:

(i) the historical record (if available) of spring flow variation,

(ii) expected minimum flow and the time of year it will occur,

(iii) expected maximum flow and the time of year it will occur,

(iv) expected average flow,

(v) the behavior of the spring during drought conditions.

After evaluating this information, the Division will assign a "firm yield" for the spring which will be used in assessing the number of and type of connections which can be served by the spring (see "desired design discharge rate" in R309-200).

(c) A copy of documentation indicating the water system owner has a right to divert water for domestic or municipal purposes from the spring source.

(d) A Preliminary Evaluation Report on source protection issues as required by R309-113-13(1).

(e) A copy of the chemical analyses required by R309-204-4(5).

(f) An assessment of whether the spring is "under the direct influence of surface water" (refer to R309-202-7(1)(a)(i).

(5) Information Required after Spring Development.

After development of a culinary spring, the following information shall be submitted:

(a) Proof of satisfactory bacteriologic quality.

(b) Information on the rate of flow developed from the spring.

(c) As-built plans of spring development.

(6) Operation Permit Required.

Water from the spring can be introduced into a public water system only after it has been approved for use, in writing, by the Executive Secretary.

(7) Spring Development.

The development of springs for drinking water purposes shall comply with the following requirements:

(a) The spring collection device, whether it be collection tile, perforated pipe, imported gravel, infiltration boxes or tunnels must be covered with a minimum of ten feet of relatively impervious soil cover. Such cover must extend a minimum of 15 feet in all horizontal directions from the spring collection device. Clean, inert, non-organic material shall be placed in the vicinity of the collection device(s).

(b) Where it is impossible to achieve the ten feet of relatively impervious soil cover, an acceptable alternate will be the use of an impermeable liner provided that:

(i) the liner has a minimum thickness of at least 10 mils,

(ii) all seams in the liner are folded or welded to prevent leakage,

(iii) the liner is certified as complying with ANSI/NSF Standard 61. This requirement is waived if certain that the drinking water will not contact the liner,

(iv) the liner is installed in such a manner as to assure its integrity. No stones, two inch or larger or sharp edged, shall be located within two inches of the liner,

(v) a minimum of two feet of relatively impervious soil cover is placed over the impermeable liner,

(vi) the soil and liner cover are extended a minimum of 15 feet in all horizontal directions from the collection devices.

(c) Each spring collection area shall be provided with at least one collection box to permit spring inspection and testing.

(d) All junction boxes and collection boxes, must comply with R309-210-14 with respect to access manholes, air vents, and overflow piping. Lids for these spring boxes shall be gasketed and the box adequately vented.

(e) The spring collection area shall be surrounded by a fence located a distance of 50 feet (preferably 100 feet if conditions allow) from all collection devices on land at an elevation equal to or higher than the collection device, and a distance of 15 feet from all collection devices on land at an elevation lower than the collection device. The elevation datum to be used is the surface elevation at the point of collection. The fence shall be at least "stock tight" (see R309-200). In remote areas where no grazing or public access is possible, the fencing requirement may be waived by the Executive Secretary. In populated areas a six foot high chain link fence with three strands of barbed wire may be required.

(f) Within the fenced area all vegetation which has a deep root system shall be removed.

(g) A diversion channel, or berm, capable of diverting all anticipated surface water runoff away from the spring collection area shall be constructed immediately inside the fenced area.

(h) A permanent flow measuring device shall be installed. Flow measurement devices such as critical depth meters or weirs shall be properly housed and otherwise protected.

(i) The spring shall be developed as thoroughly as possible so as to minimize the possibility of excess spring water ponding within the collection area. Where the ponding of spring water is unavoidable, the excess shall be collected by shallow piping or french drain and be routed beyond and down grade of the fenced area required above, whether or not a fence is in place.

R309-204-8. Operation and Maintenance.

(1) Spring Collection Area Maintenance.

(a) Spring collection areas shall be periodically (preferably annually) cleared of deep rooted vegetation to prevent root growth from clogging collection lines. Frequent hand or mechanical clearing of spring collection areas and diversion channel is strongly recommended. It is advantageous to encourage the growth of grasses and other shallow rooted vegetation for erosion control and to inhibit the growth of more detrimental flora.

(b) No pesticide (e.g., herbicide) may be applied on a spring collection area without the prior written approval of the Executive Secretary. Such approval shall be given 1) only when acceptable pesticides are proposed; 2) when the pesticide product manufacturer certifies that no harmful substance will be

imparted to the water; and 3) only when spring development construction meets the requirements of these rules.

(2) Pump Lubricants.

The U.S. Food and Drug Administration (FDA) has approved propylene glycol and certain types of mineral oil for occasional contact with or for addition to food products. These oils are commonly referred to as "food-grade mineral oils". All oil lubricated pumps shall utilize food grade mineral oil suitable for human consumption as determined by the Executive Secretary.

(3) Algicide Treatment.

No algicide shall be applied to a drinking water source unless specific approval is obtained from the Division. Such approval will be given only if the algicide is certified as meeting the requirements of ANSI/NSF Standard 60, Water Treatment Chemicals - Health Effects.

KEY: drinking water, source development, source maintenance
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R309. Environmental Quality, Drinking Water.
R309-205. Facility Design and Operation: Disinfection.
R309-205-1. Purpose.

This rule specifies requirements for facilities which disinfectant public drinking water. It is intended to be applied in conjunction with R309-201 through R309-211. Collectively, these rules govern the design, construction, operation and maintenance of public drinking water system facilities. These rules are intended to assure that such facilities are reliably capable of supplying adequate quantities of water which consistently meet applicable drinking water quality requirements and do not pose a threat to general public health.

R309-205-2. Authority.

This rule is promulgated by the Drinking Water Board as authorized by Title 19, Environmental Quality Code, Chapter 4, Safe Drinking Water Act, Subsection 104(1)(a)(ii) of the Utah Code Annotated and in accordance with Title 63, Chapter 46a of the same, known as the Administrative Rulemaking Act.

R309-205-3. Definitions.

Definitions for certain terms used in this rule are given in R309-200.

R309-205-4. General.

Continuous disinfection shall be required of all ground water sources not consistently meeting standards of bacteriologic quality. Surface water sources or ground water sources under direct influence of surface water shall be disinfected during the course of required conventional surface water treatment. Disinfection shall not be considered a substitute for inadequate collection facilities. Systems having only sources classified as ground water (see R309-202-8) and which disinfect shall meet the requirements of R309-102-4.1.

R309-205-5. Allowable Primary Disinfectants.

Primary disinfection is defined as means for providing adequate levels of inactivation of pathogenic micro organisms within the treatment process. Its effectiveness is measured through the "CT" values. Only three disinfectants; chlorine (gaseous and liquid hypochlorites), ozone, and chlorine dioxide are allowable for primary disinfection.

R309-205-6. Allowable Secondary Disinfectants.

Secondary disinfection is intended to provide an adequate disinfectant residual in the distribution system to maintain the bacteriological quality of treated water. Its effectiveness is measured through maintaining a detectable disinfectant residual throughout the distribution system. Allowable disinfectants are chlorine (gaseous and liquid hypochlorites), chloramine, and chlorine dioxide.

R309-205-7. Appropriate Uses of Chemical Disinfectants.

Chemical disinfection alone is appropriate only for groundwater not under the influence of surface water. Surface water, or groundwater under the direct influence of surface water, shall be coagulated and filtered in addition to being disinfected. For criteria to be used in determining required levels of treatment refer to R309-103-2.7.

R309-205-8. Required Chemical Dosing and Contact Time.

Minimum levels for primary and secondary disinfection are specified in R309-103-2.7.

R309-205-9. Siting.

Disinfection installations shall be sited to permit convenient access through the entire year as well as considerations of safety (i.e. proximity to population or fault zones).

R309-205-10. Chlorine.

(1) General Requirements for all Chlorination Installations.

(a) Chemical Types.

Disinfection by chlorination shall be accomplished by gaseous chlorine or liquid solutions of calcium or sodium hypochlorites.

(b) Feeding Equipment.

Solution-feed gas type chlorinators, direct-feed gas type chlorinators or hypochlorite liquid feeders of a positive displacement type shall be provided. Solution-feed gas type chlorinators are preferred. However, for small supplies requiring less than four pounds per day, liquid hypochlorinators are advised.

(c) Chlorine Feed Capacity.

The design of each chlorinator shall permit:

(i) the chlorinator capacity to be such that a free chlorine residual of at least 2 mg/l can be maintained in the system after 30 minutes of contact time during peak demand. The equipment shall be of such design that it will operate accurately over a feeding range of 0.2 mg/l to 2 mg/l.

(ii) assurance that a detectable residual, either combined or free, can be maintained at all times, at all points in the distribution system.

(d) Automatic Proportioning.

Automatic proportioning chlorinators shall be required where the rate of flow or chlorine demand is not reasonably constant.

(e) Injector/diffuser.

The chlorine solution injector/diffuser shall be compatible with the point of application to provide a rapid and thorough mix with all the water being treated. The center of a pipeline is the preferred application point.

(f) Contact Time and Point of Application.

(i) Due consideration shall be given to the contact time of the chlorine in water with relation to pH, ammonia, taste producing substances, temperature, biological quality, and other pertinent factors.

(ii) Where possible, the design shall minimize the formation of chloro-organic compounds. At plants treating surface water or ground water under the direct influence of surface water, provisions shall be made for applying chlorine to raw water, applied water, filtered water, and water entering the distribution system.

(iii) When treating ground water, provisions shall be made for applying chlorine to at least a reservoir inlet or transmission pipeline which will provide maximum contact time.

(iv) Care must be taken to assure that the point of application will, in conjunction with the pipe and tank configuration of the water system, allow required CT values to be achieved prior to the first consumer connection.

(g) Minimization of Chlorinated Overflow.

The chlorinator and associated water delivery facilities shall be designed so as to minimize the unnecessary release of chlorinated water into the environment from tank overflows (see also rules of Division of Water Quality pertaining to discharge or pollution).

(h) Chlorinator Piping.

The chlorinator water supply piping shall be designed to prevent contamination of the treated water supply by sources of questionable quality. At all facilities treating surface water, pre- and post-chlorination systems shall be independent where solution water is not finished water. All chlorinator solution water shall be at least of equal quality to the water receiving the chlorine solution.

(i) Water Measurement.

A means to measure water flow to be treated shall be provided.

(j) Residual Testing Equipment.

Chlorine residual test equipment recognized in the latest edition of "Standard Methods for the Examination of Water and Wastewater" shall be provided and shall be capable of measuring residuals to the nearest 0.1 mg/l in the range below 0.5 mg/l, to the nearest 0.3 mg/l between 0.5 mg/l and 1.0 mg/l and to the nearest 0.5 mg/l above 1.0 mg/l.

(k) Standby and Backup Equipment.

A spare parts kit shall be provided and maintained for all chlorinators to repair parts subject to wear and breakage. If there is a large difference in feed rates between routine and emergency dosages, a gas metering tube shall be provided for each dose range to ensure accurate control of the chlorine feed. Where chlorination is required for protection of the supply, standby equipment of sufficient capacity shall be available to replace the largest unit. Standby power shall be available, during power outages, for operation of chlorinators where protection of the supply is required.

(l) Heating, Lighting, Ventilation.

Chlorinator houses shall be heated, lighted and ventilated as necessary to assure proper operation of the equipment, and serviceability.

(m) Bypass Capability.

A chlorinator bypass shall be provided for periods during chlorinator servicing and power outages.

(2) Additional Requirement for Gas Chlorinators.

(a) Automatic Switch over.

Automatic Switch over of chlorine cylinders shall be provided, where necessary, to assure continuous disinfection.

(b) Injector.

Each injector shall be selected for the point of application with particular attention given to the quantity of chlorine to be added, the maximum injector waterflow, the total discharge back pressure, the injector operating pressure, and the size of the chlorine solution line. Gauges for measuring water pressure at the inlet and outlet of each injector shall be provided.

(c) Gas Scrubbers.

Gas chlorine facilities shall conform with the Uniform Fire Code, Article 80 and the Uniform Building Code, Chapter 9 as they are applied by local jurisdictions in the state. Furthermore, local toxic gas ordinances shall be complied with if they exist.

(d) Heat.

The design of the chlorination room shall assure that the temperature in the room will never fall below 32 degrees F or that temperature required for proper operation of the chlorinator, whichever is greater.

(e) Ventilation.

Chlorination equipment rooms which contain cylinders or equipment and lines with gaseous chlorine under pressure shall be vented such that:

(i) when fan(s) are operating, suction will provide one complete room air change per minute;

(ii) the ventilating fan(s) take suction near the floor, as far as practical from the door and air inlet, with the point of discharge so located as not to contaminate air inlets of any rooms or structures;

(iii) air inlets are through louvers near the ceiling;

(iv) louvers for chlorine room air intake and exhaust facilitate airtight closure;

(iv) separate switches for the fans and lights are outside of the room, at the entrance to the chlorination equipment room. Outside switches shall be protected from vandalism;

(v) vents from feeders and storage discharge above grade to the outside atmosphere; and

(vi) floor drains are discouraged. Where provided, the floor drains shall discharge to the outside of the building and shall not be connected to other internal or external drainage systems.

(f) Feeder Vent Hose.

The vent hose from the feeder shall discharge to the outside atmosphere above grade at a point least susceptible to vandalism and shall have the end covered with a No. 14 mesh non-corrodible screen.

(g) Housing.

Adequate housing shall be provided for the chlorination

equipment and for storing the chlorine (see R309-205-10(2)(d) above).

(h) Housing at Water Treatment Plants.

Separate rooms for cylinders and feed equipment shall be provided at all water treatment plants. Chlorine gas feed and storage shall be enclosed and separated from other operating areas. The chlorine room shall be:

(i) provided with a shatter resistant inspection window installed in an interior wall and preferably located so that an operator may read the weighing scales without entering the chlorine room,

(ii) constructed in a manner that all openings between the chlorine room and the remainder of the plant are sealed, and

(iii) provided with doors equipped with panic hardware assuring ready means of exit and opening only to the building exterior.

(i) Cylinder Security.

Full and empty cylinders of chlorine gas shall be:

(i) isolated from operating areas;

(ii) restrained in position to prevent upset from accidental bumping or a seismic event;

(iii) stored in rooms separated from ammonia storage; and

(iv) stored in areas not in direct sunlight or exposed to excessive heat.

(j) Feed Line Routing.

Chlorine feed lines shall not carry pressurized chlorine gas beyond the chlorinator room. Only vacuum lines may be routed to other portions of the building outside the chlorine room and any openings for these lines must be adequately sealed.

(k) Weighing Scales.

Scales shall be provided for weighing cylinders. Scales should be of a corrosion resistant material and should be placed in a location remote from any moisture. Scales shall be accurate enough to indicate loss of weight to the nearest one pound for 150 pound cylinders and to the nearest 10 pounds for one ton cylinders.

(l) Pressure Gauges.

Pressure gauges shall be provided on the inlet and outlet of each chlorine injector as indicated in R309-205-10(2)(b). The preferred location is on the water feed line immediately before the inlet of the chlorine injector and at a point on the water main just ahead of chlorine injection. These locations should give accurate pressure readings while not being subjected to corrosive chlorinated water.

(m) Injector Protection.

A suitable screen to prevent small debris from clogging a chlorine injector shall be provided on the water feed line. Provision for flushing of the screen is required.

(n) Chlorine Vent Line Protection.

A non-corrodible fine mesh (No. 14 or finer) screen shall be placed over the discharge ends of all vent lines. All vent lines shall discharge to the outside atmosphere above grade and at locations least susceptible to vandalism.

(o) Gas Masks.

(i) Respiratory protection equipment, meeting the requirements of the National Institute for Occupational Safety and Health (NIOSH) shall be available where chlorine gas in one-ton cylinders is handled, and shall be stored at a convenient location, but not inside any room where chlorine is used or stored. The units shall use compressed air, have at least a 30 minute capacity, and be compatible with or exactly the same as units used by the fire department responsible for the plant.

(ii) Where smaller chlorine cylinders are used, suitable gas masks must be provided.

(p) Chlorine Leak Detection and Repair.

A bottle of Ammonium Hydroxide, 56% ammonia solution, shall be available for chlorine leak detection; where ton containers are used, a leak repair kit approved by the Chlorine Institute shall be provided. Continuous chlorine leak detection equipment is recommended. Where a leak detector is provided, it shall be equipped with both an audible alarm and a warning light.

R309-205-11. Ozone.

Proposals for use of ozone disinfection shall be discussed with the Division prior to the preparation of final plans and specifications.

Policy Statement on Interim Standard - Ozonation, page xx, in the Recommended Standards for Water Works (commonly known as "Ten State Standards"), 1992 edition is hereby incorporated by reference and shall govern the design and operation of disinfection facilities utilizing ozone. This document is published by the Great Lakes-Upper Mississippi River Board of Public Health and Environmental Managers. A copy is available in the office of the Division for reference.

R309-205-12. Chlorine Dioxide.

Proposals for the use of Chlorine Dioxide as a disinfectant shall be discussed with the Division prior to the preparation of final plans and specifications. The "CT" values for the inactivation of Giardia cysts using chlorine dioxide are independent of pH, with only temperature affecting the value. For chlorine dioxide, a 3-log inactivation of Giardia cysts will generally result in greater than 4-log virus inactivation, and assure meeting requirements. However, for chlorine dioxide, unlike chlorine where this relationship always hold true, at certain temperatures, the 4-log virus CT may be higher than the 3-log Giardia cyst CT.

R309-205-13. Chloramines.

Proposals for the use of Chloramines as a disinfectant shall be discussed with the Division prior to the preparation of final plans and specifications.

R309-205-14. Ultraviolet Light.

(1) Proposals for use of ultraviolet disinfection shall be discussed with the Division prior to the preparation of final plans and specifications.

(2) Secondary disinfection and maintenance of the required residual will be necessary where disinfection of the supply is required.

(3) Ultraviolet disinfection will be permitted where the design conforms to the minimum recommendations of the U.S. Public Health Service listed below.

(a) Ultraviolet radiation at a level of 2,537 Angstrom units must be applied at a minimum dosage of 16,000 microwatt-seconds per square centimeter per second (1,600 Finsen Units) at all points throughout the water disinfection chamber.

(b) Maximum water depth in the chamber, measured from the tub surface to the chamber wall, shall not exceed three inches.

(c) The ultraviolet tubes shall be:

(i) jacketed so that a proper operating tube temperature of about 105 degrees F is maintained; and

(ii) the jacket shall be of quartz or high silica glass with similar optical characteristics.

(d) A flow or time delay mechanism shall be provided to permit a two minute tube warm-up period before water flows from the unit.

(e) The unit shall be designed to permit frequent mechanical cleaning of the water contact surface of the jacket without disassembly of the unit.

(f) An automatic flow control valve, accurate within the expected pressure range, shall be installed to restrict flow to the maximum design flow of the treatment unit.

(g) An accurately calibrated ultraviolet intensity meter, properly filtered to restrict its sensitivity to the disinfection spectrum, shall be installed in the wall of the disinfection chamber at the point of greatest water depth from the tube or tubes.

(h) A diversion valve or automatic shut-off valve shall be installed which will permit flow into the finished drinking water system only when at least the minimum ultraviolet dosage is applied. When power is not being supplied to the unit, the valve should be in a closed position which prevents the flow of water into the finished drinking water system.

(i) An automatic, audible alarm shall be installed to warn of malfunction or impending shutdown.

(j) The materials of construction shall not impart toxic materials into the water either as a result of the presence of toxic constituents in materials of construction or as a result of physical or chemical changes resulting from exposure to ultraviolet energy.

(k) The unit shall be designed to protect the operator against electrical shock or excessive radiation.

(l) As with any drinking water treatment process, due consideration must be given to the reliability, economics, and competent operation of the disinfection process and related equipment, including:

(i) installation of the unit in a protected enclosure not subject to extremes of temperature which could cause malfunction; and

(ii) provision of a spare UV tube and other necessary equipment to effect prompt repair by qualified personnel properly instructed in the operation and maintenance of the equipment.

R309-205-15. Operation and Maintenance.

(1) Safety.

Chlorine gas facilities shall be operated in a manner which minimizes risks to water system personnel or the general public.

(2) Residual Chlorine.

Public drinking water systems supplied water from conventional surface water treatment or alternatives shall test for detectable chlorine residual or HPC within the distribution system as outlined in R309-104-4.7.4c.

(3) Chlorine Dosing.

Chlorine, when used in the distribution system, shall be added in sufficient quantity to achieve either "breakpoint" and yield a detectable free chlorine residual or a detectable combined chlorine residual in the distribution system at points to be determined by the Executive Secretary. Residual checks must be taken daily by the operator of any system using disinfectants. The Executive Secretary may, however, reduce the frequency of residual checks if he determines that this would be an unwarranted hardship on the water system operator and, furthermore, the disinfection equipment has a verified record of reliable operation. Suppliers, when checking for residuals, must use test kits and methods which meet the requirements of the U.S. EPA. The "DPD" test method is recommended for free chlorine residuals. Information on the suppliers of this equipment is available from the Division.

(4) ANSI/NSF Standard 60 Certification.

All chemicals, including chlorine gas, added to drinking water supplied by a public water system shall be certified as complying with ANSI/NSF Standard 60, Drinking Water Treatment Chemicals.

KEY: drinking water, primary disinfectants, secondary disinfectants, operation and maintenance
January 1, 1998 19-4-104

R309. Environmental Quality, Drinking Water.
R309-206. Facility Design and Operation: Conventional Surface Water Treatment.
R309-206-1. Purpose.

This rule specifies requirements for conventional surface water treatment plants used in public water systems. It is intended to be applied in conjunction with rules R309-201 through R309-211. Collectively, these rules govern the design, construction, operation and maintenance of public drinking water system facilities. These rules are intended to assure that such facilities are reliably capable of supplying adequate quantities of water which consistently meet applicable drinking water quality requirements and do not pose a threat to general public health.

R309-206-2. Authority.

This rule is promulgated by the Drinking Water Board as authorized by Title 19, Environmental Quality Code, Chapter 4, Safe Drinking Water Act, Subsection 104(1)(a)(ii) of the Utah Code Annotated and in accordance with 63-46a of the same, known as the Administrative Rulemaking Act.

R309-206-3. Definitions.

Definitions for certain terms used in this rule are given in R309-200.

R309-206-4. General.

(1) Treatment plants used for the purification of surface water supplies or ground water supplies under direct influence of surface water must conform to the requirements given herein. The plants shall have, as a minimum, facilities for flash mixing of coagulant chemicals, flocculation, sedimentation, filtration

and disinfection.

(2) The overall design of a water treatment facility must be carefully examined to assure the compatibility of all devices and processes. The design of treatment processes and devices shall depend on an evaluation of the nature and quality of the particular water to be treated. The combined unit processes shall produce water meeting all established drinking water standards as given in R309-103.

(3) Direct filtration may be acceptable and rules governing this method are given in R309-207-5.

(4) Refer to R309-207-9 for policy with regards to novel water treatment equipment or techniques which may depart from the requirements outlined herein.

R309-206-5. Plant Capacity and Number of Treatment Trains.

(1) A determination of the required plant capacity and the required number of treatment trains shall be made after consultation with the Division. Ordinarily, a minimum of two units each for flocculation, sedimentation and filtration must be provided. The design shall provide for parallel or series operation of the clarification stages. Flash mix shall be designed and operated to provide a minimum velocity gradient of 750 fps/ft. Mixing time shall be less than thirty seconds. The treatment plant shall be designed to meet the anticipated "peak day demand" of the system being served when the treatment plant is the system's sole source. When other sources are available to the system, this requirement may be relaxed.

(2) The degree of "back-up" required in a water treatment plant will vary with the number of connections to be served, the availability of other acceptable sources of water, and the ability to control water consumption. Thus, when other sources are available to the system, the requirements of R309-206-7 (Plant Reliability) may also be relaxed. The Division shall be consulted in this regard prior to plant design.

R309-206-6. Plant Siting.

Plants must be sited with due regard for earthquake, flood, and fire hazard. Assistance in this matter is available from the Utah Geologic Survey. The Division shall be consulted regarding site selection prior to the preparation of engineering plans and specifications.

R309-206-7. Plant Reliability.

Plants designed for processing surface water or ground water under direct influence of surface water shall be designed to meet present and future water demands and assure reliable operation at all times. To help assure proper, uninterrupted operation:

(1) A manual override shall be provided for any automatic controls. Highly sophisticated automation may put proper maintenance beyond the capability of the plant operator, leading to equipment breakdowns or expensive servicing. Adequate funding must be assured for maintenance of automatic equipment.

(2) Main switch electrical controls shall be located above grade, in areas not subject to flooding.

(3) Plants shall be operated by qualified personnel approved by the Executive Secretary. As a minimum, the treatment plant manager is required to be certified in accordance with R309-301 at the grade of the waterworks system with an appropriate unrestricted Utah Operator's Certificate.

(4) The plant shall be constructed to permit units to be taken out of service without disrupting operation, and with drains or pumps sized to allow dewatering in a reasonable period of time.

(5) The plant shall have standby power available to permit operation of essential functions during power outages,

(6) The plant shall be provided with backup equipment or necessary spare parts for all critical items.

(7) Individual components critical to the operation of a treatment plant shall be provided with anchorage to secure the components from loss due to an earthquake event.

R309-206-8. Color Coding and Pipe Marking.

The piping in water treatment plants shall be color coded for identification. The following table contains color schemes recommended by the Division. Identification of the direction of flow and the contained liquid shall also be made on the pipe.

TABLE 206-1

Recommended Color Scheme for Piping

Water Lines	
Raw	Olive Green
Settled or Clarified	Aquamarine
Finished	Dark Blue
Chemical Lines	
Alum	Orange
Ammonia	White
Carbon Slurry	Black
Chorine (Gas and Solution)	Yellow
Fluoride	Light Blue with Red Band
Lime Slurry	Light Green
Potassium Permanganate	Violet
Sulfur Dioxide	Light Green with Yellow Band
Waste lines	
Backwash Waste	Light Brown
Sludge	Dark Brown
Sewer (Sanitary or Other)	Dark Gray
Other	
Compressed Air	Dark Green
Gas	Red
Other Lines	Light Gray

R309-206-9. Diversion Structures and Pretreatment.

Refer to R309-204-5(5) for diversion structure design.

R309-206-10. Presedimentation.

Waters containing, heavy grit, sand, gravel, leaves, debris, or a large volume of sediments may require pretreatment, usually sedimentation, with or without the addition of coagulation chemicals.

(1) Presedimentation basins shall be equipped for efficient sludge removal.

(2) Incoming water shall be dispersed across the full width of the line of travel as efficiently as practical. Short-circuiting shall be minimized.

(3) Provisions for bypassing presedimentation basins shall be included.

R309-206-11. Chemical Addition.

(1) Goals.

Chemicals used in the treatment of surface water shall achieve the following:

(a) Primary coagulant chemicals shall be utilized to permit the formation of a floc,

(b) Disinfectants shall be added to raw and/or treated water.

(2) Application Criteria.

In achieving these goals the chemical(s) shall be applied to the water:

(a) To assure maximum control and flexibility of treatment,

(b) To assure maximum safety to consumer and operators,

(c) To prevent backflow or back-siphonage of chemical solutions to finished water systems.

(d) With appropriate spacing of chemical feed to eliminate any interference between chemicals.

(3) Typical Chemical Doses.

Chemical doses shall be estimated for each treatment plant to be designed. "Jar tests" shall be conducted on representative raw water samples to determine anticipated doses.

(4) Information Required for Review.

With respect to chemical applications, a submittal for Division review shall include:

(a) Descriptions of feed equipment, including maximum and minimum feed rates,

(b) Location of feeders, piping layout and points of application,

(c) Chemical storage and handling facilities,

(d) Specifications for chemicals to be used,

(e) Operating and control procedures including proposed application rates,

(f) Descriptions of testing equipment and procedures, and

(g) Results of chemical, physical, biological and other tests performed as necessary to define the optimum chemical treatment.

(5) Quality of Chemicals.

All chemicals added to water being treated for use in a public water system for human consumption shall comply with ANSI/NSF Standard 60. Evidence for this requirement shall be met if the chemical shipping container labels or material safety data sheets include:

(a) Chemical name, purity and concentrations, Supplier name and address, and

(b) Labeling indicating compliance with ANSI/NSF Standard 60.

(6) Storage, Safe Handling and Ventilation of Chemicals.

All requirements of the Utah Occupational Safety and Health Act (UOSHA) for storage, safe handling and ventilation of chemicals shall apply to public drinking water facilities. The designer shall incorporate all applicable UOSHA standards into the facility design, however, review of facility plans by the Division of Drinking Water under this Rule shall be limited to the following requirements:

(a) Storage of Chemicals.

(i) Space shall be provided for:

(A) An adequate supply of chemicals,

(B) Convenient and efficient handling of chemicals,

(C) Dry storage conditions.

(ii) Storage tanks and pipelines for liquid chemicals shall be specific to the chemicals and not for alternates.

(iii) Chemicals shall be stored in covered or unopened shipping containers, unless the chemical is transferred into a covered storage unit.

(iv) Liquid chemical storage tanks must:

(A) Have a liquid level indicator, and

(B) Have an overflow and a receiving basin or drain capable of receiving accidental spills or overflows, and meeting all requirements of R309-206-23, and

(C) Be equipped with an inverted "J" air vent.

(v) Acids shall be kept in closed acid-resistant shipping containers or storage units.

(b) Safe Handling.

(i) Material Safety Data Sheets for all chemicals utilized shall be kept and maintained in prominent display and be easily accessed by operators.

(ii) Provisions shall be made for disposing of empty bags, drums or barrels by an acceptable procedure which will minimize operator exposure to dusts.

(iii) Provisions shall be made for measuring quantities of chemicals used to prepare feed solutions.

(c) Dust Control and Ventilation.

Adequate provision shall be made for dust control and ventilation.

(7) Feeder Design, Location and Control.

(a) General Feeder Design.

General equipment design, location and control shall be such that:

(i) feeders shall supply, at all times, the necessary amounts of chemicals at an accurately controlled rate, throughout the anticipated range of feed,

(ii) chemical-contact materials and surfaces are resistant to the aggressiveness of the chemicals,

(iii) corrosive chemicals are introduced in a manner to minimize potential for corrosion,

(iv) chemicals that are incompatible are not fed, stored or handled together.

(v) all chemicals are conducted from the feeder to the point of application in separate conduits,

(vi) spare parts are available for all feeders to replace parts which are subject to wear and damage,

(vii) chemical feeders are as near as practical to the feed point,

(viii) chemical feeders and pumps operate at no lower than 20 percent of the feed range,

(ix) chemicals are fed by gravity where practical,

(x) be readily accessible for servicing, repair, and observation.

(b) Chemical Feed Equipment.

Where chemical feed is necessary for the protection of the consumer, such as disinfection, coagulation or other essential processes:

(i) a minimum of two feeders, one active and one standby, shall be provided for each chemical,

(ii) the standby unit or a combination of units of sufficient capacity shall be available to replace the largest unit during shut-downs,

(iii) where a booster pump is required, duplicate equipment shall be provided and, when necessary, standby power,

(iv) a separate feeder shall be used for each non-compatible chemical applied where a feed pump is required, and

(v) spare parts shall be available for all feeders to replace parts which are subject to wear and damage.

(c) Dry Chemical Feeders.

Dry chemical feeders shall:

(i) measure feed rate of chemicals volumetrically or gravimetrically, and

(ii) provide adequate solution water and agitation of the chemical in the solution tank.

(d) Feed Rate Control.

(i) Feeders may be manually or automatically controlled, with automatic controls being designed to allow override by manual controls.

(ii) Chemical feed rates shall be proportional to flows.

(iii) A means to measure water flow rate shall be provided.

(iv) Provisions shall be made for measuring the quantities of chemicals used.

(v) Weighing scales:

(A) shall be provided for weighing cylinders at all plants using chlorine gas,

(B) may be required for fluoride solution feed, where applicable,

(C) shall be provided for volumetric dry chemical feeders, and

(D) shall be accurate to measure increments of 0.5 percent of scale capacity.

(8) Feeder Appurtenances.

(a) Liquid Chemical Solution Pumps.

Positive displacement type solution feed pumps shall be used to feed liquid chemicals, but shall not be used to feed chemical slurries. Pumps must be sized to match or exceed maximum head conditions found at the point of injection. All liquid chemical feeders shall be provided with devices approved by the Utah Plumbing Code which will prevent the siphoning of liquid chemical through the pump.

(b) Solution Tanks.

(i) A means consistent with the nature of the chemical solution shall be provided in a solution tank to maintain a uniform strength of solution. Continuous agitation shall be provided to maintain slurries in suspension.

(ii) Means shall be provided to measure the solution level in the tank.

(iii) Chemical solutions shall be kept covered. Large tanks with access openings shall have the openings curbed and fitted with tight overhanging covers.

(iv) Subsurface locations are discouraged, but when used for solution tanks shall:

(A) be free from sources of possible contamination, and

(B) assure positive drainage for ground waters, accumulated water, chemical spills and overflows.

(v) Overflow pipes, when provided, shall:

(A) have a free fall discharge, and

(B) be located where noticeable.

(vi) Acid storage tanks shall be vented to the outside atmosphere, but not through vents in common with day tanks.

(vii) Each tank shall be provided with a valved drain, protected against backflow in accordance with R309-206-11(10)(b) and R309-206-11(10)(c).

(viii) Solution tanks shall be located and protective curbing provided so that chemicals from equipment failure, spillage or accidental drainage shall not enter the water in conduits, treatment or storage basins.

(ix) When polymers are used, storage tanks shall be located away from heat sources and direct sunlight.

(c) Day Tanks.

(i) Day tanks shall be provided where dilution of liquid chemical is required prior to feeding.

(ii) Day tanks shall meet all the requirements of R309-206-11(9)(b).

(iii) Certain chemicals, such as polymers, become unstable after hydration, therefore, day tanks shall hold no more than a thirty hour supply unless manufacturer's recommendations allow for longer periods.

(iv) Day tanks shall be scale-mounted, or have a calibrated gauge painted or mounted on the side if liquid levels cannot be observed in a gauge tube or through translucent sidewalls of the tank. In opaque tanks, a gauge rod extending above a referenced point at the top of the tank, attached to a float may be used. The ratio of the cross-sectional area of the tank to its height must be such that unit readings are meaningful in relation to the total amount of chemical fed during a day.

(v) Hand pumps may be provided for transfer from a carboy or drum. A top rack may be used to permit withdrawal into a bucket from a spigot. Where motor-driven transfer pumps are provided a liquid level limit switch and an overflow from the day tank, which will drain by gravity back into the bulk storage tank, must be provided.

(vi) A means which is consistent with the nature of the chemical solution shall be provided to maintain uniform strength of solution in a day tank. continuous agitation shall be provided to maintain chemical slurries in suspension.

(vii) Tanks shall be properly labeled to designate the chemical contained.

(d) Feed Lines.

(i) Feed lines shall be as short as possible in length of run, and be:

(A) of durable, corrosion resistant material,

(B) easily accessible throughout the entire length,

(C) protected against freezing, and

(D) readily cleanable.

(ii) Feed lines shall slope upward from the chemical source to the feeder when conveying gases.

(iii) Lines shall be designed with due consideration of scale forming or solids depositing properties of the water, chemical, solution or mixture conveyed.

(9) Make up Water Supply and Protection.

(a) In Plant Water Supply.

In plant water supply shall be:

(i) Ample in supply, adequate in pressure, and of a quality equal to or better than the water at the point of application.

(ii) Provided with means for measurement when preparing specific solution concentrations by dilution.

(iii) Properly protected against backflow.

(b) Cross-Connection Control.

Cross-connection control shall be provided to assure that:

(i) The make-up waterlines discharging to solution tanks shall be properly protected from backflow as required by the Utah Plumbing Code.

(ii) Liquid chemical solutions cannot be siphoned through solution feeders into the process units as required in R309-108-8(9)(c).

(iii) No direct connection exists between any sewer and the drain or overflow from the feeder, solution chamber or tank by providing that all pipes terminate at least six inches or two pipe diameters, whichever is greater, above the overflow rim of a receiving sump, conduit or waste receptacle.

(iv) Pre- and post-chlorination systems must be independent to prevent possible siphoning of partially treated water into the clear well. The water supply to each eductor shall have a separate shut-off valve. No master shut off valve will be allowed.

(c) Liquid Chemical Feeders, Siphon Control.

Liquid chemical feeders shall be such that chemical solutions cannot be siphoned into the process units, by:

(i) Assuring positive pressure at the point of discharge,

(ii) Providing vacuum relief,

(iii) Providing a suitable air gap, or

(iv) Other suitable means or combinations as necessary.

(10) Operator Safety.

Design of the plant shall be in accordance with the Utah Occupational Safety and Health Act (UOSHA). The designer and public water system management are responsible to see that they incorporate applicable UOSHA standards into the facility design and operation. Review of facility plans by the Division shall be limited to the following recommendations:

(a) Floor surfaces should be smooth and impervious, slip-proof and well drained,

(b) At least one pair of rubber gloves, a dust respirator of a type certified by the National Institute of Occupational Safety and Health (NIOSH) for toxic dusts, an apron or other protective clothing and goggles or face mask should be provided for each operator, A deluge shower and/or eye washing device should be installed where strong acids and alkalis are used or stored.

(c) A water holding tank that will allow water to reach room temperature should be installed in the water line feeding the deluge shower and eye washing device. Other methods of water tempering may be available.

(d) Adequate ventilation should be provided.

(11) Design for Specific Chemicals.

Design of the plant shall be in accordance with the Utah Occupational Safety and Health Act (UOSHA). The designer and public water system management are responsible to see that they incorporate applicable UOSHA standards into the facility design and operation. Review of facility plans by the Division shall be limited to the following recommendations:

Acids and Caustics.

(i) Acids and caustics should be kept in closed corrosion-resistant shipping containers or storage units.

(ii) Acids and caustics should not be handled in open vessels, but should be pumped in undiluted form from original containers through suitable hose, to the point of treatment or to a covered day tank.

Sodium Chlorite for Chlorine Dioxide Generation.

Proposals for the storage and use of sodium chlorite should be approved by the Executive Secretary prior to the preparation of final plans and specifications. Provisions should be made for proper storage and handling of sodium chlorite to eliminate any danger of explosion.

(i) Sodium Chlorite Storage: (A) Sodium chlorite should be stored by itself in a separate room and preferably should be stored in an outside building detached from the water treatment facility. It should be stored away from organic materials which would react violently with sodium chlorite; (B) The storage structures should be constructed of noncombustible materials; (C) If the storage structure is to be located in a area where a fire may occur, water should be available to keep the sodium chlorite area sufficiently cool to prevent decomposition from heat and resultant potential explosive conditions.

(ii) Sodium Chlorite Handling: (A) Care should be taken to prevent spillage; (B) An emergency plan of operation should be available for the clean up of any spillage; (C) Storage drums should be thoroughly flushed prior to recycling or disposal.

(iii) Sodium Chlorite Feeders: (A) Positive displacement feeders should be provided; (B) Tubing for conveying sodium chlorite or chlorine dioxide solutions should be Type 1 PVC, polyethylene or materials recommended by the manufacturer; (C) Feed lines should be installed in a manner to prevent formation of gas pockets and should terminate at a point of positive pressure; (D) Check valves should be provided to prevent the backflow of chlorine into the sodium chlorite line.

R309-206-12. Mixing.

(1) Flash Mix.

(a) Equipment - Mechanical, in-line or jet mixing devices shall be used.

(b) Mixing - All devices used in rapid mixing shall be capable of imparting a minimum velocity gradient (G) of at least 750 fps per foot. Mixing time shall be less than thirty seconds.

(c) Location - The flash mix and flocculation basins shall be as close together as possible.

(d) Introduction of chemicals - Primary coagulant chemicals shall be added at the point of maximum turbulence within the flash mix unit. Where in-line mixing devices are used chemical injection should be at the most appropriate upstream point.

(2) Flocculation.

(a) Basin design.

Inlet and outlet design shall prevent short-circuiting and destruction of floc. A drain or pumps shall be provided to handle dewatering and sludge removal.

(b) Detention.

The flow-through velocity shall not be less than 0.5 feet per minute nor greater than 1.5 feet per minute with a detention time for floc formation of at least 30 minutes.

(c) Equipment.

Agitators shall be driven by variable speed drives with the peripheral speed of paddles ranging from 0.5 fps to 2.0 fps. Equipment shall be capable of imparting a velocity gradient (G) between 25 fps per foot and 80 fps per foot to the water treated. Compartmentalized tapered energy flocculation concept may also be used in which G tapers from 100 fps to 10 fps per foot.

(d) Hydraulic flocculation.

Hydraulic flocculation may be permitted and shall be

reviewed on a case by case basis. The unit must yield a G value equivalent to that required by b and c above.

(e) Piping.

Flocculation and sedimentation basins shall be as close as possible. The velocity of flocculated water through pipes or conduits to settling basins shall not be less than 0.5 fps nor greater than 1.5 fps. Allowance must be made to minimize turbulence at bends and changes in direction.

(f) Other designs.

Baffling may be used to provide for flocculation in small plants only after consultation with the Division. The design shall be such that the velocities and flows noted above will be maintained.

(g) Visible floc.

The flocculation unit shall be capable of producing a visible, settleable floc.

R309-206-13. Sedimentation.

(1) General Design Requirements.

Sedimentation shall follow flocculation. The detention time for effective clarification is dependent upon a number of factors related to basin design and the nature of the raw water. The following criteria apply to conventional sedimentation units:

(a) Inlet devices.

Inlets shall be designed to distribute the water equally and at uniform velocities. Open ports, submerged ports, or similar entrance arrangements are required. A baffle shall be constructed across the basin close to the inlet end and shall project several feet below the water surface to dissipate inlet velocities and provide uniform flows across the basin.

(b) Outlet devices.

Outlet devices shall be designed to maintain velocities suitable for settling in the basin and to minimize short-circuiting. The use of submerged orifices is recommended in order to provide a volume above the orifices for storage when there are fluctuations in the flow.

(c) Emergency Overflow.

An overflow weir (or pipe) shall be installed which will establish the maximum water level desired on top of the filters. It shall discharge by gravity with a free fall to a location where the discharge will be visible.

(d) Sludge Removal.

Sludge removal design shall provide that:

(i) sludge pipes shall be not less than three inches in diameter and arranged to facilitate cleaning,

(ii) entrance to sludge withdrawal piping shall prevent clogging,

(iii) valves shall be located outside the basin for accessibility, and

(iv) the operator may observe and sample sludge being withdrawn from the unit.

(v) Sludge collection shall be accomplished by mechanical means.

(e) Drainage.

Basins shall be provided with a means for dewatering. Basin bottoms shall slope toward the drain not less than one foot in 12 feet where mechanical sludge collection equipment is not provided.

(f) Flushing lines.

Flushing lines or hydrants shall be provided and shall be equipped with backflow prevention devices acceptable to the Executive Secretary.

(g) Safety.

Appropriate safety devices shall be included as required by the Occupational Safety and Health Act (OSHA).

(h) Removal of floating material.

Provision shall be made for the periodic removal of floating material.

(2) Sedimentation Without Tube Settlers.

If tube settling equipment is not used within settling basins, the following requirements apply:

(a) Detention Time.

A minimum of four hours of detention time shall be provided. Reduced sedimentation time may be approved when equivalent effective settling is demonstrated or multimedia filtration is employed.

(b) Weir Loading.

The rate of flow over the outlet weir shall not exceed 20,000 gallons per day per foot of weir length. Where submerged orifices are used as an alternate for overflow weirs they shall not be lower than three feet below the water surface when the flow rates are equivalent to weir loading.

(c) Velocity.

The velocity through settling basins shall not exceed 0.5 feet per minute. The basins shall be designed to minimize short-circuiting. Fixed or adjustable baffles shall be provided as necessary to achieve the maximum potential for clarification.

(d) Depth.

The depth of the sedimentation basin shall be designed for optimum removal.

(3) Sedimentation With Tube Settlers.

Proposals for settler unit clarification shall be approved by the Executive Secretary prior to the preparation of final plans and specifications.

(a) Inlet and outlet design shall be such to maintain velocities suitable for settling in the basin and to minimize short circuiting.

(b) Flushing lines shall be provided to facilitate maintenance and be properly protected against backflow or back siphonage. Drain and sludge piping from the settler units shall be sized to facilitate a quick flush of the settler units and to prevent flooding other portions of the plant.

(c) Although most units will be located within a plant, design of outdoor installations shall provide sufficient freeboard above the top of settlers to prevent freezing in the units.

(d) The design application rate shall be a maximum rate of 2 gal/sq.ft./min of cross-sectional area (based on 24-inch long 60 degree tubes or 39.5-inch long 7.5 degree tubes), unless higher rates are successfully shown through pilot plant or in-plant demonstration studies.

R309-206-14. Solids Contact Units.

(1) General.

Solids contact units are generally acceptable for combined softening and clarification where water characteristics, especially temperature, do not fluctuate rapidly, flow rates are uniform and operation is continuous. Before such units are

considered as clarifiers without softening, specific approval of the Executive Secretary shall be obtained. A minimum of two units are required for surface water treatment.

(2) Installation of Equipment

The design engineer shall see that a representative of the manufacturer is present at the time of initial start-up operation to assure that the units are operating properly.

(3) Operation of Equipment.

The following shall be provided for plant operation:

(a) a complete outfit of tools and accessories,

(b) necessary laboratory equipment, and

(c) adequate piping with suitable sampling taps so located as to permit the collection of samples of water from critical portions of the units.

(4) Chemical feed.

Chemicals shall be applied at such points and by such means as to insure satisfactory mixing of the chemicals with the water.

(5) Mixing.

A flash mix device or chamber ahead of solids contact units may be required to assure proper mixing of the chemicals applied. Mixing devices employed shall be so constructed as to:

(a) provide good mixing of the raw water with previously formed sludge particles, and

(b) prevent deposition of solids in the mixing zone.

(6) Flocculation.

Flocculation equipment:

(a) shall be adjustable (speed and/or pitch),

(b) shall provide for coagulation in a separate chamber or baffled zone within the unit, and

(c) shall provide the flocculation and mixing period to be not less than 30 minutes.

(7) Sludge concentrators.

(a) The equipment shall provide either internal or external concentrators in order to obtain a concentrated sludge with a minimum of waste water.

(b) Large basins shall have at least two sumps for collecting sludge with one sump located in the central flocculation zone.

(8) Sludge removal.

Sludge removal design shall provide that:

(a) sludge pipes shall be not less than three inches in diameter and so arranged as to facilitate cleaning,

(b) the entrance to the sludge withdrawal piping shall prevent clogging,

(c) valves shall be located outside the tank for accessibility, and

(d) the operator may observe and sample sludge being withdrawn from the unit.

(9) Cross-connections.

(a) Blow-off outlets and drains shall terminate and discharge at places satisfactory to the Executive Secretary.

(b) Cross-connection control must be included for the finished drinking water lines used to back flush the sludge lines.

(10) Detention period.

The detention time shall be established on the basis of the raw water characteristics and other local conditions that affect the operation of the unit. Based on design flow rates, the detention time shall be:

(a) two to four hours for suspended solids contact clarifiers and softeners treating surface water, and

(b) one to two hours for suspended solids contact softeners treating only ground water.

(11) Suspended slurry concentrate.

Softening units shall be designed so that continuous slurry concentrates of one percent or more, by weight, can be satisfactorily maintained.

(12) Water losses.

(a) Units shall be provided with suitable controls for sludge withdrawal.

(b) Total water losses shall not exceed:

(i) five percent for clarifiers,

(ii) three percent for softening units.

(c) Solids concentration of sludge bled to waste shall be:

(i) three percent by weight for clarifiers,

(ii) five percent by weight for softeners.

(13) Weirs or orifices.

The units shall be equipped with either overflow weirs or orifices constructed so that water at the surface of the unit does not travel over 10 feet horizontally to the collection trough.

(a) Weirs shall be adjustable, and at least equivalent in length to the perimeter of the basin.

(b) Weir loading shall not exceed:

(i) 10 gpm per foot of weir length for units used for clarifiers

(ii) 20 gpm per foot of weir length for units used for softeners.

(c) Where orifices are used the loading rates per foot of launderer shall be equivalent to weir loadings. Either shall produce uniform rising rates over the entire area of the tank.

(14) Upflow rates.

Upflow rates shall not exceed:

(a) 1.0 gpm/sf at the sludge separation line for units used for clarifiers,

(b) 1.75 gpm/sf at the slurry separation line for units used as softeners.

R309-206-15. Filtration.

(1) General.

Filters may be composed of one or more media layers. Mono-media filters are relatively uniform throughout their depth. Dual or multi-layer beds of filter material are so designed that water being filtered first encounters coarse material, and progressively finer material as it travels through the bed.

(2) Rate of Filtration.

(a) The rate of filtration shall be determined through consideration of such factors as raw water quality, degree of pretreatment provided, filter media, water quality control parameters, competency of operating personnel, and other factors as determined by the Executive Secretary. Generally, higher filter rates can be assigned for the dual or multi-media filter than for a single media filter because the former is more resistant to filter breakthrough.

(b) The filter rate shall be proposed and justified by the designing engineer to the satisfaction of the Executive Secretary prior to the preparation of final plans and specifications.

(c) The use of dual or multi-media filters may allow a reduction of sedimentation detention time (see R309-206-

13(2)(a)) due to their increased ability to store sludge.

(d) Filter rates assigned by the Executive Secretary must never be exceeded, even during backwash periods.

(e) The use of filter types other than conventional rapid sand gravity filters must receive written approval from the Executive Secretary prior to the preparation of final plans and specifications.

(3) Number of Filters Required.

At least two filter units shall be provided. Where only two filter units are provided, each shall be capable of meeting the plant design capacity (normally the projected peak day demand) at the approved filtration rate. Where more than two filter units are provided, filters shall be capable of meeting the plant design capacity at the approved filtration rate with one filter removed from service. Refer to R309-206-5 for situations where these requirements may be relaxed.

(4) Media Design.

R309-206-4(a) through R309-206-4(e), which follow, give requirements for filter media design. These requirements are considered minimum and may be made more stringent if deemed appropriate by the Executive Secretary.

(a) Mono-media, Rapid Rate Gravity Filters.

The allowable maximum filtration rate for a silica sand, mono-media filter is three gpm/sf This type of filter is composed of clean silica sand having an effective size of 0.35 mm to 0.65 mm and having a uniformity coefficient less than 1.7. The total bed thickness must not be less than 24 inches nor generally more than 30 inches.

(b) Dual Media, Rapid Rate Gravity Filters.

The following applies to all dual media filters:

(i) Total depth of filter bed shall not be less than 24 inches nor generally more than 30 inches.

(ii) All materials used to make up the filter bed shall be of such particle size and density that they will be effectively washed at backwash rates between 15 and 20 gpm/sf They must settle to reconstitute the bed essentially in the original layers upon completion of backwashing.

(iii) The bottom layer must be at least ten inches thick and consist of a material having an effective size no greater than 0.45 mm and a uniformity coefficient not greater than 1.5.

(iv) The top layer shall consist of clean crushed anthracite coal having an effective size of 0.45 mm to 1.2 mm, and a uniformity coefficient not greater than 1.5.

(v) Dual media filters will be assigned a filter rate up to six gpm/sf. Generally if the bottom fine layer consists of a material having an effective size of 0.35 mm or less, a filtration rate of six gpm/sf can be assigned.

(vi) Each dual media filter must be provided with equipment which shall continuously monitor turbidity in the filtered water. The equipment shall be so designed to initiate automatic backwash if the filter effluent turbidity exceeds 0.5 NTU. If the filter turbidity exceeds five NTU, filter shutdown is required. In plants attended part-time, this shutdown must be accomplished automatically and shall be accompanied by an alarm. In plants having full-time operators, a five NTU condition need only activate an alarm. Filter shutdown may then be accomplished by the operator.

(c) Tri-Media, Rapid Rate Gravity Filters.

The following applies to all Tri-media filters:

(i) Total depth of filter bed shall not be less than 24 inches nor generally more than 30 inches.

(ii) All materials used to make up the filter bed shall be of such particle size and density that they will be effectively washed at backwash rates between 15 and 20 gpm/sf. They must settle to reconstitute the bed to the normal gradation of coarse to fine in the direction of flow upon completion of backwashing.

(iii) The bottom layer must be at least four inches thick and consist of a material having an effective size no greater than 0.45 mm and uniformity coefficient not greater than 2.2. The bottom layer thickness may be reduced to three inches if it consists of a material having an effective size no greater than 0.25 mm and a uniformity coefficient not greater than 2.2.

(iv) The middle layer must consist of silica sand having an effective size of 0.35 mm to 0.8 mm, and a uniformity coefficient not greater than 1.8.

(v) The top layer shall consist of clean crushed anthracite coal having an effective size of 0.45 mm to 1.2 mm, and a uniformity coefficient not greater than 1.85.

(vi) Tri-media filters will be assigned a filter rate up to 6 gpm/sf. Generally, if the bottom fine layer consists of a material having an effective size of 0.35 mm or less, a filtration rate of six gpm/sf can be assigned.

(vii) Each Tri-media filter must be provided with equipment which shall continuously monitor turbidity in the filtered water. The equipment shall be so designed to initiate automatic backwash if the effluent turbidity exceeds 0.5 NTU. If the filter turbidity exceeds five NTU, filter shutdown is required. In plants attended part-time, this shutdown must be accomplished automatically and shall be accompanied by an alarm. In plants having full-time operators, a five NTU condition need only activate an alarm. Filter shutdown may then be accomplished by the operator.

(d) Granulated Activated Carbon (GAC).

Use of granular activated carbon media shall receive the prior approval of the Executive Secretary, and must meet the basic specifications for filter material as given above, and:

(i) There shall be provision for adding a disinfectant to achieve a suitable residual in the water following the filters and prior to distribution,

(ii) There shall be a means for periodic treatment of filter material for control of biological or other growths,

(iii) Facilities for carbon regeneration or replacement must be provided.

(e) Other Media Compositions and Configurations.

Filters consisting of materials or configurations not prescribed in this section will be considered on experimental data or available operation experience.

(5) Support Media, Filter Bottoms and Strainer Systems.

Care must be taken to insure that filter media, support media, filter bottoms and strainer systems are compatible and will give satisfactory service at all times.

(a) Support Media.

The design of support media will vary with the configuration of the filtering media and the filter bottom. Thus, support media and/or proprietary filter bottoms shall be reviewed on a case-by-case basis.

(b) Filter Bottoms and Strainer Systems.

(i) The design of manifold type collection systems shall:

(A) Minimize loss of head in the manifold and laterals,

(B) Assure even distribution of washwater and even rate of filtration over the entire area of the filter,

(C) Provide a ratio of the area of the final openings of the strainer system to the area of the filter of about 0.003,

(D) Provide the total cross-sectional area of the laterals at about twice the total area of the final openings,

(E) Provide the cross-sectional area of the manifold at 1.5 to 2 times the total area of the laterals.

(ii) Departures from these standards may be acceptable for high rate filter and for proprietary bottoms.

(iii) Porous plate bottoms shall not be used where calcium carbonate, iron or manganese may clog them or with waters softened by lime.

(6) Structural Details and Hydraulics.

The filter structure shall be so designed as to provide for:

(a) Vertical walls within the filter,

(b) No protrusion of the filter walls into the filter media,

(c) Cover by superstructure,

(d) Head room to permit normal inspection and operation,

(e) Minimum water depth over the surface of the filter media of three feet, unless an exception is granted by the Executive Secretary,

(f) Maximum water depth above the filter media shall not exceed 12 feet,

(g) Trapped effluent to prevent backflow of air to the bottom of the filters,

(h) Prevention of floor drainage to enter onto the filter by installation of a minimum four inch curb around the filters,

(i) Prevention of flooding by providing an overflow or other means of control,

(j) Maximum velocity of treated water in pipe and conduits to filters of two fps,

(k) Cleanouts and straight alignment for influent pipes or conduits where solids loading is heavy or following lime-soda softening,

(l) Washwater drain capacity to carry maximum flow,

(m) Walkways around filters, to be not less than 24 inches wide,

(n) Safety handrails or walls around filter areas adjacent to normal walkways,

(o) No common wall between filtered and unfiltered water shall exist. This requirement may be waived by the Executive Secretary for small "package" type plants using metal tanks of sufficient thickness,

(p) Filtration to waste for each filter.

(7) Backwash.

(a) Water Backwash Without Air.

Water backwash systems shall be designed so that backwash water is not recycled to the head of the treatment plant unless it has been settled, as a minimum. Furthermore, water backwash systems; including tanks, pumps and pipelines, shall:

(i) Provide a minimum backwash rate of 15 gpm/sf, consistent with water temperatures and the specific gravity of the filter media. The design shall provide for adequate backwash with minimum media loss. A reduced rate of 10 gpm/sf may be acceptable for full depth anthracite or granular activated carbon filters.

(ii) provide finished drinking water at the required rate by washwater tanks, a washwater pump, from the high service main, or a combination of these.

(iii) Permit the backwashing of any one filter for not less than 15 minutes.

(iv) Be capable of backwashing at least two filters, consecutively.

(v) Include a means of varying filter backwash rate and time.

(vi) Include a washwater regulator or valve on the main washwater line to obtain the desired rate of filter wash with washwater valves or the individual filters open wide.

(vii) Include a rate of flow indicator, preferably with a totalizer on the main washwater line, located so that it can be easily read by the operator during the washing process.

(viii) Be designed to prevent rapid changes in backwash water flow.

(ix) Use only finished drinking water.

(x) Have washwater pumps in duplicate unless an alternate means of obtaining washwater is available.

(xi) Perform in conjunction with "filter to waste" system to allow filter to stabilize before introduction into clearwell.

(b) Backwash with Air Scouring.

Air scouring can be considered in place of surface wash when:

(i) air flow for air scouring the filter must be 3 to 5 scfm/sf of filter area when the air is introduced in the underdrain; a lower air rate must be used when the air scour distribution system is placed above the underdrains,

(ii) a method for avoiding excessive loss of the filter media during backwashing must be provided,

(iii) air scouring must be followed by a fluidization wash sufficient to restratify the media,

(iv) air must be free from contamination,

(v) air scour distribution systems shall be placed below the media and supporting bed interface; if placed at the interface the air scour nozzles shall be designed to prevent media from clogging the nozzles or entering the air distribution system.

(vi) piping for the air distribution system shall not be flexible hose which will collapse when not under air pressure and shall not be a relatively soft material which may erode at the orifice opening with the passage of air at high velocity.

(vii) air delivery piping shall not pass down through the filter media nor shall there be any arrangement in the filter design which would allow short circuiting between the applied unfiltered water and the filtered water,

(viii) consideration shall be given to maintenance and replacement of air delivery piping,

(ix) when air scour is provided the backwash water rate shall be variable and shall not exceed eight gpm/sf unless operating experience shows that a higher rate is necessary to remove scoured particles from filter surfaces.

(x) the filter underdrains shall be designed to accommodate air scour piping when the piping is installed in the underdrain, and

(xi) the provisions of Section R309-206-15(7)(a) (Backwash) shall be followed.

(8) Surface Wash or Subsurface Wash.

Surface wash or subsurface wash facilities are required

except for filters used exclusively for iron or manganese removal. Washing may be accomplished by a system of fixed nozzles or a revolving-type apparatus, provided:

(a) Provisions for water pressures of at least 45 psi,

(b) A properly installed vacuum breaker or other approved device to prevent back-siphonage if connected to a finished drinking water system,

(c) All washwater must be finished drinking water,

(d) Rate of flow of two gpm/sf of filter area with fixed nozzles or 0.5 gpm/sf with revolving arms.

(9) Washwater Troughs.

Washwater troughs shall be so designed to provide:

(a) The bottom elevation above the maximum level of expanded media during washing,

(b) A two inch freeboard at the maximum rate of wash,

(c) The top edge level and all edges of trough at the same elevation

(d) Spacing so that each trough serves the same number of square feet of filter areas,

(e) Maximum horizontal travel of suspended particles to reach the trough not to exceed three feet.

(10) Appurtenances.

(a) The following shall be provided for every filter:

(i) Sample taps or means to obtain samples from influent and effluent,

(ii) A gauge indicating loss of head,

(iii) A meter indicating rate-of-flow. A modified rate controller which limits the rate of filtration to a maximum rate may be used. However, equipment that simply maintains a constant water level on the filters is not acceptable, unless the rate of flow onto the filter is properly controlled,

(iv) A continuous turbidity monitoring device where the filter is to be loaded at a rate greater than three gpm/sf

(v) Provisions for draining the filter to waste with appropriate measures for backflow prevention (see R309-206-23).

(i) Wall sleeves providing access to the filter interior at several locations for sampling or pressure sensing,

(ii) A 1.0 inch to 1.5 inch diameter pressure hose and storage rack at the operating floor for washing filter walls.

(11) Miscellaneous.

Roof drains shall not discharge into filters or basins and conduits preceding the filters.

R309-206-16. In-Plant Finished Drinking Water Storage.

(1) General.

In addition to the following, the applicable design standards of R309-111 shall be followed for plant storage.

(a) Backwash Water Tanks.

Backwash water tanks shall be sized, in conjunction with available pump units and finished water storage, to provide the backwash water required by R309-206-15(7). Consideration shall be given to the backwashing of several filters in rapid succession.

(b) Clearwell.

Clearwell storage shall be sized, in conjunction with distribution system storage, to relieve the filters from having to follow fluctuations in water use.

(i) When finished water storage is used to provide the contact time for chlorine (see R309-205-10(1)(f), especially sub-section (f)(iv)), special attention must be given to size and baffling.

(ii) To ensure adequate chlorine contact time, sizing of the clearwell shall include extra volume to accommodate depletion of storage during the nighttime for intermittently operated filtration plants with automatic high service pumping from the clearwell during non-treatment hours.

(iii) An overflow and vent shall be provided.

(2) Adjacent Compartments.

Finsihed drinking water shall not be stored or conveyed in a compartment adjacent to unsafe water when the two compartments are separated by a single wall. The Executive Secretary may grant an exception to this requirement for small "package" treatment plants using metal tanks of sufficient wall thickness.

(3) Basins and Wet-Wells.

Receiving basins and pump wet-wells for finished drinking water shall be designed as drinking water storage structures. (See Section R309-210)

R309-206-17. Miscellaneous Plant Facilities.

(1) Laboratory.

Sufficient laboratory equipment shall be provided to assure proper operation and monitoring of the water plant. A list of required laboratory equipment is:

(a) one floc testing apparatus with illuminated base and variable speed stirrer,

(b) 10 each 1000 ml Griffin beakers (plastic is highly recommended over glass to prevent breakage),

(c) one 1000 ml graduated cylinder (plastic is highly recommended over glass to prevent breakage),

(d) pH test strips (6.0 to 8.5),

(e) five wide mouth 25 ml Mohr pipets,

(f) one triple beam, single pan or double pan balance with 0.1 g sensitivity and 2000 g capacity (using attachment weights),

(g) DPD chlorine test kit,

(h) bench-top turbidimeter,

(i) five each 1000 ml reagent bottles with caps,

(j) dish soap,

(k) brush (2 3/4 inch diameter by 5 inch),

(l) one platform scale 1/2 lb sensitivity, 100 lb capacity,

(m) book - Simplified Procedures for Water Examination, AWWA Manual M12

(2) Continuous Turbidity Monitoring and Recording Equipment.

Continuous turbidity monitoring and recording facilities shall be located as specified in R309-104-4.4.1a.

(3) Sanitary and Other Conveniences.

All treatment plants shall be provided with finished drinking water, lavatory and toilet facilities unless such facilities are otherwise conveniently available. Plumbing must conform to the Utah Plumbing Code and must be so installed to prevent contamination of a public water supply.

R309-206-18. Sample Taps.

Sample taps shall be provided so that water samples can be obtained from appropriate locations in each unit operation of

treatment. Taps shall be consistent with sampling needs and shall not be of the petcock type. Taps used for obtaining samples for bacteriological analysis shall be of the smooth-nosed type without interior or exterior threads, shall not be of the mixing type, and shall not have a screen, aerator, or other such appurtenance.

R309-206-19. Operation and Maintenance Manuals.

Operation and maintenance manuals shall be prepared for the treatment plant and found to be acceptable by the Executive Secretary. The manuals shall be usable and easily understood. They shall describe normal operating procedures, maintenance procedures and emergency procedures.

R309-206-20. Operator Instruction.

Provisions shall be made for operator instruction at the start-up of a plant.

R309-206-21. Safety.

All facilities shall be designed and constructed with due regard for safety, comfort and convenience. As a minimum, all applicable requirements of Utah Occupational Safety and Health Act (UOSHA) must be adhered to.

R309-206-22. Disinfection Prior To Use.

All pipes, tanks, and equipment which can convey or store finished drinking water shall be disinfected in accordance with the following AWWA procedures:

(1) C651-92 Disinfecting Water Mains

(2) C652-92 Disinfection of Water Storage Facilities

(3) C653-87 Disinfection of Water Treatment Plants

R309-206-23. Disposal of Treatment Plant Waste.

Provisions must be made for proper disposal of water treatment plant waste such as sanitary, laboratory, sludge, and filter backwash water. All waste discharges and treatment facilities shall meet the requirements of the Utah Department of Environmental Quality, the Utah Department of Health, and the United States Environmental Protection Agency, including the following:

(1) Rules for Individual Wastewater Disposal Systems, Utah Administrative Code R312-201 through R312-215 and R312-250.

(2) Rules for Water Quality, Utah Administrative Code R317.

(3) Rules for Solid and Hazardous Waste, Utah Administrative Code R315.

In locating waste disposal facilities, due consideration shall be given to preventing potential contamination of a water supply as well as breach or damage due to environmental factors.

R309-206-24. Other Considerations.

Consideration shall be given to the design requirements of other federal, state, and local regulatory agencies for items such as safety requirements, special designs for the handicapped, plumbing and electrical codes, construction in the flood plain, etc.

R309-206-25. Operation and Maintenance.

(1) Water system operators must determine that all chemicals added to water intended for human consumption are suitable for drinking water use and comply with ANSI/NSF Standard 60.

(2) No chemicals or other substances may be added to public water supplies unless the chemical addition facilities and chemical type have been reviewed and approved by the Executive Secretary. The Executive Secretary shall be notified prior to the changing of primary coagulant type. The Executive Secretary may require documentation to verify that sufficient testing and analysis have been done. The primary coagulant may not be changed without prior approval from the Executive Secretary.

(3) During the operation of a conventional surface water treatment plant stable flow rates shall be maintained through the filters.

(4) All instrumentation needed to verify that treatment processes are sufficient shall be properly calibrated and maintained. As a minimum, this shall include turbidimeters.

KEY: drinking water, flocculation, sedimentation, filtration
January 1, 1998 19-4-104

R309. Environmental Quality, Drinking Water.

R309-207. Facility Design and Operation: Alternative Surface Water Treatment Methods.

R309-207-1. Purpose.

This rule specifies requirements for alternative surface water treatment methods. It is intended to be applied in conjunction with rules R309-201 through R309-211. Collectively, these rules govern the design, construction, operation and maintenance of public drinking water system facilities. These rules are intended to assure that such facilities are reliably capable of supplying adequate quantities of water which consistently meet applicable drinking water quality requirements and do not pose a threat to general public health.

R309-207-2. Authority.

This rule is promulgated by the Drinking Water Board as authorized by Title 19, Environmental Quality Code, Chapter 4, Safe Drinking Water Act, Subsection 104(1)(a)(ii) of the Utah Code Annotated and in accordance with subsection 63-46a of the same, known as the Administrative Rulemaking Act.

R309-207-3. Definitions.

Definitions for certain terms used in this rule are given in R309-200.

R309-207-4. General.

(1) Alternative Methods.

In addition to conventional surface water treatment method (i.e. coagulation, sedimentation and filtration as outlined in R309-206), several alternative methods may also be suitable. They are: Direct Filtration; Slow Sand Filtration; Membrane Filtration; and Diatomaceous Earth Filtration.

(2) Incorporation of Other Rules.

For each process described in this section pertinent rules

are given. The designer shall also incorporate the relevant rules given in other sections into the plans and specifications for any of these specialized treatment methods. Where applicable, the following topics shall be addressed:

(a) Plant Siting (see R309-206-6).

(b) Pre-design Submittal (see R309-204-5(2)).

(c) Plant Reliability (see R309-206-7).

(d) Color Coding and Pipe Marking (see R309-206-8).

(e) Chemical Addition (see R309-206-11).

(f) Miscellaneous Plant Facilities (see R309-206-17, particularly sub-section R309-206-17(1), Laboratory).

(g) Operation and Maintenance Manuals (see R309-206-19).

(h) Safety (see R309-206-21).

(i) Disposal of Treatment Plant Waste (see R309-206-23).

(j) Disinfection (see R309-205).

R309-207-5. Direct Filtration.

(1) Chemical Addition and Mixing.

Direct Filtration is conventional surface water treatment without the sedimentation process. Rules for Chemical Addition and Mixing shall be the same as found in sections R309-206-11 and R309-206-12.

(2) Source Water Quality.

Direct Filtration applies the destabilized colloids to the filter rather than removing the majority of the load through sedimentation. While this process represents considerable construction cost savings, the source water must have low average turbidity in order to provide reliable service without excessive backwash requirements. Source water with low average turbidity is generally only obtained from large capacity reservoirs.

(3) Design Requirements.

The following requirements shall apply to Direct Filtration plants:

(a) At least one year's record of source water turbidity, sampled at least once per week, shall be presented to the Executive Secretary. A Direct Filtration facility will only be permitted if the data shows that 75% of the measurements are below five (5) NTU. The Executive Secretary shall judge whether Direct Filtration is suitable given the quality of the proposed source water (see R309-204-5(2)(b)).

(b) Pilot plant studies, acceptable to the Executive Secretary, shall be conducted prior to the preparation of final engineering plans.

(c) Requirements for flash mix and flocculation basin design are given in sub-sections R309-206-12(1) and R309-206-12(2).

(d) Chemical addition and mixing equipment shall be designed to be capable of providing a visible, but not necessarily settleable, floc.

(e) Surface wash, subsurface wash, or air scour shall be provided for the filters in accordance with sub-section R309-206-15(7).

(f) A continuous monitoring turbidimeter shall be installed on each filter effluent line and shall be of a type with at least two alarm conditions capable of meeting the requirements of subsections R309-206-15(4)(b)(vi) or R309-206-15(4)(c)(vii). The combined plant effluent shall be equipped with a continuous turbidimeter having a chart recorder. Additional monitoring equipment to assist in control of the coagulant dose may be required (i.e. streaming current gauges, particle counters, etc.) if the plant cannot consistently meet the requirements of rule R309-103.

(g) In addition to the alarm conditions required above, the plant shall be designed and operated so that the plant will automatically shut down when a source water turbidity of 20 NTU lasts longer than three hours, or when the source water turbidity exceeds 30 NTU at any time.

(h) The plant design and land ownership surrounding the plant shall allow for the installation of conventional sedimentation basins. Sedimentation basins may be required if the Executive Secretary determines the plant is failing to meet minimum water quality or performance standards.

R309-207-6. Slow Sand Filtration.

(1) Acceptability.

Slow sand filtration means a process involving passage of raw water through a bed of sand at low velocity resulting in substantial particle removal by physical and biological mechanisms. The acceptability of slow sand filters as a substitute for "conventional surface water treatment" facilities (detailed in R309-206) shall be determined by the Executive Secretary based on suitability of the source water and demand characteristics of the system.

(2) Source Water Quality.

The Executive Secretary may impose design requirements in addition to those listed herein, in allowing this process. The following shall be considered, among other factors, in determining whether slow sand filtration will be acceptable:

(a) Source water turbidity must be low and consistent. Slow Sand Filtration shall be utilized only when the source waters have turbidity less than 50 NTU and color less than 30 units (see R309-204-5(2)(b)).

(b) The nature of the turbidity particles shall be considered. Turbidity must not be attributable to colloidal clay.

(c) The nature and extent of algae growths in the raw water shall be considered. Algae must not be a species considered as filter and screen-clogging algae as indicated in "Standard Methods for the Examanation of Water and Wastewater" prepared and published jointly by American Public Health Association, American Water Works Association, and Water Environment Federation. High concentrations of algae in the raw water can cause short filter runs; the amount of algae, expressed as the concentration of chlorophyll a in the raw water shall not exceed 0.005 mg/l.

(3) Pilot Plant Studies.

The Executive Secretary shall allow the use of Slow Sand Filtration only when the supplier's engineering studies show that the slow sand facility can consistently produce an effluent meeting the quality requirements of rule R309-103. The Executive Secretary should be consulted prior to the detailed design of a slow sand facility.

(4) Operation.

Effluent from a Slow Sand Filtration facility shall not be introduced into a public water supply until an active biological mat has been created on the filter.

(5) Design requirements.

The following design parameters shall apply to each Slow Sand Filtration plant:

(a) At least three filter units shall be provided. Where only three units are provided, any two shall be capable of meeting the plant's design capacity (normally the projected "peak daily flow") at the approved filtration rate. Where more than three filter units are provided, the filters shall be capable of meeting the plant design capacity at the approved filtration rate with any one filter removed from service.

(b) All filters shall be protected to prevent freezing. If covered by a structure, enough headroom shall exist to permit normal movement by operating personnel for scraping and sand removal operations. There shall be adequate manholes and access ports for the handling of sand. An overflow at the maximum filter water level shall be provided.

(c) The permissible rates of filtration shall be determined by the quality of the source water and shall be determined by experimental data derived during pilot studies conducted on the source water. Filtration rates of 0.03 gpm/sf to 0.01 gpm/sf shall be acceptable (equivalent to two to six million gallons per day per acre). Somewhat higher rates may be acceptable when demonstrated to the satisfaction of the Executive Secretary.

(d) Each filter unit shall be equipped with a main drain and an adequate number of lateral underdrains to collect the filtered water. The underdrains shall be so spaced that the maximum velocity of the water flow in the underdrain will not exceed 0.75 fps. The maximum spacing of the laterals shall not exceed three feet if pipe laterals are used.

(e) Filter sand shall be placed on graded gravel layers for an initial filter sand depth of 30 inches. A minimum of 24 inches of filter sand shall be present, even after scraping. The effective size of the filter sand shall be between 0.30 mm and 0.45 mm in diameter. The filter sand uniformity coefficient shall not exceed 2.5. Further, the sand shall throughly washed and found to be clean and free from foreign matter.

(f) A three-inch layer of well rounded sand shall be used as a supporting media for filter sand. It shall have an effective size of 0.8 mm to 2.0 mm in diameter and the uniformity coefficient shall not be greater than 1.7.

(g) A supporting gravel media shall be provided. It shall consist of hard, durable, rounded silica particles and shall not include flat or elongated particles. The coarsest gravel shall be 2.5 inches in size when the gravel rests directly on the strainer system, and must extend above the top of the perforated laterals. Not less than four layers of gravel shall be provided in accordance with the following size and depth distribution when used with perforated laterals:

TABLE

Size	Depth
2 1/2 to 1 1/2 inches	5 to 8 inches
1 1/2 to 3/4 inches	3 to 5 inches
3/4 to 1/2 inches	3 to 5 inches
1/2 to 3/16 inches	2 to 3 inches
3/16 to 3/32 inches	2 to 3 inches

Reduction of gravel depths may be considered upon justification to the Executive Secretary when proprietary filter bottoms are specified.

(h) Slow sand filters shall be designed to provide a depth of at least three to five feet of water over the sand.

(i) Each filter shall be equipped with: a loss of head gauge; an orifice, venturi meter, or other suitable metering device installed on each filter to control the rate of filtration; and an effluent pipe designed to maintain the water level above the top of the filter sand.

(j) Disinfection of the effluent of Slow Sand Filtration plants will be required.

(k) A filter-to-waste provision shall be included.

(l) Electrical power shall be available at the plant site.

R309-207-7. Diatomaceous Earth Filtration.

The use of Diatomaceous Earth Filtration units may be considered for application to surface waters with low turbidity and low bacterial contamination, and additionally may be used for iron removal for groundwaters of low quality, providing the removal is effective and the water is of sanitary quality before treatment.

The acceptability of Diatomaceous Earth Filtration as a substitute for "conventional surface water treatment" facilities (detailed in rule R309-206) shall be determined by the Executive Secretary. Determination may be based on the level of support previously exhibited by the public water system management along with a finding by the Executive Secretary that "conventional surface water treatment" or other methods herein described are too costly or unacceptable.

Diatomaceous Earth Filtration consists of a process to remove particles from water wherein a precoat cake of diatomaceous earth filter media is deposited on a support membrane (septum), and while the water is filtered by passing through the cake on the septum, additional filter media known as body feed is continuously added to the source water to maintain the permeability of the filter cake. Diatomite filters are characterized by rigorous operating requirements, high operating costs, and increased sludge production.

Part 4, Section 4.2.3, Diatomaceous Earth Filtration, in the Recommended Standards for Water Works (commonly known as "Ten State Standards"), 1992 edition is hereby incorporated by reference and shall govern the design and operation of diatomaceous earth filtration facilities. This document is published by the Great Lakes-Upper Mississippi River Board of Public Health and Environmental Managers. A copy is available in the office of the Division for reference.

R309-207-8. Membrane Technology.

(1) Acceptability.

Surface waters, or groundwater under the direct influence of surface water (UDI), may be treated using membrane technology (microfiltration, ultrafiltration, nanofiltration) coupled with "primary and secondary disinfection."

(2) Pilot Plant Study.

Because this is a relatively new technology, appropriate investigation shall be conducted by the public water system to assure that the process will produce the required quality of water at a cost which can be borne by the public water system consumers. A pilot plant study shall be conducted prior to the commencement of design. The study must be conducted in accordance with the "State Alternative Technology Approval

Protocol" as published by the Association of State Drinking Water Administrators (copies available from the Division). Further, the protocol and treated water parameters must conform to the requirements of "Development of a Small-Scale Bench Membrane Unit and Protocol for Compliance with the ICR" as published by EPA.

(3) Design Requirements.

The following items shall be addressed in the design of any membrane technology plant intended to provide microbiological treatment of surface waters or groundwater "UDI:"

(a) The facility shall be equipped with an on-line particle counter on the final effluent.

(b) The facility shall be equipped with an automatic membrane integrity test system.

R309-207-9. New Treatment Processes or Equipment.

The policy of the Board is to encourage, rather than to obstruct, the development of new methods and equipment for the treatment of water. Nevertheless, any new processes or equipment must have been thoroughly tested in full-scale, comparable installations, before approval of plans can be issued. Refer to the "State Alternative Technology Approval Protocol" as published by the Association of State Drinking Water Administrators (copies available from the Division).

No new treatment process will be approved for use in Utah unless the designer or supplier can present evidence satisfactory to the Executive Secretary that the process will insure the delivery of water of safe, sanitary quality, without imposing undue problems of supervision, operation and/or control.

KEY: drinking water, direct filtration, slow sand filtration, membrane technology
January 1, 1998 19-4-104

R309. Environmental Quality, Drinking Water.
R309-208. Facility Design and Operation: Miscellaneous Treatment Methods.
R309-208-1. Purpose.

The purpose of this rule is to provide specific requirements for miscellaneous water treatment methods which are primarily intended to remove chemical contaminants from drinking water; or, adjust the chemical composition of drinking water. It is intended to be applied in conjunction with other rules, specifically R309-201 through R309-212. Collectively, these rules govern the design, construction, operation and maintenance of public drinking water system facilities. These rules are intended to assure that such facilities are reliably capable of supplying adequate quantities of water which consistently meet applicable drinking water quality requirements and do not pose a threat to general public health.

R309-208-2. Authority.

This rule is promulgated by the Drinking Water Board as authorized by Title 19, Environmental Quality Code, Chapter 4, Safe Drinking Water Act, Subsection 104(1)(a)(ii) of the Utah Code Annotated and in accordance with 63-46a of the same, known as the Administrative Rulemaking Act.

R309-208-3. Definitions.

Definitions for certain terms used in this rule are given in R309-200.

R309-208-4. General.

For each process described in this section pertinent rules are given. The designer must also, however, incorporate the relevant rules given in other sections into the plans and specifications for any of these specialized treatment methods. Where applicable, the following topics must be addressed:

(1) Plant Siting (see R309-206-6).
(2) Plant Reliability (see R309-206-7).
(3) Color Coding and Pipe Marking (see R309-206-8).
(4) Chemical Addition (see R309-206-11).
(5) Miscellaneous Plant Facilities (see R309-206-17, particularly sub-section R309-206-17(1), Laboratory).
(6) Operation and Maintenance Manuals (see R309-206-19).
(7) Safety (see R309-206-21).
(8) Disposal of Treatment Plant Waste (see R309-206-23).
(9) Disinfection (see R309-205).

R309-208-5. Fluoridation.

Part 4, Section 4.7, Fluoridation, in the Recommended Standards for Water Works (commonly known as "Ten State Standards"), 1992 edition is hereby incorporated by reference and shall govern the design and operation of fluoridation facilities. This document is published by the Great Lakes-Upper Mississippi River Board of Public Health and Environmental Managers. A copy is available in the office of the Division for reference.

R309-208-6. Taste and Odor Control.

Part 4, Section 4.9, Taste and Odor Control, in the Recommended Standards for Water Works (commonly known as "Ten State Standards"), 1992 edition is hereby incorporated by reference and shall govern the design and operation of taste and odor control facilities. This document is published by the Great Lakes-Upper Mississippi River Board of Public Health and Environmental Managers. A copy is available in the office of the Division for reference.

R309-208-7. Stabilization.

Part 4, Section 4.8, Stabilization, in the Recommended Standards for Water Works (commonly known as "Ten State Standards"), 1992 edition is hereby incorporated by reference and it shall govern the design and operation of stabilization facilities. This document is published by the Great Lakes-Upper Mississippi River Board of Public Health and Environmental Managers. A copy is available in the office of the Division for reference.

R309-208-8. Deionization.

Current practical methods of deionization include Ion Exchange, Reverse Osmosis and Electrodialysis. Additional methods of deionization may be approved subject to the presentation of evidence of satisfactory reliability.

All properly developed groundwater sources having water quality exceeding 2,000 mg/l Total Dissolved Solids and/or 500

mg/l Sulfate shall be either properly diluted or treated by the methods outlined in this section. Deionization cannot be considered a substitute process for conventional complete treatment outlined in R309-206.

(1) Ion Exchange.

(a) General.

Great care shall be taken by the designer to avoid loading the media with water high in organics.

(b) Design.

(i) Pretreatment shall be provided per the manufacturer's recommendation.

(ii) Upflow or down flow units are acceptable.

(iii) Exchangers shall have at least a three foot media depth.

(iv) Exchangers shall be designed to meet the recommendations of the media manufacturer with regard to flow rate or contact time. In any case, flow shall not exceed seven gpm/sf of bed area. The plant shall be provided with an influent or effluent meter as well as a meter on any bypass line.

(v) Chemical feeders used shall conform with R309-206-8. All solution tanks shall be covered.

(vi) Regenerants added shall be uniformly distributed over the entire media surface of upflow or downflow units. Regeneration shall be according to the media manufacturer's recommendations.

(vii) The wash rate capability shall be in excess of the manufacturers recommendation and should be at least six to eight gpm/sf of bed area.

(viii) Disinfection (see R309-205) shall be required ahead of the exchange units where this does not interfere with the media.

Where disinfection interferes with the media, disinfection shall follow the treatment process.

(c) Waste Disposal.

Waste generated by ion exchange treatment shall be disposed of in accordance with R309-206-23.

(2) Reverse Osmosis.

(a) General.

The design shall permit the easy exchange of modules for cleaning or replacement.

(b) Design Criteria.

(i) Pretreatment shall be provided per the manufacturer's recommendation.

(ii) Required equipment includes the following items: pressure gauges on the upstream and downstream side of the filter; a conductivity meter present at the site; taps for sampling remeate, concentrate and blended flows (if practiced). If a continuous conductivity meter is permanently installed, piping shall be such that the meter can be disconnected and calibrated with standard solutions at a frequency as recommended by the manufacturer.

(iii) Aeration, if practiced, shall conform with provisions of R309-208-9.

(iv) Cleaning shall be routinely done in accordance with the manufacturer's recommendations.

(v) Where the feed water pH is altered, stabilization of the finished water is mandatory.

(c) Waste Disposal.

Waste generated by reverse osmosis treatment shall be disposed of in accordance with R309-206-23.

(3) Electrodialysis.

(a) General.

(b) Design.

(i) Pretreatment shall be provided per the manufacturers recommendation.

(ii) The design shall include ability to: measure plant flow rates; measure feed temperature if the water is heated (a high temperature automatic cutoff is required to prevent membrane damage); measure D.C voltage at the first and second stages as well as on each of the stacks. Sampling taps shall be provided to measure the conductivity of the feed water, blowdown water, and product water. D.C. and A.C. kilowatt-hour meters to record the electricity used shall also be provided.

(c) Waste Disposal.

Waste generated by electrodialysis treatment shall be disposed of in accordance with R309-206-23.

R309-208-9. Aeration.

Part 4, Section 4.5, Aeration, in the Recommended Standards for Water Works (commonly known as "Ten State Standards"), 1992 edition, is hereby incorporated by reference and shall govern the design and operation of aeration facilities. This document is published by the Great Lakes-Upper Mississippi River Board of Public Health and Environmental Managers. A copy is available in the office of the Division for reference.

R309-208-10. Softening.

Part 4, Section 4.4, Softening, in the Recommended Standards for Water Works (commonly known as "Ten State Standards"), 1992 edition, is hereby incorporated by reference and shall govern the design and operation of softening facilities. This document is published by the Great Lakes-Upper Mississippi River Board of Public Health and Environmental Managers. A copy is available in the office of the Division for reference.

R309-208-11. Iron and Manganese Control.

Iron and manganese control, as used herein, refers solely to treatment processes designed specifically for this purpose. The treatment process used will depend upon the character of the source water. The selection of one or more treatment processes shall meet specific local conditions as determined by engineering investigations, including chemical analyses of representative samples of water to be treated, and receive approval of the Executive Secretary. It may be necessary to operate a pilot plant in order to gather all information pertinent to the design. Consideration should be given to adjust the pH of the raw water to increase the rate of the chemical reactions involved.

Removal or treatment of iron and manganese are normally by the following methods:

(1) Removal by Oxidation, Detention and Filtration.

(a) Oxidation.

Oxidation may be by aeration, or by chemical oxidation with chlorine, potassium permanganate, ozone or chlorine dioxide.

(b) Detention.

(i) Reaction time - A minimum detention time of twenty minutes shall be provided following aeration in order to insure that the oxidation reactions are as complete as possible. This minimum detention may be omitted only where a pilot plant study indicates no need for detention. The detention basin shall be designed as a holding tank with no provisions for sludge collection but with sufficient baffling to prevent short circuiting.

(ii) Sedimentation - Sedimentation basins shall be provided when treating water with high iron and/or manganese content, or where chemical coagulation is used to reduce the load on the filters. Provisions for sludge removal shall be made.

(c) Filtration.

(i) General - Minimum criteria relative to number, rate of filtration, structural details and hydraulics, filter media, etc., provided for rapid rate gravity filters shall apply to pressure filters where appropriate, and may be used in this application but cannot be used in the filtration of surface waters or following lime-soda softening.

(ii) Details of Design for Pressure Filter - The filters shall be designed to provide for:

(A) Loss of head gauges on the inlet and outlet pipes of each filter,

(B) An easily readable meter or flow indicator on each battery of filters,

(C) Filtration and backwashing of each filter individually with an arrangement of piping as simple as possible to accomplish these purposes,

(D) The top of the washwater collectors to be at least twenty-four (24) inches above the surface of the media,

(E) The underdrain system to efficiently collect the filtered water and to uniformly distribute the backwash water at a rate capable of not less than 15 gpm/sf of filter area,

(F) Backwash flow indicators and controls that are easily readable while operating the control valves,

(G) An air release valve on the highest point of each filter,

(H) An accessible manhole to facilitate inspections and repairs,

(I) Means to observe the wastewater and filters during backwashing, and

(J) Construction to prevent cross-connection.

(2) Removal by the Lime-soda Softening Process.

For removal by the lime-soda softening process refer to Part 4, Section 4.4, Softening, in the Recommended Standards for Water Works (commonly known as "Ten State Standards"), 1992 edition as indicated in R309-208-10.

(3) Removal by Manganese Greensand Filtration.

This process, consisting of the continuous feed of potassium permanganate to the influent of a manganese greensand filter, is more applicable to the removal of manganese than the removal of iron.

(a) Provisions shall be made to apply the permanganate as far ahead of the filter as practical and at a point immediately before the filter.

(b) An anthracite media cap of at least six inches shall be provided over manganese greensand.

(c) The normal filtration rate is three gpm/sf.

(d) The normal wash rate is 8 to 10 gpm/sf.

(e) Air washing shall be provided.

(f) Sample taps shall be provided:

(i) prior to application of permanganate,

(ii) immediately ahead of filtration,

(iii) at a point between the anthracite media and the manganese greensand,

(iv) halfway down the manganese greensand, and

(v) at the filter effluent.

(4) Removal by Ion Exchange.

This process is not acceptable where either the source water or wash water contains dissolved oxygen.

(5) Sequestration by Polyphosphates.

This process shall not be used when iron, manganese or a combination thereof exceeds 1.0 milligram per liter. The total phosphate applied shall not exceed 10 milligrams per liter as PO_4. Where phosphate treatment is used, satisfactory chlorine residuals shall be maintained in the distribution system and the following required:

(a) feeding equipment shall conform to the requirements of R309-206-11(7),

(b) stock phosphate solution shall be kept covered and disinfected by carrying approximately 10 mg/l free chlorine residual,

(c) polyphosphates shall not be applied ahead of iron and manganese removal treatment. If no iron or manganese removal treatment is provided, the point of application shall be prior to any aeration, oxidation or disinfection steps, and

(d) phosphate chemicals must comply with ANSI/NSF Standard 60.

Sampling taps shall be provided for control purposes. Taps shall be located on each raw water source, and on each treatment unit influent and effluent.

Waste generated by iron and manganese control treatment shall be disposed of in accordance with R309-206-23.

R309-208-12. New Treatment Processes or Equipment.

The policy of the Board is to encourage, rather than to obstruct, the development of new methods and equipment for the treatment of water. Nevertheless, any new processes or equipment must have been thoroughly tested in full-scale, comparable installations, before approval of plans can be issued. Refer to Guidelines for Pilot Plant Protocol, 10/82, published by the Division.

No new treatment process will be approved for use in Utah unless the designer or supplier can present evidence satisfactory to the Executive Secretary that the process will insure the delivery of water of safe, sanitary quality, without imposing undue problems of supervision, operation and/or control.

KEY: drinking water, miscellaneous treatment, stabilization, iron and manganese control
January 1, 1998 19-4-104

R309. Environmental Quality, Drinking Water.
R309-209. Facility Design and Operation: Pump Stations.
R309-209-1. Purpose.

The purpose of this rule is to provide specific requirements for pump stations utilized to deliver drinking water to facilities of public water systems. It is intended to be applied in

conjunction with rules R309-201 through R309-211. Collectively, these rules govern the design, construction, operation and maintenance of public drinking water system facilities. These rules are intended to assure that such facilities are reliably capable of supplying adequate quantities of water which consistently meet applicable drinking water quality requirements and do not pose a threat to general public health.

R309-209-2. Authority.

This rule is promulgated by the Drinking Water Board as authorized by Title 19, Environmental Quality Code, Chapter 4, Safe Drinking Water Act, Subsection 104(1)(a)(ii) of the Utah Code Annotated and in accordance with 63-46a of the same, known as the Administrative Rulemaking Act.

R309-209-3. Definitions.

Definitions for certain terms used in this rule are given in R309-200.

R309-209-4. General.

Pumping stations shall be designed to maintain the sanitary quality of water and to provide ample quantities of water at sufficient pressure.

R309-209-5. Pumping Facilities.

(1) Location.

(a) The pumping station shall be designed such that:

(i) the proposed site will meet the requirements for sanitary protection of water quality, hydraulics of the system, and protection against interruption of service by fire, flood or any other hazard;

(ii) the access to the pump station shall be six inches above the surrounding ground and the station located at an elevation which is a minimum of three feet above the 100-year flood elevation, or three feet above the highest recorded flood elevation, which ever is higher, or protected to such elevations;

(iii) the station is readily accessible at all times unless permitted to be out of service for the period of inaccessibility;

(iv) surrounding ground is graded so as to lead surface drainage away from the station; and

(v) the station is protected to prevent vandalism and entrance by animals or unauthorized persons.

(2) Pumping Stations.

(a) Building structures for both raw and drinking water shall:

(i) have adequate space for the installation of additional pumping units if needed, and for the safe servicing of all equipment;

(ii) be of durable construction, fire and weather resistant, with outward-opening doors;

(iii) have an interior floor elevation at least six inches above the exterior finished grade;

(iv) have any underground facilities, especially wet wells, waterproofed;

(v) have all interior floors drained in such a manner that the quality of drinking water contained in any wet wells will not be endangered. All floors shall slope at least one percent (one foot every 100 feet) to a suitable drain; and

(vi) provide a suitable outlet for drainage from pump glands without discharging onto the floor.

(b) Suction wells shall:

(i) be watertight;

(ii) have floors sloped to permit removal of water and entrained solids;

(iii) be covered or otherwise protected against contamination; and

(iv) have two pumping compartments or other means to allow the suction well to be taken out of service for inspection, maintenance, or repair.

(c) Servicing equipment shall consist of:

(i) crane-ways, hoist beams, eyebolts, or other adequate facilities for servicing or removal of pumps, motors or other heavy equipment;

(ii) openings in floors, roofs or wherever else needed for removal of heavy or bulky equipment; and

(iii) a convenient tool board, or other facilities as needed, for proper maintenance of the equipment.

(d) Stairways and ladders shall:

(i) be provided between all floors, and in pits or compartments which must be entered; and

(ii) have handrails on both sides, and treads of non-slip material. They shall have risers not exceeding nine inches and treads wide enough for safety.

(e) Heating provisions shall be adequate for:

(i) the comfort of the operator; and

(ii) the safe and efficient operation of the equipment.

(f) Ventilation shall:

(i) conform to existing local and/or state codes; and

(ii) forced ventilation of at least six changes of air per hour shall be provided for all rooms, compartments, pits and other enclosures below ground floor, and any area where unsafe atmosphere may develop or where excessive heat may be built up.

(g) Lighting.

Pump stations shall be adequately lighted throughout. All electrical work shall conform to the requirements of the relevant state and/or local building codes.

(h) Sanitary and other conveniences.

Plumbing shall be so installed as to prevent contamination of a public water supply. Wastes shall be discharged in accordance with R309-212-5(1).

(3) Pumps.

(a) Capacity.

Capacity shall be provided by having at least two pumping units. With any one pump out of service, the remaining pump or pumps shall be capable of providing the peak day demand of the system or the specific portion of the system serviced by the pumps.

The pumping units shall:

(i) have ample capacity to supply the peak day demand against the required distribution system pressure without dangerous overloading;

(ii) be driven by prime movers able to meet the maximum horsepower condition of the pumps without use of service factors;

(iii) be provided readily available spare parts and tools; and

(iv) be served by control equipment that has proper heater

and overload protection for air temperature encountered.

(b) Suction Lift.

Suction lift, where possible, shall be avoided. If suction lift is necessary, the required lift shall be within the pump manufacturer's recommended limits and provision shall be made for priming the pumps.

(c) Priming.

Prime water shall not be of lesser sanitary quality than that of the water being pumped. Means shall be provided to prevent back siphonage. When an air-operated ejector is used, the screened intake shall draw clean air from a point at least 10 feet above the ground or other source.

(4) Booster Pumps.

(a) Booster pumps shall be located or controlled so that:

(i) they will not produce negative pressure in their suction lines;

(ii) automatic cutoff pressure shall be at least 10 psi in the suction line;

(iii) automatic or remote control devices shall have a range between the start and cutoff pressure which will prevent excessive cycling; and

(iv) a bypass is available.

(b) Inline booster pumps (pumps withdrawing water directly from distribution lines without the benefit of storage and feeding such water directly into other distribution lines rather than storage), in addition to the other requirements of this section, shall be accessible for servicing and repair and located or controlled so that the intake pressure shall be at least 20 psi when the pump is in normal operation.

(c) Individual home booster pumps shall not be allowed for any individual service from the public water supply main.

(5) Automatic and remote controlled stations.

All remote controlled stations shall be electrically operated and controlled and shall have signaling apparatus of proven performance. Installation of electrical equipment shall conform with the applicable state and local electrical codes and the National Electrical Code.

(6) Appurtenances.

(a) Valves.

Valves shall be used to permit satisfactory operation, maintenance, and repair of the equipment. If foot valves are necessary, they shall have a net valve area of at least 2 1/2 times the area of the suction pipe and they shall have a positive-acting check valve on the discharge side between the pump and the shut-off valve.

(b) Piping.

Piping within and near pumping stations shall:

(i) be designed so that the friction losses will be minimized;

(ii) not be subject to contamination;

(iii) have watertight joints;

(iv) be protected against surge or water hammer; and

(v) be such that each pump has an individual suction line or that the lines shall be so manifolded that they will insure similar hydraulic and operating conditions.

(c) Gauges and Meters.

Each pump shall:

(i) have a standard pressure gauge on its discharge line;

(ii) have a compound gauge (capable of indicating negative pressure or vacuum as well as positive pressure) on its suction line; and

(iii) have recording gauges in the larger stations.

(d) Water Seal.

Where pumps utilize water seals, the seals shall:

(i) not be supplied with water of a lesser sanitary quality than that of the water being pumped; and

(ii) when pumps are sealed with potable water and are pumping water of lesser sanitary quality, the seal shall be provided with a break tank open to atmospheric pressure, and have an air gap of at least six inches or two pipe diameters, whichever is greater, between the feeder line and the spill line of the tank.

(e) Controls.

Controls shall be designed in such a manner that they will operate their prime movers, and accessories, at the rated capacity without dangerous overload. Where two or more pumps are installed, provision shall be made for alternation. Provision shall be made to prevent energizing the motor in the event of a backspin cycle. Electrical controls shall be protected against flooding. Equipment shall be provided or other arrangements made to prevent surge pressures from activating controls which switch on pumps or activate other equipment outside the normal design cycle of operation.

(f) Standby Power.

Standby power, to ensure continuous service when the primary power has been interrupted, shall be provided from at least two independent sources or a standby or an auxiliary source shall be provided. If standby power is provided by onsite generators or engines, the fuel storage and fuel line must be designed to protect the water supply from contamination.

(g) Water Pre-Lubrication.

When automatic pre-lubrication of pump bearings is necessary and an auxiliary direct drive power supply is provided, the pre-lubrication line shall be provided with a valved bypass around the automatic control so that the bearings can, if necessary, be lubricated manually before the pump is started or the pre-lubrication controls shall be wired to the auxiliary power supply.

R309-209-6. Hydropneumatic Systems.

(1) General.

Hydropneumatic systems shall comply with all appropriate sections of R309-209-5.

Unpressurized ground level or elevated storage, designed in accordance with R309-210, shall be provided in addition to the diaphragm or air tanks. Diaphragm or air pressure tank storage shall not be considered for fire protection purposes or effective system storage.

(2) Location.

If diaphragm or air tanks and appurtenances are located below ground, adequate provisions for drainage, ventilation, maintenance, and flood protection shall be made and the electrical controls shall be located above grade as required by R309-209-5(6)(e). Any discharge piping from combination air release/vacuum relief valves(air/vac's) or pressure relief valves located in below ground chambers shall comply with all the pertinent requirements of R309-211-6(6).

(3) Operating Pressures.

The system shall be designed to provide a minimum of 20 psi pressure at all points in the distribution system during peak instantaneous flow conditions. A pressure gauge shall be installed on the pressure tank inlet line.

(4) Piping.

In addition to the bypass required by R309-209-5(4)(v) on the pumps, the diaphragm or air tanks shall have sufficient bypass piping to permit operation of the hydropneumatic system while one or more of the tanks are being repaired or painted.

(5) Pumps.

At least two pumping units shall be provided. With any pump out of service the remaining pump or pumps shall be capable of providing the peak instantaneous demand of the system as described in R309-202-6(2), while recharging the pressure tank at 115 percent of the upper pressure setting. Pump cycling shall not exceed 15 starts per hour, with a maximum of ten starts per hour preferred.

(6) Pressure Tanks.

(a) Pressure tanks shall meet the requirement of state and local laws and regulations for the manufacture and installation of unfired pressure vessels. Interior coatings or diaphragms used in pressure tanks that will come into contact with the drinking water shall comply with ANSI/NSF Standard 61. Non diaphragm pressure tanks shall have an access manhole, a drain, control equipment consisting of pressure gauge, water sight glass, automatic or manual air blow-off, means for adding air, and pressure operated start-stop controls for the pumps.

(b) The minimum volume of the pressure tank or combination of tanks shall be greater than or equal to the sum of S and the value of CX divided by 4W.

where the following values are used in the equation above:

C = minutes per operating cycle, four minutes to meet the requirements of R309-209-6(5) above or preferably six minutes, and is equal to pump ON time plus pump OFF time.

X = output capacity rating of the pump(s) at the high pressure condition in the tank(s), in gpm.

W = percent of volume withdrawn during a given drop in tank pressure: specifically, between P_h and P_l, $W = 100(P_h - P_l)/P_h$ where P_h = high pressure in tank in psia (high absolute pressure) and P_l = low pressure in tank is psia (low absolute pressure). Values of W range typically from 0.26 to 0.31 for pressure differentials of 15 to 30 psi and high system pressures of 45 to 85 psi at elevations of approximately 5,000 feet.

S = water seal volume in gallons, the volume of inactive water remaining in tank at low pressure condition.

(7) Air Volume.

The method of adjusting the air volume shall be acceptable to the Executive Secretary. Air delivered by compressors to the pressure tank shall be adequately filtered, oil free, and be of adequate volume. Any intake shall be screened and draw clean air from a point at least 10 feet above the ground or other source of possible contamination, unless the air is filtered by an apparatus approved by the Executive Secretary. Discharge piping from air relief valves shall be designed and installed with screens to eliminate the possibility of contamination from this source.

(8) Water Seal.

For air pressure tanks without an internal diaphragm the volume of water remaining in a air pressure tank at the lower pressure setting shall be sufficient to provide an adequate water seal at the outlet to prevent the leakage of air.

The following water seal depths shall be considered as minimum requirements.

(a) Horizontal outlets shall maintain sufficient depth, as measured from the centerline of the horizontal outlet pipe, such that the depth is greater than or equal to the sum of d and twice the value v^2 divided by 2G.

(b) Vertical outlets, if unbaffled, the depth shall be the same as in (a) except measured from the pipe outlet; if baffled, the depth shall be greater than or equal to the value v^2 divided by 2G.

where the following values are used in the equations above:

v = the axial velocity in the pipe outlet for the peak instantaneous demand flow rate of the system.

d = the diameter of the outlet pipe in ft.

G = the gravitational constant of 32.2 ft/sec/sec.

(9) Standby Power Supply.

Where a hydropneumatic system is intended to serve a public water system, categorized as a community water system as defined in R309-101.1, a standby source of power shall be provided.

KEY: drinking water, pumps, hydropneumatic systems, individual home booster pumps
January 1, 1998 19-4-104

R309. Environmental Quality, Drinking Water.
R309-210. Facility Design and Operation: Drinking Water Storage Tanks.
R309-210-1. Purpose.

The purpose of this rule is to provide specific requirements for public drinking water storage tanks. It is intended to be applied in conjunction with other rules, specifically R309-201 through R309-211. Collectively, these rules govern the design, construction, operation and maintenance of public drinking water system facilities. These rules are intended to assure that such facilities are reliably capable of supplying adequate quantities of water which consistently meet applicable drinking water quality requirements and do not pose a threat to general public health.

R309-210-2. Authority.

This rule is promulgated by the Drinking Water Board as authorized by Title 19, Environmental Quality Code, Chapter 4, Safe Drinking Water Act, Subsection 104(1)(a)(ii) of the Utah Code Annotated and in accordance with 63-46a of the same, known as the Administrative Rulemaking Act.

R309-210-3. Definitions.

Definitions for certain terms used in this rule are given in R309-200.

R309-210-4. General.

Storage for drinking water shall be provided as an integral part of each public drinking water system.

R309-210-5. Size of Tank(s).

Required Storage Capacity: Storage tanks shall be sized in accordance with the requirements of R309-203.

R309-210-6. Tank Material and Structural Adequacy.

(1) Materials.

The materials used in drinking water storage structures shall provide stability and durability as well as protect the quality of the stored water.

(2) Structural Design.

The structural design of drinking water storage structures shall be sufficient for the environment in which they are located. The design shall incorporate a careful analysis of potential seismic risks.

R309-210-7. Location of Tanks.

(1) Pressure Considerations.

The location of the reservoir and the design of the water system shall be such that the minimum working pressure in the distribution system under peak instantaneous flow conditions, including fire flow, is 20 psi.

(2) Connections.

Tanks shall be located at an elevation where present and anticipated connections can be adequately served. System connections shall not be placed at elevations such that a minimum of 20 psi at peak instantaneous flow cannot be continuously maintained.

(3) Sewer Proximity.

Sewers, drains, standing water, and similar sources of possible contamination shall be kept at least 50 horizontal feet from the reservoir.

(4) Standing Surface Water.

The area surrounding a ground-level drinking water storage structure shall be graded in a manner that will prevent surface water from standing within 50 horizontal feet of the structure.

(5) Ability to Isolate.

Drinking water storage structures shall be designed and located so that they can be isolated from the distribution system. Storage structures shall be capable of being drained for cleaning or maintenance without necessitating loss of pressure in the distribution system.

(6) Earthquake and Landslide Risks.

Potential geologic hazards shall be taken into account in selecting a tank location. Earthquake and landslide risks shall be evaluated.

(7) Security.

The site location and design of a drinking water storage reservoir shall take into consideration security issues and potential for vandalism.

R309-210-8. Tank Burial.

(1) Flood Elevation.

The bottom of drinking water storage reservoirs shall be located at least three feet above the 100 year flood level or the highest known maximum flood elevation, whichever is higher.

(2) Ground Water.

When the bottom of a drinking water storage reservoir is to be below normal ground surface, it shall be placed above the local ground water table elevation.

(3) Covered Roof.

When the roof of a drinking water storage reservoir is to be covered by earth, it shall be sloped to drain and have a membrane cover.

R309-210-9. Tank Roof and Sidewalls.

(1) Protection From Contamination.

All drinking water storage structures shall have suitable watertight roofs and sidewalls which shall also exclude birds, animals, insects, and excessive dust.

(2) Openings.

Openings in the roof and sidewalls shall be kept to a minimum and comply with the following:

(a) Any pipes running through the roof or sidewall of a metal drinking water storage structure shall be welded, or properly gasketed. In new concrete tanks, these pipes shall be connected to standard wall castings with seepage rings which have been poured in place. Vent pipes, in additions to seepage rings, shall have raised concrete curbs which direct water away from the vent pipe and are formed as a single pour with the roof deck.

(b) Openings in a storage structure roof or top, designated to accommodate control apparatus or pump columns, shall be welded, gasketed, or curbed and sleeved as above, and shall have additional proper shielding to prevent vandalism.

(c) Openings shall be kept as far away as possible from the storage tank outlet and other sources of surface water.

(3) Adjacent Compartments.

Drinking water shall not be stored or conveyed in a compartment adjacent to wastewater when the two compartments are separated by a single wall.

(4) Slope of Roof.

The roof of all storage structures shall be designed for drainage. Parapets, or similar construction which would tend to hold water and snow, shall not be utilized unless adequate waterproofing and drainage are provided. Downspout or roof drain pipes shall not enter or pass through the reservoir.

R309-210-10. Internal Features.

The following shall apply to internal features of drinking water storage structures:

(1) Drains.

If a drain is provided, it shall not discharge to a sanitary sewer. If local authority allows discharge to a storm drain, the drain discharge shall have a physical air gap of at least two pipe diameters between the discharge end of the pipe and the overflow rim of the receiving basin.

(2) Internal Catwalks.

Internal catwalks, if provided and located so as to be over the drinking water, shall have a solid floor with raised edges. The edges and floor shall be so designed that shoe scrapings or dirt will not fall into the drinking water.

(3) Inlet and Outlet.

To minimize potential sediment flow from the structure, the normal outlet pipes from all reservoirs shall be located in a manner to provide a silt trap prior to discharge into the distribution system.

(4) Disinfection.

If the drinking water reservoir is to be utilized as a contact

basin for disinfection purposes, the design engineer shall conduct tracer studies or other tests, previously approved by the Executive Secretary, to determine the minimum contact time and the potential for short circuiting.

R309-210-11. ANSI/NSF International, Standard 61.

(1) ANSI/NSF Standard 61 Certification.

All interior surfaces or coatings shall consist of products which are certified by laboratories approved by ANSI and which comply with ANSI/NSF Standard 61 or other standards approved by the Executive Secretary. This requirement applies to any pipes and fittings, protective materials (e.g. paints, coatings, concrete admixtures, concrete release agents, concrete sealers), joining and sealing materials (e.g. adhesives, caulks, gaskets, primers and sealants) and mechanical devices (e.g. electrical wire, switches, sensors, valves, submersible pumps) which are located so as to come into contact with the drinking water.

(2) Curing Time and Volatile Organic Compounds.

If products which require a cure or set time are utilized in such a way as to come into contact with the drinking water, then water shall not be introduced into the vessel until any required curing time has passed. It shall be the responsibility of the water purveyor to assure that no tastes or odors, toxins or other compounds, which result in MCL exceedances, are imparted to the water as a result of tank repair.

R309-210-12. Steel Tanks.

(1) Paints.

Proper protection shall be given to all metal surfaces, both internal and external, by paints or other protective coatings. Internal coatings shall comply with ANSI/NSF Standard 61.

(2) Cathodic Protection.

If installed, internal cathodic protection shall be designed, installed and maintained by personnel trained in corrosion engineering.

R309-210-13. Tank Overflow.

All water storage structures shall be provided with an overflow which is discharged at an elevation between 12 and 24 inches above the ground surface. The discharges shall not cause erosion.

(1) Diameter.

All overflow pipes shall be of sufficient capacity to permit waste of water in excess of the filling rate.

(2) Slope.

All overflow pipes shall Be sloped for complete drainage,

(3) Screen.

All overflow pipes shall be screened with No. 4 mesh non-corrodible screen installed at a location least susceptible to damage by vandalism,

(4) Visible Discharge.

All overflow pipes shall be located so that any discharge is visible,

(5) Cross Connections.

All overflow pipes shall not be connected to, or discharge into, any sanitary sewer system.

(6) Paint.

If a pipe within a reservoir is painted or otherwise coated, such coating shall comply with ANSI/NSF Standard 61.

R309-210-14. Access Openings.

Drinking water storage structures shall be designed with reasonably convenient access to the interior for cleaning and maintenance.

(1) Height.

There shall be at least one opening above the water line which shall be framed at least four inches above the surface of the roof at the opening; or if on a buried structure, shall be elevated at least 18 inches above any earthen cover over the structure.

(2) Shoebox Lid.

There shall be at least one opening above the water line which shall be provided with a close fitting solid shoebox type cover which extends down around the frame at least two inches and is furnished with a gasket(s) between the lid and frame,

(3) Locking Device.

There shall be at least one opening above the water line which shall have a locking device.

R309-210-15. Venting.

Drinking water storage structures shall be vented. Overflows shall not be considered as vents. Vents provided on drinking water storage reservoirs shall:

(1) Inverted Vent.

Be downturned or shielded to prevent the entrance of surface water and rainwater.

(2) Open Discharge.

On buried structures, have the discharge 24 to 36 inches above the earthen covering.

(3) Blockage.

Be located and sized so as to avoid blockage during winter conditions.

(4) Pests.

Exclude birds and animals.

(5) Dust.

Exclude insects and dust, as much as this function can be made compatible with effective venting.

(6) Screen.

Be fitted with No. 14 mesh or finer non-corrodible screen.

(7) Screen Protector.

Be fitted with additional heavy gage screen or substantial covering which will protect the No. 14 mesh screen against vandalism and, further, discourage purposeful attempts to contaminate the reservoir.

R309-210-16. Freezing Prevention.

All drinking water storage structures and their appurtenances, especially the riser pipes, overflows, and vents, shall be designed to prevent freezing which may interfere with proper functioning.

R309-210-17. Level Controls.

Adequate level control devices shall be provided to maintain water levels in storage structures.

R309-210-18. Security.

Locks on access manholes, and other necessary precautions

shall be provided to prevent unauthorized entrance, vandalism, or sabotage.

R309-210-19. Safety.

(1) Utah OSHA.

The safety of employees shall be considered in the design of the storage structure. Ladders, ladder guards, platform railings, and safely located entrance hatches shall be provided where applicable. As a minimum, such matters shall conform to pertinent laws and regulations of Utah OSHA.

(2) Ladders.

Generally, ladders having an unbroken length in excess of 20 feet shall be provided with appropriate safety devices. This requirement shall apply both to interior and exterior reservoir ladders.

(3) Requirements for Elevated Tanks.

Elevated tanks shall have railings or handholds provided for transfer from the access tube to the water compartment.

R309-210-20. Disinfection.

Drinking water storage structures shall be disinfected before being put into service for the first time, and after being entered for cleaning, repair, or painting. The reservoir shall be cleaned of all refuse and shall then be washed with potable water prior to adding the disinfectant. AWWA Standard C652-92 shall be followed for reservoir disinfection, with the exception there shall be no delivery of waters used in the disinfection process to the distribution system, unless specifically authorized, in writing, by the Executive Secretary.

Upon completing any of the three methods for storage tank chlorination, as outlined in AWWA C652-92, the water system must properly dispose of residual super-chlorinated waters in the outlet pipes. Other super-chlorinated waters, which are not to be ultimately diluted and delivered into the distribution system, shall also be properly disposed.

Chlorinated water discharged from the storage tank shall be disposed of in an acceptable manner and in conformance with the rules of the Utah Water Quality Board (see R317 of the Utah Administrative Code).

R309-210-21. Incorporation by Reference.

The following list of Standards shall be considered as incorporated by reference in this specific rule. The most recent published copy of the referenced standard will apply in each case.

(1) AWWA Standards.

(a) C652-92, Disinfection of Water Storage Reservoirs.

(b) D100-84, Welded Steel Tanks for Water Storage (including addendum D100a).

(c) D101-53(R86), Inspecting and Repairing Steel Water Tanks, Standpipes, Reservoirs, and Elevated Tanks for Water Storage.

(d) D103-87, Factory-Coated Bolted Steel Tanks for Water Storage.

(e) D104-91, Automatically Controlled, Impressed-Current Cathodic Protection for the Interior of Steel Water Tanks.

(f) D110-86, Wire-Wound Circular Prestressed-Concrete Water Tanks.

(g) D120-84, Thermosetting Fiberglass-Reinforced Plastic Tanks.

(h) D130-87, Flexible-Membrane-Lining and Floating-Cover Materials for Potable-Water Storage.

(2) NSF International Standards.

(a) NSF 60, Drinking Water Treatment Chemicals - Health Effects.

(b) NSF 61, Drinking Water System Components - Health Effects.

(3) Utah OSHA.

Applicable standards of the Utah Occupational Safety and Health Administration are hereby incorporated by reference.

R309-210-22. Operation and Maintenance of Storage Tanks.

(1) Inspection and Cleaning.

Tanks which are entered for inspection and cleaning shall be disinfected in accordance with R309-205 prior to being returned to service.

(2) Recoating or Repairing.

Any substance used to recoat or repair the interior of drinking water storage tank shall be certified to conform with ANSI/NSF Standard 61.

(3) Seasonal Use.

Water storage tanks which are operated seasonally shall be flushed and disinfected according to R309-210-21 prior to each season's use. Certification of proper disinfection, as evidenced by at least one satisfactory bacteriologic sample, shall be obtained by the system management and kept on file for inspection by personnel of the Division. During the non-use period, care shall be taken to see that openings to the water storage tank (those which are normally closed and sealed during normal use) are closed and secured.

KEY: drinking water, storage tanks, access, overflow and drains

January 1, 1998 19-4-104

R309. Environmental Quality, Drinking Water.

R309-211. Facility Design and Operation: Transmission and Distribution Pipelines.

R309-211-1. Purpose.

The purpose of this rule is to provide specific requirements for the design and installation of transmission and distribution pipelines which are utilized to deliver culinary drinking water to facilities of public drinking water systems or to consumers. It is intended to be applied in conjunction with rules R309-201 through R309-211. Collectively, these rules govern the design, construction, operation and maintenance of public drinking water system facilities. These rules are intended to assure that such facilities are reliably capable of supplying adequate quantities of water which consistently meet applicable drinking water quality requirements and do not pose a threat to general public health.

R309-211-2. Authority.

This rule is promulgated by the Drinking Water Board as authorized by Title 19, Environmental Quality Code, Chapter 4, Safe Drinking Water Act, Subsection 104(1)(a)(ii) of the Utah

Code Annotated and in accordance with 63-46a of the same, known as the Administrative Rulemaking Act.

R309-211-3. Definitions.

Definitions for certain terms used in this rule are given in R309-200.

R309-211-4. General.

Transmission and distribution pipelines shall be designed, constructed and operated to convey adequate quantities of water at ample pressure, while maintaining water quality.

R309-211-5. Water Main Design.

(1) Distribution System Pressure.

The distribution system shall be designed to maintain a minimum pressure of 20 psi (at ground level) at all points of connection, under all conditions of flow, but especially during peak instantaneous flow conditions, including fire flows.

(2) Assumed Flow Rates.

Flow rates to be assumed when designing or analyzing distribution systems shall be as given in R309-203 of these rules.

(3) Computerized Network Analysis.

(a) All water mains shall be sized after a hydraulic analysis based on flow demands and pressure requirements. If the calculations needed to conduct this hydraulic analysis are complex, a computerized network analysis shall be performed to verify that the distribution system will be capable of meeting the requirements of this rule.

(b) Where improvements will upgrade more than 50% of an existing distribution system, or where a new distribution system is proposed, a hydraulic analysis of the entire system shall be prepared and submitted for review prior to plan approval.

(c) In the analysis and design of water distribution systems, the following Hazen-William coefficients shall be used: PVC pipe = 140; Ductile Iron Pipe = 120; Cement-Mortar Lined Ductile Iron Pipe = 130 to 140.

(4) Minimum Water Main Size.

For water mains not connected to fire hydrants, the minimum line size shall be 4-inch diameter. Minimum water main size serving a fire hydrant lateral shall be 8-inch diameter unless a hydraulic analysis indicates that required flow and pressures can be maintained by smaller lines.

(5) Fire Protection.

(a) The design of the distribution system shall be consistent with Appendix III-A and III-B of the 1991 Uniform Fire Code. As specified in this code, minimum fire-flow requirements are:

(i) 1000 gpm for one- and two-family dwellings with an area of less than 3600 square feet.

(ii) 1500 gpm or greater for all other buildings.

(b) The location of fire hydrants shall be consistent with Appendix III-B of the 1991 Uniform Fire Code. As specified in this code, average spacing between hydrants must be no greater than 500 ft.

(c) An exception to the fire protection requirements of (a) and (b) may be granted if a suitable statement is received from the local fire protection authority.

(d) Water mains not designed to carry fire flows shall not have fire hydrants connected to them.

(e) The design engineer shall verify that the pipe network design permits fire-flows to be met at representative locations while a minimum pressure of 20 psi is maintained at all times and at all points in the distribution system.

(f) As a minimum, the flows to be assumed during a fire-flow analysis shall be the "peak day demand" plus the fire flow requirement.

(6) Geologic Considerations.

The character of the soil through which water mains are to be laid shall be considered. This information shall accompany any submittal for a pipeline project.

(7) Dead Ends.

(a) In order to provide increased reliability of service and reduce head loss, dead ends shall be minimized by making appropriate tie-ins whenever practical.

(b) Where dead-end mains occur, they shall be provided with a fire hydrant if flow and pressure are sufficient, or with an approved flushing hydrant or blow-off for flushing purposes. Flushing devices shall be sized to provide flows which will give a velocity of at least 2.5 fps in the water main being flushed. No flushing device shall be directly connected to any sewer.

(8) Valves.

Sufficient valves shall be provided on water mains so that inconvenience and sanitary hazards will be minimized during repairs. Valves shall be located at not more than 500 foot intervals in commercial districts and at not more than one block or 800 foot intervals in other districts. Where systems serve widely scattered customers and where future development is not expected, the valve spacing shall not exceed one mile.

(9) Corrosive Soils.

The design engineer shall consider the materials to be used when corrosive soils or waters will be encountered.

(10) Special Precautions in Areas of Groundwater Contamination by Organic Compounds.

Where distribution systems are installed in areas of groundwater contaminated by organic compounds:

(a) pipe and joint materials which are not subject to permeation of the organic compounds shall be used.

(b) non-permeable materials shall be used for all portions of the system including water main, service connections and hydrants leads.

(11) Separation of Water Mains from Other Sources of Contamination.

Design engineers shall exercise caution when locating water mains at or near certain sites such as sewage treatment plants or industrial complexes. Individual septic tanks shall be located and avoided. The engineer shall contact the Division to establish specific design requirements for locating water mains near any source of contamination.

R309-211-6. Component Materials and Design.

(1) NSF Standard for Health Effects.

All materials which may contact drinking water, including pipes, gaskets, lubricants and O-Rings, shall be ANSI-certified as meeting the requirements of NSF Standard 61, Drinking Water System Components - Health Effects. To permit field-verification of this certification, all such components shall be

appropriately stamped with the NSF logo.

(2) Restrictions on Asbestos and Lead.

(a) The use of asbestos cement pipe shall not be allowed.

(b) Pipes and pipe fittings containing more than 8% lead shall not be used. Lead-tip gaskets shall not be used. Repairs to lead-joint pipe shall be made using alternative methods.

(3) AWWA Standards for Mechanical Properties.

Pipe, joints, fittings, valves and fire hydrants shall conform to NSF Standard 61 or Standard 14, and applicable sections of ANSI/AWWA Standards C104-95 through C550-90

(4) Used Materials.

Only materials which have been used previously for conveying potable water may be reused. Used materials shall meet the above standards, be thoroughly cleaned, and be restored practically to their original condition.

(5) Fire Hydrant Design.

Hydrant drains shall not be connected to or located within 10 feet of sanitary sewers or storm drains.

(6) Air Relief Valves.

At high points in water mains where air can accumulate, provisions shall be made to remove air by means of hydrants or air relief valves. Automatic air relief valves shall not be used in situations where flooding may occur.

(a) Air Relief Valve Vent Piping.

The open end of an air relief vent pipe from automatic valves shall, where possible as determined by public water system management, be extended to at least one foot above grade and provided with a screened (#14 mesh, non-corrodible) downward elbow. Alternately, the open end of the pipe may be extended to as little as one foot above the top of the pipe if the valve's chamber is not subject to flooding and provided with a drain-to-daylight (See (b) below). Blow-offs or air relief valves shall not be connected directly to any sewer.

(b) Chamber Drainage.

Chambers, pits or manholes containing valves, blow-offs, meters, other such appurtenances to a distribution system, shall not be connected directly to any storm drain or sanitary sewer. They shall be provided with a drain to daylight. Where this is not possible, underground gravel filled absorption pits may be used if the site is not subject to flooding and conditions will assure adequate drainage. Where a chamber contains an air relief valve, and it is not possible to provide a drain-to-daylight, the vent pipe from the valve shall be extended to at least one foot above grade (See (a) above). Only when it is both impossible to extend the vent pipe above grade, and impossible to provide a drain-to-daylight may a gravel filled sump be utilized to provide chamber drainage (assuming local ground conditions permit adequate drainage without ground water intrusion).

R309-211-7. Separation of Water Mains and Transmission Lines from Sewers and Other Pollution Sources.

(1) Basic Separation Standards.

The horizontal distance between pressure water mains and sanitary sewer lines shall be at least ten feet. Where a water main and a sewer line must cross, the water main shall be at least 18 inches above the sewer line. Separation distances shall be measured edge-to-edge (i.e. from the nearest edges of the facilities). Water mains and sewer lines shall not be installed in the same trench.

(2) Exceptions to Basic Separation Standards.

Local conditions, such as available space, limited slope, existing structures, etc., may create a situation where there is no alternative but to install water mains or sewer lines at a distance less than that required by Subsection (1), above. Exceptions to the rule may be provided by the Executive Secretary, as allowed by R309-102-2.2, if it can be shown that the granting of such an exception will not jeopardize the public health.

(3) Special Provisions.

The following special provisions apply to all situations:

(a) The basic separation standards are applicable under normal conditions for sewage collection lines and water distribution mains. More stringent requirements may be necessary if conditions such as high groundwater exist.

(b) Sewer lines shall not be installed within 25 feet horizontally of a low head (5 psi or less pressure) water main.

(c) Sewer lines shall not be installed within 50 feet horizontally of any transmission line segment which may become unpressurized.

(d) New water mains and sewers shall be pressure tested where the conduits are located ten feet apart or less.

(e) In the installation of water mains or sewer lines, measures shall be taken to prevent or minimize disturbances of the existing line.

(f) Special consideration shall be given to the selection of pipe materials if corrosive conditions are likely to exist. These conditions may be due to soil type and/or the nature of the fluid conveyed in the conduit, such as a septic sewage which produces corrosive hydrogen sulfide.

(g) Sewer Force Mains

(i) Sewer force mains shall not be installed within ten feet (horizontally) of a water main.

(ii) When a sewer force main must cross a water line, the crossing shall be as close as practical to the perpendicular. The sewer force main shall be at least 18 inches below the water line.

(iii) When a new sewer force main crosses under an existing water main, all portions of the sewer force main within ten feet (horizontally) of the water main shall be enclosed in a continuous sleeve.

(iv) When a new water main crosses over an existing sewer force main, the water main shall be constructed of pipe materials with a minimum rated working pressure of 200 psi or equivalent pressure rating.

(4) Water Service Laterals Crossing Sewer Mains and Laterals.

Water service laterals shall conform to all requirements given herein for the separation of water and sewer lines.

R309-211-8. Installation of Water Mains.

(1) Standards.

(a) The specifications shall incorporate the provisions of the manufacturer's recommended installation procedures or the following standards:

(i) AWWA Standard C600-87, Installation of Ductile Iron Water Mains and Their Appurtenances

(ii) ASTM D2774, Recommended Practice for Underground Installation of Thermoplastic Pressure Piping and

PVC Pipe

(b) The provisions of the following publication shall be followed for PVC pipe design and installation:

PVC Pipe - Design and Installation, AWWA Manual M23, 1990, published by the American Water Works Association

(2) Bedding.

A continuous and uniform bedding shall be provided in the trench for all buried pipe. Stones larger than the backfill materials described below shall be removed for a depth of at least six inches below the bottom of the pipe.

(3) Backfill.

Backfill material shall be tamped in layers around the pipe and to a sufficient height above the pipe to adequately support and protect the pipe. The material and backfill zones shall be as specified by the standards referenced in Subsection (1), above. As a minimum:

(a) For plastic pipe, backfill material with a maximum particle size of 3/4 inch shall be used to surround the pipe.

(b) For ductile iron pipe, backfill material shall contain no stones larger than 2 inches.

(4) Dropping Pipe into Trench.

Under no circumstances shall the pipe or accessories be dropped into the trench.

(5) Burial Cover.

All water mains shall be covered with sufficient earth or other insulation to prevent freezing unless they are part of a non-community system that can be shut-down and drained during winter months when temperatures are below freezing. Pipe shall be buried at least 12 inches below maximum expected frost penetration. The following is a list of reported pipe burial depths in Utah which may serve as a guide in this respect:

(a) Logan - 5ft.

(b) Salt Lake City - 3.5 ft. (5 ft. in high benches)

(c) Alta/Snowbird - 6 ft (7 ft. if under roadway)

(d) St. George - 3 ft.

(e) Park City - 5 ft. (7 ft. above 7000 ft. elevation)

(f) Richfield - 4 ft.

(g) Moab - 4 ft.

(6) Thrust Blocking.

All tees, bends, plugs and hydrants shall be provided with reaction blocking, tie rods or joints designed to prevent movement.

(7) Pressure and Leakage Testing.

All types of installed pipe shall be pressure tested and leakage tested in accordance with AWWA Standard C600-93.

(8) Surface Water Crossings.

(a) Above Water Crossings

The pipe shall be adequately supported and anchored, protected from damage and freezing, and accessible for repair or replacement.

(b) Underwater Crossings

A minimum cover of two feet or greater, as local conditions may dictate, shall be provided over the pipe. When crossing water courses which are greater than 15 feet in width, the following shall be provided:

(i) The pipe shall be of special construction, having restrained joints for any joints within the surface water course and flexible restrained joints at both edges of the water course.

(ii) Valves shall be provided at both ends of water crossings so that the section can be isolated for testing or repair; the valves shall be easily accessible, and not subject to flooding; and the valve nearest to the supply source shall be in a manhole.

(iii) Permanent taps shall be made on each side of the valve within the manhole to allow insertion of testing equipment to determine leakage and for sampling purposes.

(9) Sealing Pipe Ends During Construction.

The open ends of all pipeline under construction shall be covered and effectively sealed at the end of the day's work.

(10) Disinfecting Water Distribution Systems.

All new water mains or appurtenances shall be disinfected in accordance with AWWA Standard C651-92. The specifications shall include detailed procedures for the adequate flushing, disinfection and microbiological testing of all water mains. On all new and extensive distribution system construction, evidence of satisfactory disinfection shall be provided to the Division. Samples for coliform analyses shall be collected after disinfection is complete and the system is refilled with potable water. A standard heterotrophic plate count is advisable. The use of water for culinary purposes shall not commence until the bacteriologic tests indicate the water to be free from contamination.

R309-211-9. Cross Connections and Interconnections.

(1) Physical Cross Connections.

There shall be no physical cross connections between the distribution system and pipe, pumps, hydrants, or tanks which are supplied from, or which may be supplied or contaminated from, any source except as approved by the Executive Secretary.

(2) Recycled Water.

Neither steam condensate nor cooling water from engine jackets or other heat exchange devices shall be returned to the potable water supply.

(3) System Interconnects.

The approval of the Executive Secretary shall be obtained for interconnections between different potable water supply systems.

R309-211-10. Water Hauling.

Water hauling is not an acceptable permanent method for culinary water distribution in community water systems. Proposals for water hauling shall be submitted to and approved by the Executive Secretary.

(1) Exceptions.

The Executive Secretary may allow its use for non-community public water supplies if:

(a) consumers could not otherwise be supplied with good quality drinking water, or

(b) the nature of the development, or ground conditions, are such that the placement of a pipe distribution system is not justified.

(2) Emergencies.

Hauling may also be necessary as a temporary means of providing culinary water in an emergency.

R309-211-11. Service Connections and Plumbing.

(1) Service Taps.

Service taps shall be made so as to not jeopardize the sanitary quality of the system's water.

(2) Plumbing.

(a) Service lines shall be capped until used.

(b) Water services and plumbing shall conform to the Utah Plumbing Code. Solders and flux containing more than 0.2% lead and pipe and pipe fittings containing more than 8% lead shall not be used.

(3) Individual Home Booster Pumps.

Individual booster pumps shall not be allowed for any individual service from the public water supply mains. Exceptions to the rule may be provided by the Executive Secretary, as allowed by R309-102-2.2, if it can be shown that the granting of such an exception will not jeopardize the public health.

(4) Service Lines.

The portion of the service line under the control of the water supplier is considered to be part of the distribution system and shall comply with all requirements given herein.

(5) Service Meters and Building Service Line.

Connections between the service meter and the home shall be in accordance with the Utah Plumbing Code.

(6) Allowable Connections.

All dwellings or other facilities connected to a public water supply shall be in conformance with the Utah Plumbing Code.

R309-211-12. Transmission Lines.

(1) Unpressurized Flows.

Transmission lines shall conform to all applicable requirements in this rule. Transmission line design shall minimize unpressurized flows.

(2) Proximity to Concentrated Sources of Pollution.

A water supplier shall not route an unpressurized transmission line any closer than fifty feet to any concentrated source of pollution (i.e. septic tanks and drain fields, garbage dumps, pit privies, sewer lines, feed lots, etc.). Furthermore, unpressurized transmission lines shall not be placed in boggy areas or areas subject to the ponding of water.

(3) Exceptions.

Where the water supplier cannot obtain a fifty foot separation distance from concentrated sources of pollution, it is permitted to use a Class 50 ductile iron pipe with joints acceptable to the Executive Secretary. Reasonable assurance must be provided to assure that contamination will not be able to enter the unpressurized pipeline.

R309-211-13. Operation and Maintenance.

(1) Disinfection After Line Repair.

The disinfection procedures of Section 10, AWWA Standard C651-92 shall be followed if any water main is cut into or repaired.

(2) Cross Connections.

The water supplier shall not allow a connection which may jeopardize water quality. Cross connections are not allowed unless controlled by an approved and properly operating backflow prevention assembly. The requirements of Chapter 10 of the Uniform Plumbing Code shall be met with respect to cross connection control and backflow prevention.

Suppliers shall maintain an inventory of each pressure atmospheric vacuum breaker, double check valve, reduced pressure zone principle assembly, and high hazard air gap used by their customers, and a service record for each such assembly.

Backflow prevention assemblies shall be inspected and tested at least once a year, by an individual certified for such work. This responsibility may be borne by the water system or the water system management may require that the customer having the backflow prevention assembly be responsible for having the device tested.

Suppliers serving areas also served by a pressurized irrigation system shall prevent cross connections between the two. Requirements for pressurized irrigation systems are outlined in Section 26-1-31 of the Utah Code Annotated 1953 as amended

(3) NSF Standards.

All pipe and fittings used in routine operation and maintenance shall be ANSI-certified as meeting NSF Standard 61 or Standard 14.

(4) Seasonal Operation.

Water systems operated seasonally shall be disinfected and flushed according to the techniques given in AWWA Standard C651 for pipelines and AWWA Standard C652 for storage facilities prior to each season's use. A satisfactory bacteriologic sample shall be achieved prior to use. During the non-use period, care shall be taken to close all openings into the system.

KEY: drinking water, transmission and distribution pipelines, connections, water hauling

January 1, 1998 19-4-104

R313. Environmental Quality, Radiation Control.
R313-36. Special Requirements for Industrial Radiographic Operations.
R313-36-1. Purpose and Authority.

(1) The rules in R313-36 prescribe requirements for the issuance of licenses and establish radiation safety requirements for persons utilizing sources of radiation for industrial radiography.

(2) The rules set forth herein are adopted pursuant to the provisions of Sections 19-3-104(3) and 19-3-104(6).

(3) The requirements of R313-36 are in addition to, and not in substitution for, the other requirements of these rules.

R313-36-2. Scope.

(1) The requirements of R313-36 shall apply to licensees using radioactive materials to perform industrial radiography.

(2) The requirements of R313-36 shall not apply to persons using electronic sources of radiation to conduct industrial radiography.

R313-36-3. Clarifications or Exceptions.

For purposes of R313-36, 62 FR 28963 to 28973, May 28, 1997, is incorporated by reference with the following clarifications or exceptions:

(1) The exclusion of the following 10 CFR sections: "34.1", "34.5", "34.8", "34.11", "34.121", and "34.123";

(2) The exclusion of "10 CFR 34.45(a)(9)";

(3) The exclusion of the following 10 CFR references within 10 CFR 34: "21", "30.7", "30.9", and "30.10";

(4) The exclusion of "offshore" in 10 CFR 34.3 definition for "offshore platform radiography";

(5) The substitution of the following wording:

(a) "Utah Radiation Control Rules" for the reference to:

(i) "Commission's regulations", except as stated in R313-36-3(5)(f);

(ii) "Federal regulations"; and

(iii) "NRC regulations";

(b) "Executive Secretary" for the reference to "Commission", except as stated in 10 CFR 34.20 and R313-36-3(5)(c)(iv);

(c) "Executive Secretary, U.S. Nuclear Regulatory Commission, or an Agreement State" for references to:

(i) "NRC or an Agreement State";

(ii) "Commission or by an Agreement State";

(iii) "Commission or an Agreement State"; and

(iv) "Commission" in 10 CFR 34.43(a)(2);

(d) "License" for reference to "NRC license(s)";

(e) In 10 CFR 34.27(d), "reports of test results for leaking or contaminated sealed sources shall be made pursuant to R313-15-1208.", for reference to the following statements:

(i) "A report must be filed with the Director of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, within 5 days of any test with results that exceed the threshold in this subsection, describing the equipment involved, the test results, and the corrective action taken."; and

(ii) "A copy of the report must be sent to the Administrator of the appropriate Nuclear Regulatory Commission's Regional Office listed in appendix D of 10 CFR part 20 of this chapter "Standards for Protection Against Radiation.";

(f) In 10 CFR 34.27(d), "R313-15-401(6)" for the reference to "Commission regulations";

(g) In 10 CFR 34.89, " a U.S. Nuclear Regulatory Commission or an Agreement State" for the reference to "the Agreement State";

(h) In 10 CFR 34.101(a), "Executive Secretary" for the following wording:

(i) "U.S. Nuclear Regulatory Commission, Division of Industrial and Medical Nuclear Safety, Washington, D.C. 20555-0001, with a copy to the Director, Office for Analysis and Evaluation of Operational Data, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001";

(i) In 10 CFR 34.101(c), "Executive Secretary" for the reference to "appropriate NRC regional office listed in 10 CFR 30.6(a)(2) of this chapter";

(j) In Item 12, Section I of Appendix A to 10 CFR 34, "Executive Secretary, the U.S. Nuclear Regulatory Commission and other independent certifying organizations and/or Agreements States" for the reference to "Commission and other independent certifying organizations and/or Agreement States";

(k) In Item 1, Section II of Appendix A to 10 CFR 34, "equivalent U.S. Nuclear Regulatory Commission or Agreement State regulations" for the reference to "equivalent Agreement State regulations"; and

(l) In Item 2(c), Section II of Appendix A to 10 CFR, "a Utah, U.S. Nuclear Regulatory Commission, or an Agreement State licensee" for the reference to "an Agreement State or a NRC licensee";

(6) The substitution of the following R313 references for specific 10 CFR references:

(a) "R313-12-55(1)" for reference to "10 CFR 34.111";

(b) "R313-15" for the reference to "10 CFR 20";

(c) "R313-15-601(1)(a)" for the reference to "10 CFR 20.1601(a)(1)";

(d) "R313-15-902" for the reference to "10 CFR 20.1902";

(e) "R313-15-903" for the reference to "10 CFR 20.1903";

(f) "R313-15-1203" for the reference to "10 CFR 20.2203";

(g) "R313-18" for the reference to "10 CFR 19";

(h) "R313-19-30" for the reference to "10 CFR 150.20";

(i) "R313-19-50" for the reference to "10 CFR 30.50";

(j) "R313-19-100" for the reference to "10 CFR 71", "10 CFR 71.5", and "49 CFR 171 to 173";

(k) "R313-22-33" for the reference to "10 CFR 30.33"; and

(l) "R313-36" for the reference to "10 CFR 34"; and

(7) The substitution of the following dates:

(a) In 10 CFR 34.42(d) and 10 CFR34.43(a)(2) , "June 27, 1999" for the date "May 28, 1999."

(b) In 10 CFR 34.43(h), "June 27, 1998" for the date "May 28, 1998."

KEY: industry, radioactive material, licensing, surveys
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R315. Environmental Quality, Solid and Hazardous Waste.
R315-303. Landfilling Standards.
R315-303-1. Applicability.

(1) These standards apply to:

(a) Class I, II, and V Landfills;

(b) Class III Landfills as specified in Rule R315-304; and

(c) Class IV Landfills as specified in Rule R315-305.

(2) An owner or operator of an existing landfill unit shall not be required to install liners or leachate collection systems in that unit.

R315-303-2. Standards for Performance.

(1) Ground Water. An owner or operator of a disposal facility shall not contaminate the ground water underlying the facility beyond the ground water quality standard set in Section R315-308-4 or, for constituents not set in Section R315-308-4, as established by the Executive Secretary based on health risk standards.

(2) Air Quality and Explosive Gas Emissions.

(a) An owner or operator of a disposal facility shall not allow concentrations of explosive gases generated by the facility to exceed:

(i) twenty-five percent of the lower explosive limit for explosive gases in facility structures, excluding gas control or recovery system components; and

(ii) the lower explosive limit for explosive gases at the property boundary or beyond.

(b) An owner or operator of a disposal facility shall not cause a violation of any ambient air quality standard at the property boundary or emission standard from any emission of landfill gases, combustion or any other emission associated with the facility.

(3) Surface Waters. An owner or operator of a disposal facility:

(a) shall not cause a violation of any Utah Pollution Discharge Elimination System permit or standard from discharges of surface run-off, leachate or any liquid associated with the facility; and

(b) shall be in compliance under the Clean Water Act for any discharge as well as in compliance with any area-wide or state-wide plan under Section 208 or 319 of the Clean Water Act.

R315-303-3. Standards for Design.

(1) Minimizing Liquids. An owner or operator of a landfill shall minimize liquids admitted to active areas by:

(a) covering according to Subsection R315-303-4(4);

(b) prohibiting the disposal of containerized liquids larger than household size, noncontainerized liquids, sludge containing free liquids, or any waste containing free liquids in containers larger than household size;

(c) designing the landfill to prevent run-on of all surface waters resulting from a maximum flow of a 25-year storm into the active area of the landfill; and

(d) designing the landfill to collect and treat the run-off of surface waters and other liquids resulting from a 25-year storm from the active area of the landfill.

(2) Leachate Collection Systems.

(a) An owner or operator of a landfill required to install liners shall:

(i) install a leachate collection system sized according to water balance calculations or using other accepted engineering methods either of which shall be approved by the Executive Secretary;

(ii) install a leachate collection system so as to prevent no more than one foot depth of leachate developing at any point in the bottom of the landfill unit; and

(iii) install a leachate treatment system or a pretreatment system, if necessary, in the case of discharge to a municipal water treatment plant.

(b) The returning of leachate to the landfill or the recirculation of leachate in the landfill may be done only in landfills that have a composite liner system or an approved equivalent liner system.

(3) Liner Designs. An owner or operator of a new landfill or a landfill seeking lateral expansion shall use liners of one of the following designs:

(a) Standard Design. The design shall have a composite liner system consisting of two liners and the associated liner protection layers and a drainage system for leachate collection:

(i) an upper liner made of synthetic material with a thickness of a least 60 mils; and

(ii) a lower liner of at least two feet thickness of recompacted clay or other soil material with a permeability of no more than 1×10^{-7} cm/sec having the bottom liner sloped no less than 2% and the side liners sloped no more than 33%, except where construction and operational integrity can be demonstrated at steeper slopes, with the synthetic liner installed in direct and uniform contact with the compacted soil component; or

(b) Alternative Design.

(i) The Executive Secretary may approve an alternative liner design, on a site specific basis, if it can be documented that, under the conditions of location and hydrogeology, the performance standard of Subsection R315-303-2(1) can be met. When approving an alternative liner design, the Executive Secretary shall consider the following factors:

(A) the hydrogeologic characteristics of the facility and surrounding land;

(B) the climatic factors of the area; and

(C) the volume and physical and chemical characteristics of the leachate.

(ii) The liner shall be constructed of at least a three feet thick layer of recompacted clay or other material with a permeability of no greater than 1×10^{-7} cm/sec having the bottom liner sloped no less than 2% and the side liners sloped no more than 33%, except where construction and operational integrity can be demonstrated at steeper slopes; or

(c) Equivalent Design.

(i) The owner or operator may use, as approved by the Executive Secretary, alternative design, operating practices, and location characteristics which will minimize the migration of solid waste constituents or leachate into the ground or surface water which are at least as effective as the liners of Subsections R315-303-3(3)(a) or (b).

(ii) The owner or operator must demonstrate that the standard of Subsection R315-303-2(1) can be met. The demonstration must be approved by the Executive Secretary,

and must be based upon:

(A) the hydrogeologic characteristics of the facility and the surrounding land;

(B) the climatic factors of the area;

(C) the volume and physical and chemical characteristics of the leachate;

(D) predictions of contaminate fate and transport in the subsurface that maximize contaminant migration and consider impacts on human health and the environment; or

(d) Stringent Design. When conditions of location, hydrogeology, or waste stream justify, the Executive Secretary may require that the liner of a landfill be constructed to meet standards more stringent than the liner designs of Subsection R315-303-3(3)(a).

(e) Small Landfill Design. Subject to the location standards of Section R315-302-1 and the performance standards of Section R315-303-2, a Class II Landfill may be exempt from the liner, leachate collection system, and ground water monitoring requirements of Rule R315-303.

(i) A Class II Landfill will be approved only if:

(A) there is no evidence of existing ground water contamination; and

(B) the landfill serves a community that has no practicable waste management alternative as determined by the Executive Secretary; and

(C) the landfill is located in an area which receives less than 25 inches of annual precipitation.

(ii) A Class II Landfill may lose the exemption of the small landfill design if at anytime the landfill receives more than 20 tons of solid waste per day, based on an annual average, or has caused ground water contamination.

(f) Design of a Landfill that Accepts No Municipal Waste. Subject to the performance standards of Section R315-303-2:

(i) a landfill that accepts no municipal waste, no conditionally exempt small quantity generator hazardous waste as defined by Section R315-2-5, or no other hazardous waste that is exempt from Section R315-2-4, may be exempt from the liner, leachate collection system, ground water monitoring, and closure requirements of Rule R315-303; or

(ii) a landfill that accepts no municipal waste but accepts conditionally exempt small quantity generator hazardous waste or other exempt hazardous waste, may be exempt from the liner and the leachate collection system requirements of Rule 315-303.

(4) Closure. An owner or operator shall design the landfill so, that at closure, the final cover shall be:

(a) a layer to minimize infiltration, consisting of at least 18 inches of compacted soil, or equivalent with a permeability of 1 x 10^{-5} cm/sec or less, or equivalent, shall be placed upon the final lifts:

(i) synthetic liners may cover the compacted soil layer, provided that a minimum of either 20 mils reinforced or 40 mils non-reinforced thickness is used;

(ii) in no case shall the cover of the final lifts be more permeable than the bottom liner system or natural subsoils present in the unit; and

(iii) the grade of surface slopes shall not be less than 2%, nor the grade of side slopes more than 33%, except where construction integrity and the integrity of erosion control can be demonstrated at steeper slopes; and

(b) a layer to minimize erosion, consisting of:

(i) at least 6 inches of soil capable of sustaining vegetative growth placed over the compacted soil cover or the artificial liner and seeded with grass, other shallow rooted vegetation or other native vegetation; or

(ii) other suitable material, approved by the Executive Secretary.

(c) The Executive Secretary may approve an alternative final cover design, on a site specific basis, if it can be documented that:

(i) the infiltration layer achieves an equivalent reduction in infiltration as the infiltration layer specified in Subsection R315-303-3(4)(a): and

(ii) the erosion layer provides equivalent protection from wind and water erosion as the erosion layer specified in Subsection R315-303-3(4)(b).

(5) Gas Control.

(a) An owner or operator shall design each landfill so that explosive gases are monitored quarterly.

(b) If the concentration of these gases ever exceed the standard set in Subsection R315-303-2(2)(a), the owner or operator must:

(i) immediately take all necessary steps to ensure protection of human health and notify the Executive Secretary;

(ii) within seven days of detection, place in the operating record the explosive gas levels detected and a description of the steps taken to protect human health; and

(iii) within 60 days of detection, implement a remediation plan, that has been approved by the Executive Secretary, for the explosive gas release, place a copy of the plan in the operating record, and notify the Executive Secretary that the plan has been implemented.

(c) Collection and handling of explosive gases shall not be required if it can be shown that the explosive gases will not support combustion.

(d) The Executive Secretary may, on a site specific basis, waive the requirement of monitoring explosive gases at a Class II Landfill. The wavier may be granted after:

(i) considering the characteristics of the landfill and the waste stream accepted;

(ii) taking into account climatic and hydrogeologic conditions of the site; and

(iii) completing a public comment period as specified by Section R315-311-3.

(iv) The Executive Secretary may revoke any waiver from the requirement of monitoring explosive gases if the lack of monitoring explosive gases at the landfill presents a threat to human health or the environment.

(v) The requirement to monitor explosive gases inside buildings at a landfill may not be waived.

(6) Other Requirements. An owner or operator shall design each landfill to provide for:

(a) fencing at the property or unit boundary or the use of other artificial or natural barriers to impede entry by the public and large animals. A lockable gate shall be required at the entry to the landfill;

(b) monitoring ground water according to Rule R315-308 using a design approved by the Executive Secretary. The

Executive Secretary may also require monitoring of:

(i) surface waters, including run-off;

(ii) leachate; and

(iii) subsurface landfill gas movement and ambient air;

(c) weighing all incoming waste on scales for a landfill that receives, on an average annual basis, more than 8,000 tons per year or provide an equivalent method of measuring waste tonnage capable of estimating total annual solid waste tonnage to within plus or minus 5%;

(d) erecting a sign at the facility entrance that identifies at least the name of the facility, the hours during which the facility is open for public use, unacceptable materials, and an emergency telephone number. Other pertinent information may also be included;

(e) adequate fire protection to control any fires that may occur at the facility. This may be accomplished by on-site equipment or by arrangement made with the nearest fire department;

(f) preventing potential harborage in buildings, facilities, and active areas of rat and other vectors, such as insects, birds, and burrowing animals;

(g) minimizing the size of the unloading area and working face as much as possible, consistent with good traffic patterns and safe operation;

(h) approach and exit roads of all-weather construction, with traffic separation and traffic control on-site and at the site entrance; and

(i) communication, such as telephone or radio, between employees working at the landfill and management offices on-site and off-site to handle emergencies.

R315-303-4. Standards for Maintenance and Operation.

(1) Plan of Operation. An owner or operator of a landfill shall maintain and operate the facility to conform to the approved plan of operation.

(2) Operating Details. An owner or operator of a landfill shall operate the facility to:

(a) control fugitive dust generated from roads, construction, general operations, and covering the waste;

(b) allow no open burning;

(c) collect scattered litter as necessary to avoid a fire hazard or an aesthetic nuisance;

(d) prohibit scavenging;

(e) conduct on-site reclamation in an orderly sanitary manner and in a way that does not interfere with the disposal site operation;

(f) ensure that landfill personnel are on-site when the site is open to the public;

(i) at least one person on-site for landfills that receive, on an average annual basis, less than 15,000 tons per year; and

(ii) at least two persons on-site, with one person at the active face, for each landfill that receives, on an average annual basis, more than 15,000 tons per year.

(g) control insects, rodents, and other vectors; and

(h) ensure that reserve operational equipment will be available to maintain and meet these standards.

(3) Boundary Posts. An owner or operator of a landfill shall clearly mark the active area boundaries authorized in the permit with permanent posts or using an equivalent method clearly visible for inspection purposes.

(4) Daily Cover.

(a) An owner or operator of a landfill shall, at the close of each day of operation, completely cover the waste with at least six inches of soil or other suitable material approved by the Executive Secretary that will control vectors, fires, odor, blowing litter, and scavenging without presenting a threat to human health or the environment.

(b) The Executive Secretary may, on a site specific basis, waive the requirement for daily cover of the waste at a landfill, including a Class III Landfill, that accepts no municipal waste if the owner or operator demonstrates that an alternative schedule for covering the waste does not present a threat to human health or the environment. The demonstration from the owner or operator of the landfill must include at least the following:

(i) certification that the landfill accepts no municipal waste;

(ii) a detailed list of the waste types accepted by the landfill;

(iii) the alternative schedule on which the waste will be covered; and

(iv) any other operational practices that may reduce the threat to human health or the environment if an alternative schedule for covering the waste is followed.

(v) In granting any wavier from the daily cover requirement, the Executive Secretary may place conditions on the owner or operator of the landfill as to the frequency of covering, depth of the cover, or type of material used as cover that will minimize the threat to human health or the environment.

(vi) The Executive Secretary may revoke any waiver from the daily cover requirement if any condition is not met or if the alternative schedule for covering the waste presents a threat to human health or the environment.

(5) Monitoring Systems. An owner or operator of a landfill shall maintain the monitoring systems required in Subsection R315-303-3(6)(b).

(6) Recycling Required.

(a) An owner or operator of a landfill at which the general public delivers household solid waste shall provide containers in which the general public may place recyclable materials for which a market exists that are brought to the site:

(i) during the normal hours of operation; and

(ii) at a location convenient to the public, i.e., near the entrance gate.

(b) An owner or operator may demonstrate alternative means to providing an opportunity for the general public to recycle household solid waste.

(7) Disposal of Hazardous Waste Prohibited.

(a) An owner or operator of a landfill shall not knowingly dispose, treat, store, or otherwise handle hazardous waste or waste containing PCBs.

(b) An owner or operator of a landfill shall include and implement as part of the plan of operation a plan that will inspect loads or take other steps as approved by the Executive Secretary that will prevent the disposal of hazardous waste or waste containing PCBs, including:

(i) inspection frequency and inspection of loads suspected

of containing hazardous waste or waste containing PCBs;

(ii) inspection in a designated area or at a designated point in the disposal process;

(iii) a training program for the facility employees in identification of hazardous waste and waste containing PCBs; and

(iv) maintaining written records of all inspections, signed by the inspector.

(c) If the receipt of hazardous waste or waste containing PCBs is discovered, the owner or operator of the landfill shall:

(i) notify the Executive Secretary, the hauler, and the generator within 24 hours;

(ii) restrict the inspection area from public access and from facility personnel; and

(iii) assure proper cleanup, transport, and disposal of the waste.

(d) A landfill that is permitted to accept waste containing PCBs under the Toxic Substances Control Act may receive waste containing PCBs but shall exclude hazardous waste.

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R315. Environmental Quality, Solid and Hazardous Waste.
R315-304. Industrial Solid Waste Landfill Requirements.
R315-304-1. Applicability.

(1) The location, design, and operation, standards of Rule R315-304 become effective January 1, 1998 on each Class III Landfill or each landfill that receives only industrial solid waste.

(2) The ground water monitoring standards of Rule R315-304 become effective July 1, 1998 on each Class III Landfill required to monitor the ground water.

(3) The requirements of Rule R315-304 do not apply to a Class IIIb Landfill that receives waste exclusively from on-site.

R315-304-2. Industrial Landfill Standards for Performance.

Each Class III Landfill shall meet the landfill standards for performance as specified in Section R315-303-2.

R315-304-3. Definitions.

Terms used in Rule R315-304 are defined in Section R315-301-2. In addition, for the purpose of Rule R315-304, the following definitions apply.

(1) "Class IIIa Landfill" means an industrial solid waste landfill that may accept:

(a) any nonhazardous industrial waste;

(b) waste that is exempt from hazardous waste regulations under Section R315-2-4; or

(c) conditionally exempt small quantity generator hazardous waste as defined by Section R315-2-5; and

(d) is not open to the general public.

(2) "Class IIIb Landfill" means an industrial solid waste landfill that may accept any nonhazardous industrial solid waste except:

(a) waste that is exempt from hazardous waste regulations under Section R315-2-4, unless approved by the Executive Secretary; or

(b) conditionally exempt small quantity generator hazardous waste as defined by Section R315-2-5; and

(c) is not open to the general public.

(3) "Existing Class III Landfill" means an industrial solid waste landfill that was receiving waste on or before January 1, 1998.

(4) "New Class III Landfill" means an industrial solid waste landfill that begins receiving waste after January 1, 1998.

R315-304-4. Industrial Landfill Location Standards.

(1) Class IIIa Landfills.

(a) A new Class IIIa Landfill shall meet the location standards of Subsection R315-302-1(2).

(b) A new Class IIIa Landfill that is proposed on the site of generation of the industrial solid waste or a lateral expansion of an existing Class IIIa Landfill, shall meet the location standards of Subsections R315-302-1(2)(b), (c), (d), and (e) with respect to geology, surface water, wetlands, and ground water.

(c) An existing Class IIIa Landfill shall not be subject to the location standards of Subsection R315-302-1(2).

(d) An exemption from any location standard of Subsection R315-302-1(2), except the standards for floodplains and wetlands, may be granted by the Executive Secretary on a site specific basis if it is determined that the exemption will cause no adverse impacts to human health or the environment.

(i) No exemption may be granted without application to the Executive Secretary.

(ii) If an exemption is granted, the landfill may be required to have more stringent design, construction, monitoring program, or operational practice to protect human health or the environment.

(2) Class IIIb Landfills.

(a) A new Class IIIb landfill or a lateral expansion of an existing Class IIIb Landfill shall be subject to the following location standards:

(i) the standards with respect to floodplains as specified in Subsection R315-302-1(2)(c)(ii);

(ii) the standards with respect to wetlands as specified in Subsection R315-302-1(2)(d); and

(iii) the landfill shall be located so that the lowest level of waste is at least five feet above the historical high level of ground water.

R315-304-5. Industrial Landfill Requirements.

(1) Each Class III Landfill shall meet the applicable general requirements of Section R315-302-2.

(2) Each Class III Landfill shall meet the applicable general requirements for closure and post-closure care of Section R315-302-3.

(a) Each Class IIIa Landfill shall meet the closure requirements of Subsection R315-303-3(4).

(b) Each Class IIIb Landfill shall meet the closure requirements of Subsection R315-305-5(5).

(3) Standards for Design.

(a) The owner or operator of a Class III Landfill shall

design the landfill to minimize the acceptance of liquids and control storm water run-on/run-off as specified in Subsection R315-303-3(1).

(b) The owner or operator of a Class III Landfill shall design the landfill to meet the requirements of R315-303-3(6)(a), (c), (d), (e), (f), (g), (h), and (i).

(4) Ground Water Monitoring.

(a) The owner or operator of a Class IIIa Landfill shall monitor the ground water beneath the landfill as specified in Rule R315-308.

(b) Subject to the performance standard of Subsection R315-303-2(1), if the owner or operator of a Class IIIa Landfill is monitoring the ground water beneath the landfill and otherwise meeting the requirements of a discharge permit as issued by the Utah Division of Water Quality, the landfill may be exempt, upon approval of the Executive Secretary, from the ground water monitoring requirements of Rule R315-308

(5) Standards for Operation.

(a) Each Class IIIa Landfill shall meet the standards of Section R315-303-4 except:

(i) for the requirements of Subsection R315-303-4(2)(f); and

(ii) may be exempt from the daily cover requirements of Subsection R315-303-4(4) upon the demonstration that an alternate schedule for the covering of waste at the landfill will not present a threat to human health or the environment.

(b) Each Class IIIb Landfill shall meet the requirements for operation in Sections R315-305-4 and R315-305-5.

(6) Financial Assurance. Each Class III Landfill shall establish financial assurance as required by Rule R315-309.

(7) Permit Requirements.

(a) Each Class III Landfill shall apply for and obtain a permit to operate by meeting the requirements of Rule R315-310.

(b) The contents of a permit application for a Class IIIa Landfill shall be the information required in Section R315-310-4.

(c) The contents of a permit application for a Class IIIb Landfill shall be the information required in Section R315-310-5.

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R315. Environmental Quality, Solid and Hazardous Waste.
R315-305. Class IV Landfill Requirements.
R315-305-1. Applicability.

(1) These standards apply to each facility that landfills only:

(a) inert waste, construction/demolition waste, yard waste, dead animals; or

(b) upon meeting the requirements of Section 26-32a-103.5 and Subsections R315-320-3(1) or (2), waste tires and material derived from waste tires.

(2) Inert wastes and inert demolition waste used as road building materials and fill material are excluded from Rule R315-305.

(3) The location, design, and operation standards of Rule R315-305 become effective January 1, 1998 on each Class IV Landfill.

(4) The ground water monitoring standards of Rule R315-305 become effective July 1, 1998 on each Class IV Landfill that is required to monitor the ground water.

R315-305-2. Class IV Landfill Standards for Performance.

Each Class IV Landfill shall meet the landfill standards for performance as specified in Section R315-303-2.

R315-305-3. Definitions.

Terms used in Rule R315-305 are defined in Section R315-301-2. In addition, for the purpose of Rule R315-305, the following definitions apply.

(1) "Class IVa Landfill" means a Class IV Landfill that receives, based on an annual average, over 20 tons of waste per day and may receive, as a component of construction/demolition waste, conditionally exempt small quantity generator hazardous waste as defined by Section R315-2-5.

(2) "Class IVb Landfill" means a Class IV Landfill that receives, based on an annual average, 20 tons, or less, of waste per day or demonstrates that no conditionally exempt small quantity generator hazardous waste is accepted.

(3) "Existing Class IV Landfill" means a Class IV Landfill that was receiving waste on or before January 1, 1998.

(4) "New Class IV Landfill" means a Class IV Landfill that begins receiving waste after January 1, 1998.

R315-305-4. General Requirements.

(1) Location Standards.

(a) A new Class IV Landfill or a lateral expansion of an existing Class IV Landfill shall be subject to the following location standards:

(i) the standards with respect to floodplains as specified in Subsection R315-302-1(2)(c)(ii);

(ii) the standards with respect to wetlands as specified in Subsection R315-302-1(2)(d); and

(iii) the landfill shall be located so that the lowest level of waste is at least five feet above the historical high level of ground water.

(b) An existing Class IV Landfill shall not be subject to the location standards of Subsection R315-305-4(1)(a).

(2) An owner or operator of a Class IV Landfill shall obtain a permit, as set forth in Rule R315-310.

(3) An owner or operator of a Class IV Landfill shall design and operate the landfill to:

(a) prevent the run-on of all surface waters resulting from a maximum flow of a 25-year storm into the active area of the landfill; and

(b) collect and treat, if necessary, the run-off of surface waters and other liquids resulting from a 25-year storm from the active area of the landfill.

(4) An owner or operator of a Class IVa Landfill shall monitor the ground water beneath the landfill as specified in Rule R315-308.

(5) An owner or operator of a Class IV Landfill shall erect

a sign at the facility entrance as specified in Subsection R315-303-3(6)(d).

(6) An owner or operator of a Class IV Landfill shall maintain the applicable records as specified in Subsection R315-302-2(3).

(7) An owner or operator of a Class IV Landfill shall meet the requirements of Subsection R315-302-2(6) and make the required recording with the county recorder.

R315-305-5. Requirements for Operation.

(1) An owner or operator of a Class IV Landfill shall not accept any other form of waste except construction/demolition waste, yard waste, inert waste, dead animals, or upon meeting the requirements of Section 26-32a-103.5 and Subsections R315-320-3(1) or (2), waste tires and material derived from waste tires.

(2) An owner or operator of a Class IV Landfill shall prevent the disposal of unauthorized waste by ensuring that at least one person is on site during hours of operation and shall prevent unauthorized disposal during off-hours by controlling entry, i.e., lockable gate or barrier, when the facility is not open.

(3) An owner or operator of a Class IV Landfill shall employ measures to prevent emission of fugitive dusts, when weather conditions or climate indicate that transport of dust off-site is liable to create a nuisance. Preventative measures include watering of roads and covering the waste with soil.

(4) Timbers, wood, and other combustible waste shall be covered with a minimum of six inches of soil, or equivalent, as needed to avoid a fire hazard.

(5) An owner or operator of a Class IV Landfill shall close the facility by:

(a) leveling the waste to the extent practicable;

(b) covering the waste with a minimum of two feet of soil, including six inches of topsoil;

(c) contouring the cover as specified in Subsection R315-303-3(4)(a)(iii); and

(d) seeding the cover with grass, other shallow rooted vegetation, or other native vegetation or covering in another manner approved by the Executive Secretary to minimize erosion.

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R315. Environmental Quality, Solid and Hazardous Waste.
R315-307. Landtreatment Disposal Standards.
R315-307-1. Applicability.

(1) These standards apply to any facility that engages in landtreatment, landfarming, or landspreading disposal of solid waste.

(2) These standards do not apply to:

(a) a facility that uses sewage sludge, woodwaste or other primarily organic sludge in recycling operations as specified in Section R315-312-4.

(b) agricultural solid wastes resulting from the operation of a farm, including farm animal manure and agricultural residues;

(c) inert waste or demolition waste; or

(d) industrial solid waste facilities.

(3) The owner or operator of a landtreatment disposal facility shall meet the standards for performance specified in Subsection R315-303-2.

(4) The owner or operator of a landtreatment disposal facility shall meet the location standards of Section R315-302-1.

R315-307-2. Standards for Design.

(1) The owner or operator of a landtreatment disposal facility shall design the facility to provide interim waste storage areas that meet the requirements for piles, as specified in Rule R315-314.

(2) The facility shall have systems to collect and treat all run-off from a 25 year storm, and divert all run-on for the maximum flow of a 25 year storm around the active area.

(3) The facility shall be designed to avoid standing water anywhere on the active area.

(4) The facility shall be designed to avoid slopes and other features that will lead to soil and waste erosion, unless contour plowing or other measures are taken to avoid erosion.

(5) The owner or operator shall monitor ground water according to Rule R315-308.

(6) The owner or operator shall control access to the facility by fencing or other means and erect a sign as specified in Subsection R315-303-3(6)(d).

R315-307-3. Standards for Maintenance and Operation.

The owner or operator of a landtreatment disposal facility shall maintain and operate the facility to:

(1) avoid the disposal of garbage or infectious waste;

(2) avoid applying wastes at rates greater than ten times agronomic rates using the proposed cover crop, or depths greater than would allow for disking the soil by tracked vehicles;

(3) provide disking of soils during the growing season and after each application of waste to maintain aerobic soil conditions, minimize odors and lessen run-off;

(4) avoid applying waste to any active area having standing water;

(5) conform to the approved plan of operation and all other applicable requirements of Section R315-302-2;

(6) provide for a written contract between landowners, waste generators, waste haulers, and waste operators requiring compliance with rules as a condition of the contract; and

(7) avoid food-chain crops during the active life of the facility and until demonstrated to be safe, after closure, according to the closure and post-closure plans filed with the plan of operation. Specific approval in writing from the Executive Secretary is required for any landspreading disposal facility that is used to raise food-chain crops after closure.

R315-307-4. Standards for Closure.

(1) The owner or operator of a landtreatment disposal facility shall:

(a) close in a manner to comply with Section R315-302-3; and

(b) meet the financial assurance requirements of Rule R315-309.

(3) Upon closure of a landtreatment disposal facility, the owner or operator shall record with the county recorder as part of the record of title the fact that the property has been used as a landtreatment disposal facility pursuant to Subsection R315-302-2(6).

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R315. Environmental Quality, Solid and Hazardous Waste.
R315-308. Ground Water Monitoring Requirements.
R315-308-1. Applicability.

(1) Each existing landfill, pile, or landtreatment disposal facility that is required to perform ground water monitoring shall comply with the ground water monitoring requirements according to the compliance schedule as established by the Executive Secretary during the permitting or the permit renewal process.

(2) Each new landfill, pile, or landtreatment disposal facility that is required to perform ground water monitoring shall have the ground water monitoring system complete and operational before waste may be accepted at the facility.

(3) Ground water monitoring requirements may be suspended by the Executive Secretary if the owner or operator of a solid waste disposal facility can demonstrate that there is no potential for migration of hazardous constituents from the facility to the ground water during the active life of the facility and the post-closure care period. This demonstration must be certified by a qualified ground-water scientist and approved by the Executive Secretary, and must be based upon:

(a) site-specific field collected measurements, sampling, and analysis of physical, chemical, and biological processes affecting contaminant fate and transport; and

(b) contaminant fate and transport predictions that maximize contaminant migration and consider impacts on human health and the environment.

(4) Once a ground water monitoring system and program has been established at a disposal facility, ground water monitoring shall continue to be conducted throughout the active life, closure, and post-closure care periods as specified by the Executive Secretary.

(5) The ground water monitoring requirements of Rule R315-308 apply to industrial solid waste facilities as specified in Rule R315-304.

R315-308-2. Ground Water Monitoring Requirements.

(1) The ground water monitoring system must consist of at least one background or upgradient well and two downgradient wells, installed at appropriate locations and depths to yield ground water samples from the uppermost aquifer and all hydraulically connected aquifers below the facility, cell, or unit. The downgradient wells shall be designated as the point of compliance and must be installed at the closest practicable distance hydraulically down gradient from the unit boundary not to exceed 150 meters (500 feet) and must also be on the property of the owner or operator:

(a) the upgradient well must represent the quality of background water that has not been affected by leakage from the active area; and

(b) the downgradient wells must represent the quality of ground water passing the point of compliance. Additional wells may be required by the Executive Secretary in complicated hydrogeological settings or to define the extent of contamination detected.

(2) All monitoring wells must be cased in a manner that maintains the integrity of the monitoring well bore hole. This casing must allow collection of representative ground water samples. Wells must be constructed in such a manner as to prevent contamination of the samples, the sampled strata, and between aquifers and water bearing strata. All monitoring wells and all other devices and equipment used in the monitoring program must be operated and maintained so that they perform to design specifications throughout the life of the monitoring program.

(3) The ground water monitoring program must include at a minimum, procedures and techniques for:

(a) well construction and completion;

(b) decontamination of drilling and sampling equipment;

(c) sample collection;

(d) sample preservation and shipment;

(e) analytical procedures and quality assurance;

(f) chain of custody control; and

(g) procedures to ensure employee health and safety during well installation and monitoring.

(4) Each facility shall have a state certified laboratory complete tests, using methods with appropriate detection levels, as specified in the approved ground water monitoring plan, on samples for the following:

(a) during the first year of facility operation after wells are installed, a minimum of eight independent samples from the upgradient and four independent samples from each downgradient well for all parameters listed in Section R315-308-4 to establish background concentrations;

(b) after background levels have been established, a minimum of one sample, semiannually, from each well, background and downgradient, for all parameters listed in Section R315-308-4 as a detection monitoring program;

(i) In the detection monitoring program, the owner or operator must determine ground water quality at each monitoring well on a semiannual basis during the life of an active area, including the closure period, and the post-closure care period.

(ii) The owner or operator must express the ground water quality at each monitoring well in a form appropriate for the determination of statistically significant changes;

(c) field measured pH, water temperature, and water conductivity must accompany each sample collected;

(d) analysis for the heavy metals and the organic constituents from Section R315-308-4 shall be completed on unfiltered samples; and

(e) the Executive Secretary may specify additional or fewer constituents depending upon the nature of the ground water or the waste on a site specific basis considering:

(i) the types, quantities, and concentrations of constituents in wastes managed at the landfill;

(ii) the mobility, stability, and persistence of waste constituents or their reaction products in the unsaturated zone beneath the landfill;

(iii) the detectability of indicator parameters, waste constituents, and reaction products in the ground water; and

(iv) the background concentration or values and coefficients of variation of monitoring parameters or constituents in the ground water.

(5) After background constituent levels have been established, a ground water quality protection standard shall be set by the Executive Secretary which shall become part of the permit.

(a) For constituents with background levels below the standards listed in Section R315-308-4, the ground water quality standards of Section R315-308-4 shall be the ground water quality protection standard.

(b) If a constituent is detected and a background level is established but the ground water quality standard for the constituent is not included in Section R315-308-4 or the constituent has a background level that is higher than the value listed in Section R315-308-4 for that constituent, the ground water quality protection standard for that constituent shall be set according to health risk standards.

(6) The ground water monitoring program must include a determination of the ground water surface elevation each time ground water is sampled.

(7) The owner or operator shall use a statistical method for determining whether a significant change has occurred as compared to background. The Executive Secretary will approve such a method as part of the permit. Possible statistical methods include:

(a) a parametric analysis of variance (ANOVA) followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance well's mean and the background mean levels for each constituent;

(b) an analysis of variance (ANOVA) based on ranks followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance well's median and the background median levels for each constituent;

(c) a tolerance or prediction interval procedure in which an interval for each constituent is established from the distribution of the background data, and the level of each constituent in each compliance well is compared to the upper tolerance or prediction limit;

(d) a control chart approach that gives control limits for each constituent; or

(e) another statistical test method approved by the Executive Secretary.

(8) The Executive Secretary may specify additional or fewer sampling and analysis events, no less than annually, depending upon the nature of the ground water or the waste on a site specific basis considering:

(a) lithology of the aquifer and unsaturated zone;

(b) hydraulic conductivity of the aquifer and unsaturated zone;

(c) ground water flow rates;

(d) minimum distance between upgradient edge of the landfill unit and downgradient monitoring well screen (minimum distance of travel); and

(e) resource value of the aquifer.

(9) The owner or operator must determine and report the ground water flow rate and direction in the upper most aquifer each time the ground water is sampled.

(10) If the owner or operator determines that there is a statistically significant change in any parameter or constituent at any monitoring well at the compliance point, the owner or operator must:

(a) within 14 days of receipt of the sample analysis results, enter the information in the operating record and notify the Executive Secretary of this finding in writing. The notification must indicate what parameters or constituents have shown statistically significant changes; and

(b) immediately resample the ground water in all monitoring wells, both background and downgradient, or in a subset of wells specified by the Executive Secretary, and determine:

(i) the concentration of all constituents listed in Section R315-308-4, including additional constituents that may have been identified in the approved ground water monitoring plan;

(ii) if there is a statistically significant change such that the established ground water quality protection level has been exceeded; and

(iii) notify the Executive Secretary in writing within seven days of receipt of the sample analysis results.

(c) The owner or operator may demonstrate that a source other than the solid waste disposal facility caused the contamination or that the statistically significant change resulted from error in sampling, analysis, statistical evaluation, or natural variation in ground water quality. A report documenting this demonstration must be certified by a qualified ground-water scientist and approved by the Executive Secretary and entered in the operating record. If a successful demonstration is made and documented, the owner or operator may continue monitoring as specified in Subsection R315-308-2(4)(b).

(11) If, after 90 days, a successful demonstration as stipulated in Subsection R315-308-2(10)(c) is not made, the owner or operator must initiate the assessment monitoring program required as follows:

(a) take one sample from each downgradient well and analyze for all constituents listed as Appendix II in 40 CFR Part 258, 1991 ed., which is adopted and incorporated by reference.

(b) for any constituent detected from Appendix II, 40 CFR Part 258, in the downgradient wells a minimum of eight independent samples from the upgradient and four independent samples from each downgradient well must be collected and analyzed to establish background concentration levels for the constituents; and

(c) within 14 days of the receipt of the results of the analysis of the samples, place a notice in the operation record

and notify the Executive Secretary in writing identifying the Appendix II, 40 CFR Part 258, constituents and their concentrations that have been detected as well as background levels. The Executive Secretary shall establish a ground water quality protection standard pursuant to Subsection R315-308-2(5) for any Appendix II, 40 CFR Part 258, constituent detected in the downgradient wells.

(d) The owner or operator shall thereafter resample:

(i) all wells on a quarterly basis for all constituents in Section R315-308-4, or the alternative list that may have been approved as part of the permit, and for those constituents detected from Appendix II, 40 CFR Part 258; and

(ii) the downgradient wells on an annual basis for all constituents in Appendix II, 40 CFR Part 258.

(e) If after two consecutive sampling events, the concentrations of all constituents being analyzed in Subsection R315-308-2(11)(d)(i) are shown to be at or below established background values, the owner or operator must notify the Executive Secretary of this finding and may, upon the approval of the Executive Secretary, return to the monitoring schedule and constituents as specified in Subsection R315-308-2(4)(b).

(12) If one or more constituents from Section R315-308-4 or the approved alternative list, or from those detected from Appendix II, 40 CFR Part 258, are detected at statistically significant levels above the ground water quality protection standard as established pursuant to Subsection R315-308-2(5) in any sampling event, the owner or operator must:

(a) within 14 days of the receipt of this finding, place a notice in the operating record identifying the constituents and concentrations that have exceeded the ground water quality standard. Within the same time period, the owner or operator must also notify the Executive Secretary and all appropriate local governmental and local health officials that the ground water quality standard has been exceeded;

(b) characterize the nature and extent of the release by installing additional monitoring wells as necessary;

(c) install at least one additional monitoring well at the facility boundary in the direction of contaminant migration and sample this well and analyze the sample for the constituents in Section R315-308-4 or the approved alternative list and the detected constituents from Appendix II, 40 CFR Part 258; and

(d) notify all persons who own the land or reside on the land that directly overlies any part of the plume of contamination if contaminants have migrated off-site as indicated by sampling of wells in accordance with Subsections R315-308-2(12)(b) and (12)(c).

(e) The owner or operator may demonstrate that a source other than the solid waste disposal facility caused the contamination or that the statistically significant change resulted from error in sampling, analysis, statistical evaluation, or natural variation in ground water quality. A report documenting this demonstration must be certified by a qualified ground-water scientist and approved by the Executive Secretary and entered in the operating record. If a successful demonstration is made, documented and approved, the owner or operator may continue monitoring as specified in Subsection R315-308-2(11)(d) or Subsection R315-308-2(11)(e) when applicable.

R315-308-3. Corrective Action Program.

(1) If, within 90 days, a successful demonstration as stated in Subsection R315-308-2(12)(e) is not made, the owner or operator must:

(a) continue to monitor as required in Subsection R315-308-2(11)(d).

(b) take any interim measures as required by the Executive Secretary or as necessary to ensure the protection of human health and the environment; and

(c) assess possible corrective action measures for the current conditions and circumstances of the disposal facility, addressing at least the following:

(i) the performance, reliability, ease of implementation, and potential impacts of appropriate potential remedies, including safety impacts, cross-media impacts, and control exposure to any residual contamination;

(ii) time required to begin and complete the remedy;

(iii) the costs of remedy implementation;

(iv) public health or environmental requirements that may substantially affect implementation of the remedy; and

(v) prior to the selection of a remedy, discuss the results of the corrective measures assessment in a public meeting with interested and affected parties.

(d) Based on the results of the corrective measures assessment conducted and the comments received in the public meeting, the owner or operator must select a remedy which shall be submitted to the Executive Secretary.

(i) The corrective action remedy must:

(A) be protective of human health and the environment;

(B) use permanent solutions that are within the capability of best available technology;

(C) attain the established ground water quality standard;

(D) control the sources of release so as to reduce or eliminate, to the maximum extent practicable, further releases of contaminants into the environment that may pose a threat to human health or the environment; and

(E) be approved by the Executive Secretary.

(ii) Within 14 days after the selection of the remedy the owner or operator must:

(A) amend the corrective action program required by Subsection R315-302-2(2)(e) if necessary and send a report to the Executive Secretary for approval describing the selected remedy and amendments, along with a schedule of implementation and estimated time of completion; and

(B) put in place the financial assurance mechanism as required by Rule R315-309 for corrective action and notify the Executive Secretary of the financial assurance mechanism and its effective date.

(2) Upon approval of the selected corrective action remedy, the Executive Secretary will notify the owner or operator of such approval and will require that the corrective action plan proceed according to the approved schedule.

(a) The Executive Secretary may also require facility closure if the ground water quality standard is exceeded and, in addition, may revoke any permit and require reapplication.

(b) The Executive Secretary or the owner or operator may determine, based on information developed after implementation of the corrective action plan, that compliance with the requirements of Subsection R315-308-3(1)(d)(i) of this section are not being achieved through the remedy selected. In

such cases, the owner or operator must implement other methods or techniques, upon approval by the Executive Secretary, that could practicably achieve compliance with the requirements.

(c) Upon completion of the remedy, the owner or operator must notify the Executive Secretary. The notification must contain certification signed by the owner or operator and a qualified ground-water scientist that the concentration of contaminant constituents have been reduced to levels below the specified limits of the ground water quality standard for a period of three years or an alternative length of time specified by the Executive Secretary. Upon approval of the Executive secretary the owner or operator shall:

(i) terminate corrective action measures;

(ii) continue detection monitoring as required in Subsection R315-308-2(4)(b); and

(iii) be released from the requirements of financial assurance for corrective action.

R315-308-4. Constituents for Detection Monitoring.

(1) The table lists the constituents for detection monitoring, the CAS number for the constituents, and the ground water quality standard for the constituents for any facility that is required to monitor ground water under Rule R315-308.

TABLE

Constituents for Detection Monitoring

	CAS	Ground Water Protection Standard (mg/l)
Inorganic Constituents		
Ammonia (as N)	7664-41-7	
Carbonate/Bicarbonate		
Calcium		
Chemical Oxygen Demand (COD)		
Chloride		
Iron	7439-89-6	
Magnesium		
Manganese	7439-96-5	
Nitrate (as N		
pH		
Potassium		
Sodium		
Sulfate		
Total Dissolved Solids (TDS)		
Total Organic Carbon (TOC)		
Heavy Metals		
Antimony	7440-36-0	0.006
Arsenic	7440-38-2	0.05
Barium	7440-39-3	2
Beryllium	7440-41-7	0.004
Cadmium	7440-43-9	0.005
Chromium		0.1
Cobalt	7440-48-4	0.4
Copper	7440-50-8	1.3
Lead		0.015
Mercury	7439-97-6	0.002
Nickel	7440-02-0	0.1
Selenium	7782-49-2	0.05
Silver	7440-22-4	0.1
Thallium		0.002
Vanadium	7440-62-2	0.05
Zinc	7440-66-6	5
Organic Constituents		
Acetone	67-64-1	0.7
Acrylonitrile	107-13-1	0.1
Benzene	71-43-2	0.005
Bromochloromethane	74-97-5	0.01
Bromodichloromethane[1]	75-27-4	0.1
Bromoform[1]	75-25-2	0.1
Carbon disulfide	75-15-0	0.7
Carbon tetrachloride	56-23-5	0.005
Chlorobenzene	108-90-7	0.1
Chloroethane	75-00-3	0.3
Chloroform[1]	67-66-3	0.1
Dibromochloromethane[1]	124-48-1	0.1
1,2-Dibromo-3-chloropropane	96-12-8	0.0002
1,2-Dibromoethane	106-93-4	0.00005
1,2-Dichlorobenzene (ortho)	95-50-1	0.6
1,4-Dichlorobenzene (para)	106-46-7	0.075
trans-1,4-Dichloro-2-butene	110-57-6	
1,1-Dichloroethane	75-34-3	0.7
1,2-Dichloroethane	107-06-2	0.005
1,1-Dichloroethylene	75-35-4	0.007
cis-1,2-Dichloroethylene	156-59-2	0.07
trans-1,2-Dichloroethylene	156-60-5	0.1
1,2-Dichloropropane	78-87-5	0.005
cis-1,3-Dichloropropene	10061-01-5	0.002
trans-1,3-Dichloropropene	10061-02-6	0.002
Ethylbenzene	100-41-4	0.7
2-Hexanone	591-78-6	
Methyl bromide	74-83-9	0.01
Methyl chloride	74-87-3	0.003
Methylene bromide	74-95-3	0.07
Methylene chloride	75-09-2	0.005
Methyl ethyl ketone	78-93-3	0.17
Methyl iodide	74-88-4	
4-Methyl-2-pentanone	108-10-1	0.6
Styrene	100-42-5	0.1
1,1,1,2-Tetrachloroethane	630-20-6	0.07
1,1,2,2-Tetrachloroethane	79-34-5	0.0058
Tetrachloroethylene	127-18-4	0.005
Toluene	108-88-3	1
1,1,1-Trichloroethane	71-55-6	0.2
1,1,2-Trichloroethane	79-00-5	0.005
Trichloroethylene	79-01-6	0.005
Trichlorofluoromethane	75-69-4	2
1,2,3-Trichloropropane	96-18-4	0.04
Vinyl acetate	108-05-4	7
Vinyl Chloride	75-01-4	0.002
Xylenes	1330-20-7	10

[1] The ground water protection standard of 0.1 mg/l is for the total of Bromodichloromethane, Bromoform, Chloroform, and Dibromochloromethane.

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40 CFR 258

R315. Environmental Quality, Solid and Hazardous Waste.
R315-311. Permit Approval For Solid Waste Disposal, Energy Recovery, And Incinerator Facilities.
R315-311-1. General Requirements.

(1) Upon submittal of the complete plan of operation and supporting information required by Rule R315-310, as determined by the Executive Secretary, a draft permit will be prepared and the owner or operator of the proposed facility will be notified in writing by the Executive Secretary.

(a) After meeting the requirements of the public comment

period and public hearing as stipulated in Section R315-311-3, the owner or operator may be issued a permit which will include appropriate conditions and limitations on operation and types of waste to be accepted at the facility.

(b) Construction shall not begin prior to the receipt of the permit.

(c) An application that has been initiated by an owner or operator but left inactive by the applicant for more than one year shall be cancelled.

(2) Solid waste disposal facility plan approval and permit issuance will depend upon:

(a) the adequacy of the facility in meeting the location standards in Section R315-302-1;

(b) the hydrology and geology of the area; and

(c) the adequacy of the plan of operation, facility design, and monitoring programs in meeting the requirements of the applicable rules.

(3) A permit can be granted for up to five years by the Executive Secretary. Each facility must apply for a permit renewal, as required by Section R315-310-8, 180 days before the expiration date of the current permit.

R315-311-2. Permit Modification, Renewal, or Termination.

(1) A permit may be considered for modification, renewal, or termination at the request of any interested person, including the permittee, or upon the Executive Secretary's initiative as a result of new information or changes in statutes or rules. Requests for modification, reissuance, or termination shall be submitted in writing to the Executive Secretary and shall contain facts or reasons supporting the request. Requests for permit modification, renewal, or termination shall become effective only upon approval by the Executive Secretary.

(a) Minor modifications of a permit or plan of operation shall not be subject to the 30 day public comment period as required by Section R315-311-3. A permit modification shall be considered minor if:

(i) typographical errors are corrected;

(ii) the name, address, or phone number of persons or agencies identified in the permit are changed;

(iii) administrative or informational changes are made;

(iv) procedures for maintaining the operating record are changed;

(v) changes are made to provide for more frequent monitoring, reporting, sampling, or maintenance;

(vi) a compliance date extension request is for a date not to exceed 120 days after the date specified in the approved permit;

(vii) changes are made in the expiration date of the permit to allow an earlier permit termination;

(viii) changes are made in the closure schedule for a unit, in the final closure schedule for the facility, or the closure period is extended;

(ix) the Executive Secretary determines, in the case of a permit transfer application, that no change in the permit other than the change in the name of the owner or operator is necessary;

(x) equipment is upgraded or replaced with functionally equivalent components;

(xi) changes are made in sampling or analysis methods, procedures, or schedules;

(xii) changes are made in quality control/quality assurance plans which will better certify that the specifications for construction, closure, sampling, or analysis will be met;

(xiii) changes are made in the facility plan of operation which conform to guidance or rules approved by the Board or provide more efficient waste handling or more effective waste screening;

(xiv) an existing monitoring well is replaced with a new well without changing the location;

(xv) changes are made in the design or depth of a monitoring well that provides more effective monitoring; or

(xvi) changes are made in the statistical method used to statistically analyze the ground water quality data.

(xvii) Other permit modifications shall be considered to be major modifications.

(xviii) The Executive Secretary may subject any minor modification request to the 30 day public comment period if justified by conditions and circumstances.

(b) If the Executive Secretary determines that major modifications to a permit or plan of operation are justified, a new operational plan incorporating the approved modifications shall be prepared. The modifications shall be subject to the public comment period as specified in Section R315-311-3.

(2) An application for permit renewal shall consist of the information required by Section R315-310-8. Upon receipt of the application, the Executive Secretary will review the application and will notify the applicant as to what information or change of operational practice is required of the applicant, if any, to receive a permit renewal. The current permit shall remain in effect until issuance or denial of a new permit. Each permit renewal shall be subject to the public comment requirements of Section R315-311-3.

(3) The Executive Secretary shall notify, in writing, the owner or operator of any facility of intent to terminate a permit. A permit may be terminated for:

(a) noncompliance with any condition of the permit;

(b) noncompliance with any applicable rule;

(c) failure in the application or during the approval or renewal process to disclose fully all relevant facts;

(d) misrepresentation by the owner or operator of any relevant facts at any time; or

(e) a determination that the solid waste activity or facility endangers human health or the environment.

(4) The owner or operator of a facility may appeal any action associated with modification, renewal, or termination in accordance with Section R315-317-3, Title 63 Chapter 46b, and Rule R315-12.

R315-311-3. Public Comment Period.

(1) All solid waste disposal, energy recovery and incinerator facility draft permits, permit renewals, or major modifications of a permit shall be subject to a 30 day public comment period.

(2) A public hearing may be held if a request for public hearing is submitted to the Executive Secretary in writing:

(a) by a local government, a state agency, ten interested persons, or an interested association having not fewer than ten members; and

(b) the request is received by the Executive Secretary not more than 15 days after the publication of the public notice.

(3) After due consideration of all comments received, final determination on draft permits or major modification of permits will be made available by public notice.

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19-6-108

R317. Environmental Quality, Water Quality.
R317-1. Definitions and General Requirements.
R317-1-1. Definitions.

1.1 "Absorption system" means a device constructed under the ground surface to receive and to distribute effluent in such a manner that the effluent is effectively filtered and retained below ground surface.

1.2 "Board" means the Utah Water Quality Board.

1.3 "BOD" means 5-day, 20 degrees C. biochemical oxygen demand.

1.4 "Body Politic" means the State or its agencies or any political subdivision of the State to include a county, city, town, improvement district, taxing district or any other governmental subdivision or public corporation of the State.

1.5 "Building sewer" means the pipe which carries wastewater from the building drain to a public sewer, a wastewater disposal system or other point of disposal. It is synonymous with "house sewer".

1.6 "CBOD" means 5-day, 20 degrees C., carbonaceous biochemical oxygen demand.

1.7 "Deep well" means a drinking water supply source which complies with all the applicable provisions of the State of Utah Public Drinking Water Regulations.

1.8 "Digested sludge" means sludge in which the volatile solids content has been reduced to about 50% by a suitable biological treatment process.

1.9 "Division" means the Utah State Division of Water Quality.

1.10 "Domestic wastewater" means a combination of the liquid or water-carried wastes from residences, business buildings, institutions, and other establishments with installed plumbing facilities, together with those from industrial establishments, and with such ground water, surface water, and storm water as may be present. It is synonymous with the term "sewage".

1.11 "Effluent" means the liquid discharge from any unit of a wastewater treatment works, including a septic tank.

1.12 "Human pathogens" means specific causative agents of disease in humans such as bacteria or viruses.

1.13 "Individual wastewater disposal system" means, for the purposes of Section 19-5-102(7), a system for underground 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 and twin homes. It usually consists of a building sewer, a septic tank and an absorptions system.

1.14 "Industrial wastes" means the liquid wastes from industrial processes as distinct from wastes derived principally from dwellings, business buildings, institutions and the like. It is synonymous with the term "industrial wastewater".

1.15 "Influent" means the total wastewater flow entering a wastewater treatment works.

1.16 "Large underground wastewater disposal system" means the same type of device as described under 1.1.13 above, except that it is designed to handle more than 5,000 gallons per day of domestic wastewater which originates in multiple dwellings, commercial establishments, recreational facilities, schools, or any other wastewater disposal system not covered in 1.1.13 above. The Board controls the installation of such systems.

1.17 "Person" means any individual, corporation, partnership, association, company, or body politic, including any agency or instrumentality of the United States government (Section 19-1-103).

1.18 "Point source" means any discernible, confined and discrete conveyance including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, concentrated animal feeding operation, or vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flow from irrigated agriculture.

1.19 "Polished Secondary Treatment" means a treatment process that can produce an effluent meeting or exceeding the following standards:

A. The arithmetic mean of BOD values determined on effluent samples collected during any 30-day period shall not exceed 15 mg/l, nor shall the arithmetic mean exceed 20 mg/l during any 7-day period.

B. The arithmetic mean of SS values determined on effluent samples collected during any 30-day period shall not exceed 10 mg/l, nor shall the arithmetic mean exceed 12 mg/l during any 7-day period.

C. The geometric mean of total coliform and fecal coliform bacteria in effluent samples collected during any 30-day period shall not exceed either 200 per 100 ml or 20 per 100 ml respectively, nor shall the geometric mean exceed 250 per 100 ml or 25 per 100 ml respectively during any 7-day period.

D. The effluent pH values shall be maintained within the limits of 6.5 to 9.0.

1.20 "Pollution" means such contamination, or other alteration of the physical, chemical, or biological properties of any waters of the state, or such discharge of any liquid, gaseous or solid substance into any waters of the state as will create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

1.21 "Seepage trench" means a modified seepage pit, an absorption system consisting of trenches filled with coarse filter material into which septic tank effluent is discharged.

1.22 "Seepage pit" means an absorption system consisting of a covered pit into which effluent is discharged.

1.23 "Septic tank" means a water-tight receptacle which receives the discharge of a drainage system or part thereof, designed and constructed so as to retain solids, digest organic matter through a period of detention and allow the liquids to discharge into the soil outside of the tank through an underground absorption system meeting the requirements of these regulations.

1.24 "Shallow well" means a well providing a source of drinking water which does not meet the requirements of a "deep well".

1.25 "Sludge" means the accumulation of solids which have settled from wastewater. As initially accumulated, and prior to treatment, it is known as "raw sludge".

1.26 "SS" means suspended solids.

1.27 "Subsurface absorption bed" means an absorption system consisting of a covered, gravel-filled bed into which effluent is discharged through specifically designed underground pipes.

1.28 "Subsurface absorption field" means an absorption system consisting of a series of covered, gravel-filled trenches into which effluent is discharged through specifically designed underground pipes.

1.29 "Treatment works" means any plant, disposal field, lagoon, dam, pumping station, incinerator, or other works used for the purpose of treating, stabilizing or holding wastes. (Section 19-5-102).

1.30 "Wastes" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water. (Section 19-5-102).

1.31 "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.

1.32 "Waters of the state" means all streams, lakes, ponds, marshes, water-courses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion thereof, except that bodies of water confined to and retained within the limits of private property, and which do not develop into or constitute a nuisance, or a public health hazard, or a menace to fish and wildlife, shall not be considered to be "waters of the state" under this definition (Section 19-5-102).

R317-1-2. General Requirements.

2.1 Water Pollution Prohibited. No person shall discharge wastewater or deposit wastes or other substances in violation of the requirements of these regulations.

2.2 Construction Permit. No person shall make or construct any device for treatment or discharge of wastewater (including storm sewers), except to an existing sewer system, without first receiving a permit to do so from the Board or its authorized representative, except as provided in R317-1-2.5. Issuance of such permit shall be construed as approval of plans for the purposes of authorizing release of federal or state funds allocated for planning or construction purposes. Construction permits shall expire one year after date of issuance unless substantial and continuous construction is under way. Upon application, construction permits may be extended on an individual basis provided application for such extension is made prior to the permit expiration date.

2.3 Submission of Plans. Any person desiring a permit as required by R317-1-2.2, shall submit complete plans, specifications, and other pertinent documents covering the proposed construction to the Division for review.

2.4 Review of Plans. The Division shall review said plans and specifications as to their adequacy of design for the intended purpose and shall require such changes as are found necessary to assure compliance with pertinent parts of these regulations.

2.5 Exceptions.

A. Individual Wastewater Disposal Systems. Construction plans and specifications for individual wastewater disposal systems shall be submitted to the local health authority having jurisdiction and need not be submitted to the Division. Such devices, in any case, shall be constructed in accordance with regulations for individual wastewater disposal systems adopted by the Water Quality Board. Compliance with the regulations shall be determined by an on-site inspection by the appropriate health authority.

B. Small Animal Waste (Manure) Lagoons. Construction plans and specifications for small animal waste lagoons as defined in R317-6 (permitted by rule for ground water permits) need not be submitted to the Division if the design is prepared or certified by the U.S.D.A. Natural Resources Conservation Service (NRCS) in accordance with criteria provided for in the Memorandum of Agreement between the Division and the NRCS, and the construction is inspected by the NRCS. Compliance with these rules shall be determined by on-site inspection by the NRCS.

2.6 Compliance with Water Quality Standards. No person shall discharge wastes into waters of the state except in compliance with these regulations and under circumstances which assure compliance with water quality standards in R317-2.

2.7 Operation of Wastewater Treatment Works. Wastewater treatment works shall be so operated at all times as to produce effluents meeting all requirements of these regulations and otherwise in a manner consistent with adequate protection of public health and welfare. Complete daily records shall be kept of the operation of wastewater treatment works covered under R317-3 on forms approved by the Division and a copy of such records shall be forwarded to the Division at monthly intervals.

R317-1-3. Requirements for Waste Discharges.

3.1 Deadline For Compliance With Water Quality Standards.

All persons discharging wastes into any of the waters of the State on the effective date of these regulations shall provide the degree of wastewater treatment determined necessary to insure compliance with the requirements of R317-2 (Water Quality Standards) as soon as practicable but not later than June 30, 1983, except that the Board may, on a case-by-case basis, allow an extension to the deadline for compliance with these requirements for specific criteria listed in R317-2 where it is determined that the designated use is not being impaired or significant use improvement would not occur or where there is a reasonable question as to the validity of a specific criterion or for other valid reasons as determined by the Board.

3.2 Deadline For Compliance With Secondary Treatment Requirements.

All persons discharging wastes from point sources into any of the waters of the State shall provide treatment processes which will produce secondary effluent meeting or exceeding the following effluent quality standards.

A. The arithmetic mean of BOD values determined on effluent samples collected during any 30-day period shall not exceed 25 mg/l, nor shall the arithmetic mean exceed 35 mg/l

during any 7-day period. In addition, if the treatment plant influent is of domestic or municipal sewage origin, the BOD values of effluent samples shall not be greater than 15% of the BOD values of influent samples collected in the same time period. As an alternative, if agreed to by the person discharging wastes, the following effluent quality standard may be established as a requirement of the discharge permit and must be met: The arithmetic mean of CBOD values determined on effluent samples collected during any 30-day period shall not exceed 20 mg/l nor shall the arithmetic mean exceed 30 mg/l during any 7-day period. In addition, if the treatment plant influent is of domestic or municipal sewage origin, the CBOD values of effluent samples shall not be greater than 15% of the CBOD values of influent samples collected in the same time period.

B. The arithmetic mean of SS values determined on effluent samples collected during any 30-day period shall not exceed 25 mg/l, nor shall the arithmetic mean exceed 35 mg/l during any 7-day period. In addition, if the treatment plant influent is of domestic or municipal sewage origin, the SS values of effluent samples shall not be greater than 15% of the SS values of influent samples collected in the same time period.

C. The geometric mean of total coliform and fecal coliform bacteria in effluent samples collected during any 30-day period shall not exceed either 2000 per 100 ml or 200 per 100 ml respectively, nor shall the geometric mean exceed 2500 per 100 ml or 250 per 100 ml respectively, during any 7-day period. Exceptions to this requirement may be allowed by the Board on a case-by-case basis where domestic wastewater is not a part of the effluent and where water quality standards are not violated.

D. The effluent values for pH shall be maintained within the limits of 6.5 and 9.0.

E. Exceptions to the 85% removal requirements may be allowed on a case-by-case basis where infiltration makes such removal requirements infeasible and where water quality standards are not violated.

F. The Board may allow exceptions to the requirements of (A), (B) and (D) above on a case-by-case basis where the discharge will be of short duration and where there will be of no significant detrimental affect on receiving water quality or downstream beneficial uses.

3.3 Extensions To Deadlines For Compliance.

The Board may, upon application of a waste discharger, allow extensions on a case-by-case basis to the compliance deadlines in Section 1.3.2 above where it can be shown that despite good faith effort, construction cannot be completed within the time required.

3.4 Pollutants In Diverted Water Returned To Stream.

A user of surface water diverted from waters of the State will not be required to remove any pollutants which such user has not added before returning the diverted flow to the original watercourse, provided there is no increase in concentration of pollutants in the diverted water. Should the pollutant constituent concentration of the intake surface waters to a facility exceed the effluent limitations for such facility under a federal National Pollutant Discharge Elimination System permit or a permit issued pursuant to State authority, then the effluent limitations shall become equal to the constituent concentrations in the intake surface waters of such facility. This section does not apply to irrigation return flow.

R317-1-4. Utilization and Isolation of Domestic Wastewater Treatment Works Effluent.

4.1 Untreated Domestic Wastewater. Untreated domestic wastewater or effluent not meeting secondary treatment standards as defined by these regulations shall be isolated from all public contact until suitably treated. Land disposal or land treatment of such wastewater or effluent may be accomplished by use of an approved total containment lagoon as defined in R317-3 or by such other treatment approved by the Board as being feasible and equally protective of human health and the environment.

4.2 Submittal of Reuse Project Plan. If a person intends to reuse or provide for the reuse of treated domestic wastewater directly for any purpose, except on the treatment plant site as described in R317-1-4.6, a Reuse Project Plan must be submitted to the Division of Water Quality. A copy of the plan must also be submitted to the local health department. Any needed construction of wastewater treatment and delivery systems would also be covered by a construction permit as required in section R317-1-2.2 of this rule. The plan must contain the following information. At least items A and B should be provided before construction begins. All items must be provided before any water deliveries are made.

A. A description of the source, quantity, quality, and use of the treated wastewater to be delivered, the location of the reuse site, and how the requirements of this rule would be met.

B. A description of the water rights for the use of the treated effluent. This will include evidence that the State Engineer has been notified and has agreed that the treatment entity has the right to use the water for the intended use.

C. An operation and management plan to include:

1. A copy of the contract with the user, if other than the treatment entity.

2. A labelling and separation plan for the prevention of cross connections between reclaimed water distribution lines and potable water lines. Guidance for distribution systems is available from the Division of Water Quality.

3. Schedules for routine maintenance.

4. A contingency plan for system failure or upsets.

D. If the water will be delivered to another entity for distribution and use, a copy of the contract covering how the requirements of this rule will be met.

4.3 Use of Treated Domestic Wastewater Effluent Where Human Exposure is Likely (Type I)

A. Uses Allowed

1. Residential irrigation, including landscape irrigation at individual houses.

2. Urban uses, which includes non-residential landscape irrigation, golf course irrigation, toilet flushing, fire protection, and other uses with similar potential for human exposure.

3. Irrigation of food crops where the applied reclaimed water is likely to have direct contact with the edible part. Type I water is required for all spray irrigation of food crops.

4. Irrigation of pasture for milking animals.

5. Impoundments of wastewater where direct human contact is likely to occur.

6. All Type II uses listed in 4.4.A below.

B. Required Treatment Processes

1. Secondary treatment process, which may include activated sludge, trickling filters, rotating biological contactors, oxidation ditches, and stabilization ponds. The secondary treatment process should produce effluent in which both the BOD and total suspended solids concentrations do not exceed 25 mg/l as a monthly mean.

2. Filtration, which includes passing the wastewater through filter media such as sand and/or anthracite or approved membrane processes.

3. Disinfection to destroy, inactivate, or remove pathogenic microorganisms by chemical, physical, or biological means. Disinfection may be accomplished by chlorination, ozonation, or other chemical disinfectants, UV radiation, membrane processes, or other approved processes.

C. Water Quality Limits. The quality of effluent before use must meet the following standards. Testing methods and procedures shall be performed according to Standards Methods for Examination of Water and Wastewater, eighteenth edition, 1992, or as otherwise approved by the Executive Secretary.

1. The monthly arithmetic mean of BOD shall not exceed 10 mg/l as determined by daily composite sampling. Composite samples shall be comprised of at least six flow proportionate samples taken over a 24-hour period.

2. The daily arithmetic mean turbidity shall not exceed 2 NTU, and turbidity shall not exceed 5 NTU at any time. Turbidity shall be measured continuously. The turbidity standard shall be met prior to disinfection. If the turbidity standard cannot be met, but it can be demonstrated to the satisfaction of the Executive Secretary that there exists a consistent correlation between turbidity and the total suspended solids, then an alternate turbidity standard may be established. This will allow continuous turbidity monitoring for quality control while maintaining the intent of the turbidity standard, which is to have 5 mg/l total suspended solids or less to assure adequate disinfection.

3. The weekly median fecal coliform concentration shall be none detected, as determined from daily grab samples, and no sample shall exceed 14 organisms/100 ml.

4. The total residual chlorine shall be measured continuously and shall at no time be less than 1.0 mg/l after 30 minutes contact time at peak flow. If an alternative disinfection process is used, it must be demonstrated to the satisfaction of the Executive Secretary that the alternative process is comparable to that achieved by chlorination with a 1 mg/l residual after 30 minutes contact time. If the effectiveness cannot be related to chlorination, then the effectiveness of the alternative disinfection process must be demonstrated by testing for pathogen destruction as determined by the Executive Secretary. A 1 mg/l total chlorine residual is required after disinfection and before the reclaimed water goes into the distribution system.

5. The pH as determined by daily grab samples or continuous monitoring shall be between 6 and 9.

D. Other Requirements

1. An alternative disposal option or diversion to storage must be automatically activated if turbidity exceeds or chlorine residual drops below the instantaneous required value for more than 5 minutes.

2. Any irrigation must be at least 50 feet from any potable water well. Impoundments of reclaimed water, if not sealed, must be at least 500 feet from any potable water well.

3. Requirements for ground water discharge permits, if required, shall be determined in accordance with R317-6.

4. For residential landscape irrigation at individual homes, additional quality control restrictions may be required by the Executive Secretary. Proposals for such uses should also be submitted to the local health authority to determine any conditions they may require.

4.4 Use of Treated Domestic Wastewater Effluent Where Human Exposure is Unlikely (Type II)

A. Uses Allowed

1. Irrigation of sod farms, silviculture, limited access highway rights of way, and other areas where human access is restricted or unlikely to occur.

2. Irrigation of food crops where the applied reclaimed water is not likely to have direct contact with the edible part, whether the food will be processed or not (spray irrigation not allowed).

3. Irrigation of animal feed crops other than pasture used for milking animals.

4. Impoundments of wastewater where direct human contact is not allowed or is unlikely to occur.

5. Cooling water. Use for cooling towers which produce aerosols in populated areas may have special restrictions imposed.

6. Soil compaction or dust control in construction areas.

B. Required Treatment Processes

1. Secondary treatment process, which may include activated sludge, trickling filters, rotating biological contactors, oxidation ditches, and stabilization ponds. Secondary treatment should produce effluent in which both the BOD and total suspended solids do not exceed 25 mg/l as a monthly mean.

2. Disinfection to destroy, inactivate, or remove pathogenic microorganisms by chemical, physical, or biological means. Disinfection may be accomplished by chlorination, ozonation, or other chemical disinfectants, UV radiation, membrane processes, or other approved processes.

C. Water Quality Limits. The quality of effluent before use must meet the following standards. Testing methods and procedures shall be performed according to Standards Methods for Examination of Water and Wastewater, eighteenth edition, 1992, or as otherwise approved by the Executive Secretary.

1. The monthly arithmetic mean of BOD shall not exceed 25 mg/l as determined by weekly composite sampling. Composite samples shall be comprised of at least six flow proportionate samples taken over a 24-hour period.

2. The monthly arithmetic mean total suspended solids concentration shall not exceed 25 mg/l as determined by daily composite sampling. The weekly mean total suspended solids concentration shall not exceed 35 mg/l.

3. The weekly median fecal coliform concentration shall not exceed 200 organisms/100 ml, as determined from daily grab samples, and no sample shall exceed 800 organisms/100 ml.

4. The pH as determined by daily grab samples or continuous monitoring shall be between 6 and 9.

5. At the discretion of the Executive Secretary, the sampling frequency to determine compliance with water quality

limits for effluent from lagoon systems used to irrigate agricultural crops, may be reduced to monthly grab sampling for BOD, and weekly grab sampling for fecal coliform, TSS and pH.

D. Other Requirements

1. An alternative disposal option or diversion to storage must be available in case quality requirements are not met.

2. Any irrigation must be at least 300 feet from any potable water well. Spray irrigation must be at least 300 feet from areas intended for public access. This distance may be reduced or increased by the Executive Secretary, based on the type of spray irrigation equipment used and other factors. Impoundments of reclaimed water, if not sealed, must be at least 500 feet from any potable water well.

3. Requirements for ground water discharge permits, if required, shall be determined in accordance with R317-6.

4. Public access to effluent storage and irrigation or disposal sites shall be restricted by a stock-tight fence or other comparable means which shall be posted and controlled to exclude the public.

4.5 Records. Records of volume and quality of treated wastewater delivered for reuse shall be maintained and submitted monthly in accordance with R317-1-2.7. If monthly operating reports are already being submitted to the Division of Water Quality, the data on water delivered for reuse may be submitted on the same form.

4.6 Use of Secondary Effluent at Plant Site. Secondary effluent may be used at the treatment plant site in the following manner provided there is no cross-connection with a potable water system:

A. Chlorinator injector water for wastewater chlorination facilities, provided all pipes and outlets carrying the effluent are suitably labeled.

B. Water for hosing down wastewater clarifiers, filters and related units, provided all pipes and outlets carrying the effluent are suitably labeled.

C. Irrigation of landscaped areas around the treatment plant from which the public is excluded.

4.7 Other Uses of Effluents. Proposed uses of effluents not identified above, including industrial uses, shall be considered for approval by the Board based on a case-specific analysis of human health and environmental concerns.

R317-1-5. Use of Industrial Wastewaters.

5.1 Use of industrial wastewaters (not containing human pathogens) shall be considered for approval by the Board based on a case-specific analysis of human health and environmental concerns.

R317-1-6. Disposal of Domestic Wastewater Treatment Works Sludge.

6.1 General. No person shall use, dispose, or otherwise manage sewage sludge through any practice for which pollutant limits, management practices, and operational standards for pathogens and vector attraction reduction requirements are established in 40 CFR 503, July 1, 1994, except in accordance with such requirements.

6.2 Permit. All treatment works producing, treating and disposing of sewage sludge must comply with applicable permit requirements at R317-3, 6 and 8.

6.3 Septic Tank Contents. The dumping or spreading of septic tank contents is prohibited except in conformance with 40 CFR 503, and as authorized by the local health authority.

6.4 Effective Date. Notwithstanding the effective date for incorporation by reference of 40 CFR 503 provided in R317-8-1.10(9), those portions of 40 CFR 503 specified in R317-1-6.1 and 6.3 are effective immediately.

R317-1-7. Municipal Wastewater Facility Planning and Compliance Criteria.

7.1 Planning and Compliance Requirements.

A. Each wastewater treatment entity in Utah (which does not have an approved, current facility plan) is required to develop, as soon as practicable, but no later than December 31, 1985, a Facilities Management and Financial Plan (FMFP) which will assure that sewerage works construction, operation, maintenance, and replacement needs will be met in a timely manner. A general outline of an FMFP is provided as an attachment. These plans are prerequisite to issuance of construction permits for new or significantly modified wastewater treatment facilities and for certification of new or renewed NPDES permits.

B. The FMFP must include an evaluation of alternatives in sufficient detail to determine the most cost effective and environmentally sound treatment strategy. The strategy must include a timely progression of interim measures which are planned to result in effective wastewater treatment for existing and projected population levels. The FMFP should contain an implementation schedule which outlines the specific measures to be taken which are developed to achieve effective wastewater management as soon as possible. Measurable, continuing progress toward this goal must be achievable. Public entities are encouraged to begin implementing their FMFP as soon as possible.

C. The FMFP must describe a financial plan to pay for all project costs, including replacement costs. This financial plan should include an "enterprise" fund which is separate from the general fund. The enterprise fund will account for user charges and other assessments collected to pay for all necessary operation and maintenance costs, debt service, and capital replacement. The plan should consider budgeting an allowance for eventual replacement of the entire facility at the end of the design life as well as replacement of major components in the interim.

D. The FMFP must address optimizing the operation and maintenance of existing facilities.

E. The FMFP must be consistent with all applicable State and Federal Laws and Regulations regarding pollution control and financial management of publicly owned wastewater treatment facilities. Specific regulatory compliance dates may only be extended on the basis of approval of such a plan.

7.2 Facility Plans. Existing wastewater treatment facility plans for projects awaiting EPA funding for design and construction should be updated where necessary to include all elements of an approvable FMFP (above) and elements identified by EPA in current guidance for an approvable facility plan. Updated facility plans shall be submitted by December 31, 1985.

7.3 Planning Deadline Provisions. The deadline for submission of FMFP's or updated facility plans shall be December 31, 1985. Extensions to this deadline may be granted on a case-by-case basis by the Board if it is demonstrated that the imposition of the deadline will cause financial hardship to the entity; if the plan cannot, despite good faith efforts, be completed by this date; or if the preparation and approval process would likely cause delays in projects already planned and in the process of implementation. A schedule and plan for the preparation of the FMFP or facility plan must be submitted with any extension request.

7.4 Scope of Planning Necessary. In order to assure that FMFP's and facility plans are properly scoped wastewater treatment entities should first determine the current design life of existing wastewater treatment facilities.

If the current design life is five years or less, according to responsible engineering judgement, entities should prepare FMFP's or facility plans with sufficient detail to permit preparation of detailed design so that construction of necessary wastewater facilities may be completed as soon as possible. Short-term and long-term facilities needs should be addressed. A general outline of such a plan is presented as an attachment. Facility plans, prepared in anticipation of an EPA Construction Grant, must be prepared in accordance with current EPA guidance.

If the current design life exceeds five years, long-term wastewater facilities needs and a financial plan to address these needs, prepared in a professional manner, may be an acceptable level of planning. These facilities needs would generally be established at a very preliminary level in recognition of the fact that detailed plans have a useful life of approximately five years. However, the long-term facilities needs must be estimated so that financial plans can be implemented as necessary.

After a preliminary determination is made regarding the present design life of facilities, the staff of the Bureau of Water Pollution Control should be consulted to provide scoping recommendations. Design criteria, wastewater characteristics, demographics, other factors used to determine the present design life of facilities, and the proposed plan of study should be submitted to the staff before planning is initiated.

7.5 Extensions to the Implementation of Standards.

To permit the expeditious and orderly development of plans for a short and long term wastewater management strategy, the Board will consider temporary extensions to the deadlines for compliance with water quality standards, secondary treatment standards and polished secondary treatment standards where it is documented by the entity that justifiable reasons exist. Extensions may be considered for specific standards and time periods if the following conditions are met:

A. A Facilities Management and Financial Plan or a current Facility Plan has been prepared in accordance with policies noted above.

B. Existing and anticipated conditions will not pose a health hazard.

C. The beneficial uses of affected state waters, as defined by R317-2, will not be seriously impaired by the discharge during the proposed extension.

D. Optimal operation and maintenance of existing facilities will be continued during the extension. Any time extension granted will require a treatment entity to conduct a detailed evaluation of the facility to identify and correct any operational and non-capital intensive deficiencies at the facility.

E. The FMFP or current facility plan must demonstrate that the entity will upgrade its wastewater treatment facility to meet the required standards in a timely manner. User charges and fees must be structured appropriately so that wastewater management facilities become self supporting.

7.6 Responsibility for Planning. Any wastewater treatment entity that is presently in compliance, yet has an identifiable need to plan for future expansion to accommodate growth but elects to wait for federal funds for construction, will make such election with full knowledge that should the capacity of the existing facilities be reached before new facilities are completed, a moratorium on new connections may be imposed and/or other enforcement actions may be taken. In such enforcement actions, the entity will not qualify for any special consideration, since the condition will be considered to have resulted as a matter of its choice.

7.7 Public Participation. The WPCC encourages entities to involve the affected public throughout the development of the Facility Plan or Facilities Management and Financial Plan. Since sewer users will be required to pay for debt retirement, operation and maintenance costs, connection fees, and contractor charges for service lateral hook-up, active citizen involvement is essential to assess public acceptance prior to bond elections and assure a responsive posture for local governments. The WPCC staff, as resources allow, will assist entities to develop and maintain effective public participation programs.

At least one public meeting should be held during early phases of the planning process before a recommended alternative is developed.

A public hearing should be held prior to the adoption of the Facility Plan or FMFP.

Adequate notification of public meetings, hearings, and actions in response to public participation should be provided.

A consensus of the communities' willingness to proceed with the plan should be developed through public meetings, hearings, referendums, bond elections, etc. and it should be documented in the Facility Plan or FMFP.

7.8 Staff Support. Upon request and as resources permit, the WPCC staff will provide technical assistance to help entities develop interim and long-range programs, construction schedules, FMFP's and Facility Plans. The staff will also provide information relative to securing financing for construction. Technical assistance would include reviews of documents submitted and meetings with city officials and their engineers to help scope the planning project, evaluate work plans, etc., in an effort to facilitate an expeditious approval process.

R317-1-8. Administrative Procedures.

8.1 Designation of Formal or Informal Proceedings. The following proceedings and actions are designated to be conducted either formally or informally as required by Utah Code Annotated Section 63-46b-4:

a. Issuance of construction permits shall be by informal procedures identified in R317-1, R317-2, R317-3 and R317-5.

b. Issuance of discharge permits shall be by informal procedures identified in R317-8.

c. Issuance of underground injection control permits shall be by informal procedures identified in R317-7.

d. Review of facility management and financial plans shall be by informal procedures identified in R317-7.

e. Notices of Violation and Orders are exempt under Utah Code Annotated Section 63-46b-1(2)(k). Appeals to the Committee of Notices of Violation and Orders shall be processed using formal procedures.

f. Appeals of issuances, denials, or conditions of construction permits, discharge permits and underground injection control permits shall be conducted formally.

g. Funding requests, insofar as they are covered by Utah Code Annotated Section 63-46b-1, shall be processed informally using procedures outlined in the Board's regulations, policies and guidelines.

h. Variance requests, exceptions, and other approvals etc. will be processed informally in accordance with the applicable provisions of the Wastewater Disposal Regulations.

8.2 Conversion of Hearings. At any time before a final order is issued, the Board or appointed hearing officer may convert proceedings which are designated to be informal to formal, and proceedings which are designated as formal to informal if conversion is in the public interest and rights of all parties are not unfairly prejudiced.

8.3 Rules for Conducting Formal and Informal Proceedings. Rules for conducting formal proceedings shall be as provided in Utah Code Annotated Sections 63-46b-3, and 63-46b-6 through 63-46b-13. In addition to the procedures referenced in paragraph 8.1 above, the procedures in Utah Code Annotated Sections 63-46b-3 and 63-46b-5 apply to informal proceedings.

8.4 Declaratory Orders. In accordance with the provisions of Utah Code Annotated Section 63-46b-21, any person may file a request for a declaratory order. The request shall be titled a petition for declaratory order and shall specifically identify the issues requested to be the subject of the order. Requests for declaratory order, if set for adjudicative hearing, will be processed informally using the procedures identified in Utah Code Annotated Sections 63-46b-3 and 63-46b-5 unless converted to a formal proceeding under paragraph 8.2 above. No declaratory orders will be issued in the circumstances described in Utah Code Annotated Section 63-46b-21(3)(a). Intervention rights and other procedures governing declaratory orders are outlined in Utah Code Annotated Section 63-46b-21.

R317-1-9. Penalty Criteria for Civil Settlement Negotiations.

9.1 Introduction. Section 19-5-115 of the Water Quality Act provides for penalties of up to $10,000 per day for violations of the act or any permit, rule, or order adopted under it and up to $25,000 per day for willful violations. Because the law does not provide for assessment of administrative penalties, the Attorney General initiates legal proceedings to recover penalties where appropriate.

9.2 Purpose And Applicability. These criteria outline the principles used by the State in civil settlement negotiations with water pollution sources for violations of the UWPCA and/or any permit, rule or order adopted under it. It is designed to be used as a logical basis to determine a reasonable and appropriate penalty for all types of violations to promote a more swift resolution of environmental problems and enforcement actions.

To guide settlement negotiations on the penalty issue, the following principles apply: (1) penalties should be based on the nature and extent of the violation; (2) penalties should at a minimum, recover the economic benefit of noncompliance; (3) penalties should be large enough to deter noncompliance; and (4) penalties should be consistent in an effort to provide fair and equitable treatment of the regulated community.

In determining whether a civil penalty should be sought, the State will consider the magnitude of the violations; the degree of actual environmental harm or the potential for such harm created by the violation(s); response and/or investigative costs incurred by the State or others; any economic advantage the violator may have gained through noncompliance; recidivism of the violator; good faith efforts of the violator; ability of the violator to pay; and the possible deterrent effect of a penalty to prevent future violations.

9.3 Penalty Calculation Methodology. The statutory maximum penalty should first be calculated, for comparison purposes, to determine the potential maximum penalty liability of the violator. The penalty which the State seeks in settlement may not exceed this statutory maximum amount.

The civil penalty figure for settlement purposes should then be calculated based on the following formula: CIVIL PENALTY = PENALTY + ADJUSTMENTS - ECONOMIC AND LEGAL CONSIDERATIONS

PENALTY: Violations are grouped into four main penalty categories based upon the nature and severity of the violation. A penalty range is associated with each category. The following factors will be taken into account to determine where the penalty amount will fall within each range:

A. History of compliance or noncompliance. History of noncompliance includes consideration of previous violations and degree of recidivism.

B. Degree of willfulness and/or negligence. Factors to be considered include how much control the violator had over and the foreseeability of the events constituting the violation, whether the violator made or could have made reasonable efforts to prevent the violation, whether the violator knew of the legal requirements which were violated, and degree of recalcitrance.

C. Good faith efforts to comply. Good faith takes into account the openness in dealing with the violations, promptness in correction of problems, and the degree of cooperation with the State.

Category A - $7,000 to $10,000 per day. Violations with high impact on public health and the environment to include:

1. Discharges which result in documented public health effects and/or significant environmental damage.

2. Any type of violation not mentioned above severe enough to warrant a penalty assessment under category A.

Category B - $2,000 to $7,000 per day. Major violations of the Utah Water Pollution Control Act, associated regulations, permits or orders to include:

1. Discharges which likely caused or potentially would cause (undocumented) public health effects or significant environmental damage.

2. Creation of a serious hazard to public health or the environment.

3. Illegal discharges containing significant quantities or concentrations of toxic or hazardous materials.

4. Any type of violation not mentioned previously which warrants a penalty assessment under Category B.

Category C - $500 to $2,000 per day. Violations of the Utah Water Pollution Control Act, associated regulations, permits or orders to include:

1. Significant excursion of permit effluent limits.

2. Substantial non-compliance with the requirements of a compliance schedule.

3. Substantial non-compliance with monitoring and reporting requirements.

4. Illegal discharge containing significant quantities or concentrations of non toxic or non hazardous materials.

5. Any type of violation not mentioned previously which warrants a penalty assessment under Category C.

Category D - up to $500 per day. Minor violations of the Utah Water Pollution Control Act, associated regulations, permits or orders to include:

1. Minor excursion of permit effluent limits.

2. Minor violations of compliance schedule requirements.

3. Minor violations of reporting requirements.

4. Illegal discharges not covered in Categories A, B and C.

5. Any type of violations not mentioned previously which warrants a penalty assessment under category D.

ADJUSTMENTS: The civil penalty shall be calculated by adding the following adjustments to the penalty amount determined above: 1) economic benefit gained as a result of non-compliance; 2) investigative costs incurred by the State and/or other governmental levels; 3) documented monetary costs associated with environmental damage.

ECONOMIC AND LEGAL CONSIDERATIONS: An adjustment downward may be made or a delayed payment schedule may be used based on a documented inability of the violator to pay. Also, an adjustment downward may be made in consideration of the potential for protracted litigation, an attempt to ascertain the maximum penalty the court is likely to award, and/or the strength of the case.

9.4 Mitigation Projects. In some exceptional cases, it may be appropriate to allow the reduction of the penalty assessment in recognition of the violator's good faith undertaking of an environmentally beneficial mitigation project. The following criteria should be used in determining the eligibility of such projects:

A. The project must be in addition to all regulatory compliance obligations;

B. The project preferably should closely address the environmental effects of the violation;

C. The actual cost to the violator, after consideration of tax benefits, must reflect a deterrent effect;

D. The project must primarily benefit the environment rather than benefit the violator;

E. The project must be judicially enforceable;

F. The project must not generate positive public perception for violations of the law.

9.5 Intent Of Criteria/Information Requests. The criteria and procedures in this section are intended solely for the guidance of the State. They are not intended, and cannot be relied upon to create any rights, substantive or procedural, enforceable by any party in litigation with the State.

KEY: water pollution, waste disposal, industrial waste, effluent standards*
July 12, 1996 **19-5**
Notice of Continuation December 12, 1997

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, and 1996 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 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. Domestic wastewater effluents discharged to mixing zones shall meet effluent requirements

specified in R317-1-3.

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.

12.13 Statewide

All surface waters geographically located within the outer boundaries of U.S. National Forests whether on public or private lands.

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		3C	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		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			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 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	3C	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
Van Tassel Creek from Utah-Wyoming state line to headwaters		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	3C	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	3C	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		
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

* Special case numeric criteria for Total Residual Chlorine. See Table 2.14.2, Footnote (7).

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				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 485O 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	3B		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

* Special case numeric criteria for Total Residual Chlorine. See Table 2.14.2, Footnote (7).

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	3C	4
Coal Creek and tributaries		2B	3C	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	3C	4
Muddy Creek and tributaries, Box Elder County		2B	3C	4
Dove Creek and tributaries, Box Elder County		2B	3C	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			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	

* See Table 2.14.2, Footnote (7)

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					

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	Recreation and Aesthetics 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	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 (12) (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 (12)	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) (7)				
4 Day Average	0.011	0.011		
1 Hour Average	0.019	0.019	0.2	(8)
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 (9)	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.
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
He				
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.
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 (10)				
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 (9)				
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) (11)	0.05	0.05		
Total Suspended Solids (MG/L)(9)	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.

(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

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) Special case segments and maximum TRC concentrations as follows:

Mill Race from Interstate Highway 15 to the Provo City wastewater treatment plant discharge 0.2 mg/l

Ironton Canal (Utah County), from Utah Lake (Provo Bay) to East boundary of Denver and Rio Grande Western Railroad right-of-way 0.05 mg/l

Beer Creek (Utah County) from 4850 West (in NE1/4NE1/4 sec. 36, T.8 S., R.1 E.) to headwaters 0.3 mg/l

Box Elder Creek from confluence with Black Slough to Brigham City Reservoir (the Mayor's Pond) 0.019 mg/l 1 day

average, 0.011 mg/l 4 day average.

Powell Slough 0.019 mg/l 1 day average, 0.011 mg/l 4 day average.

(8) Numeric criteria will be established based on a site-specific assessment of potential impacts to aquatic wildlife.

(9) Investigations should be conducted to develop more information where these levels are exceeded.

(10) pH dependent criteria. pH 7.8 used in table. See Table 2.14.4 for equation.

(11) Total Phosphorus as P (mg/l) limit for lakes and reservoirs shall be 0.025.

(12) 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.

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	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	-
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		-	-
	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

KEY: water pollution, water quality standards
December 19, 1997 **19-5**
Notice of Continuation December 12, 1997

R317. Environmental Quality, Water Quality.
R317-3. Design Requirements for Wastewater Collection, Treatment and Disposal Systems.
R317-3-1. Technical and Procedural Requirements.

1.1. Scope of This Rule

A. General. This rule is intended to aid the logical development, from feasibility study to startup, of a wastewater collection, treatment and disposal project.

B. Authority. Construction permits and approvals are issued pursuant to the provisions of Sections 19-5-107 and 19-5-108. Violation of construction permit or approval including compliance with the conditions thereof, or beginning of construction, or modification without the executive secretary's approval, is subject to the penalties provided in Section 19-5-115.

C. Applicability

1. This rule applies to:

a. communities, sewerage agencies, industries, and federal or state agencies (hereinafter referred to as the applicant), and

b. i. construction, installation, modification or operation of any treatment works or part thereof or any extension or addition thereto, or

ii. construction, installation, modification or operation of any establishment or any extension or modification or addition to it, the operation of which would probably result in a discharge.

2. The applicant must not advertise the project for bids and must not begin construction without receiving a construction permit.

D. Requirements

1. The design requirements in this rule are for collection, treatment and disposal of wastewater largely originating from

domestic sources. These criteria are intended to be limiting values for items upon which an evaluation of such plans and specifications will be made and to establish, as far as practicable, uniformity of practice. This rule also provides for a mechanism to apply water pollution control research and recommendations for further evaluation by the design engineer.

2. Communities, and the engineering profession should discuss with the staff of the executive secretary possible combinations of wastewater treatment and disposal processes or situations not covered in detail by this rule.

E. Construction Permit and Approvals

1. When a Permit or an Approval is Issued. A construction permit or an approval is issued when the applicant has met all requirements of this rule, including any additional requirements of funding programs administered by the executive secretary. The applicant or the designee or the consultant should meet with the staff of the executive secretary to discuss the plan of study before undertaking extensive engineering studies for construction of treatment works. A permit for construction of a new treatment works or a sewerage system, or modifications to an existing treatment works or sewerage system for multiple units under separate ownership will be issued only if the treatment works or sewerage system are under the sponsorship of a body politic as defined in R317-1-1.

2. Variance. The executive secretary may grant a variance from the minimum requirements stated in this rule, subject to site-specific consideration and justification, but not overriding safeguarding of public health or protection of water quality or engineering practice. The applicant must submit pertinent and relevant material in support of a variance from the minimum requirements.

3. Limitations

a. The issuance of a construction permit does not relieve in any way the applicant of the obligation to obtain other approvals and permits, i.e., ground water discharge permit, clearances etc., from other agencies which may have jurisdiction over the project.

b. The permit will expire at the end of one year from the date of issuance if the approved project is not under substantial construction. Plans and specifications must be resubmitted for review and reissuance of the expired permit.

F. Definitions

1. The annual average daily rate of flow is defined as:

a. an average of daily rates of flow over a period of not less than one year; or

b. the rate of flow equal to or greater than 50 percent of the daily flow rate data.

2. The average design rate of flow or the average peak-monthly rate of flow is defined as:

a. a moving average of daily rates of flow over a thirty consecutive days; or over a period of month whichever produces a higher rate of flow; or

b. the rate of flow equal to or greater than 92 percent of the daily flow rate data.

3. The maximum design rate of flow or peak-daily rate of flow is defined as:

a. the maximum rates of flow over a 24 hour period; or

b. the rate of flow equal to or greater than 99.7 percent of the daily flow data.

4. The peak design rate of flow or peak-hourly rate of flow is defined as:

a. the maximum rate of flow over a 60-minute period; or

b. the rate of flow equal to or greater than 99.9 percent of the daily flow data.

5. The minimum daily rate of flow is defined as the minimum rate of flow over a twenty-four hour period.

6. Industrial waste flow is defined as the maximum rate of flow for each of industries tributary to the sewer system.

7. Other Definitions. Other definition of terms and their use in this rule is intended to be in accordance with:

a. R317-1 (Definitions and General Requirements), and

b. Glossary - Water and Wastewater Control Engineering, jointly prepared by American Public Health Association (APHA), American Society of Civil Engineers (ASCE), American Water Works Association (AWWA), and Water Pollution Control Federation (WPCF).

8. Units of Expression The units of expression used are in accordance with those recommended in WPCF Manual of Practice Number 6, Units of Expression for Wastewater Treatment.

9. Terms

a. The term shall is used where practice is standardized to permit specific delineation of requirements or where safeguarding of the public health or protection of water quality justifies such definite action.

b. Other terms, such as should, recommended, preferred, indicate desirable procedures or methods, with deviations subject to individual consideration and justification, but not overriding safeguarding of public health or protection of water quality or engineering practice.

c. Desirable procedures or methods may be mandatory requirements for projects using state or federal funds.

1.2. Engineering Report

A. The Scope of the Report

1. The applicant or the applicant's consulting engineer should submit an engineering report to the executive secretary at least 60 days before the date when action by the executive secretary is desired. The report shall be prepared under the direction of a registered professional engineer licensed to practice in the State of Utah. The report must establish the need, scope, basis and viability for:

a. all projects involving innovative treatment and disposal processes, and

b. collection and pumping systems handling flows in excess of 1 million gallons per day (3,785 cubic meters per day).

2. The documents submitted for formal approval should include all pertinent and relevant material to aid in the review of the submitted reports.

B. What is Required in the Report

1. The magnitude and complexity of the project will determine the scope of the report.

2. The report must provide basic information; criteria and assumptions; evaluation of alternate projects, with preliminary layouts and cost estimates; assessment of environmental factors; financing methods, anticipated charges for users; organizational and staffing requirements; conclusions or recommendations with a proposed project for consideration; and an outline of official actions and procedures required to implement the

project.

3. The report should detail various concepts (including process description and sizing), factual data, and controlling assumptions and considerations for the functional planning of sewerage facilities. These data form the continuing technical basis for the detailed design and preparation of construction plans and specifications.

4. The report should include preliminary architectural, structural, mechanical, and electrical designs, sketches and outline specifications of process units, special equipment, etc.

5. The applicant or the consultant must address specific program and funding requirements in the report.

6. A detailed topical outline is available from the division.

C. Supplemental Requirements for Lagoons and Land Application. The engineer's report shall contain pertinent information on location, geology, hydrology, hydrogeology, soil conditions, area for expansion and any other factors that will affect the feasibility and acceptability of the proposed lagoon and land application projects.

1. Project Location. The engineer's report shall include on a 7.5-minute US Geological Survey topographic map showing the following within two mile (3.22 kilometers) radius of the proposed project site:

a. the location and direction of all residences, commercial developments, parks, recreational areas, land requirements for future additional treatment units and increased waste loadings, and land use zoning of area;

b. elevations and contours of the site and adjacent area;

c. watercourses and water supplies (including a log of each well, unless waived by the executive secretary);

d. location, depth, and discharge point of any field tile in the immediate area of the proposed site;

e. buffer zones;

f. limits of all flood plains, public drinking water supply watersheds and inland wetlands; and

g. natural site drainage zones.

2. Soil Borings and Geology. The applicant must determine representative subsurface soil characteristics and geology of the project site using a number of soil borings logged by an independent soil testing laboratory. At least one boring shall be a minimum of 25 feet (7.6 meters) in depth or into bedrock, whichever is shallower. The borings shall be filled and sealed. The report must address the following items as a minimum:

a. depth, type and texture of soil, all confirmed field data by the Soil Conservation Service (US Department of Agriculture);

b. hydraulic conductivity of the project site or the lagoon bottom as determined in the field, and lagoon bottom materials;

c. soil chemical properties such as, pH, nutrient levels, cation exchange capacity, etc.;

d. depth to bedrock;

e. bedrock type;

f. geologic discontinuities - faults, fractures, sinkholes;

g. jointing and permeability of rock.

3. Ground Water Issues

a. ground water depth confirmed by field investigations, for various seasons, including data from the period between March and May;

b. location of perched water tables;

c. ground water contours;

d. direction of ground water movement and flow;

e. ground water points of discharge;

f. available analyses of site ground water quality and drinking water wells in the vicinity, including but not limited to: coliform bacteria, pH, nitrates, total nitrogen, chlorides, sulfates, and total hardness;

g. a description of the depth and type of all water supply wells within two-mile (3.22 kilometers) radius of the proposed project site;

h. ground water monitoring needs using a system of wells or lysimeters around the perimeter of the project site; and

i. compliance with the requirements of R317-6 (Ground Water Quality Protection Rules) including securing a ground water discharge permit.

4. Climate Data

a. total precipitation for each month;

b. mean number of days per year with temperatures less than or equal to 32 degrees Fahrenheit (0 degree Centigrade);

c. wind velocities and direction;

d. evapotranspiration data.

D. Reports on Supplementary Investigations. Reports on soils, foundation, geological and hydrogeological investigations must be submitted by the applicant or the consultant, to the executive secretary. These reports are supplementary to a proposal, predesign or design report, plans and specifications for all projects. The reports must focus on any existing site conditions which may affect feasibility or constructibility of the project. If such problems do exist, mitigative and remedial measures thereto must be recommended by the applicant's consultant. The basis of conclusions reached should be supported with relevant and detailed information, graphically and narratively. The recommendations must be incorporated in the design.

1.3. Predesign Report

A. A predesign report must be prepared for the projects designed to:

1. treat domestic sewage flow in excess of 5 million gallons per day (18,900 cubic meters per day); or

2. incorporate emerging, innovative and alternative technologies.

B. The report must be submitted for review and approval by the division. The report shall include a summary of process design criteria, the basis of design, process and hydraulic profiles, outline of all appurtenant facilities, and supporting information.

C. Approval of a predesign report represents an agreement-in-principle subject to receipt, review and approval of satisfactory engineering plans and specifications. Such agreement-in-principle will be modified or revised in light of new information that may become available later. Also, an approval of prefinal documents is not an authorization to advertise the project for bids or to begin construction; but allows the applicant to proceed with preparing final engineering drawings and specifications.

1.4. Construction Plans

A. General. A complete set of construction drawings covering all disciplines shall be submitted for review in

fulfillment of the requirements of this rule. The size, complexity and nature of the project will determine the extent of involvement of various disciplines. Such disciplines are, but not necessarily limited to, Civil, Structural, Mechanical, Architectural, Mechanical, Electrical, Geotechnical, Instrumentation, Heating, Ventilating and Air Conditioning etc. All designs shall be in accordance with the requirements of applicable local, state and federal rules or regulations, the latest recognized practice standards including the Uniform Building Code, the National Electrical Code, the Uniform Mechanical Code, the Uniform Plumbing Code and other industry standards. The plans shall be clear, legible and suitable for microfilming or image processing.

1. Standard Information

a. Plans shall show a suitable project title, the name of municipality, sewer district, sewerage agency, sponsoring institution or industry, current revision date, and the name of engineer in charge of the project, engineer's registration number, an imprint of registration seal and signature.

b. Plans shall be drawn to a scale which will permit all necessary information to be plainly shown. Numerical and graphical scales in foot-pound-second (FPS or English) system shall be shown. The use of the international system (metric or MKS or meter-kilogram-second) of units is encouraged.

c. All plan views shall indicate a north point, preferably in a standardized direction. A suitable geographical reference for the project shall also be shown. Topographical and elevation data should be presented on a recognized standard datum. Such datum should be clearly indicated.

2. Vicinity and Location Plans. A large scale vicinity map should be provided for a suitable geographical reference to the project. It should also indicate vehicular access to the project.

3. General Site Work Plans.

a. A site plan showing the project lay out should be included to establish a reference to the existing features. Similarly, a reduced-scale site or key plan should be drawn on all drawings to provide the context of work shown on the drawing to the site.

b. For the entire project site, information shall be provided on topography, survey data, location of test borings, limits of work, staging area for contractors, areas of project related site work, and other work that may overlap the areas of concentrated work activities. Information shall be compiled to the extent practicable on utility locations, above and below ground utilities which might interfere with the proposed construction, particularly water mains, gas mains, storm drains, and telephone and power conduits, outside piping, all known existing structures, security improvements, roads, signage, lighting, and other site improvements. Compiled information should be shown on plans.

4. Detailed Plans. Construction to be performed in areas of concentrated work such as individual installations, buildings, rooms or assemblies shall be shown on the detailed plans. Such plans shall show plan views, elevations, sections and supplementary views which, together with the specifications and general layouts, provide the working information for the contract and construction of the works. They shall also include detailed design data in all applicable disciplines, dimensions and relative elevations of structures, the location and outline form of equipment, location size of piping, water levels, water surface and hydraulic profiles, and ground elevations.

B. Plans for Sewers. Construction plans are required to be submitted for projects involving new sewer systems. Projects for substantial additions to the existing systems are required to be submitted only in fulfillment of the requirements of the funding agency. These plans must detail the following information:

1. Geographical Features

a. Topography and elevations. Existing or proposed improvements, streets, the boundaries of all streams and water impoundments, and water surfaces shall be clearly shown. Contour lines at suitable intervals should be included.

b. Streams. The direction of flow in all natural or artificial streams, and high and low water elevations of all water surfaces at sewer outlets shall be shown.

2. Boundaries. The boundary lines of the municipality or the sewer district, and the area to be sewered, shall be shown.

3. Sewers. The plan shall show the location, size and direction of flow of all existing and proposed sanitary sewers draining to the treatment works concerned.

4. Plans and Profiles. Detailed plans and profiles shall be submitted. Profiles should have a horizontal scale of not more than 100 feet to the inch and vertical scale of not more than 10 feet to the inch. Plan views should be drawn to a corresponding horizontal scale and preferably be shown on the same sheet. Plans and profiles shall show:

a. Location of streets and sewers;

b. ground surface; size of pipe; length between manholes; manhole identifiers, such as numbers etc.; invert and surface elevation at each manhole; and grade of sewer between each two adjacent manholes;

c. the elevation and location of the basement floor on the profile of the sewer, showing feasibility to serve adjacent basements except where otherwise noted on the plans; and

d. Locations of all special features such as inverted siphons, concrete encasements, elevated sewers, special construction to implement proper separation from water mains etc.

5. Detailed drawings, made to a scale to clearly show the nature of the design, shall be furnished to show the following particulars:

a. all stream crossings and sewer outlets, with elevations of the stream bed and of normal and extreme high and low water levels;

b. details of all special sewer joints, pipeline construction or installation, and cross-sections; and

c. details of all sewer appurtenances such as manholes, inspection chambers, inverted siphons, regulators, flow measurement or control stations and elevated sewers.

C. Plans for Pumping Stations. Construction plans shall be submitted for construction or modifications of pumping stations having the installed capacity in excess of 1 million gallons per day (3,785 cubic meters per day). These plans must detail the following information besides vicinity, site and location, and engineering information required:

1. Vicinity, Site and General Site Work Plans

a. the location and extent of the tributary area;

b. any municipal boundaries within the tributary area;

c. the location of the pumping station and force main, and pertinent elevations; and

d. availability of power sources, including alternative sources.

2. Detailed Plans. Detailed plans shall be submitted showing the following:

a. topography of the site with all pertinent elevations;

b. soils or foundation report;

c. existing pumping station with all adjacent improvements;

d. proposed pumping station, including provisions for installation of future pumps or ejectors, emergency power generation, and other reliability features;

e. maximum hydraulic gradient including calculations in downstream gravity sewers when all installed pumps are in operation; and

f. elevation of high water at the site, and maximum elevation of sewage in the collection system upon occasion of power failure.

D. Plans for Treatment Plants. Construction plans shall be submitted for construction or modifications of treatment plants. These plans must detail the following information besides vicinity, site and location, and engineering information required:

1. Location Plan. A plan shall be submitted showing the treatment plant in relation to the remainder of the system.

2. General Layout. Layouts of the proposed treatment plant shall be submitted, showing:

a. topography of the site;

b. size and location of plant structures, and adjacent improvements;

c. schematic flow diagram(s), including mass balance, showing the flow through various plant units, and showing utility systems serving the plant processes;

d. outside or yard piping, including any arrangements for bypassing individual units (Materials handled and direction of flow through pipes shall be shown.); and

e. hydraulic profiles, including calculations, showing the flow of the major liquid or solid process streams including raw or treated sewage, supernatant liquor, scum and sludge.

3. Detailed Plans. Detailed plans shall show the following:

a. location, dimensions, and elevations of all existing and proposed plant facilities;

b. elevations of a 100-year water level of the body of water to which the plant effluent is to be discharged;

c. type, size, pertinent features, and operating capacity of all pumps, blowers, motors, and other mechanical devices;

d. schematics, sectional or isometric views of all process and utility piping not shown on the General Site Work Plans;

e. hydraulic profile at the minimum, average, and maximum rate of flow; and

f. description of any features not otherwise covered by other drawings or specifications or engineer's report.

1.5. Technical Specifications. Complete technical specifications for the construction of sewers, pumping stations, treatment plants, and all other appurtenances, shall accompany the plans. The specifications accompanying construction drawings shall include all construction information not shown on the drawings which is necessary to inform the builder in detail of the design requirements for the quality of materials, workmanship and fabrication of the project. They shall also include: the type, size strength, operating characteristics, and rating of equipment; allowable infiltration; the complete requirements for all mechanical and electrical equipment, including machinery, valves, piping, and jointing of pipe; electrical apparatus, wiring, instrumentation, and meters; laboratory fixtures and equipment; operating tools, construction materials; special filter materials, such as, stone, sand, gravel, or slag; miscellaneous appurtenances; chemicals when used; instructions for testing materials and equipment as necessary to meet design standards; and performance tests for the completed work and component units. Performance tests must be conducted at design load conditions wherever practical.

1.6. Revisions to the Approved Plans and Specifications. Any changes, such as addenda, change orders, field change etc., to the approved plans or specifications affecting capacity, flow, operation of units, or point or quality of discharge shall be submitted for review and approval before any such change is made in either contract documents or construction. Plans or specifications proposed to be so revised must, therefore, be submitted at least 30 days in advance of any construction work which will be affected by such changes to permit sufficient time for review and approval. Changes under emergency conditions may be communicated verbally, and then submitted in writing. Structural revisions or other minor changes not affecting capacities, flows, or operation are to be permitted during construction without approval.

1.7. Construction Supervision. The applicant must demonstrate that adequate and competent inspection will be provided during construction. It is the responsibility of the applicant to provide frequent and comprehensive inspection of the project.

1.8. Plan of Operation

A. Submittal. A plan of operation must be prepared at the mid-point of construction, but no later than at the time of 80 percent completion of construction, unless waived by the executive secretary on the basis of funding program requirements, and the scope and the complexity of the project.

B. Contents of the Plan. The plan of operation must provide a concise, sequential description of and implementation schedule for the following activities:

1. hiring and training of operators;
2. start-up schedules and services;
3. safety programs, plans and procedures;
4. emergency operations procedures and plan;
5. process monitoring program;
6. laboratory and testing services;
7. user charge and pretreatment program, necessary to assure cost-effective, efficient and reliable startup and operation of the facility, future expansion and upgrade; and
8. maintenance of water quality and public health.

1.9. Operation and Maintenance Manual

A. Submittal. A draft of the manual must be submitted at the mid-point of construction, unless waived by the executive secretary on the basis of funding program requirements, and the scope and the complexity of the project. Final draft must be submitted for review and approval, no later than at the 90 percent stage of construction in the final form or 30 days prior

to startup, whichever occurs first.

B. Contents of the Manual

1. The manual presents procedures to facilitate operation and maintenance of the plant under all conditions, technical guidance for troubleshooting, and requirements for compliance with the permits and approvals issued. The manual must address the needs of the system being employed and must be directed toward the level of training required of the operating staff.

2. The manual must include all information pertinent for the facilities besides information from manufacturers' catalogs or brochures.

1.10. Start-up

A. Certificate of Completion. The engineer in charge of construction management or inspection of the approved project or facilities shall submit a certificate, bearing the seal of the professional engineer, to the effect that the facilities were constructed in accordance with approved plans, specifications, addenda and change orders to the owner with a copy thereof to the division.

B. Authorization to Operate. The applicant will request a final inspection the division upon receipt of the certificate of completion. No facilities may be placed in service before the final inspection by the division, and authorization to operate the facility is issued in writing by the executive secretary.

C. As-built or Record Drawings.

1. Within 30 days of acceptance by the owner of wastewater or industrial waste facilities from the contractor, a copy of such acceptance must be submitted to the division for record.

2. As-built or record drawings clearly showing the as-built project shall be submitted to the executive secretary within 120 days after the completion of the construction of the approved project or facilities.

1.11. Operation During Construction

A. Construction-related Bypass. Operation of all existing sewers, pump stations, and treatment plants must continue without interruption during the construction of new facilities or modification of existing facilities. Therefore, bypassing will not be allowed except under extenuating circumstances. If this is not possible and construction will result in the discharge of partially treated and untreated sewage into the surface waters of the state, an approval for such a discharge shall be required from the executive secretary before such discharge occurs.

B. Request for a Construction-related Bypass. A formal request for the consideration of a construction-related bypass shall be submitted to the executive secretary by the permittee not less than 90 days prior to the date of proposed bypass initiation. Such request shall contain at least the following information:

1. a detailed description of the construction work to be performed which the owner has deemed warrants a bypass;

2. an analysis of all known alternatives which would eliminate or reduce the need for plant bypassing;

3. cost-benefit and effective analysis of alternatives, including an assessment of resource damages;

4. the minimum and maximum duration of bypassing under each alternative;

5. the applicant's preferred alternative for conducting the bypass;

6. the projected date of initiation of bypass.

C. Approval or Denial of a Construction-related Bypass

1. The request for a construction-related bypass will be approved or denied following a thorough review with due consideration of compliance with the discharge permit(s); water quality standards; and all known available and reasonable methods to abate water pollution.

2. An approval issued to permit bypass will contain all restrictions necessary to minimize the duration of bypassing. A denial determination will state the reasons for the denial and will direct the permittee to initiate a plan of action to implement an alternative to bypassing.

1.12. Innovative Processes Evaluation

A. Basic requirements. The executive secretary will consider the evaluation of innovative approaches to wastewater treatment in the interest of encouraging advances in technology, processes, equipment and material not covered by this rule, provided that:

1. a favorable recommendation has been made by a professional engineer licensed to practice in Utah, following his own evaluation of developmental processes or equipment or material, for a specific project;

2. the applicant has capital and technical resources to replace or modify developmental processes, equipment and material with conventional processes, equipment and material;

3. the risk incurred with the experimentation rests solely with the proponent of processes, equipment and material as evidenced by the written acknowledgement to the executive secretary; and

4. the applicant will replace the failed processes, equipment and material with a proven conventional processes, equipment and material as evidenced by the written acknowledgement to the executive secretary.

B. Approval Limitations

1. The executive secretary may approve developmental processes, equipment and material may be approved in the form of terms and conditions to a construction permit, when reliable operating data from full scale installations are not available. The term and conditions may include such as, but not necessarily limited to, demonstration period for a successful application, requirements to submit reports on the operation of the system during the experimental period.

2. The executive secretary may limit the number of approvals for the same developmental processes, equipment and material until reliable and valid operational experience is gained.

C. Evaluation Criteria. The evaluation of innovative processes will include the following factors:

1. anticipated performance of the system in full scale field conditions,

2. ability to consistently meet required effluent and water quality standards,

3. any evidence of equivalence to conventional technology,

4. the owner's ability to finance, and to operate and maintain the system with the level of expertise necessary, and

5. submission of process descriptions, schematics, reports, monitoring and performance data, costs, specific studies, bench scale test data and pilot plant test data, and any other

information appropriate and necessary for the evaluation.

R317-3-2. Sewers.

2.1. General. Construction of a new sewer system project may not begin unless the applicant has submitted an engineering report detailing the design, and construction plans to the executive secretary for review and approval evidenced by a construction permit. The executive secretary will not normally review construction plans for extensions of the existing sewer systems to new areas or replacement of sanitary sewers in the existing sewer systems unless requested or required by state or federal funding programs. Rain water from roofs, streets, and other areas, and ground water from foundation drains must not be allowed to enter the sewer system through planning, design and construction quality assurance and control measures.

2.2. Basis of Design

A. Planning Period. Sewers should be designed for the estimated ultimate tributary population or the 50-year planning period, whichever requires a larger capacity. The executive secretary may approve the design for reduced capacities provided the capacity of the system can be readily increased when required. The maximum anticipated capacity required by institutions, industrial parks, etc. must be considered in the design.

B. Sewer Capacity. The required sewer capacity shall be determined on the basis of maximum hourly domestic sewage flow; additional maximum flow from industrial plants; inflow; ground water infiltration; potential for sulfide generation; topography of area; location of sewage treatment plant; depth of excavation; and pumping requirements.

1. Per Capita Flow. New sewer systems shall be designed on the basis of an annual average daily rate of flow of 100 gallons per capita per day (0.38 cubic meter per capita per day) unless there are data to indicate otherwise. The per capita rate of flow includes an allowance for infiltration/inflow. The per capita rate of flow may be higher than 100 gallons per day (0.38 cubic meter per day) if there is a probability of large amounts of infiltration/inflow entering the system.

2. Design Flow

a. Laterals and collector sewers shall be designed for 400 gallons per capita per day (1.51 cubic meters per capita per day).

b. Interceptors and outfall sewers shall be designed for 250 gallons per capita per day (0.95 cubic meter per capita per day), or rates of flow established from an approved infiltration/inflow study.

c. The executive secretary will consider other rates of flow for the design if such basis is justified on the basis of supporting documentation.

C. Design Calculations. Detailed computations, such as the basis of design and hydraulic calculations showing depth of flow, velocity, water surface profiles, and gradients shall be submitted with plans.

2.3. Design and Construction Details

A. Minimum Size

1. No gravity sewer shall be of less than eight inches (20 centimeters) in diameter.

2. A 6-inch (15 centimeters) diameter pipe may be permitted when the sewer is serving only one connection, or if the applicant justifies the need for such diameter on the basis of supporting documentation.

B. Depth. Sewers should be sufficiently deep to receive sewage from basements and to prevent freezing. Insulation shall be provided for sewers that cannot be placed at a depth sufficient to prevent freezing.

C. Odor and Sulfide Generation. The design shall incorporate features to control and mitigate odor and sulfide generation in sewers. Such features may include steeper slope to achieve higher velocity, reaeration through induced turbulence, etc.

D. Slope

1. The pipe diameter and slope shall be selected to obtain velocities to minimize settling problems.

2. All sewers shall be designed and constructed to give mean velocities of not less than 2 feet per second (0.61 meter per second), when flowing full, based on Manning's formula using an n value of 0.013.

3. Sewers shall be laid with uniform slope between manholes.

4. Table R317-3-2.3(D)(4) shows the minimum slopes which shall be provided; however, slopes greater than these are desirable.

E. Flatter Slopes. Slopes flatter than those required for the 2-feet-per-second (0.61 meter per second)-velocity criterion when flowing full, may be permitted by the executive secretary provided that:

1. there is no other practical alternative;

2. the depth of flow is not less than 30 percent of the diameter at the average design rate of flow;

3. the design engineer has furnished with the report the computations showing velocity and depth of flow corresponding to the minimum, average and peak rates of flow for the present and design conditions in support of the request for variance; and

4. the operating authority of the sewer system submits a written acknowledgement of the ability to provide any additional sewer maintenance required by flatter slopes.

F. Steep Slopes

1. Where velocities greater than 15 feet per second (4.6 meters per second) are attained, special provision shall be made to protect against displacement by erosion and shock.

2. Sewers on 20 percent slopes or greater shall be anchored securely against lateral and axial displacement with suitable thrust blocks, concrete anchors or other equivalent restraints, spaced as follows:

a. Not over 36 feet (11 meters) center to center on grades 20 percent and up to 35 percent;

b. Not over 24 feet (7.3 meters) center to center on grades 35 percent and up to 50 percent;

c. Not over 16 feet (4.9 meters) center to center on grades 50 percent and over.

G. Alignment. Sewers 24 inches (61 centimeters) in diameter or less shall be laid with a straight alignment between manholes. The alignment shall be checked by either using a laser beam or lamping.

H. Changes in Pipe Size. When a smaller sewer joins a large one, the invert of the larger sewer should be lowered sufficiently to maintain the same energy gradient. An approximate method for securing these results is to place the 0.8 depth point of both sewers at the same elevation.

I. Materials

1. The material of pipe selected should be suitable for local conditions. The material of sewer pipe should be compatible with factors such as industrial wastewater characteristics, putrecibility, physical and chemical properties of adjacent soil, heavy external loading, etc.

2. The material of pipe must withstand superimposed loads without any damage. The design of trench widths and depths should allow for loads. Special bedding, concrete cradle or encasement, or other special construction may be used to withstand extraordinary superimposed loading.

2.4. Curved Sewers. Curved sewers are permitted only under circumstances where conventional sewer construction is not feasible. A conceptual approval must be obtained before beginning the design.

A. Design

1. The minimum radius of curvature shall be greater than 200 feet or one-half of the maximum deflection angle for the material of pipe allowed by the manufacturer.

2. The design n value for the sewer pipe shall be 0.018.

3. Only one horizontal curve in the sewer alignment will be allowed between manholes. No vertical curves shall be permitted.

4. Manhole spacing shall not exceed 400 feet (122 meters).

5. Manholes must be provided at the beginning and the end of a curved alignment (i.e. change in radius of curvature).

6. The design should consider increased erosion potential due to high velocities.

B. Other Requirements

1. Maintenance equipment shall be available at all times for inspection and cleaning.

2. Horizontal and vertical alignment of the sewer after the construction must be verified and certified by a registered professional engineer.

a. Accurate record or as-built drawings must be prepared showing the physical location of the pipe in the ground, and submitted to the division in accordance with the requirements of R317-3-1.

2.5. Installation Requirements

A. Standards

1. The technical specifications shall require that installation be in accordance with the requirements based on the criteria, standards and procedures established by:

a. this rule;

b. recognized industry standards and practices as published in their technical publications;

c. the product manufacturer's recommendations and guidance;

d. Uniform Building Code, Uniform Plumbing Code, Uniform Mechanical Code and National Electrical Code;

e. American Society of Testing Materials;

f. American National Standards Institute; and

g. Occupational Safety and Health Administration (OSHA), US Department of Labor or its succeeding agencies.

2. Requirements shall be set forth in the specifications for the pipe and methods of bedding and backfilling thereof so as not to damage the pipe or its joints, impede cleaning operations and future tapping, nor create excessive side fill pressures or ovalation of the pipe, nor seriously impair flow capacity.

B. Identification of Sewer Lines. A clearly labelled tracer location tape shall be placed two feet above the top of sewer lines less than or equal to 24 inch (61 centimeters) in diameter, along its entire length.

C. Deflection Test

1. Deflection test shall be performed on all flexible pipes. The test shall be conducted after the final backfill has been in place at least 30 days.

2. No pipe shall show a deflection in excess of 5 percent.

3. If the deflection test is run using a rigid ball or mandrel, it shall have a diameter equal to 95 percent of the inside diameter of the pipe. The test shall be performed without mechanical pulling devices.

D. Joints and Infiltration

1. Joints. The installation procedures of joints and the materials to be used shall be included in the specifications. Sewer joints shall be designed to minimize infiltration and to prevent the entrance of roots throughout the life of the system.

2. Leakage Tests. Procedures for leakage tests shall be specified. This may include appropriate water or low pressure air testing. The leakage outward or inward (exfiltration or infiltration) shall not exceed 200 gallons per inch of pipe diameter per mile per day (0.19 cubic meter per centimeter of pipe diameter per kilometer per day) for any section of the system. An exfiltration or infiltration test shall be performed with a minimum positive head of 2 feet (0.61 meter). The air test, if used, shall, as a minimum, conform to the test procedure described in the American Society of Testing Materials standards. The testing methods selected should take into consideration the range in ground water elevations projected during the test.

E. Inspection

1. The specifications shall include requirements for inspection of manholes for water-tightness prior to placing in service, including television inspection.

2. Records of television inspection shall be retained for future reference.

2.6. Manholes

A. Location. Manholes shall be installed at:

1. the end of each line exceeding 150 feet (46 meters) in length;

2. all changes in grade, size, or alignment;

3. all intersections; and

4. distances not greater than:

a. 400 feet (120 meters) for sewers 15 inches (38 centimeters) or less; and

b. 500 feet (150 meters) for sewers 18 inches (46 centimeters) to 30 inches (76 centimeters).

5. Distances up to 600 feet (180 meters) may be approved in cases where adequate cleaning equipment for such spacing is provided.

6. Greater spacing may be permitted in larger sewers.

7. Cleanouts shall not be substituted for manholes nor installed at the end of lines greater than 150 feet (46 meters) in length.

B. Drop Type Manholes

1. A drop pipe should be provided for a sewer entering a manhole at an elevation of 24 inches (61 centimeters) or more above the manhole invert. Where the difference in elevation

between the incoming sewer and manhole invert is less than 24 inches (61 centimeters), the invert should be filleted to prevent solids deposition.

2. Drop manholes should be constructed with an outside drop connection. If an inside drop connections is necessary, it shall be secured to the interior wall of the manhole and provide access for cleaning.

3. Due to the unequal earth pressures that would result from the backfilling operation in the vicinity of the manhole, the entire outside drop connection shall be encased in concrete.

C. Diameter. The minimum diameter of manholes shall be 48 inches (1.22 meters); larger diameter manholes are preferable for large diameter sewers. A minimum diameter of 22 inches (56 centimeters) shall be provided for safe access.

D. Flow Channel. The flow channel through manholes should be made to conform in shape and slope to that of the sewers. The depth of flow channels should be up to one-half to three-quarters of the diameter of the sewer. Adjacent floor area should drain to the channel with the minimum slope of 1 inch per foot (8.3 centimeters per meter).

E. Watertightness

1. Manholes shall be of the pre-cast concrete or poured-in-place concrete type. Manholes shall be waterproofed on the exterior.

2. Inlet and outlet pipes shall be joined to the manhole with a gasketed flexible watertight connection arrangement that allows differential settlement of the pipe and manhole wall to take place.

3. Watertight manhole covers shall be used wherever the manhole tops may be flooded by street runoff or high water. Locked manhole covers may be desirable in isolated easement locations or where vandalism may be a problem.

F. Electrical. Electrical equipment installed or used in manholes shall conform to appropriate National Electrical Code requirements.

2.7. Inverted Siphons. Inverted siphons shall consist of at least two barrels, with a minimum pipe size of 6 inches (15 centimeters) with an arrangement to exclude debris and solids. The siphon shall be provided with necessary appurtenances for convenient flushing and maintenance. The manholes shall have adequate clearances for rodding; and in general, sufficient head shall be provided and pipe sizes selected to secure velocities of at least 3.0 feet per second (0.92 meter per second) for average flows. The inlet and outlet details shall be so arranged that the normal flow is diverted to 1 barrel, and that either barrel may be cut out of service for cleaning. The vertical alignment should permit cleaning and maintenance.

2.8. Sewers In Relation To Streams

A. Location of Sewers on Streams

1. The top of all sewers entering or crossing streams shall be at a sufficient depth below the natural bottom of the stream bed to protect the sewer line. In general, the following cover requirements must be met:

a. one foot (30 centimeters) of cover is required where the sewer is located in bedrock;

b. three feet (90 centimeters) of cover is required in other material;

c. cover in excess of 3 feet (90 centimeters) may be required in streams having a high erosion potential; and

d. in paved stream channels, the top of the sewer must be placed below the bottom of the channel pavement.

2. If the proposed sewer crossing will not interfere with the future improvements to the stream channel, then reduced cover may be permitted.

B. Horizontal Location. Sewers shall be located along streams outside of the stream bed and sufficiently removed therefrom to provide for future possible stream widening and to prevent pollution by siltation during construction.

C. Structures. The sewer outfalls, headwalls, manholes, gate boxes, or other structures shall be located so they do not interfere with the free discharge of flood flows of the stream.

D. Alignment

1. Sewers crossing streams should be designed to cross the stream as nearly at right angles to the stream flow as possible, and shall be free from change in grade.

2. Sewer systems shall be designed to minimize the number of stream crossings.

E. Construction

1. Materials. Sewers entering or crossing streams shall be constructed of cast or ductile iron pipe with mechanical joints; otherwise they shall be constructed so they will remain watertight and free from changes in alignment or grade. Material used to backfill the trench shall be stone, coarse aggregate, washed gravel, or other materials which will not cause siltation.

2. Siltation and Erosion. Construction methods that will minimize siltation and erosion shall be employed. The design engineer shall include in the project specifications the method(s) to be employed in the construction of sewers in or near streams to provide adequate control of siltation and erosion. Specifications shall require that cleanup, grading, seeding, and planting or restoration of all work areas shall begin immediately. Exposed areas shall not remain unprotected for more than seven days.

F. Aerial Crossings

1. A carrier pipe shall be provided for all aerial sewer crossings. Support shall be provided for all joints in pipes utilized for aerial crossings. The supports shall be designed to prevent frost heave, overturning and settlement.

2. Precautions against freezing, such as insulation and increased slope, shall be provided. Expansion jointing shallbe provided between above-ground and below-ground sewers.

3. The design engineer shall consider the impact of flood waters and debris for aerial stream crossings. The bottom of the pipe should be placed below the elevation of twenty-five (25) year flood. Crossings, in no case, shall block the channel.

2.9. Protection of Water Supplies. The applicant must review the requirements stated in R309-112-2 - Distribution System Rules, Drinking Water and Sanitation Rules, to assure compliance with the said rule.

A. Water Supply Interconnections. There shall be no physical connections between a public or private potable water supply system and a sewer, or appurtenance thereto which would permit the passage of any sewage or polluted water into the potable supply. No water pipe shall pass through or come in contact with any part of a sewer manhole.

B. Relation to Water Mains

1. Horizontal Separation

a. Sewers shall be laid at least 10 feet (3.0 meters) horizontally from any existing water main. The distance shall be measured edge to edge. In cases where it is not practical to maintain a ten foot separation, a deviation may be allowed based on the supportive data from the design engineer. Such deviation may allow installation of the sewer closer to a water main, provided that the sewer is laid:

(1) in a separate trench, or

(2) on an undisturbed earth shelf located on one side of the sewer trench, or

(3) in the sewer trench which has been backfilled and compacted to not less than 95 percent of the optimum density as determined by the ASTM Standard D-690, as amended, and

b. In each of the above cases, the bottom of the water main shall be at least 18 inches (46 centimeters) above the top of the sewer.

2. Crossings. Sewers crossing above water mains shall be laid to provide a minimum vertical distance of 18 inches (46 centimeters) between the outside of the water main and the outside of the sewer. The crossing shall be arranged so that the sewer joints will be equidistant and as far as possible from the water main joints. Where a water main crosses under a sewer, adequate structural support shall be provided for the sewer to prevent damage to the water main.

3. Special Conditions. When it is impossible to obtain proper horizontal and vertical separation as stated above, the sewer shall be designed and constructed of cast iron, ductile iron, galvanized steel or protected steel pipe with mechanical joints for the minimum distance of 10 feet on either side of the point of crossing. The design engineer may use other types of joints if equivalent joint integrity is demonstrated. The lines shall be pressure tested to assure watertightness before backfilling.

R317-3-3. Sewage Pumping Stations.

3.1. General. Sewage pumping station structures, and electrical and mechanical equipment shall be protected from physical damage that would be caused by a 100-year flood. Sewage pumping stations must remain fully operational and accessible during a 25-year flood.

3.2. Design

A. Pumping Rates. The pumps and controls of main pumping stations, and especially pumping stations pumping to the treatment works or operated as part of the treatment works, should be selected to operate at varying delivery rates to permit discharging sewage at approximately its rate of delivery to the pump station.

B. System - Head Calculation

1. The design engineer shall submit system-head calculations and curves. System-head curves for C values of 100, 120 and 140 in the Hazen William's equation for calculating head loss corresponding to minimum, median and maximum water levels shall be developed.

2. A system-head curve for C value of 120 corresponding to median (normal operating) water level shall be used to make preliminary selection of motor and pump. The pump and motor must operate satisfactorily over the entire range of system-head curves for C values of 100 and 140 corresponding to minimum and maximum water levels intersected by the head-discharge relationship of a given pump.

3. Pumps and motors shall be sized for the 10-year peak flows; preferably the 20-year sewage flow requirements. These operating points shall be shown on the system-head curves.

C. Accessibility. The pumping station shall be readily accessible by maintenance vehicles during all weather conditions. The facility should be located off the traffic way of streets and alleys.

D. Grit. Where it is necessary to pump sewage before grit removal, the design of the wet well and pump station piping shall be such that operational problems from the accumulation of grit are avoided.

E. Odor and Corrosion Control. The pumping station design should incorporate measures for:

1. mitigating the effects of sulfide corrosion to structure and equipment; and

2. effective odor control when a populated area is within close proximity.

F. Structures

1. Dry wells, including their superstructure, shall be completely separated from the wet well.

2. Provision shall be made to facilitate maintenance and removal of pumps, motors, and other mechanical and electrical equipment.

3. Safe means of access and proper ventilation shall be provided to dry wells and to wet wells containing either bar screens or mechanical equipment requiring inspection or maintenance.

a. For built-in-place pump stations, a stairway with rest landings shall be provided at vertical intervals not to exceed 12 feet (3.7 meters). For factory-built pump stations over 15 feet (4.6 meters) deep, a rigidly fixed landing shall be provided at vertical intervals not to exceed 10 feet (3.0 meters). Where a landing is used, a suitable and rigidly fixed barrier shall be provided to prevent an individual from falling past the intermediate landing to a lower level.

b. Where space requirements are insufficient, the design may provide for a manlift or elevator in lieu of landings in a factory-built station if the design includes an emergency access or exit.

c. Local, state and federal safety requirements, including those in applicable fire code, the Uniform Building Code, etc., must be reviewed and complied with. Those requirements, if more stringent than the ones stated above, shall be incorporated in the design.

4. Construction Materials. The materials selected in construction and installation must be safe and able to withstand adverse operating environmental conditions caused by presence of hydrogen sulfide and other corrosive gases, greases, oils, and other constituents frequently present in sewage.

3.3. Pumps and Pneumatic Ejectors

A. Multiple Units

1. At least two pumps or pneumatic ejectors shall be provided. A minimum of three pumps shall be provided for stations handling flows greater than 1 million gallons per day (3,785 cubic meters per day).

2. If only two units are provided, they should have the same capacity. Each shall be capable of handling flows in excess of the expected maximum flow. Where three or more

units are provided, they should be designed to fit actual flow conditions and must be of such capacity that with any one of the largest units out of service, the remaining units shall have capacity to handle maximum sewage flows.

B. Protection Against Clogging

1. Pumps handling sewage from 30 inch (76 centimeters) or larger diameter sewers shall be protected by readily accessible bar racks from clogging or damage.

2. Bar racks should have clear openings not exceeding 1-1/2 inches (6.4 centimeters). The design shall provide for a mechanical hoist.

3. The design engineer shall consider installation of mechanically cleaned and duplicate bar racks in the pumping stations handling larger than five million gallons per day (18,900 cubic meters per day) rate of flow.

4. Small pumping stations pumping less than one million gallons per day (3,785 cubic meters per day) shall be equipped with bar racks or inline grinding devices, etc., to prevent clogging.

C. Pump Openings. Except where grinder pumps are used, pumps shall be capable of passing spheres of at least 3 inches (7.6 centimeters) in diameter, and pump suction and discharge piping shall be at least 4 inches (10.2 centimeters) in diameter.

D. Priming. The pump shall be so placed that it will operate under a positive suction head under normal operating conditions, except for submersible pumping stations.

E. Electrical Equipment. Electrical systems and components (e.g., motors, lights, cables, conduits, switchboxes, and control circuits) in raw sewage wet wells, or in enclosed or partially enclosed spaces where hazardous concentrations of flammable gases or vapors may be present, shall comply with the National Electrical Code requirements for Class 1 Group D, Division 1 locations. In addition, equipment located in the wet well shall be suitable for use under corrosive conditions. Each flexible cable shall be provided with watertight seal and separate strain relief. A fused disconnect switch located above ground shall be provided for all pumping stations. When such equipment is exposed to weather, it shall as a minimum, meet the requirements of weatherproof equipment (NEMA 3R).

F. Intake. Each pump should have an individual intake. Turbulence should be avoided near the intake in wet wells. Intake piping should be as straight and short as possible.

G. Dry Well Dewatering. A separate sump pump equipped with dual check valves shall be provided in dry wells to remove leakage or drainage. Discharge shall be located as high as possible. A connection to the pump suction is also recommended as an auxiliary feature. Water ejectors connected to a potable water supply will not be approved. All floor and walkway surfaces should have an adequate slope to a point of drainage. Pump seal water shall be piped to the sump.

H. Controls

1. Type. Control systems for liquid level monitoring shall be of the air bubbler type, the capacitance type, the encapsulated float type, or the non-contact type. The selection of type of controls must be based on wastewater characteristics and other site related conditions. The executive secretary may approve the existing float-tube control systems on pumping stations being upgraded. The electrical equipment shall comply with the National Electrical Code requirements for Class I, Group D, Division 1 locations.

2. Location. The level control system shall be located away from the turbulence of incoming flow and pump suction.

3. Alternation. The design engineer must consider automatic alternation of the sequencing of pumps in use.

I. Valves

1. Suction Line. An isolation valve shall be placed on the suction line of each pump except on submersible pumps.

2. Discharge Line

a. Isolation and check valves shall be placed on the discharge line of each pump. The check valve shall be located between the isolation valve and the pump.

b. Check valves shall not be placed in the vertical run of discharge piping unless the valve is designed for that specific application.

c. Ball valves may be permitted in the vertical runs.

d. All valves shall be suitable for the material being handled, and capable of withstanding normal operating pressure and water hammer.

e. Where limited pump backspin will not damage the pump and low discharge head conditions exist, a short individual force main for each pump, may be approved by the executive secretary in lieu of a discharge manifold.

3. Location. Valves shall not be located in wet well. They shall be located in a dry well adjacent to the pumps or in an adjacent isolated pit appropriately protected from physical, weather or freezing damage, with proper access for operation and maintenance.

J. Wet Wells

1. Divided Wells. Wet well should be divided into multiple sections, properly interconnected, to facilitate repairs and cleaning, and non-turbulent hydraulic operating condition to each pump inlet.

2. Size. The wet well size and level control settings shall be appropriate to avoid heat buildup in the pump motor due to frequent starting (short cycling), and septic conditions due to excessive detention time.

3. Floor Slope. The wet well floor shall have a minimum slope of one to one to the hopper bottom. The horizontal area of the hopper bottom shall be not greater than necessary for proper installation and function of the pump inlet.

K. Ventilation. All pump stations must be ventilated to maintain safe operating environment. Where the pump pit is below the ground surface, mechanical ventilation is required, so arranged as to independently ventilate the dry well and the wet well if screens or mechanical equipment requiring maintenance or inspection are located in the wet well. There shall be no interconnection between the wet well and dry well ventilation systems. In pits over 15 feet (4.6 meters) deep, multiple inlets and outlets are recommended. Dampers should not be used on exhaust or fresh air ducts. Fine screens or other obstructions in air ducts should be avoided to prevent clogging. Switches for operation of ventilation equipment should be marked and located for convenient operation from outside of the enclosed environment. All intermittently operated ventilating equipment shall be interconnected with the respective pit lighting system. Automatic controls are recommended for intermittently ventilated pump stations. Fan parts should be of non-corrosive material. All parts adjacent to moving ones should be of non-

sparking materials. Consideration should be given to installation of automatic heating and dehumidification equipment.

1. Wet Wells. Ventilation may be either continuous or intermittent. Ventilation, if continuous, shall provide at least 12 complete air changes per hour; if intermittent, at least 30 complete air changes per hour. Ventilating equipment should force air into wet well rather than exhaust it from wet well.

2. Dry Wells. Ventilation may be either continuous or intermittent. Ventilation, if continuous, shall provide at least 6 complete air changes per hour; if intermittent, at least 30 complete air changes per hour.

L. Flow Measurement. Continuous measuring and recording of sewage flow shall be provided at all pumping stations with a design pumping capacity greater than one million gallons per day (3,785 cubic meters per day).

M. Water Supply. There shall be no physical connection between any potable water supply and a sewage pumping station which under any condition might cause contamination of the potable water supply. The potable water supply to a pumping station shall be protected against cross connection or backflow.

3.4. Self-Priming Pumps. Self-priming pumps shall be capable of rapid priming and repriming at the lead pump on elevation. Such self-priming and repriming shall be accomplished automatically under design operating conditions. Suction piping should not exceed the size of the pump suction and shall not exceed 25 feet (7.6 meters) in total length. Priming lift at the lead pump on elevation shall include a safety factor of at least 4 feet (1.2 meters) from the maximum allowable priming lift for the specific equipment at design operating conditions. The combined total of dynamic suction lift at the pump off elevation and required net positive suction head at design operating conditions shall not exceed 22 feet (6.7 meters).

3.5. Submersible Pump Stations. Submersible pump stations may be used for flows less than 0.25 million gallons per day (946 cubic meters per day). The executive secretary may approve submersible pump stations for flows greater than 0.25 million gallons per day (946 cubic meters per day), based on operational, reliability and maintenance considerations. The submersible pumps stations shall meet the design requirements stated above, except as modified in this section.

A. Construction. Submersible pumps and motors shall be designed specifically for raw sewage use, including totally submerged operation during a portion of each pumping cycle. An effective method to detect shaft seal failure or potential seal failure shall be provided, and the motor shall be of squirrel-cage type design without brushes or other arc-producing mechanisms.

B. Pump Removal. Submersible pumps shall be readily removable and replaceable without dewatering the wet well or disconnecting any piping in the wet well.

C. Electrical

1. Power Supply and Control. Electrical supply, control and alarm circuits shall be designed to allow for disconnection of the equipment from outside and inside of pumping station. Terminals and connectors shall be protected from corrosion by location outside of wet well or through use of watertight seals. If located outside of the pumping station, weatherproof equipment shall be used.

2. Controls. The motor control center shall be located outside of the wet well and be protected by a conduit seal or other appropriate measures meeting the requirements of the National Electrical Code, to prevent the atmosphere of the wet well from gaining access to the control center. The seal shall be so located that the motor may be removed and electrically disconnected without disturbing the seal.

3. Power Cord. Pump motor power cords shall be designed for flexibility and serviceability under severe service conditions and shall meet the requirements of the Mine Safety and Health Administration for trailing cables. Ground fault interruption protection shall be used to deenergize the circuit in the event of any failure in the electrical integrity of the cable. Power cord terminal fittings shall be corrosion-resistant and constructed in a manner to prevent the entry of moisture into the cable, shall be provided with strain relief appurtenances, and shall be designed to facilitate field connecting.

3.6. Valves. Valves shall be located in a separate valve pit. Accumulated water shall be drained to the wet well or the soil. If the valve pit is drained to the wet well, an effective method shall be provided to prevent sewage gases and liquid from entering the pit during surcharged wet well conditions.

3.7. Alarm Systems.

A. Alarm systems shall be provided for pumping stations. The alarm shall be activated in cases of power failure, high water level in dry or wet well, pump failure, use of the lag pump, air compressor failure, or any other pump malfunction.

B. Pumping station alarms shall be telemetered, including identification of the alarm condition, to the operating agency's facility that is manned 24 hours a day. If such a facility is not available and 24-hour holding capacity is not provided, the alarm shall be telemetered to the operating agency's facility during normal working hours and to the home of the person(s) responsible for the lift station during off-duty hours.

C. The executive secretary may approve audio-visual alarm systems with a self-contained power supply in lieu of the telemetering system outlined above, depending upon location, station holding capacity and inspection frequency.

3.8. Emergency Operation

A. Pumping stations and collection systems shall be designed to prevent bypassing of raw sewage and backup into the sewer system. For use during possible periods of extensive power outages, mandatory power reductions, or uncontrolled storm events, a controlled high-level wet well overflow or emergency power generator shall be provided. Where a high level overflow is utilized, storage or retention tanks, or basins, shall be provided having at least a 2-hour retention capacity at the anticipated overflow rate.

B. The applicant must review the requirements of R317-6 (Ground Water Quality Protection Rule) for compliance with the said rule for earthen retention basins.

C. The operating agency shall provide:

1. an in-place or portable pump, driven by an internal combustion engine or an emergency generator capable of pumping from the wet well to the discharge side of the station for pump stations with a capacity in excess of one million gallons per day (3,785 cubic meters per day), and

2. an engine-driven generating equipment or an independent source of electrical power or emergency generators

capable of pumping from the wet well to the discharge side of the station for pump stations with a capacity in excess of five million gallons per day (18,925 cubic meters per day).

3.9. Auxiliary and Emergency Equipment Requirements

A. General. The following general requirements shall apply to all internal combustion engines used to drive auxiliary pumps, service pumps through special drives, or electrical generating equipment.

1. Engine Protection. The engine must be protected from damaging operating conditions. Protective equipment shall shut down the engine and activating an alarm on site unless continuous manual supervision is planned. Protective equipment shall monitor for conditions of low oil pressure and overheating, Oil pressure monitoring is not required for engines with splash lubrication.

2. Size. The engine shall have adequate rated power to start and continuously operate all connected loads.

3. Fuel Type. The type of fuel must be carefully selected for maintaining reliability and ease of starting, especially during cold weather conditions. Unused fuel from the fuel storage tank should be removed annually, and the tank refilled with fresh fuel.

4. Engine Ventilation. The engine shall be located above grade with adequate ventilation of fuel vapors and exhaust gases.

5. Routine Start-up. All emergency equipment shall be provided with instructions indicating the need for regular starting and running of such units at full loads.

6. Protection of Equipment. Emergency equipment shall be protected from damage at the restoration of regular electrical power.

B. Engine-Driven Pumping Equipment. Where permanently installed or portable engine-driven pumps are used, the following requirements in addition to general requirements apply:

1. Pumping Capacity. Engine-driven pump(s) shall be capable of pumping at the design pumping rates unless storage capacity is available for flows in excess of pump capacity. Pumps shall be designed for anticipated operating conditions, including suction lift if applicable.

2. Operation. Provisions shall be made for automatic and manual start-up and load transfer. The pump must be protected against damage from adverse operating conditions. Provisions should be considered to allow the engine to start and stabilize at operating speed before assuming the load. Where manual start-up and transfer is justified, storage capacity and alarm system must meet the requirements stated hereinabove.

3. Portable Generating Equipment. Where portable generating equipment or manual transfer of power to the pumping equipment is provided, sufficient storage capacity shall be provided in the design of pumping station, to allow time for detection of pump station failure and transportation and connection of generating equipment. The use of special electrical connections and double throw switches are recommended for connecting portable generating equipment.

3.10. Instructions and Equipment

A. Sewage pumping stations and their operators must be supplied with a complete set of operational instructions, including emergency procedures, maintenance schedules, special tools, and necessary spare parts.

B. Local, state and federal safety requirements, including those in applicable fire code, the Uniform Building Code etc., must be reviewed and complied with. Those requirements take precedence over the foregoing requirements, if more stringent, and should be incorporated in the design.

3.11. Force Mains

A. Velocity. A velocity of not less than 2 feet per second (0.61 meter per second) shall be maintained at the average design flow, to avoid septic sewage and resulting odors.

B. Air Relief Valve. An automatic air relief valve shall be placed at high points in the force main to prevent air locking.

C. Termination. Force mains should enter the gravity sewer system at a point not more than 2 feet (30 centimeters) above the flow line of the receiving manhole.

D. Design Pressure. The force main and fittings, including reaction blocking, shall be designed to withstand normal pressure and pressure surges (water hammer).

E. Special Construction. Force main construction near streams or used for aerial crossings shall meet the requirements stated in Sewers.

F. Design Friction Losses

1. Friction losses through force mains shall be based on the Hazen and Williams formula or other hydraulic analysis to determine friction losses. When the Hazen and Williams formula is used, the design shall be based on the value of C equal to 120; for unlined iron or steel pipe the value of C equal to 100 shall be used.

2. When initially installed, force mains will have a significantly higher C factor. The higher C factor should be considered only in calculating maximum power requirements.

G. Separation from Water Main. The applicant or the design engineer must review the requirements stated in R309-112.2 - Distribution System rules, Drinking Water and Sanitation Rules, to assure compliance with the said rule.

H. Identification. A clearly labelled tracer location tape shall be placed two feet above the top of force mains less than or equal to 24 inch (61 centimeters) in diameter, along its entire length.

R317-3-4. Treatment Works.

4.1. Plant Location

A. The treatment plant structures and all related equipment shall be protected from physical damage by the 100-year flood. Treatment works must remain fully operational and accessible during the 25-year flood.

B. These conditions shall apply to all new facilities under construction as well as the existing facilities being expanded, upgraded or modified.

4.2. Quality of Effluent. The effluent requirements and water quality standards established in the discharge permit, R317-1 (Definitions and General Requirements), R317-2 (Standards of Quality for Waters of the State) shall be used to determine the required degree of wastewater treatment, and unit processes and operations.

4.3. Design

A. Basis of Design. The plant design shall be based on the higher value of:

1. a moving average of daily rates of flow and wastewater

strength as measured by five-day biochemical oxygen demand (BOD_5) and suspended solids determination tests over a period of 30 consecutive days; or

2. an average of values rate of flow and wastewater strength as measured by five-day biochemical oxygen demand (BOD_5) and suspended solids determination tests, over a period of month; or

3. the rate of flow and wastewater strength as measured by five-day biochemical oxygen demand (BOD_5) and suspended solids determination tests, equal to or greater than 92 percent of the daily flow rate and wastewater strength data.

B. Hydraulic Design. The hydraulic capacities of all units and conveyance structures shall be computed and checked for the maximum and average design rates of flow with one largest unit out of service. No overtopping of any structure under any condition shall be permitted.

1. New Systems. The design for sewage treatment plants shall be based upon an average daily per capita flow of 100 gallons (0.38 cubic meter) unless the applicant provides and justifies a better estimate of flow based on water use data. An allowance shall be made in the design for industrial wastewaters and rates of infiltration/inflow.

2. Existing Systems. For an existing system, the applicant may use the data based on both dry-weather and wet-weather conditions. The data over a minimum period of one year shall be taken as the basis for the design.

C. Organic Design

1. New System Design

a. Domestic waste treatment design shall be on the basis of at least 0.17 pounds (0.08 kilogram) or 200 milligrams per liter of BOD_5 per capita per day and 0.20 pounds (0.09 kilogram) or 250 milligrams per liter of suspended solids per capita per day, unless information is submitted to justify alternate designs.

b. When garbage grinders are used in areas tributary to a domestic treatment plant, the design basis may be increased to 0.22 pounds (0.10 kilogram) or 260 milligram per liter of BOD_5 per capita per day and 0.25 pounds (0.11 kilogram) or 300 milligram per liter of suspended solids per capita per day.

c. An allowance shall be made in the design for industrial wastewaters and rates of infiltration/inflow.

d. Other approved methods for measurement of organic strength of wastewater published in Standard Methods for Examination of Water and Wastewater, jointly prepared by American Public Health Association (APHA), American Society of Civil Engineers (ASCE), American Water Works Association (AWWA), and Water Pollution Control Federation (WPCF), will be accepted in lieu of the five-day biochemical oxygen demand (BOD_5) test.

2. Existing Systems

a. For an existing system, the applicant may use the data based on the actual strength of the wastewater as determined by analysis of composite samples for five-day biochemical oxygen demand (BOD_5) and suspended solids. An appropriate increment for growth shall be included in the basis of design.

b. The data over a minimum period of one year shall be taken as the basis for the design.

D. Shock Loadings. The applicant shall consider the shock loadings of high concentrations and diurnal peaks for short periods of time on the treatment process, particularly for small treatment plants.

E. Design by Analogy. The applicant may utilize the data from similar municipalities in the case of new systems, provided that the reliability and applicability of such data is established through thorough investigations and documentation.

F. Flow Conduits. All piping and channels shall be designed to carry the maximum rates of flows. The incoming sewer shall be designed for unrestricted flow. Bottom corners of the channels must be filleted. Conduits shall be designed to avoid creation of pockets and corners where solids can accumulate. Suitable gates shall be placed in channels to seal off unused sections which might accumulate solids. The use of shear gates or stop planks is permitted where they can be used in place of gate valves or sluice gates. Corrosion resistant materials shall be used for these control gates.

G. Arrangement of Process Units. The design should provide for an arrangement of component parts of the plant, for greatest operating and maintenance convenience, reliability flexibility, economy, continuity of maximum effluent quality, and ease of installation of future units.

H. Flow Division Control. The design shall provide for flow division control facilities to insure organic and hydraulic loading control to various process units. Convenient, easy and safe access, change, observation, and maintenance shall be considered in the design of such facilities. Flow division shall be measured using flow measurement devices to assure uniform loading of all unit processes and operations.

4.4. Plant Design Details

A. Mechanical Equipment. The specifications should provide for:

1. services of a representative of the manufacturer to supervise the installation and initial operation of major items of mechanical equipment; and

2. performance tests of the installed equipment before acceptance by the applicant.

B. Unit Bypasses

1. A minimum of two units in the liquid treatment process train shall be provided for all unit processes and operations in all plants rated at over 1 million gallons per day (3,785 cubic meters per day).

2. The executive secretary will approve any exceptions based on reliability and operability of the components.

3. The design shall provide for properly located and arranged bypass structures and piping so that each unit of the plant can be removed from service independently. The bypass design shall facilitate plant operation during unit maintenance and emergency repair so as to minimize deterioration of effluent quality and insure rapid process recovery upon return to normal operational mode.

C. Unit Bypass During Construction. Any bypass during construction or operation must be approved by the executive secretary before such bypass occurs, as provided in this rule.

D. Drains. The design shall incorporate means to completely drain each unit with a discharge to a point within the process or the plant.

E. Protection of Structures. The design shall incorporate hydrostatic pressure relief devices to prevent flotation of structures.

F. Pipe Cleaning and Maintenance. Fittings, valves, and

other appurtenances shall be provided for pipes subject to clogging, to facilitate proper cleaning through mechanical cleaning or flushing. Pipes subject to clogging, such as pipes carrying sludge, shall be lined with a material which creates a smooth and nonadhering surface, thereby reducing clogging and resistance to flow.

G. Construction Materials. The materials of construction and equipment shall be resistant to hydrogen sulfide and other corrosive gases, greases, oils, chemicals, and similar constituents frequently present in sewage. This is particularly important in the selection of metals and paints. Contact between dissimilar metals should be avoided to minimize galvanic action, and consequent corrosion.

H. Painting

1. Piping within the plant shall be color coded to facilitate identification of piping, particularly in the plants rated over 5 million gallons per day (18,925 cubic meters per day). Table R317-3-4.4(H)(1) shows color and identification scheme recommended by the American National Standards Institute (ANSI 253.1 and 13.1) shall be used for the purposes of standardization.

2. The labels shall be stenciled in conformance with the ANSI standard A13.1.

3. The executive secretary may approve painting of piping with one color with a labelling scheme in conformance with the ANSI standard A13.1 provided that:

a. labels are color coded as directed above;

b. piping contents and direction of flow are legibly stenciled on the label; and

c. labels are securely on the piping at interval and all locations required in the above referenced standard.

I. Operating Equipment. A complete outfit of tools, accessories, and spare parts necessary for the plant operator's use should be provided. Readily-accessible storage space and workbench facilities should be provided, and consideration be given to provision of a garage for large equipment storage, maintenance, and repair.

J. Erosion Control During Construction. Effective site erosion control shall be provided during construction.

K. Grading and Landscaping. The site should be graded and landscaped upon completion of the plant. Concrete or gravel walkways should be provided for access to all units. Steep slopes should be avoided to prevent erosion. Surface water shall not be permitted to drain into any unit. Particular care shall be taken to protect all treatment plant components from storm water runoff.

4.5. Plant Outfall Lines

A. Discharge Impact Control. The outfall sewer shall be designed to discharge to the receiving stream in a manner not to impair the beneficial uses of the receiving stream and acceptable to the executive secretary. The outfall design should provide for:

1. Free fall or submerged discharge at the site selected;

2. Cascading of effluent to increase dissolved oxygen concentration in the effluent; and

3. Limited or complete dispersion of discharge across stream to minimize impact on aquatic life movement, and growth in the immediate reaches of the receiving stream; and

B. Protection and Maintenance. The outfall sewer shall be so constructed and protected against the effects of floodwater, ice, or other hazards as to reasonably insure its structural stability and freedom from stoppage.

C. Sampling Provisions. All outfall lines shall be designed with a safe and convenient access, preferably using a manhole, so that a sample of the effluent can be obtained at a point after the final treatment process, and before discharge to or mixing with the receiving waters.

4.6. Essential Facilities

A. Emergency Power Facilities

1. General. All plants shall have an alternate source of electric or mechanical power to allow continuity of operation during power failures. Methods of providing alternate sources include:

a. provision of at least two independent sources of power, such as feeders, grid, etc., to the plant;

b. portable or in-place internal combustion engine equipment which will generate electrical or mechanical energy; or

c. portable pumping equipment when only emergency pumping is required.

2. Power for Aeration. Standby power generating capacity normally is not required for aeration equipment used in the activated sludge type processes or aerated lagoons. In cases where a history of long-term (4 hours or more) power outages have occurred, auxiliary power for minimum aeration of the activated sludge type processes or aerated lagoon will be required. Full power generating capacity may be required when discharge is to critical stream segments to protect downstream uses identified in R317-2 (Standards for Quality for Waters of the State).

3. Power for Disinfection. Standby power generating capacity shall include the capacity needed for continuous disinfection of wastewater during power outages.

B. Plant Water Supply

1. General. An adequate supply of potable water under pressure should be provided for use in the laboratory and for general cleanliness around the plant. No piping or other connections shall exist in any part of the treatment works which, under any conditions, might cause the contamination of a potable water supply. The chemical quality of the water should be checked for suitability for its intended uses such as in heat exchangers, chlorinators, etc.

2. Direct Connections

a. Potable water from a municipal or separate supply may be used directly at points above grade for hot and cold supplies in lavatory, water closet, laboratory sink (with vacuum breaker), shower, drinking fountain, eye wash fountain, and safety shower; unless local authorities require a positive break at the property line.

b. The applicant must review the requirements stated in R309-112.2 - Distribution System Rules, Drinking Water and Sanitation Rules, to assure compliance with the said rule.

c. Hot water for any of the above units shall not be taken directly from a boiler or piping used for supplying hot water to a sludge heat exchanger or digester heating unit.

3. Indirect Connections

a. Where a potable water supply is used for any purpose in a plant, a break tank, pressure pump, and pressure tank shall be

provided. Water shall be discharged to the break tank through an air gap at least 6 inches (15.2 centimeters) above the maximum flood line or the spill line of the tank, whichever is higher.

b. A sign shall be permanently posted at every hose bib, faucet, hydrant, or sill cock located on the water system beyond the break tank to indicate that the water is not safe for drinking.

4. Separate Potable Water Supply. Where it is not possible to provide potable water from a public water supply, a separate well may be provided. Location and construction of the well shall be in accordance with the requirements of R309, Drinking Water and Sanitation Rules.

5. Separate Non-Potable Water Supply. Where a separate non-potable water supply or plant effluent is to be provided, a break tank will not be necessary, but all system outlets shall be posted with a permanent sign indicating the water is not safe for drinking.

C. Sanitary Facilities. Toilet, shower, lavatory, and locker facilities shall be provided in convenient locations to serve the expected staffing level at the plant.

D. Floor Slope. All floor surfaces shall be sloped adequately to a collection floor drain system.

E. Stairways

1. Stairways shall be installed wherever possible in lieu of ladders. Spiral or winding stairs are permitted only for secondary access where dual means of egress are provided. Stairways shall have slopes between 50 degrees and 30 degrees (preferably nearer the latter) from the horizontal to facilitate carrying samples, tools, etc. Each tread and riser shall be of uniform dimension in each flight. Minimum tread run shall not be less than 8 inches (20.3 centimeters). The sum of the tread run and riser shall not be less than 17 inches (43 centimeters) nor more than 18 inches (46 centimeters). A flight of stairs shall consist of not more than a 12-foot (3.7 meters) continuous rise without a platform.

2. Local, state and federal safety requirements, including those in applicable fire code, the Uniform Building Code, etc., must be reviewed and complied with. Those requirements take precedence over the foregoing requirements, if more stringent, and should be incorporated in the design.

4.7. Flow Measurement. Flow measurement devices, preferably of the primary type (devices which create a hydrodynamic condition that is sensed by the secondary element), shall be provided at the plant to continuously indicate, totalize and record volume of wastewater entering the plant in a unit time.

A. Flumes. Installation of flumes shall be as follows:

1. Flumes with throat widths of less than 6 inches (15 centimeters) shall not be installed. Throat width shall be selected to measure the entire range of anticipated flow rates at all measurement locations.

2. Locations close to turbulent, surging or unbalanced flow, or a poorly distributed velocity pattern shall be avoided. For super-critical upstream flow, a hydraulic jump should be forced to occur in a section upstream of the flume at a distance of at least 30 times maximum upstream operating depth of flume followed by a straight approach section of a length specified in this rule.

3. For flumes with throat width less than half the width of the approach channel, the length of approach channel - straight upstream section - shall be the greater of 20 times the throat width or ten times maximum upstream operating depth in flume.

4. For flumes with throat width greater than half the width of the approach channel, the length of approach channel - straight upstream section - shall be not less than ten times the maximum upstream operating depth in flume.

5. Parshall flumes shall be permitted only in locations where free discharge conditions exists on the downstream side at the average design flow. Submergence must not exceed 60 percent at the maximum design flow.

6. The stilling well, if used, and secondary measuring elements, such as floats, sensors, or gages, shall be protected against extreme weather conditions.

B. Other Flow Measurement Devices. Effluent discharged to receiving waters should be measured using flow measurement devices, such as weirs, sonic or capacitance type, etc.

C. Flow Recorders

1. Clock-wound mechanisms for recording of flow are not permitted.

2. Battery powered flow measurement devices may be permitted at locations where electrical power is not available, and continuous operability of flow measurement devices is demonstrated.

4.8. Safety and Hazardous Chemical Handling. Adequate provision shall be made to effectively protect the operator and visitors from hazards. Local, state and federal safety requirements must be reviewed and complied with. Typical items for consideration are fence, splash guards, hand and guard rails, labeling of containers and process piping, warning signs, protective clothing, first aid equipment, containments, eye-wash fountains and safety showers, dust collection, portable emergency lighting, etc.

4.9. Laboratory.

A. Treatment plants rated in excess of 1 million gallons per day (3,785 cubic meters per day) shall include a laboratory for making the necessary analytical determinations and operating control tests. Otherwise, the applicant shall show availability of services of state-certified laboratories on a continuous contract basis.

B. The laboratory size, bench space, equipment and supplies shall be such that it can perform analytical work for:

1. All self-monitoring parameters required by discharge permits;

2. The process control necessary for good management of each treatment process included in the design; and

3. Industrial waste control or pretreatment programs.

R317-3-5. Screening and Grit Removal.

5.1. Screening Devices. Coarse bar racks or screens shall be used to protect pumps, comminutors, flow measurement devices and other equipment.

5.2. Bar Racks and Screens

A. Location

1. Indoor. Screening devices, installed in a building where other equipment or offices are located, shall be accessible only through a separate outside entrance to protect the operating personnel and the equipment from damage and nuisance caused by gases, odors and potential flooding.

2. Outdoors. Screening devices not installed in enclosures or buildings shall be protected from freezing or other adverse environmental conditions.

B. Access. Screening areas shall be provided with proper work and safe access and egress, proper and emergency lighting, ventilation, and a convenient and safe means for removing the screenings.

C. Design and Installation

1. Bar Spacing. Clear openings between bars should be:

a. not more than 1 inch (2.54 centimeters) for manually cleaned screens; and

b. less than 5/8 of an inch (1.59 centimeters) for mechanically cleaned screens.

2. Bar Slope. Manually cleaned screens, except those for emergency use, should be placed on a slope of 30 to 45 degrees from the horizontal.

3. Approach Velocities. At average design flow conditions, approach velocities should be no less than 1.25 feet per second (38 centimeters per second), to prevent settling; and no greater than three (3) feet per second (91 centimeters per second) to prevent forcing material through the openings.

4. Channels. Dual channels shall be provided and equipped with the necessary gates to isolate flow from any screening unit. Provisions shall also be made to facilitate dewatering each unit. The channel preceding and following the screen shall be shaped to eliminate stranding and settling of solids. Entrance channels should be designed to provide equal and uniform distribution of flow to the screens.

5. Reliability. A minimum of two screens shall be provided. Each screen shall be designed to handle the peak design rate of flow. Where more than two screens are provided, the peak design rate of flow shall be handled with one of the largest units out of service. Where a single mechanical screen handles the peak design rate of flow, then other unit can be a manually cleaned screen.

6. Flow Measurement. The types and locations of flow measurement devices should be selected for reliability and accuracy. The effect of changes in backwater elevations, due to intermittent blinding and cleaning of screens, should be considered in the selection of the locations for flow measurement equipment.

7. Invert. The screen channel invert should be 3.0 to 6.0 inches (7.6-15.2 centimeters) below the invert of the incoming sewer.

D. Safety

1. Railings and Gratings.

a. All screening installations shall be equipped with guard rails and deck grating to insure operator safety.

b. The manually cleaned bar rack shall be accessible for cleaning insuring operator safety.

c. Proper guard rails and enclosures shall be used to protect the operator from moving parts of mechanically operated and cleaned screens. These guard rails and enclosures shall be removable for safe access to maintain and repair mechanically operated and cleaned screens. Catchments shall be provided to prevent dripping of liquids in multi-level installations.

2. Equipment Deactivation and Lockout. Each piece of electrical power mechanical equipment shall be equipped with a positive means of deactivating or locking out or isolating from its power source. Such device shall be located in close proximity to the equipment.

3. Removal of Screenings. The design shall provide for mechanical conveying or lifting systems for safe transport of screenings from a subgrade installation to a collection point on grade.

E. Power Control Systems

1. Timing Devices. All mechanical units which are operated by timing devices shall be provided with auxiliary override controls which will set the cleaning mechanism in operation at a preset high water elevation or water differential across the screen.

2. Electrical Fixtures and Controls. Electrical fixtures and controls in screening areas where hazardous gases may accumulate shall meet the requirements of the National Electrical Code for Class I, Group D, Division 1 locations.

3. Manual Override. Automatic controls shall be supplemented with a manual override.

F. Disposal of Screenings

1. Facilities shall be provided for removal, handling, storage, and disposal of screenings in a sanitary manner. Separate grinding of screenings and return to the sewage flow is unacceptable. Manually cleaned screening facilities should include an accessible platform from which the operator may rake screenings easily and safely. Suitable drainage facilities shall be provided for both the platform and the storage areas.

2. Screenings may be landfilled. The ultimate disposal of screenings shall conform to and comply with the requirements for the ultimate disposal of residues or sludge management plan.

5.3. Comminutors

A. General. Comminutors may be used in plants, excepting aerated or facultative or total containment lagoons, where mechanically cleaned bar screens are not used.

B. Design Considerations

1. Location. Comminutors should be located downstream of bar screen and any grit removal equipment.

2. Size. Comminutor capacity shall be adequate to handle the peak design rate of flow.

3. Installation.

a. A comminutor bypass channel, with manually cleaned bar screen, shall be provided. The use of the bypass channel should be automatic at depths of flow exceeding the design capacity of the comminutor. The bypass channel should be able to pass the peak design rate of flow when the comminutor channel is out of service.

b. Each comminutor that is not preceded by grit removal equipment should be protected by a 6-inch (15.2 centimeters) deep easily cleaned gravel trap.

PC Maintenance. Gates shall be provided for isolation of comminutor, comminutor channel including bypass channel for draining, repairs and maintenance. Provisions shall be made to facilitate servicing of units in place and removing units from their location for servicing.

5. Electrical Power Controls and Motors. Electrical equipment in comminutor chambers where hazardous gases may accumulate shall meet the requirements of the National Electrical Code for Class 1, Group D, Division 1 locations. Motors in areas not governed by this requirement may need protection against accidental submergence.

5.4. Grit Removal Facilities

A. General. Grit removal facilities shall be provided for all mechanical treatment plants. Pumps, comminutors, and other mechanical equipment preceding grit removal, shall be protected from the damaging effects of grit. Storage capacity shall be provided in treatment units where grit is likely to accumulate.

B. Location. Grit removal facilities should be located ahead of pumps and comminuting devices. Coarse bar racks should be placed ahead of grit removal facilities.

C. Enclosed Facilities

1. Ventilation. Uncontaminated air shall be introduced continuously at a minimum rate of 12 air changes per hour, or intermittently at a minimum rate of 30 air changes per hour. Odor control facilities are recommended.

2. Access. Grit removal facilities shall be provided with proper and safe access, and egress from equipment and facilities.

3. Electrical Work. All electrical work in enclosed grit removal areas where hazardous gases may accumulate shall meet the requirements of the National Electrical Code for Class 1, Group D, Division 1 locations.

D. Outdoor Facilities. Grit removal facilities located outside the buildings shall be protected from freezing, and other adverse environmental conditions.

E. Type and Number of Units

1. Number of Units. For plants treating:

a. more than 1 million gallons per day rate of flow (3,785 cubic meters per day), two mechanically cleaned grit removal units shall be installed in a parallel configuration. Each grit channel shall be designed to handle the peak design rate of flow.

b. less than 1 million gallons per day rate of flow (3,785 cubic meters per day), a single manually cleaned or mechanically cleaned grit chamber with a bypass channel shall be provided.

2. Other types. When arrangements other than channel-type of grit removal is considered, equipment for agitation, air supply, grit collection, grit removal, and grit washing shall be provided with controls for handling variations in rates of flow, and providing operating flexibility.

F. Design Factors

1. General. The designed effectiveness of a grit removal system shall be commensurate with the requirements of the subsequent process units.

2. Inlet Configuration. Inlet turbulence shall be minimized. The inlet flow direction must be parallel to the induced roll direction within aerated grit chambers.

3. Velocity and Detention Time.

a. Horizontal Channel-type Grit Chambers.

(1) Velocity of flow through a channel-type chamber shall be controlled such that it is not less than one foot per second (30 centimeters per second) during normal variations in flow.

(2) The detention time shall be based on the size of particle to be removed but not less than 20 seconds at the maximum design flow. Velocity and detention time in the channel shall be regulated by installation of control devices such as proportional flow, Sutro weirs, etc.

b. Aerated grit chambers.

(1) The velocity of flow through an aerated grit chamber shall not be less than 1 foot per second (30 centimeters per second) during normal variations in flow, in the direction of induced roll.

(2) A minimum detention time of two to five minutes at the maximum design flow shall be provided. Rate of aeration shall not be less than 4 cubic feet per minute per lineal foot (1.5 liters per second per meter). Outlet weir shall be provided parallel to the direction of induced roll.

c. Square grit chambers. Detention time and overflow rate for square grit chambers shall be based on the size of particles intended to be removed. Overflow rate should not exceed 40,000 gallons per day per square foot of the chamber area (1,600 cubic meters per day per square meter).

4. Grit Washing. Grit should be washed before the disposal.

5. Drains. Provision shall be made for to adequately bypass, isolate and dewater each grit removal unit for maintenance.

6. Water. An adequate supply of service or non-potable plant water under pressure shall be provided for cleanup.

G. Grit Handling.

1. Mechanical equipment for hoisting or transporting grit to ground level shall be provided in grit removal facilities located in deep pits. Impervious, non-slip, working surfaces with adequate drainage shall be provided for grit handling areas. Grit transporting facilities shall be provided with protection against freezing and loss of material.

2. Grit may be landfilled. The ultimate disposal of grit shall conform to and comply with the requirements for the ultimate disposal of residues or sludge management plan.

R317-3-6. Settling.

6.1. General Considerations

A. Number of Units. Multiple units capable of independent operation shall be provided in all plants where the design rate of flow exceed 1 million gallons per day (3,785 cubic meters per day). Plants where the design rate of flow is less than one (1) million gallons per day (3,785 cubic meters per day), shall include other provisions to assure continuity of treatment.

B. Arrangement. Settling tanks shall be arranged for optimum site utilization, and shall be consistent with the hydraulic head requirements for other ancillary units.

C. Flow Distribution. Effective flow measurement devices and control appurtenances (e.g. valves, gates, splitter, boxes, etc.) should be provided to permit proper proportioning of flow to each unit.

D. Tank Configuration. The selection of tank size and shape, and inlet and outlet type and location shall be based on the site and flow patterns.

6.2. Design Considerations

A. Dimensions.

1. The minimum length of flow from inlet to outlet should not be less than be 10 feet (3 meters) unless special provisions are made to prevent short circuiting. The sidewater depth for primary clarifiers shall be not less than 8 feet (2.4 meters).

2. Clarifiers following an activated sludge process shall have sidewater depths of at least 12 feet (3.7 meters) to provide adequate separation zone between the sludge blanket and the overflow weirs.

3. Clarifiers following fixed film reactors shall have

sidewater depth of at least 8 feet (2.4 meters).

B. Surface Loading (Overflow) Rates

1. Primary Settling Tanks

a. Surface loading or overflow rates at the average design rate of flow for primary tanks shall not exceed:

(1) 600 gallons per day per square foot (24 cubic meters per square meter per day) for plants treating at the rate of flow less than 1 million gallons per day (3,785 cubic meter per day), or

(2) 1,000 gallons per day per square foot (41 cubic meters per square meter per day) for plants treating at the rate of flow more than 1 million gallons per day (3,785 cubic meter per day).

b. For primary settling, expected influent BOD_5 removal and surface loading is as shown by the relationship: E = (41.5 - (0.01 x Surface loading at average design Q)) where, E = efficiency, percent, and surface loading less than or equal to 2,000 gallons per day per square foot (82 cubic meters per square meter per day). However, anticipated higher BOD_5 removal than the one predicted using above relationship for sewage or sewage containing appreciable quantities of industrial wastes (or chemical additions to be used), shall be validated by plant performance data.

2. Intermediate Settling Tanks. Surface loading or overflow rates for intermediate settling tanks following fixed film reactor processes shall not exceed 1,000 gallons per day per square foot (41 cubic meters per square meter per day) at the average design rate of flow.

3. Final Settling Tanks

a. Settling tests should be conducted wherever a pilot study of biological treatment is warranted by unusual waste characteristics or treatment requirements.

b. The applicant will conduct pilot testing where proposed loadings go beyond the limits set forth in this section.

c. Surface loading or overflow rates for settling tanks following fixed film processes shall not exceed 800 gallons per day per square foot (33 cubic meters per square meter per day) at the average design rate of flow.

d. Settling tanks following activated sludge processes must be designed to meet thickening as well as solids separation requirements. Surface loading or overflow, and weir overflow rates must be adjusted for the various processes to minimize the problems with sludge loadings, density currents, inlet hydraulic turbulence, and occasional poor sludge settleability. The high rate of recirculation of return sludge from the final settling tanks to the aeration or reaeration tanks requires careful consideration of above factors. The hydraulic design of intermediate and final settling tanks following the activated sludge process shall be based upon the average design rate of flow excluding activated sludge return flow as shown in Table R317-3-6.2(B)(3)(d).

C. Inlet Structures. Inlets should be designed to dissipate the inlet velocity and to distribute the flow equally both horizontally and vertically and to prevent short circuiting. Channels should be designed to maintain a velocity of at least one foot per second (0.3 meter per second) at the minimum design flow. Corner pockets and dead ends should be eliminated and corner fillets or channeling used where necessary. Provisions shall be made for elimination or removal of floating materials in inlet structures.

D. Effluent Overflow Weirs

1. General. Effluent overflow weirs shall be adjustable for leveling.

2. Location. Effluent overflow weirs shall be located to optimize actual hydraulic detention time, and minimize short circuiting.

3. Design Rates. Weir loadings shall not exceed 10,000 gallons per day per lineal foot (124 cubic meters per meter per day) for plants treating the average design rate of flow of one (1) million gallons per day (3,785 cubic meters per day) or less. Higher weir loadings may be used for plants designed for larger average flows, but shall not exceed 15,000 gallons per day per lineal foot (186 cubic meters per meter per day). If pumping is required, weir loadings must be related to pump delivery rates to avoid short circuiting.

4. Weir Troughs. Weir troughs shall be designed to prevent submergence at the maximum design rate of flow (peak daily flow), and to maintain a velocity of at least one foot per second (0.3 meter per second) at one-half of the average design rate of flow. Submergence may be permitted at the maximum design rate of flow (peak daily flow) with one unit out of service.

E. Submerged Surfaces. The tops of troughs, beams, and similar submerged construction elements shall have a minimum slope of 1.4 vertical to 1 horizontal; the underside of such elements should have a slope of 1 to 1 to prevent the accumulation of scum and solids.

F. Unit Dewatering. The bypass design shall provide for redistribution of the plant flow to the remaining units in operation.

G. Freeboard. Walls of settling tanks shall extend at least 6 inches (15 centimeters) above the surrounding ground surface and shall provide not less than 12 inches (30 centimeters) freeboard. Additional freeboard or the use of wind screens should be provided where larger settling tanks are subject to high velocity wind currents that would cause tank surface waves and inhibit effective scum removal.

6.3. Sludge and Scum Removal

A. Scum Removal. Effective scum collection and removal facilities, including baffling, shall be provided for primary, intermediate and secondary settling tanks. The unusual characteristics of scum which may adversely affect pumping, piping, sludge handling and disposal, should be recognized in design. Provisions may be made for the discharge of scum with the sludge; however, other special provisions for disposal may be necessary.

B. Sludge Removal. Sludge collection and withdrawal facilities shall be designed to assure rapid removal of the sludge. Suction withdrawal of sludge from the tank floor should be provided for activated sludge plants designed for reduction of the nitrogenous oxygen demand.

1. Sludge Hopper. When scrapers are used to move sludge into a discharge hopper, the minimum slope of the side walls shall be 1.7 vertical to 1 horizontal. Hopper wall surfaces should be made smooth with rounded corners to aid in sludge removal. Hopper bottoms shall have a maximum dimension of two feet (0.6 meter). Deep sludge hoppers for sludge thickening are not acceptable.

2. Sludge Removal Piping. Each hopper shall have an individually valved sludge withdrawal line at least six inches

(15 centimeters) in diameter. The static head available for withdrawal of sludge shall be 30 inches (76 centimeters) or greater, as necessary to maintain a three foot per second (0.91 meter per second) velocity in the withdrawal pipe. Clearance between the end of the withdrawal line and the hopper walls shall be sufficient to prevent bridging of the sludge. Adequate provisions shall be made for rodding or back-flushing individual pipe runs for activated sludge secondary clarifiers except for oxidation ditch clarifiers. Piping shall also be provided to return waste sludge to primary clarifiers.

3. Sludge Removal Control. Sludge wells shall be provided with telescoping valves or other equipment for viewing, sampling and controlling the rate of sludge withdrawal. The use of sight glass and sampling valves may be appropriate. A means of measuring the sludge removal rate shall be provided. Air lift type of sludge removal must not be used for removal of primary sludges. Sludge pump motor control systems shall include time clocks and valve controls for regulating the duration and sequencing of sludge removal.

6.4. Protective and Service Facilities

A. Operator Protection. All settling tanks shall be equipped to provide safe working conditions for operators. Such features shall include machinery covers, life lines, stairways, walkways, handrails and slip resistant surfaces.

B. Mechanical Maintenance Access. The design shall provide for convenient and safe access to routine maintenance items such as gear boxes, scum removal mechanisms, baffles, weirs, inlet stilling baffle area, sludge and scum pumps, and effluent channels.

C. Electrical Fixtures and Controls. Electrical fixtures and controls in enclosed settling basins shall meet the requirements of the National Electrical Code for Class 1, Group D, Division 1 locations. The fixtures and controls shall be located so as to provide convenient and safe access for operation and maintenance. Walkways, bridge area and area around settling tanks shall be illuminated with area lighting for operating personnel safety.

R317-3-7. Biological Treatment.

7.1. Trickling Filters

A. General. Trickling filters shall be preceded by effective settling tanks equipped with scum and grease collecting devices, or other suitable pretreatment facilities.

B. Hydraulics

1. Distribution. The sewage may be distributed over the filter by rotary distributors or other suitable devices which will ensure uniform wastewater distribution to the surface area. Uniform hydraulic distribution of sewage on the filters is required.

2. For reaction type distributors, a minimum head of 24 inches (61 centimeters) between low water level in the siphon chamber and center of the arms is required. Similar allowance in design shall be provided for added pumping head requirements where pumping to the reaction type distributor is used. The applicant should evaluate other types of drivers and drives.

3. A minimum clearance of 6 inches (15 centimeters) between media and distributor arms shall be provided. Larger clearance than 6 inches (15 centimeters) must be provided where ice buildup may occur.

C. Wastewater Application. Application of the sewage shall be continuous. The piping system shall be designed for recirculation. The design must provide for routine flushing of filters by heavy dosing at intermittent intervals.

D. Piping System. The piping system, including dosing equipment and distributor, shall be designed to provide capacity for the peak design rate of flow, including recirculation.

E. Media

1. Quality

a. The media may be crushed rock, slag, or specially manufactured material. The media shall be durable, resistant to spalling or flaking and insoluble in sewage. The top 18 inches (46 centimeters) shall have a loss by the 20-cycle, sodium sulfate soundness test of not more than 10 percent. The balance is to pass a ten-cycle test using the same criteria. Slag media shall be free from iron.

b. Manufactured media shall be resistant to ultraviolet degradation, disintegration, erosion, aging, all common acids and alkalies, organic compounds, and fungus and biological attack. Such media shall be structurally capable of supporting a man's weight or a suitable access walkway shall be provided to allow for distributor maintenance.

2. Depth. The filter design shall provide for a depth of:

a. not less than 5 feet (1.5 meters) above the underdrains, but not more than 10 feet (3 meters) when rock or slag media is used in the filters.

b. not less than 10 feet (3 meters) above the underdrains to provide adequate contact time with the wastewater, but not more than 30 feet (9 meters) unless additional structural construction and aeration are provided, when manufactured media is used in the filters.

3. Size and Grading of Media

a. Rock, Slag and Similar Media

(1) Rock, slag, and similar media shall not contain more than 5 percent by weight of pieces whose longest dimension is three times the least dimension.

(2) Media shall be free from thin, elongated and flat pieces, dust, clay, sand or fine material and shall conform to the size and grading when mechanically graded over vibrating screens with square openings, as shown in Table R317-3-7.1(E)(3(a)(2).

b. Manufactured Media. The applicant must evaluate suitability of manufactured media on the basis of experience with installations handling similar wastes and loadings.

c. Handling and Placing of Media. Material delivered to the filter site shall be stored on wood-planked or other approved clean, hard-surfaced areas. All material shall be rehandled at the filter site and no material shall be dumped directly into the filter. Crushed rock, slag and similar media shall be washed and rescreened or forked at the filter site to remove all fines. Such material shall be placed by hand to a depth of 12 inches (30 centimeters) above the tile underdrains. The remainder of material may be placed by means of belt conveyors or equally effective methods approved by the design engineer. All material shall be carefully placed so as not to damage the underdrains. Manufactured media shall be handled and placed as approved by the engineer. Trucks, tractors, and other heavy equipment shall not be driven over the filter during or after construction.

F. Underdrain System

1. Arrangement. Underdrains with semicircular inverts or equivalent should be provided and the underdrainage system shall cover the entire floor of the filter. Inlet openings into the underdrains shall have an unsubmerged gross combined area equal to at least 15 percent of the surface area of the filter.

2. Hydraulic Capacity and Ventilation.

a. The underdrains shall have a minimum slope of 1 percent. Effluent channels shall be designed to produce a minimum velocity of two (2) feet per second (0.61 meters per second) at average daily rates of application to the filter.

b. The underdrainage system, effluent channels, and effluent pipe shall be designed to permit a free passage of air preventing septicity within the filter. The size of drains, channels, and pipe should be such that not more than 50 percent of their cross-sectional area will be submerged under the design peak hydraulic loading, including proposed or possible future recirculated flows. Forced air ventilation must be provided for deep or covered filters using manufactured media. The design of filters should be compatible for the installation of odor control equipment such as covers, forced air ventilation, scrubber, etc., as a retrofit.

3. Flushing. The design should include means for flushing of the underdrains. In small filters, use of a peripheral head channel with vertical vents is acceptable for flushing purposes. Means or facilities of inspection of underdrainage should be provided.

G. Special Features

1. Flooding. Appropriate valves, sluice gates, or other structures shall be provided to enable flooding of filters comprised of rock or slag media.

2. Freeboard. A freeboard of not less than 4 feet (1.2 meters) should be provided for tall filters using manufactured media, to maximize the containment of windblown spray.

3. Maintenance. All distribution devices, underdrains, channels, and pipes shall be installed so that they may be properly maintained, flushed or drained.

4. Freeze Protection. When climatic conditions are expected to result in operational problems due to cold temperatures, the filters may be covered for protection against freezing; maintaining operation and treatment efficiencies.

5. Recirculation. The piping and pumping systems shall be designed for recirculation rates as required to achieve sufficient wetting of biofilm and the design efficiency.

6. Recirculation Measurement. Recirculation rate to the filters shall be measured using flow measurement and recording devices. Time lapse meters and pump head recording devices are acceptable for facilities treating less than 1 million gallons per day (3,785 cubic meters per day).

H. Rotary Distributor Seals. Mercury seals are not permitted. The design of the distributor support septum shall provide for convenient and easy seal replacement to assure continuity of operation.

I. Multi-Stage Filters. The foregoing standards in this rule also apply to all multi-stage filters.

J. Unit Sizing

1. Required volumes of rock or slag media filters shall be based upon the following equations: For Single or First stage of Trickling Filter: $E = 100 - ((100 / (3 + 2 (R/I))) + (0.4 x (W / V) - 10))$. For Second stage of Trickling Filter: $E = 100 x ((1 + (R_2 / I)) / (2 + (R_2 / I)))$ where, E = Efficiency, percent R = recirculated flow through trickling filter, mgd I = raw sewage flow, mgd W = pounds of BOD_5 per day in raw sewage V = volume of filter media in 1000 cubic feet R_2 = recirculated flow through second-stage trickling filter, mgd.

2. The required volume of media may be determined by pilot testing or use of any of the various empirical design equations that have been verified through actual full scale experience. Such calculations must be submitted if pilot testing is not utilized. Pilot testing is recommended to verify performance predictions based upon the various design equations, particularly when significant amounts of industrial wastes are present.

3. Expected performance of filters packed with manufactured media shall be determined from documented full scale experience on similar installations or through actual use of a pilot plant on site.

K. Nitrification

1. Trickling filters may be used for nitrification. The design should be based as shown in Table R317-3-7.1(K)(1).

2. Nitrification is affected by variations in flow, loadings and temperature, and other factors. Therefore, the applicant must conduct pilot studies before developing the design criteria.

L. Design Safety Factors. Trickling filters are affected by diurnal load conditions. The volume of media determined from either pilot plant studies or use of acceptable design equations shall be based upon organic loading at the maximum design rate of flow rather than the average design rate of flow.

7.2. Activated Sludge

A. General. The activated sludge process and its several modifications may be used to accomplish varied degrees of removal of suspended solids, and reduction of carbonaceous and nitrogenous oxygen demand. The degree and consistency of treatment required, type of waste to be treated, proposed plant size, anticipated degree of operation and maintenance, and operating and capital costs determine the choice of the process to be used. The design shall provide for flexibility in operation. Plants over 1 million gallons per day (3,785 cubic meters per day) shall be designed to facilitate easy conversion to various operational modes. In severe climates, protection against freezing shall be provided to ensure continuity of operation and performance.

B. Aeration

1. Capacities and Permissible Loadings

a. The design of the aeration tank for any particular adaptation of the process shall be based on full scale experience at the plants receiving wastewater of similar characteristics under similar climatic conditions, pilot plant studies, or calculations based on process kinetics parameters reported in technical literature. The size of treatment plant, diurnal load variations, degree of treatment required, temperature, pH, and reactor dissolved oxygen when designing for nitrification, influence the design. Calculations using values differing substantially from those in the table shown below must reference actual operational data.

b. The applicant must substantiate capability of the aeration and clarification systems in the processes using mixed liquor suspended solids levels greater than 5,000 milligrams per

liter.

c. The applicant shall use the values shown in Table R317-3-7.2(B)(1)(c) to determine the aeration tank capacities and permissible loadings for the several adaptations of the processes, when process design calculations are not submitted. These values are based on the average design rate of flow, and apply to plants receiving peak to average diurnal load ratios ranging from about 2:1 to 4:1.

2. Arrangement of Aeration Tanks

a. Dimensions. Effective mixing and utilization of air must be the basis of dimensions of each independent mixed liquor aeration tank or return sludge reaeration tank. Liquid depths should not be less than 10 feet (3 meters) or more than 30 feet (9 meters) unless the applicant justifies the need for shallower or deeper tanks.

b. Short-circuiting. The shape of the tank and the installation of aeration equipment should provide for positive control of short-circuiting through the aeration tank.

c. Number of Units. Total aeration tank volume shall be divided among two or more units, capable of independent operation, to meet applicable effluent limitations and reliability guidelines.

d. Inlets and Outlets. Inlets and outlets for each aeration tank unit shall be suitably equipped with valves, gates, stop plates, weirs, or other devices to permit controlling the flow to any unit and to maintain reasonable constant liquid level. The hydraulic properties of the system shall permit the maximum instantaneous hydraulic load to be carried with any single aeration tank unit out of service.

e. Conduits. Channels and pipes carrying liquids with solids in suspension shall be designed to maintain self-cleaning velocities or shall be agitated to keep such solids in suspension at all rates of flow within the design limits. Drains shall be installed in the aeration tank to drain segments or channels which are not being used due to alternate flow patterns.

f. Freeboard. All aeration tanks should have a freeboard of not less than 18 inches (46 centimeters). Additional freeboard or windbreak may be necessary to protect against freezing or windblown spray.

3. Aeration Requirements

a. Oxygen requirements must be calculated based on factors such as, maximum organic loading, degree of treatment, level of suspended solids concentration (mixed liquor) to be maintained, and uniformly maintaining a minimum dissolved oxygen concentration in the aeration tank, at all times, of two milligrams per liter.

b. When pilot plant or experimental data on oxygenation requirements are not available, the design oxygen requirements shall be calculated on the basis of:

(1) 1.2 pounds 0_2 per pound of maximum BOD_5 applied to the aeration tanks (1.2 kilograms 0_2 per kilogram of maximum BOD_5), for carbonaceous BOD_5 removal in all activated sludge processes with the exception of the extended aeration process,

(2) 2 pounds 0_2 per pound of maximum BOD_5 applied to the aeration tanks (two kilograms 0_2 per kilogram of maximum BOD_5) for carbonaceous BOD_5 removal in the extended aeration process,

(3) 4.6 pounds 0_2 per pound of maximum total kjeldahl nitrogen (TKN) applied to the aeration tanks (1.2 kilograms 0_2 per kilogram of maximum TKN), for oxidizing ammonia in the case of nitrification, and

(4) oxygen demand due to the high concentrations of BOD_5 and TKN associated with recycle flows such as, digester supernatant, heat treatment supernatant, belt filter pressate, vacuum filtrate, elutriates, etc.

c. Oxygen utilization should be maximized per unit power input. The aeration system should be designed to match the diurnal organic load variation while economizing on power input.

4. Diffused Air Systems

a. The design of the diffused air system to provide the oxygen requirements shall be done using data derived from pilot testing or an empirical approach.

b. Air requirements for a diffused air system may be determined by use of any of the recognized equations incorporating such factors as:

(1) tank depth;

(2) alpha factor of waste;

(3) beta factor of waste;

(4) certified aeration device transfer efficiency;

(5) minimum aeration tank dissolved oxygen concentrations;

(6) critical wastewater temperature; and

(7) altitude of plant.

c. In the absence of experimentally determined alpha and beta factors by an independent laboratory for the manufacturer or at the site, wastewater transfer efficiency shall be assumed to be 50 percent of clean water efficiency for plants treating primarily (90 percent or greater) domestic sewage. Treatment plants where the waste contains higher percentages of industrial wastes shall use a correspondingly lower percentage of clean water efficiency and shall submit calculations to justify such a percentage.

d. The design air requirements shall be calculated on the basis of:

(1) 1,500 cubic feet per pound of maximum BOD_5 applied to the aeration tanks (94 cubic meters per kilogram of maximum BOD_5), for carbonaceous BOD_5 removal in all activated sludge processes with the exception of the extended aeration process,

(2) 2,000 cubic feet per pound of maximum BOD_5 applied to the aeration tanks (125 cubic meters per kilogram of maximum BOD_5) for carbonaceous BOD_5 removal in the extended aeration process,

(3) 5800 cubic feet per pound of maximum total kjeldahl nitrogen (TKN) applied to the aeration tanks (360 cubic meters per kilogram of maximum TKN), for oxidizing ammonia in the case of nitrification,

(4) corresponding air quantities for satisfaction of oxygen demand due to the high concentrations of BOD_5 and TKN associated with recycle flows such as, digester supernatant, heat treatment supernatant, belt filter pressate, vacuum filtrate, elutriates, etc., and

(5) air required for channels, pumps, aerobic digesters, or other uses.

e. The capacity of blowers or air compressors, particularly centrifugal blowers, must be calculated on the basis of air intake temperature of 40 degrees Centigrade (104 degrees Fahrenheit) or higher and the less than normal operating pressure. The

capacity of drive motor must be calculated on the basis of air intake temperature of -30 degrees Centigrade (-22 degrees Fahrenheit) or less. The design must include means of controlling the rate of air delivery to prevent overheating or damage to the motor.

f. The blowers shall be provided in multiple units, so arranged and in such capacities as to meet the maximum air demand with the single largest unit out of service. The design shall also provide for varying the volume of air delivered in proportion to the load demand of the plant. Aeration equipment shall be easily adjustable in increments and shall maintain solids suspension within these limits.

g. Diffuser systems shall be capable of providing for the maximum design oxygen demand or 200 percent of the average design oxygen demand, whichever is larger. The air diffusion piping and diffuser system shall be capable of delivering normal air requirements with minimal friction losses.

h. Air piping systems should be designed such that total head loss from blower outlet (or silencer outlet where used) to the diffuser inlet does not exceed 0.5 pounds per square inch (0.04 kilogram per square centimeter) at average operating conditions.

i. The spacing of diffusers should be in accordance with the oxygen requirements through the length of the channel or tank, and should be designed to facilitate adjustment of their spacing without major revision to air header piping. Removable diffuser assemblies are recommended to minimize downtime of aeration tanks.

j. Individual assembly units of diffusers shall be equipped with control valves, preferably with indicator markings for throttling, or for complete shutoff. Diffusers in any single assembly shall have substantially uniform pressure loss.

k. Air filters shall be provided in numbers, arrangements, and capacities to furnish, at all times, an air supply sufficiently free from dust to prevent damage to blowers and clogging of the diffuser system used.

5. Mechanical Aeration Systems

a. Oxygen Transfer Performance. The mechanism and drive unit shall be designed for the expected conditions in the aeration tank in terms of the power performance. The mechanical aerator performance shall be verified by certified testing.

b. Design Requirements. The design requirements of a mechanical aeration system shall accomplish the following:

(1) Maintain a minimum of 2.0 milligrams per liter of dissolved oxygen in the mixed liquor at all times throughout the tank or basin;

(2) Maintain all biological solids in suspension;

(3) Meet maximum oxygen demand and maintain process performance with the largest unit out of service; and

(4) Provide for varying the amount of oxygen transferred in proportion to the load demand on the plant.

c. Winter Protection. Due to high heat loss and the nature of spray-induced agitation, the mechanism, as well as subsequent treatment units, shall be protected from freezing where extended cold weather conditions occur.

6. Return Sludge Equipment

a. Return Sludge Rate

(1) The minimum permissible return sludge rate of withdrawal from the final settling tank is a function of the concentration of suspended solids in the mixed liquor entering it, the sludge volume index of these solids, and the length of time these solids are retained in the settling tank. Since undue retention of solids in the final settling tanks may be deleterious to both the aeration and sedimentation phases of the activated sludge process, the rate of sludge return expressed as a percentage of the average design flow of sewage should be between the limits set forth in Table R317-3-7.2(B)(6)(a)(1).

(2) The rate of sludge return shall be varied by means of variable speed motors, drives, or timers (in plants designed for less than one million gallons per day - 3,785 cubic meters per day) to pump sludge at the above rates.

b. Return Sludge Pumps

(1) If motor driven return sludge pumps are used, the maximum return sludge capacity shall be with the largest pump out of service. A positive head should be provided on pump suctions. Pumps should have at least 3 inch (7.6 centimeters) suction and discharge openings.

(2) If air lifts are used for returning sludge from each settling tank hopper, no standby unit is required provided the design of the air lifts are such to facilitate their rapid and easy cleaning and provided standby air lifts are provided. Air lifts should be at least 3 inches (7.6 centimeters) in diameter.

c. Return Sludge Piping. Discharge piping shall not be less than 4 inches (10 centimeters) in diameter, and should be designed to maintain a velocity of not less than two (2) feet per second (0.61 meters per second) when return sludge facilities are operating at normal return sludge rates. Sight glasses, sampling ports and rate of flow controllers for return activated sludge flow from each settling tank hopper shall be provided.

7. Waste Sludge Facilities

a. The design of waste sludge control facilities should be based on a logically developed solids mass balance at the maximum design flow. Otherwise, a maximum capacity of not less than 25 percent of the average design flow shall be provided, and function satisfactorily at rates of 0.5 percent of average sewage flow or a minimum of 10 gallons per minute (0.63 liters per second), whichever is larger.

b. Sight glasses, sampling ports and rate of flow controllers for waste activated sludge flow shall be provided.

c. Waste sludge may be discharged to the concentration or thickening tank, primary settling tank, sludge digestion tank, vacuum filters, other thickening equipment, or any practical combination of these units.

7.3. Flow Measurement. Instrumentation should be provided in all plants for indicating flow rates of raw sewage or primary effluent, return sludge, and air to each tank unit. For plants designed for the average design rate of flow of 1 million gallons per day (3,785 cubic meters per day) or more, these devices should total, record, and indicate the rate of flow. Where the design provides for all return sludge to be mixed with the raw sewage (or primary effluent) at one location, then the mixed liquor flow rate to each aeration unit should be measured.

7.4. Other Biological Systems. The executive secretary may consider and approve new biological treatment processes with promising applicability in wastewater treatment. The approval will be based on the required engineering data for new process evaluation as provided in this rule.

7.5. Packaged Plants. The executive secretary may consider and approve packaged biological treatment plants only when there are no other and appropriate alternatives for waste treatment. These type of plants shall be designed for handling large flow variations and to meet all requirements contained in this rule. The applicant must consider the need for close attention and competent operating supervision, including routine laboratory control, when proposing a packaged plant.

R317-3-8. Disinfection.

8.1. General

A. All wastewaters containing pathogens or coliform bacteria must be disinfected before discharge to a water course. The disinfection procedures must consider any effect on the natural aquatic habitat and biota of the receiving water course. Effectiveness of disinfection also varies with BOD_5 and suspended solids in the effluent. If chlorination is utilized, it may be necessary to dechlorinate if the residual chlorine level would otherwise impair the receiving water course. The applicant must submit justification to the executive secretary for the determination of the acceptability of any disinfection system other than chlorination or ultraviolet irradiation.

B. If effluent to be discharged meets applicable bacteriologic standards before disinfection, the executive secretary may waive the disinfection process. However, all plants must have an ability to introduce a disinfectant in the effluent with proper reaction time before discharge. An example could be multi-celled (more than three cells) lagoon discharge following extended storage in excess of 150 days.

C. The disinfection method should be selected after due consideration of wastewater flow rates, application rates, demand rates and effects, pH of the wastewater, cost of equipment, availability, maintenance, reliability and safety problems.

D. Chlorine is the most commonly used chemical for wastewater disinfection. The forms most often used are liquid-gaseous chlorine and sodium and calcium hypochlorite. The executive secretary may review and accept other disinfection methods based on the information submitted.

8.2. Design

A. Capacity of System

1. Required disinfection capacity will vary, depending on the uses and points of application of the disinfectant, e.g., prechlorination, post chlorination, odor and process control uses, etc.

2. For disinfection of the wastewater before its discharge to a water course, the disinfection system capacity shall be sufficient to produce an effluent that will meet the coliform bacteria limits specified for that installation at all times. This condition must be attainable when maximum flow rates occur and during emergency conditions. For non-chemical disinfecting systems, an equivalent installed capacity shall be provided. Normal dosage requirements for disinfection will vary with the quality of effluent to be treated.

3. Duplicate disinfection systems shall be provided. Where only two units are installed, each shall be capable of feeding the expected maximum dosage rate.

4. Disinfection system equipment should be provided with necessary changeable parts to permit operation of system at initial anticipated flows at mid-scale on flow meters and other devices. Spare parts shall be provided for all disinfection equipment to replace parts which are subject to wear and breakage. Operation and maintenance data for all equipment shall be furnished.

5. Dosage control based on effluent flow rate should be provided because of the diurnal variations in the disinfectant demand of the wastewater. A residual disinfectant concentration must be maintained to insure the pathogen destruction, and subsequent reactivation, if any.

B. Contact Period

1. For a chlorination system, a minimum contact period is required after a thorough mixing of disinfectant with the effluent. The minimum contact period shall be greater of:

a. 30 minutes at the maximum design rate of flow (peak daily rate of flow) or the maximum pumping rate, or

b. 60 minutes at the average design rate of flow.

2. This contact period shall normally be provided in the contact tank. Contact period in pipeline or outfalls before discharge into a water course, may be credited towards the contact time if the effluent discharge point can be sampled.

C. Contact Chambers

1. The contact chambers must be designed such that:

a. effectiveness of disinfection is maximized;

b. accumulation of solids is minimized;

c. maintenance and cleaning is facilitated; and

d. short circuiting of flow is reduced to a practical minimum by installation of baffles.

2. Two tanks are required for all plants treating more than 1 million gallons per day (3,785 cubic meters per day). Means of removal of solids from the tank bottom shall be provided. Solids and drainage water must be returned to the head end of the plant. Skimming devices should be provided in all contact tanks. Covered tanks must have means of access for maintenance and cleaning.

3. Pipelines and outfall sewers may be acceptable as effective plug-flow contact chambers.

4. The applicant must incorporate all of the above process and design features in devices using other disinfecting methods.

D. Point of Application

1. The design shall provide for application of chlorine or other disinfectants to all fully treated, partially treated, or untreated wastewater discharged from the treatment plant. Other points of application shall be incorporated in the design for process considerations such as prechlorination, odor control, control of sludge bulking, etc. All application points shall be submerged below the wastewater surface.

2. Chlorine shall be positively mixed as rapidly as possible, with a complete mix being effected in three seconds. This may be accomplished by either the use of turbulent flow regime or a mechanical flash mixer.

8.3. Disinfection Methods

A. Chlorination (Liquid or Gaseous Chlorine)

1. Equipment

a. The installed capacity of a chlorine feed system shall be sufficient to provide a dosage of 25 milligrams per liter at the maximum design rate of flow. Procedures recommended by the Chlorine Institute and the Occupational Safety and Health Administration, the US Department of Labor, and succeeding

organizations should be carefully followed in handling, installation, operation and maintenance of chlorination equipment. The requirements, procedures and recommendations from these organizations take precedence over the requirements stated herein, if more stringent.

b. Liquid chlorine lines from tank cars to evaporators shall be buried and installed in a conduit and shall not be exposed in below grade spaces. Systems shall be designed for the shortest possible pipe transportation of liquid chlorine. When chlorine cylinders are used, two scales, indicating and recording type, should be used for weighing the cylinders in use. Each scale should be sized to accommodate the maximum number of cylinders required to deliver chlorine at the maximum chlorine feeding rate. Adequate means for supporting cylinders on the scales should be provided. Scales shall be of corrosion-resistant material.

c. Separate manifolds shall be provided for the bank of cylinders on each scale. The manifolds shall be properly valved so that one bank of cylinders may be replaced while chlorine is being withdrawn from the other bank of cylinders. Provision should be made for automatically changing the withdrawal of chlorine from one bank of cylinders to the second when the chlorine in the first bank of cylinders has been exhausted.

d. Gas chlorinators shall be of the solution feed type. The design capacity of evaporators must correspond to gaseous chlorine demand, where several cylinders or ton containers are manifolded to evaporate sufficient chlorine. Chlorine gas systems and piping should be of vacuum type.

2. Housing and Storage

a. Local, state and federal safety requirements, including fire code, shall be carefully followed in storing and handling of chlorine containers, cylinders or tank cars.

b. Gaseous chlorine and chlorination equipment rooms shall be isolated from other sections of the building by gas-tight partitions. Separation of the chlorine storage room and the chlorination equipment room is required for safety. All doors and rooms containing gas chlorination equipment and rooms used for chlorine gas storage should open only to the outside of the building, and all doors should be equipped with panic hardware and a viewing window. Multiple exits to the outside should be provided for each room in which chlorine gas is stored or used. Rooms housing chlorination equipment should be heated to 70 degrees Fahrenheit (21 degrees Centigrade), but never in excess of normal summer temperatures. Rooms containing chlorine cylinders from which chlorine is being withdrawn should be heated to above 60 degrees Fahrenheit (16 degrees Centigrade), but never above the temperature of the equipment room. Where chlorine containers are stored out of doors, the storage area shall be provided with a canopy. Similar precautions should be taken for tank cars. Also, if containers are stored out of doors, cylinders and containers must be allowed to reach room temperature before being placed in use. Floor drains from chlorine rooms must not be connected to floor drains from other rooms.

c. Chlorine rooms shall be at ground level, and should permit easy access to all equipment. The storage area should be separated from the feed area. Chlorination equipment should be situated as close to the application point as reasonably possible.

3. Ventilation and Heating

a. With chlorination systems, forced, mechanical ventilation shall be installed which will provide one complete air change per minute when the room is occupied.

b. When unoccupied, facilities in the ventilation system may be provided with means to reduce the number of air changes to twenty per hour to conserve energy. Whenever such a two-speed ventilation system is used, adequate provisions shall be made to insure that one complete air change per minute is provided when the room is occupied.

c. The entrance to the air exhaust duct from the room shall be near the floor and the point of discharge shall be so located as not to contaminate the air inlet to any buildings or inhabited areas.

d. Air inlets shall be so located as to provide cross ventilation with air and at such temperature that will not adversely affect the chlorination equipment. The vent hose from the chlorinator shall discharge to the outside atmosphere above grade or to the scrubbing system.

e. Switches for exhaust fans and cylinders shall be kept at essentially room temperature.

f. Chlorine scrubbing systems should be incorporated in the design of handling and storage areas where required by the state or local codes.

4. Ancillary Services

a. Water Supply. An ample supply of water meeting a minimum of secondary effluent quality, R317-1, Definitions and General Requirements, shall be available for operating the chlorinator. All in-plant use of effluent shall be taken from downstream of the sampling point for effluent quality monitoring and permit compliance. Where a booster pump is required, a standby booster pump shall be provided, and standby power shall be available.

b. Other Equipment. All electrical fixtures and drainage conduits in chlorination equipment rooms and chlorine storage rooms shall be gas-tight to prevent the spread of chlorine gas in the event of a leak.

5. Piping and Material. Piping systems should be as simple as possible, specifically selected and manufactured to be suitable for chlorine service, with a minimum number of joints. Piping should be well supported and protected against temperature extremes. Low pressure lines made of hard rubber, saran-lined, rubber-lined, polyethylene, polyvinyl chloride (PVC), or Uscolite materials are satisfactory for wet chlorine or aqueous solutions of chlorine.

6. Reliability. The design of the system must include the necessary provisions that will either prevent failures or allow immediate corrective action to be taken. Standby power, duplicate equipment and water storage shall be incorporated in the design to prevent interruption of feed, water supply and backup to power and equipment failures.

7. Residual Monitoring

a. An indicating and recording type residual chlorine analyzer using accepted test procedures shall be installed to monitor residual chlorine as required in the discharge permit.

b. Where dechlorination is used, residual chlorine analyzers shall be equipped with audible and visual alarms to indicate discharge of chlorine in the effluent.

8. Safety

a. At least two complete sets of respiratory air-pac

protection equipment, meeting the requirements of the Occupational Safety and Health Administration (OSHA), shall be available where chlorine gas is handled, and shall be stored at a convenient location, but not inside any room where chlorine is used or stored. Instructions for using the equipment shall be posted near the equipment. The equipment shall, using compressed air, have at least 30-minute capacity, and be compatible with the equipment used by the fire department responsible for the plant.

b. Where ton containers or tank cars are used, a leak repair kit approved by the Chlorine Institute shall be provided. Caustic soda solution reaction tanks for absorbing the contents of leaking ton containers must be provided where such containers are in use. The installation of automatic gas detection and related alarm equipment must be provided.

B. Ultraviolet Irradiation

1. The executive secretary will consider and approve the use of ultraviolet irradiation for disinfection of wastewater treatment plant effluent based on the information submitted. Effectiveness of this system depends upon shallowness of depth or contact volume at the point of application and relative absence of suspended solids.

a. The applicant must submit supporting data describing the proposed system and including such items as contact geometry between the ultraviolet light source and water, reliability, and suitability of the effluent for this process. Designs should be investigated for sound application of the fundamentals of UV disinfection theory.

b. The design shall be based on factors such as, plug-flow hydraulics, intimate contact with the UV light for a sufficient period, short-circuiting, illumination. Tracer test results are helpful in assessment of hydraulic characteristics.

c. Materials of construction should be consistent with the wastewater and environment.

2. The design of ultraviolet disinfection systems shall be based on on-site testing and the following considerations:

a. Wastewater characteristics. Concentration of total suspended solids (TSS), calcium, magnesium, iron, etc., should be such that UV disinfection is effective. The wastewater should contain low levels of total suspended solids, preferably 20 milligrams per liter or below, and must transmit at least 50 percent of UV light through a wastewater depth of one (1) centimeter.

b. Layout

(1) Adequate space around the UV units to accommodate maintenance activities is required.

(2) Easy removal and replacement of lamps without the use of special tools by one man should be a feature of the equipment design.

(3) The ballasts should be arranged for ready and unhindered access for removal or replacement of any ballast without having a need to remove others.

(4) The layout design must provide adequate floor space for any separate components of the UV system in addition to the UV reactor itself, including requirements for power supply cabinets or cleaning equipment.

(5) Modular design with multiple units to allow uninterrupted service when performing maintenance must be specified.

3. Electrical Requirements

a. power consumption of this process alone should be separately metered.

b. UV lamps and ballasts must be properly matched. The proper matching of lamp and ballast will improve the lamps output and extend its useful life.

c. arrangements for shutting off banks of lamps within a single unit must be provided for lamp replacement or maintenance.

d. power controls should be provided for matching output of lamps with the rate of flow, and system maintenance by the plant staff.

e. minimum electrical standards of construction shall conform to the National Electrical Code, and other applicable codes and standards, consistent with the location or environment surrounding the UV unit and associated equipment.

4. Ventilation. Adequate ventilation to the structure housing the electrical components of the system must be provided to prevent failures from overheating.

5. Cleaning

a. The various means of chemical cleaning available must be evaluated. The evaluation must cover methods required for the unit to be drained; volume of cleansing agent required per cleaning; disposition of spent cleaning solution; manpower requirements to accomplish a cleaning cycle; capital costs of the cleaning and equipment; cleaner cost availability; and special storage and handling needs.

b. The system design must provide for complete draining and easy cleaning.

c. Ultrasonic cleaning must be considered for prevention of biofilm growth on non-illuminated quartz sleeves.

6. Monitoring and Instrumentation

i. Adequate staffing and resources to conduct the data collection and monitoring required for assessing performance must be provided.

ii. Each individual lamp output shall be measured and recorded.

8.4. Dechlorination

A. Sulfur Dioxide (SO_2)

1. Sulfur dioxide is most readily available in liquid (gaseous) form in ton containers similar to chlorine. Approximately, 1 milligram per liter of sulfur dioxide is required to dechlorinate 1 milligram per liter of chlorine residual (free or combined).

2. The dechlorination reaction between sulfur dioxide and both free and combined chlorine is a rapid reaction and requires only a few seconds of contact. The design of sulfur dioxide system must be based on the following considerations:

a. Equipment. Generally sulfur dioxide shall be fed as a gas similar to chlorine gas, as described in R317-3-8. The sulfur dioxide header should be heated to prevent re-liquefaction.

b. Housing and Storage. These requirements are same as to those for chlorine, as described in R317-3-8.

c. Ventilation. These requirements are same as to those for chlorine, as described in R317-3-8.

d. Ancillary Services. These requirements are same as to those for chlorine, as described in R317-3-8.

e. Piping and Material. Pipe material (plastics) inside the sulfonator must be compatible with continuous exposure to sulfur dioxide gas.

f. Reliability. These requirements are same as to those for chlorine, as described in R317-3-8.

g. Residual Monitoring. Control is critical when sulfur dioxide is used as the dechlorinating agent because excess sulfur dioxide consumes excess dissolved oxygen in the wastewater or receiving waters. The dechlorination reaction between sulfur dioxide and both free and combined chlorine is rapid, a few seconds at the most, so sampling can be performed immediately downstream of good mixing. The system should be monitored with a residual chlorine analyzer.

h. The design shall incorporate reaeration of the effluent to be in compliance with the dissolved oxygen requirement, if any, of the discharge permit.

i. Safety

(1) Adequate precautions must be taken for storing sulfur dioxide as it is a potentially hazardous chemical to store.

(2) Provide the same amount of air changes per hour as would be required for chlorine, together with a sulfur dioxide sensing and alarm detector.

B. Other Dechlorinating Agents. The executive secretary may review and approve other methods and chemicals for dechlorination based on the information submitted.

R317-3-9. Sludge Processing and Disposal.

9.1. Design Considerations

A. Process Selection

1. The selection of sludge handling and disposal methods must be based on the following considerations:

a. Energy requirements;

b. Efficiency of equipment for sludge thickening;

c. Complexity and costs of equipment and operations;

d. Staffing requirements;

e. Toxic effects of heavy metals and other substances on sludge stabilization and disposal alternatives;

f. Treatment and disposal of side-stream flows, such as digester and thickener supernatant;

g. Process considerations and good house keeping procedures for minimum waste stream generation;

h. A back-up method of sludge handling and disposal; and

i. The long term effects and regulatory requirements on methods of ultimate sludge disposal.

2. The selected process shall be designed to result in stabilized sludge prior to disposal. Significant reduction of odors, volatile solids and reduction or deactivation of pathogenic organisms can be achieved by chemical, physical, thermal or biological treatment processes; thereby reducing public health hazards and nuisance conditions.

B. Sludge Quantities

1. The sludge treatment system shall be designed to accommodate the quantities of sludge generated through the design period. Individual process sizing shall consider the sludge generation peaking factors appropriate for the size and type of facility, with allowance for: seasonal variations, industrial loads, and type of collection system. Reserve capacity in the form of off-line storage, standby units or use of extended hours of operation should be considered to handle peak sludge loads.

2. In plants treating less than one million gallons per day (3,785 cubic meters per day), sludge dewatering equipment may operate for less than 35 hours per week. Sludge processing equipment must be designed to operate efficiently over the range of sludge characteristics expected from the preceding unit process. The design engineer shall submit to the executive secretary, copies of design sizing calculations and relevant information to include:

a. average and maximum sludge quantities;

b. number and size of units;

c. equipment characteristics, conditioning chemical requirements and basic sizing parameters;

d. hours of operation;

e. expected capture efficiency;

f. expected percent solids yield.

C. Recycle loads. The sludge system as well as the liquid handling system shall be designed to take into consideration the recycle BOD5, suspended solids, nitrogen and phosphorus from the solids processing units. The magnitude of such recycle loads and resulting additional sludge will normally range from 5 to 30 percent of the influent loads. Solids balances to account for the additional solids must be calculated.

D. Sludge Storage

1. Design Considerations

a. When the plant design, except for the lagoons, does not include aerobic or anaerobic digesters, or gravity thickeners, etc., a minimum sludge storage for the entire sludge production over a two week period must be provided.

b. In-line storage by increasing mixed liquor solids concentration in aeration tanks or increasing retention in settling tanks is not permitted.

c. Aerated off-line sludge storage of not less than seven days shall be provided for oxidation ditch type activated sludge plants without a sludge digestion process.

2. Equipment Design. The sludge storage system should be equipped with mixing devices to prevent separation of solids and provide a more uniform feed to dewatering devices. Provision for adding lime, chlorine or air to prevent septicity and resulting odors is desirable. Decanting systems to provide thicker solids and flushing water to clean out tankage are necessary. Covering and odor control devices should be provided to minimize nuisance conditions.

9.2. Sludge Pumps and Piping

A. Design Basis

1. Pump Capacity. Capacity shall be adequate to cover the full range of solid concentrations and sludge production. Variable speed or other rate control systems should be provided for all sludge pumps. Maximum operating pressure should be calculated to account for the high friction factor when pumping thixotropic sludges in low velocity laminar ranges.

2. Duplicate Units. Duplicate units shall be provided where failure of one unit would seriously hamper plant operation. Pump suction and discharge manifolds should be interconnected so that one pump discharge can be used to backflush other suction piping.

3. Minimum Head. A minimum positive static head of 24 inches (61 cm) shall be provided at the suction side of centrifugal type pumps and is desirable for all types of sludge

pumps. Maximum suction lift should not exceed 10 feet (3 meters) for plunger or diaphragm pumps.

4. Piping

a. Size. Sludge withdrawal piping shall have a minimum diameter of 8 inches (20 cm) for gravity withdrawal and 6 inches (15 cm) for pump suction and discharge lines. Where withdrawal is by gravity, available head shall be adequate to provide sufficient velocity in pipe; thereby preventing solids deposition in pipe.

b. Slope. Gravity flow piping should be laid on a uniform grade and alignment. The slope of gravity discharge lines should not be less than 3 percent.

c. Lining. Scum and primary sludge conveying piping should be lined with a low roughness material such as, glass lining, to reduce friction and to aid in cleaning and maintenance.

B. Equipment Features

1. Plunger type, screw feed type, rotary lobe type, recessed-impeller centrifugal type, progressive cavity type or other types of pumps with demonstrated solids handling capability shall be provided for handling raw sludge. Plunger pump backup for centrifugal pumps is recommended. The abrasive nature of sludges, especially those containing grit, must be considered in the selection of pump type and materials of construction.

2. Sludge grinders should be used where downstream process equipment, such as frame and plate presses, centrifuges, heat exchangers, sludge mixing devices or progressive cavity pumps, is susceptible to rag or trash build-up.

3. Valves. The piping system shall be equipped with isolation valves to allow for repairs and replacement of equipment or metering devices.

4. Piping Layout. Provisions should be made for cleaning, draining and flushing sludge piping. Flanges tees and crosses and cleanouts to allow rodding of suction line are desirable. Provision for back flushing with positive displacement pump discharge is desirable. Provision for cleaning by hot water, steam injection, in-line pigging or chemical degreasing should be considered in long lines containing raw sludge or scum.

C. Control Devices

1. Flow meters should be provided on all process and ancillary lines such as feed, withdrawal, gas, transfer, recirculation, hot water etc. Provision should be made for equipment isolation, cleaning and calibrating.

2. Sludge pumps used on intermittent withdrawal service should be equipped with variable timer equipment.

3. Quick-closing sampling valves shall be installed at the sludge pump, unless sludge sampling is provided separately elsewhere. The size of the valve and piping shall be at least 1 1/2 inches in diameter (3.8 centimeters).

9.3. Sludge Thickeners

1. The design of thickeners (gravity, dissolved-air flotation, centrifuge, and others) should consider the type and concentration of sludge, the sludge stabilization processes, the method of ultimate sludge disposal, chemical needs, and the cost of operation. The pumping rate and piping of the concentrated sludge should be selected such that anaerobic conditions are prevented.

2. No credit towards sludge storage or digestion, if any, in thickeners shall be permitted.

A. Gravity Thickening

1. Design Basis

a. Typical loading rates and resulting solids concentration for gravity thickening are as shown in Table R317-3-9.3(A)(1)(a).

b. Equipment and piping must be designed to deliver sufficient dilution water to gravity thickeners. Flow rate of dilution water shall be measured and recorded. Hydraulic loading to produce overflow rates of 400 to 800 gallons per day per square foot (16-33 cubic meter per day per square meter) shall be maintained to prevent septicity.

2. Equipment Features

a. Heavy duty scrapers capable of withstanding extra heavy torque loads should be provided.

b. Sidewater depths of 10-14 feet (3-4.2 meters) are recommended.

c. Ability to add chlorine solution should be provided to prevent septicity.

d. Tank covers and odor control systems should be considered depending on adjacent land use.

B. Co-Settling. Trickling filter or activated sludge may be returned to primary clarifiers for co-settling. If this method is utilized:

1. Peak design overflow rates for the primary clarifier shall not exceed 1,500 gallons per day per square foot (61 cubic meters per day per square meter), including recirculated sludge flow, and

2. Minimum sidewater depth in the primary clarifier must not be less than 12 feet (3.7 meters).

9.4. Anaerobic Digestion

A. Design Basis

1. The anaerobic digestion system shall provide for active digestion, supernatant separation, sludge concentration and storage. Heating and gas collection systems are required. Mixing systems for primary digesters shall be provided, and are recommended for secondary digesters.

2. Multiple digestion units shall be provided in all plants designed for more than 1 million gallons per day (3,7854 cubic meter per day) rate of flow. For plants designed for less than one million gallons per day (3,785 cubic meters per day), alternative methods of sludge stabilization and emergency storage must be available if only one unit is available.

3. The total digestion tank capacity should be determined by rational calculations based upon the following factors:

a. sludge characteristics - volume and percent solids,

b. the temperature to be maintained in the digesters,

c. the degree and extent of mixing in the digesters, and

d. the degree of volatile solids reduction desired.

4. Calculations shall be submitted to justify the basis of design. Otherwise, the following assumptions shall be used:

a. sludge characteristics - domestic wastewater sludge volume generated as shown in Table R317-3-9.4(A)(4)(a).

b. the temperature to be maintained in the digesters: 90 to 100 degrees Fahrenheit (32-38 degrees Centigrade).

c. the degree and extent of mixing in the digesters: 40 horsepower per million gallons (8 watts per cubic meter).

d. volatile solids in digested sludge: 50 percent.

5. Completely-mixed systems, mixed at an intensity such that digester contents are completely turned over every 30

minutes, may be loaded at a rate up to 120 pounds of volatile solids per 1,000 cubic feet of volume per day (1.92 kilograms per cubic meter per day) in the active digestion units. When grit removal facilities are not provided, the digester volume must be increased to accommodate grit accumulation.

6. Moderately mixed digestion systems, mixed by circulating sludge through an external heat exchanger, may be loaded at a rate up to 40 pounds of volatile solids per 1,000 cubic feet of volume per day (0.64 kilograms per cubic meter per day) in the active digestion units. This loading may be modified upward or downward depending upon the degree of mixing provided.

7. For those units intended to serve as supernatant separation tanks, the depth should be sufficient to allow for the formation of a reasonable depth of supernatant liquor. A minimum sidewater depth of 20 feet (6.1 meters) is recommended.

B. Tank Covers

1. All anaerobic digestion tanks shall be covered. Primary tanks may be equipped with gas-tight, fixed steel or concrete covers or floating steel covers made gas-tight by extended rims. Secondary tank covers may be of the fixed type or floating steel type, including gas storage type units.

2. Floating covers shall be equipped with a guide rail system to prevent tipping and lower-landing ridges, and cover restraints.

C. Sludge Inlets and Outlets

1. Multiple recirculation, withdrawal and return points, should be provided, to enhance flexible operation and effective mixing, unless mixing facilities are incorporated within the digester. The returns, in order to assist in scum breakup, should discharge above the liquid level and be located near the center of the tank.

2. Raw sludge feed to the digester should be through the sludge heater and recirculation return piping, or directly to the tank if internal mixing facilities are provided.

3. Sludge withdrawal to disposal should be from the bottom of the tank. This pipe should be interconnected with the recirculation piping, if such piping is provided, to increase versatility in mixing the tank contents. Additional alternative withdrawal lines should be provided.

D. Supernatant Withdrawal

1. Supernatant piping should not be less than 6 inches (15 centimeters) in diameter. Piping should be arranged so that withdrawal can be made from three or more levels in the digester. A positive, unvalved, vented overflow shall be provided with a drop leg for a liquid seal and downstream vent.

2. If a supernatant selector is provided, provisions shall be made for at least one other draw-off level, located in the supernatant zone of the tank, in addition to the unvalved emergency supernatant draw-off pipe. High pressure back-wash facilities shall be provided.

3. Multiple supernatant draw-offs should be provided for sampling at different levels. Sampling pipes must be at least 1 1/2 inches (3.8 centimeters) in diameter, and should terminate at a suitably-sized sampling sink or basin.

E. Sampling. Sampling hatches shall be provided in all tank covers with water seal tubes extending to beneath the liquid surface.

F. Gas Collection, Piping and Appurtenances

1. General. All portions of the gas system, including the space above the tank liquor, storage facilities and piping, shall be so designed that under normal operating conditions, including sludge withdrawal, the gas will be maintained under positive pressure. All enclosed areas where any gas leakage might occur shall be adequately ventilated.

2. Safety Equipment. All safety equipment shall be provided where gas is produced. Pressure and vacuum relief valves, flame traps, gas detectors, and automatic safety shut off valves, shall be provided.

3. Gas Piping and Condensate. Gas piping shall be of adequate diameter for gas flow rate and shall slope to condensate traps at low points. The use of float-controlled condensate traps is not permitted.

4. Gas Utilization Equipment.

a. Gas-fired boilers for heating digesters shall be located in a separate room not directly connected to the digester gallery. Gas lines to these units shall be provided with flame traps.

b. Dual fuel engines on major pumps or blowers, should be installed with possible recovery of exhaust and jacket cooling heat for use in heating digester or building spaces. An alternate system would consist of direct electric power generation. Gas cleaning and storage may be desirable.

5. Electrical Fixtures. Electrical fixtures and controls in enclosed places where hazardous gases may accumulate shall comply with the National Electrical Code for Class I, Division I Group D locations. Digester galleries must be isolated from normal operating areas to avoid an extension of the hazardous location.

6. Waste Gas.

a. Waste gas burners shall be readily accessible and should be located at least 25 feet (7.6 meters) away from any plant structure if placed at ground level, or they may be located on the roof of the control building at a height of not less than three feet (0.9 meter) from the top of the roof.

b. All waste gas burners shall be equipped with automatic ignition, such as a pilot light or a device using a photoelectric cell sensor. Consideration should be given to the use of natural or propane gas to insure reliability of the pilot light.

c. Necessary approvals from the Utah Air Conservation Committee and its succeeding authorities, shall be obtained for burning any waste gas and any other emissions from the treatment plant.

7. Ventilation. Any underground enclosures connecting with digesters or containing sludge or gas piping or equipment shall be forced ventilated. The piping gallery for digesters should not be connected to other passages.

8. Metering. Gas meters, with by-pass, shall be provided to meter total and waste gas production.

G. Digester Heating

1. Insulation. Wherever possible, digesters should be constructed above ground water level and should be suitably insulated to minimize heat loss.

2. Heating Facilities

a. External Heating. Sludge may be heated by circulating the sludge through external heaters. Piping should be designed to provide for the preheating of feed sludge before introduction to the digesters, especially if sludge thickeners are not used, or

if feed is a batch feed resulting in high intermittent feed rates. Provisions shall be made in the lay-out of the piping and valving to facilitate cleaning of these lines. Heat exchanger sludge piping should be sized for heat transfer requirements.

b. Other Heating Methods. The executive secretary may approve review other types of heating facilities based on the information submitted by the applicant.

3. Heating Capacity. Heating capacity sufficient to consistently maintain the design sludge temperature shall be provided. Where digester tank gas is used for sludge heating, an auxiliary fuel supply is required.

4. Hot Water Internal Heating Controls

a. A suitable automatic mixing valve shall be provided to temper the boiler water with return water so that the inlet water to the heat jacket can be held below a temperature at which caking will be accentuated. Manual control should also be provided by suitable by-pass valves.

b. The boiler should be provided with suitable automatic controls to maintain the boiler temperature at approximately 180 degrees Fahrenheit (82.2 degrees Centigrade), to minimize corrosion, and to shut off the main gas supply in the event of pilot burner or electrical failure, low boiler water level, or excessive temperatures.

c. Thermometers shall be provided to show temperatures of the sludge, hot water feed, hot water return, and boiler water.

H. Mixing Systems. Sludge mixing systems shall be gas recirculation, draft tube mixing, mechanical mixer or pump recirculation types. The mixing system should be designed such that routine maintenance can be performed without taking the digester out of service.

I. Operational Considerations

1. Piping Flexibility. Where two stage digestion is practiced, provision shall be made to feed and heat the secondary digester. Mixing systems should be installed in secondary digestion units.

2. Provision to pump secondary sludge to primary units for reseeding and extending sludge detention time is recommended.

3. When digested sludge is pumped to the dewatering unit, piping shall be laid out so as to prevent uncontrolled gravity flow.

4. Provisions to adjust pH and alkalinity by addition of chemicals shall be made.

J. Maintenance Features for draining, cleaning, and maintenance must be considered in the design of the digesters.

1. Slope. The tank bottom should slope to drain toward the withdrawal pipe. For tanks equipped with a suction mechanism for withdrawal of sludge, a bottom slope of 1:12 or greater is recommended. Where the sludge is to be removed by gravity alone, 1:4 slope is recommended.

2. Access Manholes. At least two 36 inch (91 centimeters) diameter access manholes should be provided in the top of the tank in addition to the gas dome. There should be stairways to reach the access manholes. A separate sidewall manhole shall be provided. The opening should be large enough to permit the use of mechanical equipment to remove grit and sand.

3. Safety. Local, state and federal safety requirements, including those in applicable fire code, the Uniform Building Code etc., must be reviewed and complied with. Those requirements take precedence over the requirements stated herein, if more stringent, and should be incorporated in the design. Nonsparking tools, safety lights, rubber-soled shoes, safety harness, gas detectors for inflammable and toxic gases, and at least two self-contained breathing units shall be provided for emergency use.

9.5. Aerobic Digestion

A. General. Aerobic digestion may be used for stabilization of primary sludge, and activated or trickling filter sludge. Digestion may take place in single or multiple tanks designed to provide effective air mixing, reduction of the organic matter, supernatant separation, and sludge concentration under controlled conditions.

B. Tank Capacity. The digestion tank capacity shall be based on such factors as, quantity of sludge produced, sludge concentration and related characteristics, time of aeration, sludge temperature, etc.

1. Volatile Solids Loading. Volatile suspended solids loading shall not exceed 100 pounds per 1,000 cubic feet of volume per day (1.60 kilograms per cubic meter per day) in the digestion units.

2. Detention Time. The minimum detention time of 15 days shall be provided for aerobic digestion. The detention time may vary with sludge characteristics. Where sludge temperature is lower than 50 degrees Fahrenheit (10 degrees Centigrade) additional detention time should be considered. Covering of the aerobic digesters may be considered to prevent heat losses to atmosphere.

3. Multiple Units. Multiple tanks are required for plants designed to treat more than 1 million gallons per day (3,785 cubic meters per day). Adequate provision must be made for sludge handling and storage for the plants treating less than 1 million gallons per day (3,785 cubic meters per day). When multiple units are provided, ability to utilize them in serial operation is recommended.

4. Mixing and Air Requirements

a. Aerobic sludge digestion tanks shall be designed for effective mixing. Sufficient air shall be provided to keep the solids in suspension and maintain dissolved oxygen between 1 to 2 milligrams per liter.

b. A minimum air volume of 30 cubic feet per minute per 1,000 cubic feet of tank volume (0.51 liters per cubic meter per second) shall be provided with the largest blower out of service for the mixing and aeration requirements. For the diffused aeration systems, the nonclog type air diffusers are recommended, and shall be designed to permit continuity of service.

c. A minimum of 75 horsepower per million gallon of tank volume (15 watts per cubic meter) shall be provided for mechanical aeration systems. Mechanical aerators must be protected where freezing temperatures are expected. Submerged turbine units or floating surface aerators may be considered to allow for liquid level variation.

5. Supernatant Separation. Facilities shall be provided for effective separation and withdrawal of supernatant and for effective collection and removal of scum and grease. Multiple level decant withdrawal lines should be provided.

6. Foam Spray. Foam suppression spray water piping and nozzles should be provided.

9.6. Sludge Dewatering

A. Belt Filter Press

1. Design Basis

a. Hydraulic and solids loading rates, conditioning requirements, and performance shall be based on pilot unit performance or operational results on similar sludges.

b. Multiple units are required unless storage capacity or alternate dewatering methods are available to handle sludge during prolonged power outage.

c. In plants designed for 1 million gallons per day (3,785 cubic meters per day), the operational period should not usually exceed 35 hours per week which allows one shift operation with time for chemical makeup, cleanup and delays. In plants designed for over 1 million gallons per day (3,785 cubic meters per day), the operational period may approach 20 hours per day.

2. Equipment Features

a. The facility should provide for chemical storage, feed equipment, belt wash water, and filtrate return and for conveying and loading sludge cake onto transport vehicles.

b. Belt alignment and tensioning should be regulated automatically.

c. If a single unit is provided, standby equipment should be provided for the sludge feed pump, belt wash, and chemical feed.

d. Facilities or piping for filtrate and wash water sampling should be provided.

3. Operational Considerations. Good house keeping and maintenance features should include press housing, ventilation, safe and convenient access for cleanup and maintenance, floor drains, minimum splashing of filtrate or wash water, etc.

9.7. Sludge Drying Beds

A. Design Basis

1. The area of sludge drying beds is determined by factors such as, climatic conditions, the character and volume of the sludge to be dewatered, the method and schedule of sludge removal, and other methods of sludge disposal.

2. The applicant or the design engineer must submit the basis of design including calculations for review. When the basis of design is not submitted, the drying bed area shall be determined on the basis of 4 square feet per population equivalent (0.38 square meter per population equivalent) when the drying bed is the primary method of dewatering, and 2.0 square feet per population equivalent (0.19 square meter per population equivalent) if it is to be used as a backup dewatering unit. An increase of bed area by 25 percent is required for paved beds. Sludge storage or alternate dewatering methods should be considered for winter weather.

3. A ground water discharge permit may be required for beds without an impervious base. Hydraulic conductivity shall not be greater than 1 x 10-6 centimeters per second or as required for compliance with the provisions of R317-6 (Ground Water Quality Protection Regulations).

B. Design Features

1. Gravel. The lower course of gravel around the underdrains should be properly graded and not less than 12 inches (30.5 centimeters) in depth, extending at least 6 inches (15.2 centimeters) above the top of the underdrains. It is desirable to place this in two or more layers. The top layer of at least 3 inches (7.6 centimeters) must consist of gravel 1/8 inch to 1/4 inch (3.18 to 6.35 millimeters) in size. The remaining layer of gravel below the top 3-inch (7.6 centimeters) layer may be 3/4 to 1 inch (1.9 to 2.5 centimeters) in size.

2. Sand. The top course placed above the gravel should consist of at least 6 to 9 inches (15.2 to 22.9 centimeters) of clean coarse sand. The finished sand surface should be level.

3. Underdrains. Underdrains should be clay pipe or concrete drain tile at least 4 inches (10.2 centimeters) in diameter laid with open joints. Underdrains should be spaced not more than 20 feet (6.1 meters) apart. Underdrainage should be returned to the process with raw or settled sewage.

4. Partially Paved Type. The partially paved drying bed should be designed with consideration for the space requirement to operate mechanical equipment for removing the dried sludge. Paving must positively slope to the underdrains.

5. Containment Walls. Walls should be water-tight and extend 15 to 18 inches (38 to 46 centimeters) above and at least 6 inches (15 centimeters) below the surface of the drying bed. Outer walls should be curbed to prevent soil from washing onto the beds.

6. Sludge Removal. Not less than two beds should be provided and they should be arranged to facilitate sludge removal. Paved truck tracks should be provided for all percolation-type sludge beds.

7. Sludge Feed Line. The sludge pipe to the drying beds should terminate at least 12 inches (30.5 centimeters) above the floor surface and be so arranged that it will drain into the bed. Concrete splash blocks should be provided at sludge discharge points.

9.8. Other Sludge Treatment Methods. Other methods for sludge dewatering, treatment, and stabilization will be considered by the executive secretary based on such factors as the need, suitability of application and process, reliability and flexibility, etc.

R317-3-10. Lagoons.

10.1. Lagoon Siting

A. Distance from Habitation. A lagoon should be sited as far as practicable, with a minimum of 1/4 mile (0.4 kilometer), from areas developed for residential or commercial or institutional purposes or may be developed for such purposes within a foreseeable future. Site characteristics such as topography, prevailing wind direction, forests, etc., must be considered in siting the lagoon.

B. Prevailing Winds. The lagoon should be sited where the direction of local prevailing winds is towards uninhabited areas.

C. Surface Runoff. The lagoon should not be sited in watersheds receiving significant amounts of storm-water runoff. Storm-water runoff should be diverted around the lagoon and protect lagoon embankments from erosion.

D. Hydrology and hydrogeology. Close proximity to water supplies and other facilities subject to wastewater contamination should be avoided in siting the lagoon. A minimum separation of four (4) feet (1.2 meters) between the bottom of the lagoon and the maximum ground water elevation should be maintained.

E. Geology

1. The lagoon shall not be located in areas which may be subjected to karstification, i.e., sink holes or underground

streams generally occurring in area underlain by porous limestone or dolomite or volcanic soil.

2. A minimum separation of 10 feet (3.0 meters) between the lagoon bottom and any bedrock formation is recommended.

10.2. Small Facilities. The executive secretary will review and approve the construction of a lagoon for a design rate of flow less than 25,000 gallons per day (95 cubic meters per day) only if:

A. there are no other alternatives for wastewater treatment and disposal available to the applicant;

B. there is no other appropriate technology for wastewater treatment and disposal except lagoon; and

C. the applicant has resources to satisfactorily operate and maintain the lagoon.

10.3. Basis of Design. Design variables such as lagoon depth, number of units, detention time, and additional treatment units must be based on effluent standards for BOD_5, total suspended solids (TSS), fecal coliforms, dissolved oxygen (DO), and pH.

A. Design for Discharging and Total Containment Lagoons

1. The design shall be based on BOD_5 loading ranging from 15 to 35 pounds per acre per day (16.8-39.2 kilograms per hectare per day).

2. The design for total containment lagoons shall be based on conservative estimates of precipitation, evaporation, seepage or percolation and inflow relevant to the site. A mass diagram showing each of the foregoing factors on a month-by-month basis, shall be prepared and submitted with the design and plans for review.

B. Design Depth. The minimum operating depth should be such that growth of aquatic plants is suppressed to prevent damage to the dikes, bottom, control structures, aeration equipment and other appurtenances.

1. Discharging or Total Containment Lagoons. The maximum water depth shall be 6 feet (1.8 meters) in primary cells. Greater depth in subsequent cells may be deeper than 6 feet provided that supplemental aeration or mixing is incorporated in the design. Minimum operating depth shall be three feet.

2. Aerated Lagoons. The design water depth should range from 10 to 15 feet (three to 4.5 meters). The type of the aeration equipment, waste strength and climatic conditions affect the selection of the design water depth.

3. Sludge Accumulation. The minimum depth of 18 inches (45 centimeters) for sludge accumulation shall be provided in primary cells of facultative lagoons.

C. Freeboard. The minimum freeboard shall be three (3) feet (1.0 meter). For small systems - less than 50,000 gallons per day (190 cubic meters per day), the minimum freeboard can be reduced to two (2) feet (0.6 meter).

D. Slope

1. Maximum Dike Slope. The inner and outer dike slopes shall not be steeper than 3 horizontal to 1 vertical (3:1).

2. Minimum Dike Slope. Inner dike slope shall not be flatter than 4 horizontal to 1 vertical (4:1). A flatter slope can be specified for larger installations because of wave action, but have the disadvantages of added shallow areas, that are conducive to emergent vegetation.

E. Seepage

1. The bottom of lagoons treating domestic sewage shall be no less than 12-inch (30 centimeters) in thickness, constructed in two six-inch (15 centimeters) lifts. The selection of the type of seals using soils, bentonite, or synthetic liners for the lagoon bottom shall be based on the design hydraulic conductivity, durability, and integrity of the proposed material.

2. Hydraulic conductivity of the lagoon bottom as constructed or installed, shall be such that it meets the requirements of ground water discharge permit issued under R317-6, (Ground Water Quality Protection rules). It shall not exceed 1.0×10^{-6} centimeters per second.

3. The seepage loss may vary with the thickness of the bottom seal and hydraulic head thereon. Detailed calculations on the determination of seepage loss shall be submitted with the design. It shall not exceed 6,500 gallons per acre per day (60.8 cubic meters per hectare per day).

4. Results of field and laboratory hydraulic conductivity tests, including a correlation between them, shall meet the design and ground water discharge permitting requirements, before the use of lagoon can be authorized.

5. Hydraulic conductivity for the lagoon where industrial waste is a significant component of sewage, shall be based on ground water protection criteria contained in R317-6 (Ground Water Quality Protection rules).

F. Detention time

1. Discharging Lagoons. Detention time in the lagoon shall be the greater, and exclusive of the capacity provided for sludge build-up, of:

a. 120 days based on winter flow and the maximum operating depth of the entire system; or

b. 60 days based on summer flow and peak monthly infiltration/inflow.

c. The detention time shall not be less than 150 days at the mean operating depth for effluent discharge without chlorination. In order to meet bacteriologic standards in such a case, at least 5 cells shall be provided. The detention time and organic loading rate shall depend on climatic or stream conditions.

2. Aerated Lagoons

a. The detention time shall be the greater of:

(1) 30 days minimum; or

(2) the value determined using the following formula: $E = (1/(1 + (2.3 \times K_1 \times t)))$ where: t = detention time, days; E = fraction of BOD_5 remaining in an aerated lagoon; K_1 = reaction coefficient, aerated lagoon, base 10. For normal domestic sewage, the K_1 value may be assumed to be 0.12 day^{-1} at 20 degrees Centigrade, and 0.06 day^{-1} at one degree Centigrade.

b. The reaction rate coefficient for domestic sewage which includes some industrial wastes must be determined experimentally for various conditions which might be encountered in the aerated lagoons. The reaction rate coefficient based on temperature used in the experimental data, shall be adjusted for the minimum sewage temperature.

G. Aeration Requirements for Aerated Lagoons

1. The design parameters for the aerated lagoon should be based on pilot testing or validated experimental data.

2. When pilot testing is not conducted, the design should be based on two pounds of oxygen input per pound of BOD_5

applied (two kilograms of oxygen input per kilogram of BOD_5 applied). However, it may vary with the degree of treatment, and the concentration of suspended solids to be maintained. A tapered mode of aeration is permitted based on applied BOD_5 to each cell.

3. Aeration equipment shall be capable of maintaining a minimum dissolved oxygen level of 2 milligrams per liter in the lagoon at all times such that their circles of influence meet.

a. Circle of Influence. It is that area in which return velocity is greater than 0.15 feet per second as indicated by the manufacturer's certified data. Table R317-3-10.3(G)(3)(a) may be used when the manufacturer's certified data is not available.

b. Freezing. Suitable protection from weather shall be provided for aerators and electrical controls.

H. Industrial Wastes. For industrial waste treatment using lagoon, the design parameters shall be based on the type and treatability of industrial wastes using biological processes. In some cases it may be necessary to pretreat industrial waste or combine with domestic sewage.

10.4. Lagoon Construction Details

A. Cell Shape. The shape of all cells should be such that there are no narrow or elongated portions. Round, square or rectangular lagoons with a length not exceeding three times the width are most desirable. No islands, peninsulas or coves are permitted. Dikes should be rounded at corners to minimize accumulations of floating materials. Common-wall dike construction, wherever possible, is strongly encouraged.

B. Multiple Units

1. At a minimum, the lagoon system shall consist of three cells of approximately equal capacity designed to facilitate both series and parallel operations.

2. The executive secretary may approve less than three cells on the basis of review of factors such as, the rate of flow, the need, treatment reliability, etc.

3. All systems shall be designed with piping:

a. to permit isolation of any cell without affecting the transfer and discharge capabilities of the total system, and

b. to split the influent waste load to a minimum of two cells or all primary cells in the system.

C. Embankments and Dikes

1. Material. Dikes shall be constructed of relatively impervious material and compacted to no less than 90 percent Standard Proctor Density at 3 percent above the optimum moisture density to form a stable structure. The area where the embankment is to be placed shall be from vegetation and unstable organic material.

2. Top Width. The minimum dike width shall be 8 feet (2.4 meters) and shall permit access by maintenance vehicles.

D. Lagoon Bottom

1. Soil. Soil used in constructing the lagoon bottom (not including seal) and dike cores shall be incompressible and tight and compacted at a moisture content of 3 percent above the optimum water content to at least 90 percent Standard Proctor Density.

2. Uniformity. The lagoon bottom should be as level as possible at all points. Finished elevations shall not be more than three (3) inches (7.5 centimeters) from the average elevation of the bottom.

3. Prefilling. The lagoon should be prefilled to a level which protects the liner, prevents weed growth, reduces odor, and maintains moisture content of the seal. However, the dikes must be completely prepared before the introduction of any water.

E. Construction Quality Control and Assurance. A construction quality control and assurance plan showing frequency and type of testing for materials used in construction shall be submitted with the design for review and approval. Results of such testing, gradation, compaction, field permeability, etc., shall be submitted to the executive secretary.

F. Erosion Control

1. The site shall be protected from erosion. The design of control measures shall be based on factors, such as lagoon location and size, seal material, topography, prevailing winds, cost breakdown, application procedures, etc.

2. For aerated lagoons, the slopes and bottom shall be protected from erosion resulting from turbulence.

3. Exterior face of the dike slope shall be protected from erosion due to severe flooding of a water course.

4. Seeding. The outside surface of dikes shall have a cover layer of at least 4 inches (10 centimeters), of fertile topsoil to promote establishment of an adequate vegetative cover wherever riprap is not utilized. Prior to prefilling, adequate vegetation shall be established on dikes from the outside toe to 2 feet (0.6 meter) above the lagoon bottom on the interior as measured on the slope. Perennial-type, low-growing, native, spreading grasses that minimize erosion and can be mowed are most satisfactory for seeding on dikes. Alfalfa and other deep-rooted crops must not be used for seeding since the roots of this type are apt to impair the water holding efficiency of the dikes.

5. Riprap or equivalent material shall be placed from 1 foot (0.3 meter) above the high water mark to two feet (0.6 meter) below the low water mark (measured on the vertical) for protection from severe wave action.

a. Riprap. The interior face of dikes must be protected from erosion by riprap or other equivalent methods of erosion control.

(1) Riprap layer shall be of durable, angular, sound and hard, field or quarry stones, and shall be free from seams, cracks and structural defects.

(2) The thickness of riprap layer shall be at least 8 inches (20 centimeters).

(3) Stones to be used in the riprap layer shall meet the following requirements:

(a) A minimum of 50 percent of stones by weight, shall be of sizes between two-thirds and one and one-half of the layer thickness;

(b) No more than ten percent of stones by weight, shall be of a size less than one-tenth of the layer thickness;

(c) The specific weight of stones must range between 2.5 and 2.82;

(d) Durability shall be tested in accordance with ASTM Standard C-535, as amended, and stones wearing in excess of 40 percent shall not be used.

(e) Stones shall be graded and manipulated in size so as to produce a regular surface of dense and stable mass. A stable foundation for the placed riprap shall be provided at the toe of the dike.

10.5. Influent Piping

A. Influent and Effluent Structures

1. All influent and effluent structures shall be located to minimize short-circuiting within lagoons, and to avoid blocking of lagoon circulation. Such structures must have protection against freezing or ice damage under winter conditions.

2. Inlets to the primary cells shall meet the following criteria:

a. Surcharging of upstream sewer from the inlet manhole is not permitted.

b. Multiple influent discharge points for primary cells of 20 acres (8 hectares) or larger should be provided to enhance the distribution of waste load in the cell.

c. Discharge shall be in the center of a round or a square cell, or at the third point farthest from the outlet structure in a rectangular cell, or at least 100 feet (30 meters) from the toe of the dike.

d. All aerated cells shall have an influent line which distributes the load within the mixing zone of the aeration equipment. Multiple inlets may be considered for a diffused aeration system.

e. Force mains shall be valved at the lagoon, and may terminate in a vertically or horizontally discharging section. The discharge end of the vertical pipe must be located no more than one foot above the lagoon bottom. Flow velocities in the discharge section entering the lagoon must not be in excess of two feet per second.

B. Influent Discharge Apron

1. The influent line shall discharge horizontally into a shallow, saucer-shaped, depression extending below the lagoon bottom not more than the diameter of the influent pipe plus 1 foot.

2. The end of the discharge line shall rest on a suitable concrete apron large enough to prevent the terminal influent velocity at the end of the apron from causing soil erosion. A 2-foot (0.6 meter) square apron shall be provided at the minimum.

C. Flow Measurement. Influent flow to the lagoon shall be continuously indicated and recorded. Flow measurement and recording equipment shall be weatherproof.

D. Level Gauges. Level gauges with clear markings shall be provided in:

1. each cell to measure and manually record the depth; and

2. the primary flow measurement device structure to indicate the depth or the rate of flow.

E. Manhole

1. A manhole or vented cleanout wye shall be installed prior to entrance of the influent line into the primary cell and shall be located close to the dike as topography permits. Its invert shall be at least 6 inches (15 centimeters) above the maximum operating level of the lagoon and provide sufficient hydraulic head without surcharging the manhole.

2. A manhole is required for small systems to house flow measurement device. For larger systems, flow measurement device and related instrumentation must be housed in a headworks type structure.

F. Flow Distribution. Flow distribution structures shall be designed to effectively split hydraulic and organic loads equally to primary cells.

G. Material. The material for influent line to the lagoon should meet the requirements of material for underground sewer construction described in this rule. Unlined corrugated metal pipe is not permitted due to corrosion problems. The material selection shall be based on factors such as, wastewater characteristics, heavy external loadings, abrasion, soft foundations, etc.

10.6. Control Structures and Interconnecting Piping

A. Structure

1. As a minimum, control structures shall:

a. be accessible for maintenance and adjustment of controls;

b. be adequately ventilated for safety and to minimize corrosion;

c. be locked to discourage vandalism;

d. contain controls to permit water level and flow rate control, and complete shutoff;

e. be constructed of non-corrodible materials (metal-on-metal); and

f. be located to minimize short-circuiting within the cell and avoid freezing and ice damage.

2. Recommended devices to regulate water level are valves, slide tubes or dual slide gates. Regulators should be designed so that they can be preset to stop flows at any lagoon elevation.

B. Piping. All piping shall be of cast iron or other material for installation of underground piping. The piping shall be located along the bottom of the lagoon with the top of the pipe just below average elevation of the lagoon bottom. Pipes should be anchored and protected from erosion.

10.7. Effluent Discharge Piping

A. Submerged Takeoffs. For lagoons designed for shallow or variable depth operations, submerged takeoffs are required. Intakes shall be located a minimum of 10 feet (3.0 meters) from the toe of the dike and 2 feet (0.6 meter) from the seal, and shall employ vertical withdrawal.

B. Multi-level Takeoffs. For lagoons that are designed deeper than 10 feet (3 meters), enough to permit stratification of lagoon content, multiple takeoffs are required. There shall be a minimum of three withdrawal pipes at different elevations. Adequate structural support for takeoffs shall be provided.

C. Emergency Overflow. An emergency overflow should be provided to prevent overtopping of dikes. The hydraulic capacity for continuous discharge structures and piping shall allow for a minimum of 250 percent of the design flow of the system. The hydraulic capacity for controlled-discharge systems shall permit transfer of water at a minimum rate of six (6) inches (15 centimeters) of lagoon water depth per day at the available head.

10.8. Miscellaneous

A. Fencing. The lagoon area shall be enclosed with not less than 6 feet high chain link fence to prevent entering of livestock and to discourage trespassing. Fencing must not obstruct vehicle traffic on top of the dikes. A vehicle access gate of sufficient width to accommodate all maintenance equipment shall be provided. All access gates shall be provided with locks.

B. Access. An all-weather access road shall be provided to the lagoon site to allow year-round maintenance of the facility.

C. Warning Signs. Permanent signs shall be provided

along the fence around the lagoon to designate the nature of the facility and advise against trespassing. At least one sign shall be provided on each side of the site and one for every 500 feet (150 meters) of its perimeter.

D. Service Building A service building for laboratory and maintenance equipment should be considered.

10.9. Industrial Waste Lagoons. The executive secretary will review the design of lagoons for treatment of industrial wastes on the basis of such factors as treatability, operability, reliability, ground water protection levels, water quality objectives, etc.

R317-3-11. Land Application of Wastewater Effluents.

11.1. Effluent Criteria. Land application of effluents is permitted following treatment if standards are met as defined in R317-1, Definitions and General Requirements. The proposal for land application must include detailed site information, effluent characteristics, meteorological data, type of crop to be grown, ground water data, and a site management plan and practices.

11.2. Site Operation and Management

A. Piping System

1. All distribution pipes and sprinklers must have the capability to be completely drained.

2. Main distribution headers must have flow measurement devices and pressure gages. All land applied flow must be totalized.

B. Warning Signs. Signs warning of the nature of the facility shall be provided at the boundaries of the site.

R317-3-12. Effluent Filtration.

12.1. Granular Media Filters. Granular media filters may be used as a tertiary treatment device for the removal of residual suspended solids from secondary effluents. A pretreatment process such as chemical coagulation and sedimentation or other acceptable process must precede the filter units, where effluent suspended solids requirements are less than 10 milligrams per liter, or where secondary effluent quality can be expected to fluctuate significantly, or where filters follow a treatment process and where significant amounts of algae will be present.

12.2. Design Considerations. The plant design should incorporate flow-equalization facilities to moderate filter influent quality and quantity. The selection of pumping equipment ahead of filter units should be designed to minimize shearing of floc particles.

A. Filter Types. Filters may be of the gravity or pressure type. Pressure filters shall be provided with ready and convenient access to the media for treatment or cleaning. Where greases or similar solids which result in filter plugging are expected, filters should be of the gravity type.

B. Filtration Rates. Filtration rates shall not exceed 5 gallons per minute per square foot. (3.4 liters per square meter per second) based on the maximum hydraulic flow rate applied to the filter units.

C. Number of Units. Total filter area shall be provided in two or more units, and the filtration rate shall be calculated on the total available filter area with one unit out of service.

D. Filter Backwash

1. Backwash Rate. The backwash rate shall be adequate to fluidize and expand each media layer a minimum of 20 percent based on the media selected. The backwash system shall be capable of providing a variable backwash rate having a maximum of at least 20 gallons per minute per square foot, (13.6 liters per square meter per second) and a minimum backwash period of 10 minutes.

2. Backwash Pumps. Pumps for backwashing filter units shall be sized and interconnected to provide the required rate to any filter with the largest pump out of service. Filtered water should be used as the source of backwash water. Waste filter backwash shall be returned to the treatment process or otherwise adequately treated.

E. Filter Media

1. Selection. Selection of proper media size will depend on the rate of filtration rate, the type of pretreatment, filter configuration, and effluent quality objectives. In dual or multi-media filters, media size selection must consider compatibility among media.

2. Media Specifications. Table R317-3-12.2(E)(2) provides minimum media depths and the normally acceptable range of media sizes. The applicant has the responsibility for selection of media to meet specific conditions and treatment requirements relative to the project under consideration.

12.3. Filter Appurtenances. The filters shall be equipped with wash water troughs, surface wash or air scouring equipment, means of measurement and positive control of the backwash rate, equipment for measuring filter head loss, positive means of shutting off flow to a filter being backwashed, and filter influent and effluent sampling points. If automatic controls are provided, there shall be a manual override for operating equipment, including each individual valve essential to the filter operation. The underdrain system shall be designed for uniform distribution of backwash water (and air if provided) without danger of clogging from solids in the backwash water. Provision shall be made to allow periodic chlorination of the filter influent or backwash water to control slime growths.

12.4. Reliability. Each filter unit shall be designed and installed so that there is ready and convenient access to all components and the media surface for inspection and maintenance without taking other units out of service. The need for enclosing filter units shall depend on expected extreme climatic conditions at the treatment plant site. As a minimum, all controls shall be protected from adverse process and climatic conditions. The structure housing filter controls and equipment shall be provided with adequate heating and ventilation equipment to minimize problems with excess humidity.

12.5. Backwash Surge Control. The rate of waste filter backwash water return to treatment units shall be controlled such that the rate does not exceed 15 percent of the design average daily flow rate to the treatment units. The hydraulic and organic loads from waste backwash water shall be considered in the overall design of the treatment plant. Where waste backwash water is returned for treatment by pumping, adequate pumping capacity shall be provided with the largest unit out of service.

12.6. Backwash Water Storage. Total backwash water storage capacity provided in an effluent clearwell or surge tank or other unit shall equal or exceed the volume required for two complete backwash cycles. Additional storage capacity should

be considered for operational flexibility.

12.7. Proprietary Equipment. Where proprietary filtration equipment, not conforming to the preceding requirements is proposed, data which supports the capacity of the equipment to meet effluent requirements under design conditions shall be submitted for review and approval by the executive secretary.

TABLE R317-3-2.3(D)(4).
Minimum Slopes

Sewer Size, inch (centimeter)	Minimum Slope, feet per feet or meter per meter
8 (20)	0.00334
9 (23)	0.00285
10 (25)	0.00248
12 (30)	0.00194
14 (36)	0.00158
15 (38)	0.00144
16 (41)	0.00132
18 (46)	0.00113
21 (53)	0.00092
24 (61)	0.00077
27 (69)	0.00066
30 (76)	0.00057
36 (91)	0.00045

TABLE R317-3-4.4(H)(1).
Painting

Service	Color
Sludge	Brown
Gas	Orange
Potable Water	Blue
Non-Potable Water	Blue with a 6-inch (15 centimeters) red band spaced 30 inches (76 centimeters) apart
Chlorine	Yellow
Compressed Air	Green
Sewage	Gray

TABLE R317-3-6.2(B)(3)(d).
Loadings for Final Settling Tanks
Following Activated Sludge Process

Process	Average Design Rate of Flow, million gallons per day (cubic meters per day)	Surface Loading, gallons per day per square foot (cubic meters per day per square meter)	Surface Loading, pounds per day per square foot (kilograms per day per square meter)
Contact Stabilization	0.5 (1,893) to 1.5 (5,678)	400 (16.3) to 600 (24.5)	
	Greater than or equal to 1.5 (5,678)	500 (20.4) to 700 (28.5)	
Extended Aeration	Less than or equal to 0.5 (1,893)	200 (8.2) to 400 (16.3)	
	0.5 (1,893) to 1.5 (5,678)	300 (12.3) to 500 (20.4)	25 (122.1)
	Greater than or equal to 1.5 (5,678)	400 (16.3) to 600 (24.5)	
Other than Contact Stabilization and Extended Aeration	Less than or equal to 0.5 (1,893)	400 (16.3) to 600 (24.5)	
	0.5 (1,893) to 1.5 (5,678)	500 (20.4) to 700 (28.5)	25 (122.1)
	Greater than or equal to 1.5 (5,678)	600 (24.5) to 800 (32.6)	

TABLE R317-3-7.1(E)(3)(a)(2).
Media Grading

	Percent by Weight
Passing 4-1/2 inch (11.4 centimeters) screen	100
Retained on 3 inch (7.6 centimeters) screen	95 - 100
Retained on 2 inch (5.1 centimeters) screen	98

TABLE R317-3-7.1(K)(1).
Hydraulic and Organic Loadings
for Nitrification in Trickling Filters

Trickling Filter Configuration	Loadings
Rock or Slag Media Filters	
Hydraulic Loading	Less than or equal to 4 million gallons per acre per day, or less than or equal to 4 cubic meters per square meter per day
Organic Loading	Less than or equal to 25 pounds BOD_5 per day per 1000 cubic feet, or less than or equal to 0.4 kilograms BOD_5 per day per cubic meter
Deep Manufactured Media Filters	
Hydraulic Loading	Less than or equal to 25 million gallons per acre per day, or less than or equal to 25 cubic meters per square

	meter per day
Organic Loading	Less than or equal to 100 pounds BOD_5 per day per 1000 cubic feet, or less than or equal to 1.6 kilograms BOD_5 per day per cubic meter

TABLE R317-3-7.2(B)(1)(c)
Permissible Aeration Tank Capacities and Loadings

Process	Hydraulic Retention Time (HRT), hours	Solids Retention Time (SRT), days	Aeration Tank Loading, pounds of BOD_5 per day per 1000 cubic feet	Food:Mass (F:M) Ratio, pounds of BOD_5 per day per pound of MLVSS (2)	Mixed Liquor Suspended Solids (1) (MLSS) milligrams per liter
Conventional	4-8	4-8	20-40	0.2-0.4	1,500-4,000
Step Aeration					
Complete Mix					
Contact Stabilization	1-3 (4) 3-6 (5)	3-10	50 (3)	0.2-0.6	2,000-4,000
Extended Aeration, or Oxidation Ditch	24	30	10-12	0.05-0.1	2,000-4,000

Notes:
(1) Mixed Liquor Suspended Solids (MLSS) values are dependent upon the surface area provided for sedimentation and the rate of sludge return as well as the aeration process.
(2) Mixed Liquor Volatile Suspended Solids (MLVSS)
(3) Total Aeration capacity, includes both contact and reaeration capacities. Normally, the contact zone equals 30 to 35 percent of the total aeration capacity.
(4) Contact zone
(5) Reaeration zone

TABLE R317-3-7.2(B)(6)(a)(1).
Return Sludge Rate

Process	Q_R / Q, Percent
Standard Rate	15-75
Carbonaceous stage of separate stage nitrification	15-75
Step Aeration	15-75
Contact stabilization	50-150
Extended aeration	50-150
Nitrification stage of separate stage nitrification	50-200

TABLE R317-3-9.3(A)(1)(a).
Gravity Thickening

Type solids	Solids Loading Rate, pounds per day per square foot (kilograms per square meter per day)	Percent in thickened sludge
Primary sludge	20-30 (98-146)	8-10
Trickling filter sludge	8-10 (39-49)	7-9
Activated sludge	4-8 (20-49)	2.5-3
Combined primary and trickling filter sludges	10-12 (49-59)	7-9
Combined primary and activated sludges	6-10 (29-49)	3-6

TABLE R317-3-9.4(A)(4)(a).
Sludge Volume Generated

Type of Plant	cubic feet per Population Equivalent (P.E.) or cubic meters per Population Equivalent (P.E.)
Trickling Filter	5 (0.14)
Activated Sludge	6 (0.17)

TABLE R317-3-10.3(G)(3)(a).
Circle of Influence

Nameplate Horsepower	Radius, Feet
5	35
10-25	50
40-60	50-100
75	60-100
100	100

TABLE R317-3-12.2(E)(2).
Media Depths and Size

Media Material	Single Media	Multi-Media Two	Multi-Media Three
Anthracite:			
Minimum Depth, inches		20	20
Effective Size, millimeters		1-2	1-2
Sand:			
Minimum Depth, inches	48	12	10
Effective Size, millimeters	1-4	0.5-1	0.6-0.8
Garnet or Similar Material:			
Minimum Depth, inches			2
Effective Size, millimeters			0.3-

0.6

Uniformity Coefficient shall be less than or equal to 1.7

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R317. Environmental Quality, Water Quality.
R317-5. Large Underground Wastewater Disposal Systems.
R317-5-1. General.

1.1 SCOPE: These regulations shall apply to large underground disposal systems for domestic wastewater discharges which exceed 5,000 gallons per day (gpd) and all other domestic wastewater discharges not covered under the definition of an "Individual wastewater disposal system" in R317-1-1.22. Usually these systems should not be designed for over 15,000 gpd. In general, it is not acceptable to dispose of industrial wastewater in an underground disposal system.

1.2 ENGINEERING REPORT: An engineering report shall be submitted which shall contain design criteria along with all other information necessary to clearly describe the proposed project and demonstrate project feasibility.

1.3 SUBMISSION OF PLANS FOR REVIEW: Plans for new underground wastewater disposal systems or extensions of existing systems shall be submitted to the Department for review as required by R317-1. All designs shall be prepared and submitted under the supervision of a registered professional engineer licensed to practice in the State of Utah. A construction permit must be issued by the Utah Water Pollution Control Committee prior to construction of the wastewater disposal system or the building(s) to be served by the wastewater system.

1.4 OPERATION AND MAINTENANCE: Operation and maintenance shall be provided by the owner to insure the disposal system is functioning properly at all times. A written operation and maintenance document describing the treatment and disposal system and outlining routine maintenance procedures, including checklists and maintenance logs needed for proper operation of the system, shall be required. The document must be available at the time of final inspection.

1.5 LARGE UNDERGROUND WASTEWATER DISPOSAL SYSTEM REQUIRED:

The drainage system of any building or establishment covered herein shall receive all wastewater as required by R309-100, the Utah Plumbing Code and shall have a connection to a public sewer except when such sewer is not available for use, in which case connection shall be made as follows:

A. To an underground wastewater disposal system found to be adequate and constructed in accordance with requirements stated herein.

B. To any other type of disposal system acceptable under R317-3.

1.6 MULTIPLE UNITS UNDER SEPARATE OWNERSHIP: Multiple Units Under Separate Ownership shall not be served by a common underground disposal system except when, based upon sound engineering judgment, other alternatives are determined infeasible. In such cases, a common subsurface system may be used provided the following requirements are met:

A. The common subsurface disposal system and conveyance sewers shall be under the sponsorship of a body politic.

B. The subsurface absorption system shall be designed and constructed to provide duplicate capacity (two independent systems). Each system shall be designed to accommodate the total anticipated maximum daily flow. The duplicate systems shall be designed with appropriate valving, etc., to allow for periodic alternation of the use of each system.

C. Sufficient land area with suitable characteristics shall be available to provide for a third absorption system capable of handling the total maximum daily wastewater flow. This area shall be kept free of permanent structures, traffic or soil modification (See Section R317-5-3.1(L)).

D. The subsurface absorption system should be used only until a more permanent system becomes available.

1.7 NEW PROCESSES AND METHODS OF DISPOSAL: Where unusual conditions exist, other methods of disposal not described herein may be employed if approved by the Utah Water Pollution Control Committee and by the local health authority having jurisdiction. The approval will be based on evidence of adequacy to meet water quality standards and other requirements of the Code.

1.8 UNITS REQUIRED IN AN UNDERGROUND WASTEWATER DISPOSAL SYSTEM: The underground wastewater disposal system shall typically consist of the following:

A. A wastewater drainage line or building sewer.

B. A septic tank.

C. A subsurface absorption system. This may be an absorption field, seepage pits, seepage trenches or an absorption bed, depending on location, topography, soil conditions and maximum ground water level.

1.9 LOCATION AND INSTALLATION: Location and installation of the wastewater disposal system shall be such that with reasonable maintenance it will function properly and will not create a nuisance, health hazard or endanger the quality of any waters of the State. Due consideration shall be given to the size and shape of the area in which the system is installed, slope of natural and finished grade, soil characteristics, maximum ground water elevation, proximity of existing or future water supplies or water courses, possible flooding and expansion potential of the disposal system.

1.10 ISOLATION: The system shall be isolated as shown in Table 5-1.

TABLE 5-1
MINIMUM HORIZONTAL SEPARATION IN FEET
(Undisturbed Earth)

	Building Sewer	Septic Tank	Absorption Field Trench	Seepage Pit or trench	Absorption Bed
Drinking Water Supply Source					
Deep Well	(a)100	100	100	100	100

Shallow Well or Spring	(b)	(b)	(b)	(b)	(b)
Domestic Water Supply Lines	(c)	10	10	10	10
Ponds, Lakes, Reservoirs and Water Courses	---	25	(d)	(d)	(d)
Foundation Walls	3	5	25	25	25
Land Drain					
Located upslope	---	10	20	20	20
Located downslope	---	25	100	100	100
Property Line	5	5	5	15	10
Seepage Pits (Trenches)	---	5	10	12(e)	10
Absorption beds	---	5	10	10	10
Absorption fields	---	5	(f)	10	10

Footnotes:

(a) Sewers may be constructed within the 100 foot protective zone, provided the sewer construction meets the requirements of R309-106-2.3.4.

(b) It is recommended that the listed concentrated sources of pollution be located at least 1,500 feet from shallow wells and springs. Any proposal to locate closer than 1,500 feet will be reviewed on a case-by-case basis, taking into account geology, topography, existing land use agreements, designated use of water system (public or non-public) and potential for pollution of water sources. It is the responsibility of the water supply owner to establish an adequate protection zone in accordance with the applicable drinking water regulations. Even separation of 1500 feet or greater from concentrated sources of pollution will not guarantee suitability of the water supply system.

(c) The requirements stated in R317-5-1.13(F) must be met

(d) A minimum of 100 feet is desirable, but may be modified to a lesser or greater distance, depending on soil conditions or mitigating measures such as lining the water course with impervious material.

(e) Seepage pits or seepage trenches must be installed within an established absorption zone. The absorption zone will be sized based on the ratio of ground surface area "GSA" to the required sidewall area "SWA". The GSA/SWA ratio must be at least 2.5. The trenches and pits shall be installed within the absorption zone such that the spacing between trenches will be equal. Spacing of 12 feet (sidewall to sidewall) shall be a minimum. Distance to the edge or boundary of the established absorption zone shall be a minimum of 15 feet. The system must also conform to all other separation requirements identified in Table 5-1.

The required sidewall area "SWA" shall be computed based on the design application rate with the associated soil type depicted in Table 5-8. The ground surface area identified within the absorption zone will be a minimum of 2.5 times the required sidewall area. An example of a typical seepage trench design with variation is available from the Bureau of Water Pollution Control.

(f) See Table 5-4.

1.11 CONSTRUCTION INSPECTION: Approval to operate the constructed/installed facilities shall be issued following a final inspection by a representative of the Department of Health. The facilities must be inspected after installation but prior to backfilling.

1.12 CONSTRUCTION MATERIALS: Materials used in construction of the system shall be durable, sound, and not unduly subject to corrosion. Pipe, pipe fittings and similar materials shall comply with the requirements of R309-100.

1.13 WASTEWATER DRAINAGE LINE OR BUILDING SEWER: Wastewater drainage lines (or building sewers) shall comply with R309-100, the Utah Plumbing Code, or meet the following requirements, whichever is more restrictive.

A. Any generally accepted material will be given consideration, but material selected shall be suitable for local conditions to include soil characteristics, external loadings, abrasions and similar problems.

B. The lines shall have a minimum inside diameter of 4 inches, in which case they shall be laid on a minimum slope of 1.25 percent. For sewer lines serving more than one dwelling unit, it is recommended that the line be sized greater than 4 inches in diameter. Lines of greater sizes should be designed for a minimum velocity of 2 feet per second based on the pipe flowing full. See R317-3 for calculation of flow velocities.

C. The lines shall have cleanouts every 50 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.

D. On 4-inch and 6-inch lines, two 45 degree bends with cleanout will be acceptable in lieu of a manhole, and 90 degree ells are not recommended.

E. The design of wastewater pump stations shall comply with the requirements contained in R317-3.

F. Lines shall be separated from water service pipes in separate trenches and by at least 10 feet horizontally. If the local conditions prevent a 10 foot separation, or when sewer lines must cross water lines, the two lines may be placed within the 10 feet of each other, provided:

1. The bottom of the water service pipe, at all points, shall be at least 18 inches above the top of the wastewater drainage line at its highest point.

2. The water service pipe shall be placed in a separate trench or the line should be placed on a shelf of undisturbed soil to one side of the sewer line 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 line and water service line shall be of a strength and durability to prevent leakage under known adverse conditions. The joints between the two lines shall be staggered to the extent possible.

4. When it is impossible to obtain the proper horizontal and vertical separation as stipulated above, both the water and sewer line shall be constructed in accordance with the requirements of R309-112.2.

1.14 ESTIMATES OF WASTEWATER QUANTITY: The maximum daily wastewater flow to be disposed of should be determined as accurately as possible, preferably by actual measurement. Where this is not possible, Table 5-2 may be used to estimate the flow.

TABLE 5-2
ESTIMATED QUANTITY OF DOMESTIC WASTEWATER

TYPE OF ESTABLISHMENT	GALLONS PER DAY
Construction/work camps (semi-permanent)	60 per person
Resort camps with limited plumbing	60 per person
Country Clubs	25 per person

Dwellings	
a. Boarding house	60 per person
Additional kitchen waste for non-resident boarder	10 per person
b. Boarding schools	75-100 per person
c. Condominium	400 per unit
d. Mobile home	400 per unit
e. Single family dwelling	400 per day
f. Rooming House	40 per person
Highway Rest Areas (improved with restroom facilities)	5 per vehicle
Hospitals	250 per bed
Nursing Homes	200 per Bed
Institutions other than Hospitals and Nursing Homes	75-125 per person
Motels and Hotels	62 per person
Industrial Buildings (exclusive of industrial waste)	15-35 per person
Launderette (self-service)	50 per load
Office Buildings	
a. With cafeteria	25 per employee
b. Without cafeteria	15 per employee
Recreational Vehicle Parks/ Campgrounds	
a. Sanitary stations for self-contained Vehicles	50 per space
b. Independent spaces (temporary or transient with sewer connections)	125 per space
c. Dependent spaces (temporary or transient with no sewer connections)	125 per space
with service building including showers	35 per person (Campground)
(1) with service building but no showers	85 per space 25 per person (Campground)
d. Campground with no flush toilets	5 per person
Restaurants	35 per seat
a. Additional for bars and cocktail lounges	2 per person
Schools	
a. Boarding	75 per person
b. Day, without cafeteria, gymnasiums or showers	15 per person
c. Day, with cafeteria, but no gymnasium or shower	20 per person
d. Day, with cafeteria, gymnasium and shower	25 per person
Service Station (per vehicle served)	5 per vehicle
Ski Areas and Visitor Centers	5 per visitor

R317-5-2. Septic Tanks.

2.1 GENERAL REQUIREMENTS: Septic tanks shall be constructed of durable materials designed to withstand expected physical loads and corrosive forces. They shall be watertight and designed to provide settling of solids, accumulation of sludge and scum, and access for cleaning, as specified in the following paragraphs.

2.2 TANK CAPACITY: Septic tanks shall be sized on the following basis:

(1) V = 1.5Q for Q less than or equal to 1500

(2) V = 1125 + 0.75 Q for Q greater than 1500

V = liquid volume of tank in gallons

Q = (Maximum anticipated) wastewater discharge in gallons per day

2.3 TANK DIMENSIONS: In general, tank length should be at least 2 or 3 times the width. Liquid depth of tanks shall be at least 30 inches. A liquid depth greater than 6 feet shall not be considered in determining tank capacity.

2.4 TANK COMPARTMENTS: Septic tanks may be divided into compartments, or separate tanks may be installed in series, up to a maximum of 3, provided the following requirements are met:

A. The volume of the first compartment or tank must equal or exceed the volume of any other compartment.

B. No compartment or tank shall have an inside horizontal dimension less than 24 inches.

C. Inlets and outlets shall be designed as specified for tanks, except when a partition wall is used to form a multi-compartment tank. Under such conditions, an opening in the partition may be used to allow for flow between compartments, provided the minimum dimension of the opening is 4 inches, the cross-sectional area is not less than 30 square inches, and the mid-point is below the liquid surface a distance approximately equal to 40% of the liquid depth of the tank.

2.5 INLETS AND OUTLETS:

A. Inlets and outlets of tanks or compartments shall be submerged or baffled to divert incoming flow toward the tank bottom and minimize the discharge of sludge or scum in the effluent.

B. Sanitary Tees may be used in lieu of baffled inlet or outlet structures.

C. All outlet baffles shall extend below the liquid surface a distance equal to approximately 40% of the liquid depth. Space between the baffle top and the underside of the tank cover shall be at least 1 inch.

D. Scum storage volume shall consist of 15% or more of the required liquid capacity of the tank and shall be provided in the space between liquid surface and top of inlet devices, which shall be set at least 1 inch below the underside of the tank cover.

E. Inlets and outlets shall allow free venting of tank gases back through the drainage system.

F. The inlet invert shall be at least 1 inch above outlet invert.

2.6 ACCESS TO TANK:

A. Access to inlet and outlet devices shall be provided through properly placed openings not less than 18 inches in minimum horizontal dimension.

B. The top of the tank shall be at least 6 inches below finished grade.

C. If the top of the tank is located more than 18 inches below finished grade, all access openings required by sub-section (1) above, shall be extended to within 18 inches of the finished grade.

2.7 ABANDONED SEPTIC TANKS: Septic tanks, cesspools and seepage pits which are no longer in use shall be completely pumped and filled with sand or soil.

2.8 DISCHARGE TO ABSORPTION SYSTEM: Septic tank effluent shall be conducted to the absorption system through a watertight sewer line meeting the requirements for wastewater drainage lines as contained in R317-5-1.13(A), (B), and (F). Tees, wyes, or other distributing devices may be used as needed. If a distribution box is used, it shall be of sufficient size to accommodate the necessary distribution line connections. Outlet inverts shall be at the same elevation and at least 1 inch

below the inlet invert. Conveyance to the absorption system must be adequately sized to handle peak hydraulic flow.

R317-5-3. Absorption Systems.

3.1 GENERAL REQUIREMENTS:

A. Suitable soil exploration, to a depth of about 10 feet, or at least 4 feet below the bottom of the proposed absorption systems and percolation tests, shall be made to provide information on subsoil conditions. Percolation tests and soil exploration reports shall be completed and submitted as part of the engineering report for the disposal facility. A minimum of 5 percolation tests must be conducted at different sites for each disposal system. Additional tests may be required, where necessary to adequately evaluate the total absorption system or where there is significant variability in test results. In general, the system will be sized based on the slowest stabilized percolation test rate. Soil logs should be prepared in accordance with the Unified Soil Classification System by a qualified individual. Requirements outlined in R317-5-4.1 and Table 5-8 will be helpful in developing this information.

B. Absorption devices, including seepage pits or trenches, placed in sloping ground should be so constructed that the horizontal distance between the distribution line and the ground surface is at least 10 feet.

C. Soil having excessively high permeability, such as gravel with large voids, affords little filtering and is unsuitable for absorption systems. Percolation rates (R317-5-4.1) of approximately 5 minutes per inch or less usually will not be acceptable.

The extremely fine-grained "blow sand" found in some parts of Utah is generally unsuitable for absorption systems and should be avoided. If no choice is available, systems may be constructed in such material, provided it is within the required percolation range specified in this code, and the required area is calculated on the minimum percolation rate (60 minutes per inch for absorption fields and 30 minutes per inch for absorption beds).

D. 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. 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.

E. Effluent distribution lines or pipe shall be perforated and should consist of 4-inch diameter pipe of appropriate material which has demonstrated satisfactory results for the given application. The distribution pipe shall be bedded true to line and grade, uniformly and continuously supported on firm, stable material.

F. The coarse material in the absorption system shall consist of crushed stone, gravel, or similar material of equivalent strength and durability. It shall be free from fines, dust, sand or clay. The top of the stone or gravel shall be covered with a pervious material such as an acceptable synthetic filter fabric, a 2-inch compacted layer of straw, or similar material before being covered with earth backfill to prevent infiltration of backfill into the stone or gravel.

G. 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.

H. Absorption systems shall be backfilled with earth that is free from debris and large rocks. The first 4 to 6 inches of soil backfill should be hand placed. Distribution pipes shall not be crushed or misaligned during backfilling. When backfilling, the earth should be mounded slightly above the surface of the ground to allow for settlement.

I. Heavy equipment shall not be driven in or over absorption systems during backfilling or after completion.

J. That portion of absorption system below the top of distribution pipes shall be in natural soil. Under unusual circumstances the Utah Water Pollution Control Committee may allow installation in acceptably stabilized earth fill. The earth fill and location will have to be evaluated on a case-by-case basis, taking into consideration the soil characteristics and degree of consolidation of the fill material.

K. Soil and Ground Water Requirements. In areas where absorption systems are to be constructed, soil cover must be adequate to insure at least 4 feet of soil between bedrock or any other impervious formation, and the bottom of absorption systems. Maximum ground water elevation must be at least 2 feet below the bottom of absorption systems and at least 4 feet below finished grade.

L. Replacement Area for Absorption System. Adequate and suitable land shall be reserved and kept free of permanent structures, traffic, or adverse soil modification for replacement of the absorption system. Suitability must be demonstrated through soil exploration and percolation tests results.

3.2 ABSORPTION FIELDS: Absorption fields are the preferred type of absorption system. They consist of a series of gravel-filled trenches provided with perforated pipes designed to distribute septic tank effluent into the gravel fill, from which it percolates through the trench walls and bottom into the surrounding sub-surface soil.

A. Design of absorption fields shall be as outlined in Tables 5-3 and 5-4.

TABLE 5-3
ABSORPTION FIELD CONSTRUCTION DETAILS

ITEMS	UNITS	MINIMUM	MAXIMUM
Number of lateral trenches		2	-
Length of trenches	Feet	-	100
Width of trenches	Inches	12	36
Slope of pipe (bottom)	In./100 ft.	Level	Level
Depth of coarse material:			
Under pipe	Inches	6	-
Under pipe located within 10 ft. of trees	Inches	12	-
Over pipe	Inches	2	-
Size of coarse material	Inches	3/4	2-1/2
Depth of backfill over coarse material	Inches	6	-

TABLE 5-4
SIZE AND MINIMUM SPACING FOR ABSORPTION FIELD TRENCHES

Minimum Spacing of Trenches Width of trench at bottom (inches)	wall to wall (ft.)
12 to 18	6.0
18 to 24	6.5
24 to 30	7.0
30 to 36	7.5

B. The minimum absorption area (total bottom area of trenches) of the absorption field shall be determined from the following equation but in no case the maximum allowable application rate shall exceed 2.2 gallons per square foot per day

Q = 5 / square root of t

Where Q = maximum rate of effluent application to the soil in gallons per square foot per day

t = stabilized percolation rate in minutes per inch

Percolation tests shall be performed as specified in R317-5-4.1. Rates in excess of 60 minutes per inch indicate a soil unsuitable for absorption field construction.

C. Wherever possible all trench bottoms should be constructed at the same elevation. Distribution pipes and trenches should be level and should be connected at both ends to provide a continuous system. If ground surface slope is too steep to permit a level installation, then a system of serial trenches following land contours should be used, with each trench and distribution pipe being constructed level but at a different elevation. A schematic diagram showing the recommended layout of trenches and distribution systems is available from the Bureau of Water Pollution Control.

1. The system should include drop boxes which should generally conform to the detail in Appendix 1 and should operate 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. The drop boxes shall be watertight and should be provided with a means of access at the top.

2. The lines between the drop boxes should be a minimum of 4 inches in diameter and should be watertight with direct connections to the distribution box. They should be laid in a trench excavated through undisturbed earth to the exact depth required. Backfill should be carefully tamped.

3.3 ABSORPTION BEDS: Absorption beds consist of large excavated areas provided with gravel fill in which effluent distribution lines are laid. They may be used in place of absorption fields when trenches are not considered desirable, and shall conform to requirements applying to absorption fields, except for the following:

A. They shall comply with construction details specified in Table 5-5.

TABLE 5-5
ABSORPTION BED CONSTRUCTION DETAILS

ITEM	UNIT	MINIMUM	MAXIMUM
Distance between distribution lines	Feet	-	6
Distance between distribution lines and wall	Feet	-	3
Depth to bottom of bed	Feet	1-1/2	-
Size of coarse material	Inches	3/4	2-1/2
Depth of coarse material			
Under pipe	Inches	6	-
In bed within 10 ft. of trees	Inches	12	-
Over pipe	Inches	2	-
Depth of backfill over coarse material	Inches	6	-

B. Required absorption area (total bottom area of bed) shall be determined from the following equation, but in no case shall it exceed 1.1 gallons per square foot per day.

Q = 2.5/square root of t

Where Q = maximum rate of effluent application to the soil in gallons per square foot per day.

t = stabilized percolation rate in minutes per inch.

Percolation tests shall be performed as specified in R317-5-4.1. Rates in excess of 30 minutes per inch indicate a soil unsuitable for absorption bed construction.

3.3 SEEPAGE PITS: If absorption fields or beds are not feasible, seepage pits will be considered. These consist of deep pits which receive septic tank effluent and allow it to seep through sidewalls into the adjacent subsurface soil. Seepage pits may be either hollow lined or filled with clean coarse material. They shall conform to the following requirements:

A. Number and size of seepage pits required shall be determined by calculation of seepage rate into each stratum of soil encountered in pit sidewall by reference to Table 5-8. Only pervious side-wall area below the inlet shall be considered. In order to calculate a sidewall seepage rate a representative number of soil explorations shall be evaluated to adequately identify the type and depth of each soil stratum expected throughout the absorption area. In general, a minimum of 5 explorations will be evaluated. This information shall be provided in the engineering report.

B. For the purposes of confirming an appropriate sidewall seepage rate, the owner shall submit a statement describing the character and thickness of each stratum of soil encountered during pit construction. Soil classification and assumed seepage rates shall be as specified in Table 5-8 except when valid seepage measurements are available.

C. The lining may be brick, stone, block or similar materials, at least 4 inches thick, laid in cement mortar above the inlet and with tight butted joints below the inlet. The annular space between the lining and the earth wall shall be filled with crushed rock or gravel varying in diameter from 3/4 inch to 2-1/2 inches.

D. A structurally sound and otherwise suitable top shall be provided. Structural design and materials used throughout shall assure a durable safe structure.

E. If more than one seepage pit is provided, the installation may be operated in series or parallel with distribution of effluent as specified in R317-5-2.1(G).

F. 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.

G. For filled pits a thin layer of crushed rock or gravel ranging from 3/4 to 2-1/2 inches in diameter, free from fines, sand, clay or organic material shall cover the coarse material to permit leveling of the distribution pipe.

TABLE 5-6
SEEPAGE PITS CONSTRUCTION DETAILS

ITEM	UNIT	MINIMUM	MAXIMUM
Generals			
Distance between seepage pits	feet	12(a)	-
Diameter of distribution pipe	inches	4	-
Size of coarse material	inches	3/4	12
Bottom of pit to maximum ground water	feet	2	-
Bottom of Pit in unsuitable soil or bedrock formations	feet	4	-
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	-
Thickness of brick, or block linings	inches	4(b)	
Filled Pits:			
Depth of coarse material:			
Under pipe	feet	4	-
Over distribution pipe	inches	2	-
Depth of backfill over material	inches	6	-

Footnotes:
(a) See Table 5-1
(b) Pre-manufactured linings may be approved with thicknesses less than 4 inches.

3.5 SEEPAGE TRENCHES (MODIFIED SEEPAGE PITS):

Seepage trenches are considered as modified seepage pits and consist of deep trenches filled with clean, coarse material. They shall conform to the requirements applying to seepage pits except for the following:

A. The effective sidewall absorption area shall be considered as the outside surface of the seepage trench (vertical sidewall area) calculated below the inlet or distribution pipe. Only pervious sidewall area below the inlet shall be considered.

TABLE 5-7
SEEPAGE TRENCH DETAIL

ITEM	UNIT	MINIMUM	MAXIMUM
Seepage trench width	feet	2	-
Seepage trench length	feet	-	100
Effluent Distribution pipe			
Diameter	inches	4	-
Slope	percent	level	level
Distance between seepage trenches	feet	12(a)	-

Footnote:
(a) See Table 5-1.

TABLE 5-8
SEEPAGE TRENCHES AND PITS
ALLOWABLE SIDEWALL SEEPAGE RATES

	SYMBOL AND CHARACTER OF SOIL BY UNIFIED SOIL CLASSIFICATION SYSTEM	GALLONS/ DAY/ SQ. FT.
	Hardpan or bedrock (including fractured bedrock with little or no fines).	0
GW	Well graded gravels, gravel-sand mixtures little or no fines.	1.55
GP	Poorly graded gravels or gravel-sand mixtures, little or no fines.	1.55
SW	Well graded sands, gravelly sand, little or no fines.	1.20
SP	Poorly graded sands or gravelly sands, little or no fines.	1.20
SM	Silty sand, sand-silt mixtures.	0.8
GM	Silty gravels, poorly graded gravel-sand-silt mixtures.	1.0
GC	Clayey gravels, gravelly-sand-clay mixtures.	0.45(a)
SC	Clayey sands, sand-clay mixtures.	0.45(a)
ML	Inorganic silts and very fine sand, rock flour, silt or clayey find sands or clayey silts with slight plasticity.	0.45(a)
MH	Inorganic silts, micaceous or diatomaceous fine sandy or silty soils, elastic silts.	0.45(a)(b)
CL	Inorganic clays or low to medium plasticity, gravelly clays, sandy clays, silty clays, lean clays.	0.45(a)(b)
CH	Inorganic clays of high plasticity, fat clays.	0
OL	Organic silts and organic silty clays of low plasticity.	0
OH	Organic clays of medium to high plasticity, organic silts.	0
PT	Peat and other highly organic silts.	0
Other	Impervious formations.	0

Footnotes:
(a) For the purpose 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 R317-4-1. Soils

within the same classification may exhibit extreme variability in permeability, depending on the amount and type of clay and silt present. The following soils categories, SC,GC, and ML, MH and CL soils, may prove unsatisfactory for absorption systems, depending upon the percentage and type of fines present.

(b) 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.

R317-5-4. Percolation Tests.

A. General Requirements.

1. A percolation test measures the rate which subsurface soil absorbs water for the purpose of identifying porous soil strata and site suitability for absorption systems, and is also a basis for estimating the design criteria of such systems to insure a reasonably long lifespan.

2. While percolation tests constitute a valuable guide for successful operation of disposal systems, considerable judgment must be used in applying the results. Percolation test results shall not be presumptive, prima facie, or conclusive evidence as to the suitability for absorption systems. Such percolation tests may be considered and analyzed as one of many criteria in determining soil suitability for absorption systems. There is no need for conducting percolation tests when the soil or other site conditions are clearly unsuitable.

3. 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 absorption systems has been evaluated and approved for construction, no grade changes shall be made to this area unless the health authority is notified and a reevaluation of the area's suitability is made prior to the initiation of construction.

B. Required Test Procedures.

1. 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, certifying that the tests were conducted in accordance with these requirements, and indicating the depth and rate of each test in minutes per inch, the date of the tests, the logs of the soil exploration pits, a statement of the present and maximum ground water table, and all other factors affecting percolation test results. Percolation tests shall be conducted at the owner's expense by or under the supervision of a registered sanitarian, registered engineer, or other qualified person approved by the health authority in accordance with the following:

(a) 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 health authority.

(b) 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.

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 health authority and may be accepted only if conducted with an authorized representative present.

(c) 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 4 to 18 inches (preferably 8 to 12 inches). The vertical sides shall be at least 12 inches deep, terminating in the soil at an elevation 6 inches below the bottom of the proposed absorption system.

2. 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 12 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 12 inches above the gravel seeps away in 10 minutes, or less, the test may proceed immediately as follows:

(a) Water shall be added to a point not more than 6 inches above the gravel.

(b) Thereupon, from the fixed reference point, water levels shall be measured at 10 minute intervals for a period of 1 hour.

(c) If 6 inches of water seeps away in less than 10 minutes a shorter time interval between measurements shall be used, but in no case shall the water depth exceed 6 inches.

(d) The final water level drop shall be used to calculate the percolation rate.

3. Test Procedure for Other Soils Not Meeting the Above Requirements.

The hole shall be carefully filled with clear water and a minimum depth of 12 inches shall be maintained above the gravel for at least a 4-hour period by refilling whenever necessary. Water remaining in the hole after 4 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 6 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 4 hours unless 2 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 6 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 6 inches of water seeps away in less than 30 minutes, the time interval between measurements shall be 10 minutes, and the test run for 1 hour.

(f) The water depth shall not exceed 6 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.

4. 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 or fractions thereof.

5. Using Percolation Rate to Determine Absorption Area.

The minimum or slowest percolation rate shall be used in calculating the required absorption area.

C. Recommendations to Enhance Test Procedures.

1. 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.

2. 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 6 inches above the strata to be tested.

3. 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. Nails driven into a board will provide a good instrument to scarify the sides of the hole. Remove all loose soil from the bottom of the hole. Add up to 3 inches of clean coarse sand or pea-sized 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.

4. 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 increase 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.

5. 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.

6. 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.

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R317. Environmental Quality, Water Quality.
R317-6. Ground Water Quality Protection.
R317-6-1. Definitions.

1.1 "Aquifer" means a geologic formation, group of geologic formations or part of a geologic formation that contains sufficiently saturated permeable material to yield usable quantities of water to wells and springs.

1.2 "Background Concentration" means the concentration of a pollutant in ground water upgradient or lateral hydraulically equivalent point from a facility, practice or activity which has not been affected by that facility, practice or activity.

1.3 "Best Available Technology" means the application of design, equipment, work practice, operation standard or combination thereof at a facility to effect the maximum reduction of a pollutant achievable by available processes and methods taking into account energy, public health, environmental and economic impacts and other costs.

1.4 "Best Available Technology Standard" means a performance standard or pollutant concentration achievable through the application of best available technology.

1.5 "Board" means the Utah Water Quality Board.

1.6 "Class TDS Limit" means the upper boundary of the TDS range for an applicable class as specified in Section R317-6-3.

1.7 "Community Drinking Water System" means a public drinking water system which serves at least fifteen service connections used by year-round residents or regularly serves at least twenty-five year-round residents.

1.8 "Comparable Quality (Source)" means a potential alternative source or sources of water supply which has the same general quality as the ground water source.

1.9 "Comparable Quantity (Source)" means a potential alternative source of water supply capable of reliably supplying water in quantities sufficient to meet the year-round needs of the users served by the ground water source.

1.10 "Compliance Monitoring Point" means a well, seep, spring, or other sampling point used to determine compliance with applicable permit limits.

1.11 "Contaminant" means any physical, chemical, biological or radiological substance or matter in water.

1.12 "Conventional Treatment" means normal and usual treatment of water for distribution in public drinking water supply systems including flocculation, sedimentation, filtration, disinfection and storage.

1.13 "Discharge" means the release of a pollutant directly or indirectly into subsurface waters of the state.

1.14 "Existing Facility" means a facility or activity that was in operation or under construction after August 14, 1989 and before February 10, 1990.

1.15 "Economically Infeasible" means, in the context of a public drinking water source, the cost to the typical water user for replacement water would exceed the community's ability to pay.

1.16 "Executive Secretary" means the Executive Secretary of the Utah Water Quality Board.

1.17 "Facility" means any building, structure, processing, handling, or storage facility, equipment or activity; or contiguous group of buildings, structures, or processing, handling or storage facilities, equipment, or activities or

combination thereof.

1.18 "Gradient" means the change in total water pressure head per unit of distance.

1.19 "Ground Water" means subsurface water in the zone of saturation including perched ground water.

1.20 "Ground Water Quality Standards" means numerical contaminant concentration levels adopted by the Board in or under R317-6-2 for the protection of the subsurface waters of the State.

1.21 "Infiltration" means the movement of water from the land surface into the pores of rock, soil or sediment.

1.22 "Institutional Constraints" means legal or other restrictions that preclude replacement water delivery and which cannot be alleviated through administrative procedures or market transactions.

1.23 "Lateral Hydraulically Equivalent Point" means a point located hydraulically equal to a facility and in the same ground water with similar geochemistry such that the ground water at that point has not been affected by the facility.

1.24 "Limit of Detection" means the concentration of a chemical below which it can not be detected using currently accepted sampling and analytical techniques for drinking water as determined by the U.S. Environmental Protection Agency.

1.25 "New Facility" means a facility for which construction or modification is initiated after February 9, 1990.

1.26 "Permit Limit" means a ground water pollutant concentration limitation specified in a Ground Water Discharge Permit and may include protection levels, class TDS limits, ground water quality standards, alternate concentration limits, permit-specific ground water quality standards, or limits stipulated in the application and use of best available technology. For facilities permitted by rule under R317-6-6.2, a permit limit is a ground water pollutant concentration limitation specified in R317-6-6.2.B.

1.27 "Person" means any individual, corporation, partnership, association, company or body politic, including any agency or instrumentality of the federal, state, or local government.

1.28 "Point of Discharge" means the area within outermost location at which effluent or leachate has been stored, applied, disposed of, or discharged; for a diked facility, the outermost edge of the dikes.

1.29 "Pollutant" means dredged spoil, solid waste, incinerator residue, sewage, sewage sludge, garbage, munitions, trash, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste discharged into waters of the state.

1.30 "Pollution" means such contamination, or other alteration of the physical, chemical, or biological properties of any waters of the State, or such discharge of any liquid, gaseous, or solid substance into any waters of the state as will create a nuisance or render such waters harmful or detrimental or injurious to public health, safety, or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

1.31 "Protection Level" means the ground water pollutant concentration levels specified in R317-6-4.

1.32 "Substantial Treatment" means treatment of water utilizing specialized treatment methods including ion exchange, reverse osmosis, electrodialysis and other methods needed to upgrade water quality to meet standards for public water systems.

1.33 "Technology Performance Monitoring" means the evaluation of a permitted facility to determine compliance with best available technology standards.

1.34 "Total Dissolved Solids (TDS)" means the quantity of dissolved material in a sample of water which is determined by weighing the solid residue obtained by evaporating a measured volume of a filtered sample to dryness; or for many waters that contain more than 1000 mg/l, the sum of the chemical constituents.

1.35 "Radius of Influence" means the radial distance from the center of a well bore to the point where there is no lowering of the water table or potentiometric surface because of pumping of the well; the edge of the cone of depression.

1.36 "Upgradient" means a point located hydraulically above a facility such that the ground water at that point has not been impacted by discharges from the facility.

1.37 "Vadose Zone" means the zone of aeration including soil and capillary water. The zone is bound above by the land surface and below by the water table.

1.38 "Waste" see "Pollutant."

1.39 "Water Table" means the top of the saturated zone of a body of unconfined ground water at which the pressure is equal to that of the atmosphere.

1.40 "Water Table Aquifer" means an aquifer extending downward from the water table to the first confining bed.

1.41 "Waters of the State" means all streams, lakes, ponds, marshes, water courses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion thereof; except bodies of water confined to and retained within the limits of private property, and which do not develop into or constitute a nuisance or a public health hazard, or a menace to fish and wildlife, shall not be considered to be "waters of the state" under this definition.

1.42 "Zone of Influence" means the area contained by the outer edge of the drawdown cone of a water well.

R317-6-2. Ground Water Quality Standards.

2.1 The following Ground Water Quality Standards as listed in Table I are adopted for protection of ground water quality.

TABLE 1
GROUND WATER QUALITY STANDARDS

Parameter	Milligrams per liter (mg/l) unless noted otherwise and based on analysis of filtered sample except for Mercury and organic compounds

PHYSICAL CHARACTERISTICS	
Color (units)	15.0
Corrosivity (characteristic)	noncorrosive
Odor (threshold number)	3.0
pH (units)	6.5-8.5
INORGANIC CHEMICALS	
Cyanide (free)	0.2
Fluoride	4.0
Nitrate (as N)	10.0
Nitrite (as N)	1.0
Total Nitrate/Nitrite (as N)	10.0
METALS	
Arsenic	0.05
Barium	2.0
Cadmium	0.005
Chromium	0.1
Copper	1.3
Lead	0.015
Mercury	0.002
Selenium	0.05
Silver	0.1
Zinc	5.0
ORGANIC CHEMICALS	
Pesticides and PCBs	
Alachlor	0.002
Aldicarb	0.003
Aldicarb sulfone	0.002
Aldicarb sulfoxide	0.004
Atrazine	0.003
Carbofuran	0.04
Chlordane	0.002
Dibromochloropropane	0.0002
2, 4-D	0.07
Endrin	0.002
Ethylene Dibromide	0.00005
Heptachlor	0.0004
Heptachlor epoxide	0.0002
Lindane	0.0002
Methoxychlor	0.04
Polychlorinated Biphenyls	0.0005
Pentachlorophenol	0.001
Toxaphene	0.003
2, 4, 5-TP (Silvex)	0.05
VOLATILE ORGANIC CHEMICALS	
Benzene	0.005
Carbon tetrachloride	0.005
1, 2 - Dichloroethane	0.005
1, 1 - Dichloroethylene	0.007
1, 1, 1 - Trichloroethane	0.200
para - Dichlorobenzene	0.075
o-Dichlorobenzene	0.6
cis-1,2 dichloroethylene	0.07
trans-1,2 dichloroethylene	0.1
1,2 Dichloropropane	0.005
Ethylbenzene	0.7
Monochlorobenzene	0.1
Styrene	0.1
Tetrachloroethylene	0.005
Toluene	1
Trichloroethylene	0.005
Vinyl chloride	0.002
Xylenes (Total)	10
OTHER ORGANIC CHEMICALS	
Trihalomethanes	0.1

RADIONUCLIDES

The following are the maximum contaminant levels for Radium-226 and Radium-228, and gross alpha particle radioactivity, beta particle radioactivity, and photon radioactivity:

Combined Radium-226 and Radium-228	5pCi/l
Gross alpha particle activity, including Radium-226 but excluding Radon and Uranium	15pCi/l

Beta particle and photon radioactivity

The average annual concentration from man-made radionuclides of beta particle and photon radioactivity from man-made radionuclides shall not produce an annual dose equivalent to the total body or any internal organ greater than four millirem/year.

Except for the radionuclides listed below, the concentration of man-made radionuclides causing four millirem total body or organ dose equivalents shall be calculated on the basis of a two liter per day drinking water intake using the 168 hour data listed in "Maximum Permissible Body Burden and Maximum Permissible Concentration Exposure", NBS Handbook 69 as amended August 1962, U.S. Department of Commerce. If two or more radionuclides are present, the sum of their annual dose equivalent to the total body or to any organ shall not exceed four millirem/year.

Average annual concentrations assumed to produce a total body or organ dose of four millirem/year:

Radionuclide	Critical Organ	pCi per liter
Tritium	Total Body	20,000
Strontium-90	Bone Marrow	8

2.2 A permit specific ground water quality standard for any pollutant not specified in Table 1 may be established by the Executive Secretary at a level that will protect public health and the environment. This permit limit may be based on U.S. Environmental Protection Agency maximum contaminant level goals, health advisories, risk based contaminant levels, standards established by other regulatory agencies and other relevant information.

R317-6-3. Ground Water Classes.

3.1 GENERAL

The following ground water classes are established: Class IA - Pristine Ground Water; Class IB - Irreplaceable Ground Water; Class IC - Ecologically Important Ground Water; Class II - Drinking Water Quality Ground Water; Class III - Limited Use Ground Water; Class IV - Saline Ground Water.

3.2 CLASS IA - PRISTINE GROUND WATER

Class IA ground water has the following characteristics:

A. Total dissolved solids of less than 500 mg/l.

B. No contaminant concentrations that exceed the ground water quality standards listed in Table 1.

3.3 CLASS IB - IRREPLACEABLE GROUND WATER

Class IB ground water is a source of water for a community public drinking water system for which no reliable supply of comparable quality and quantity is available because of economic or institutional constraints.

3.4 CLASS IC - ECOLOGICALLY IMPORTANT GROUND WATER

Class IC ground water is a source of ground water discharge important to the continued existence of wildlife habitat.

3.5 CLASS II - DRINKING WATER QUALITY

GROUND WATER

Class II ground water has the following characteristics:

A. Total dissolved solids greater than 500 mg/l and less than 3000 mg/l.

B. No contaminant concentrations that exceed ground water quality standards in Table 1.

3.6 CLASS III - LIMITED USE GROUND WATER

Class III ground water has one or both of the following characteristics:

A. Total dissolved solids greater than 3000 mg/l and less than 10,000 mg/l, or;

B. One or more contaminants that exceed the ground water quality standards listed in Table 1.

3.7 CLASS IV - SALINE GROUND WATER

Class IV ground water has total dissolved solids greater than 10,000 mg/l.

R317-6-4. Ground Water Class Protection Levels.

4.1 GENERAL

A. Protection levels are ground water pollutant concentration limits, set by ground water class, for the operation of facilities that discharge or would probably discharge to ground water.

B. For the physical characteristics (color, corrosivity, odor, and pH) and radionuclides listed in Table 1, the values listed are the protection levels for all ground water classes.

4.2 CLASS IA PROTECTION LEVELS

A. Class IA ground water will be protected to the maximum extent feasible from degradation due to facilities that discharge or would probably discharge to ground water.

B. The following protection levels will apply:

1. Total dissolved solids may not exceed the lesser of 1.1 times the background value or

500 mg/l.

2. When a contaminant is not present in a detectable amount as a background concentration, the concentration of the pollutant may not exceed the greater of 0.1 times the ground water quality standard value, or the limit of detection.

3. When a contaminant is present in a detectable amount as a background concentration, the concentration of the pollutant may not exceed the greater of 1.1 times the background concentration or 0.1 times the ground water quality standard; however, in no case will the concentration of a pollutant be allowed to exceed the ground water quality standard.

4.3 CLASS IB PROTECTION LEVELS

A. Class IB ground water will be protected as an irreplaceable source of drinking water.

B. The following protection levels will apply:

1. Total dissolved solids may not exceed the lesser of 1.1 times the background value or 2000 mg/l.

2. When a contaminant is not present in a detectable amount as a background concentration, the concentration of the pollutant may not exceed the greater of 0.1 times the ground water quality standard, or the limit of detection.

3. When a contaminant is present in a detectable amount as a background concentration, the concentration of the pollutant may not exceed the greater of 1.1 times the background concentration or 0.1 times the ground water quality standard; however, in no case will the concentration of a pollutant be allowed to exceed the ground water quality standard.

4.4 CLASS IC PROTECTION LEVELS

Class IC ground water will be protected as a source of water for potentially affected wildlife habitat. Limits on increases of total dissolved solids and organic and inorganic chemical compounds will be determined in order to meet applicable surface water standards.

4.5 CLASS II PROTECTION LEVELS

A. Class II ground water will be protected for use as drinking water or other similar beneficial use with conventional treatment prior to use.

B. The following protection levels will apply:

1. Total dissolved solids may not exceed 1.25 times the background value.

2. When a contaminant is not present in a detectable amount as a background concentration, the concentration of the pollutant may not exceed the greater of 0.25 times the ground water quality standard, or the limit of detection.

3. When a contaminant is present in a detectable amount as a background concentration, the concentration of the pollutant may not exceed the greater of 1.25 times the background concentration or 0.25 times the ground water quality standard; however, in no case will the concentration of a pollutant be allowed to exceed the ground water quality standard.

4.6 CLASS III PROTECTION LEVELS

A. Class III ground water will be protected as a potential source of drinking water, after substantial treatment, and as a source of water for industry and agriculture.

B. The following protection levels will apply:

1. Total dissolved solids may not exceed 1.25 times the background concentration level.

2. When a contaminant is not present in a detectable amount as a background concentration, the concentration of the pollutant may not exceed the greater of 0.5 times the ground water quality standard, or the limit of detection.

3. When a contaminant is present in a detectable amount as a background concentration, the concentration of the pollutant may not exceed the greater of 1.5 times the background concentration or 0.5 times the ground water quality standard; however, in no case will the concentration of a pollutant be allowed to exceed the ground water quality standard. If the background concentration exceeds the ground water quality standard no increase will be allowed.

4.7 CLASS IV PROTECTION LEVELS

Protection levels for Class IV ground water will be established to protect human health and the environment.

R317-6-5. Ground Water Classification for Aquifers.

5.1 GENERAL

A. When sufficient information is available, entire aquifers or parts thereof may be classified by the Board according to the quality of ground water contained therein and commensurate protection levels will be applied.

B. Ground water sources furnishing water to community drinking water systems with ground water meeting Class IA criteria are classified as Class IA.

5.2 CLASSIFICATION AND RECLASSIFICATION PROCEDURE

A. The Board may initiate classification or reclassification.

B. Any person may petition the Board for classification and reclassification.

C. Boundaries for class areas will be delineated so as to enclose distinct ground water classes as nearly as known facts permit. Boundaries will be based on hydrogeologic properties, existing ground water quality and for Class IB and IC, current use. Parts of an aquifer may be classified differently.

D. The petitioner requesting reclassification will provide sufficient information to determine if reclassification is in the best interest of the beneficial users.

E. A petition for classification or reclassification shall include:

1. factual data supporting the proposed classification;

2. a description of the proposed ground waters to be classified or reclassified;

3. potential contamination sources;

4. ground water flow direction;

5. current beneficial uses of the ground water; and

6. location of all water wells in the area to be classified or reclassified.

F. One or more public hearings will be held to receive comment on classification and reclassification proposals.

G. The Board will determine the disposition of all petitions for classification and reclassification, except as provided in R317-6-5.2.H.

H. Ground water proximate to a facility for which an application for a ground water discharge permit has been made may be classified by the Executive Secretary for purposes of making permitting decisions.

R317-6-6. Implementation.

6.1 DUTY TO APPLY FOR A GROUND WATER DISCHARGE PERMIT

A. No person may construct, install, or operate any new facility or modify an existing or new facility, not permitted by rule under R317-6-6.2, which discharges or would probably result in a discharge of pollutants that may move directly or indirectly into ground water, including, but not limited to land application of wastes; waste storage pits; waste storage piles; landfills and dumps; large feedlots; mining, milling and metallurgical operations, including heap leach facilities; and pits, ponds, and lagoons whether lined or not, without a ground water discharge permit from the Executive Secretary. A ground water discharge permit application should be submitted at least 180 days before the permit is needed.

B. All persons who constructed, modified, installed, or operated any existing facility, not permitted by rule under R317-6-6.2, which discharges or would probably result in a discharge of pollutants that may move directly or indirectly into ground water, including, but not limited to: land application of wastes; waste storage pits; waste storage piles; landfills and dumps; large feedlots; mining, milling and metallurgical operations, including heap leach facilities; and pits, ponds, and lagoons whether lined or not, must have submitted a notification of the nature and location of the discharge to the Executive Secretary before February 10, 1990 and must submit an application for a ground water discharge permit within one year after receipt of written notice from the Executive Secretary that a ground water discharge permit is required.

6.2 GROUND WATER DISCHARGE PERMIT BY RULE

A. Except as provided in R317-6-6.2.C, the following facilities are considered to be permitted by rule and are not required to obtain a discharge permit under R317-6-6.1 or comply with R317-6-6.3 through R317-6-6.7, R317-6-6.9 through R317-6-6.11, R317-6-6.13, R317-6-6.16, R317-6-6.17 and R317-6-6.18:

1. facilities with effluent or leachate which has been demonstrated to the satisfaction of the Executive Secretary to conform and will not deviate from the applicable class TDS limits, ground water quality standards, protection levels or other permit limits and which does not contain any contaminant that may present a threat to human health, the environment or its potential beneficial uses of the ground water. The Executive Secretary may require samples to be analyzed for the presence of contaminants before the effluent or leachate discharges directly or indirectly into ground water. If the discharge is by seepage through natural or altered natural materials, the Executive Secretary may require samples of the solution be analyzed for the presence of pollutants before or after seepage;

2. water used for watering of lawns, gardens, or shrubs or for irrigation for the revegetation of a disturbed land area except for the direct land application of wastewater;

3. application of agricultural chemicals including fertilizers, herbicides and pesticides including but not limited to, insecticides fungicides, rodenticides and fumigants when used in accordance with current scientifically based manufacturer's recommendations for the crop, soil, and climate and in accordance with state and federal statutes, regulations, permits, and orders adopted to avoid ground water pollution;

4. water used for irrigated agriculture except for the direct land application of wastewater from municipal, industrial or mining facilities;

5. flood control systems including detention basins, catch basins and wetland treatment facilities used for collecting or conveying storm water runoff;

6. natural ground water seeping or flowing into conventional mine workings which re-enters the ground by natural gravity flow prior to pumping or transporting out of the mine and without being used in any mining or metallurgical process;

7. leachate which results entirely from the direct natural infiltration of precipitation through undisturbed materials;

8. wells and facilities regulated under the underground injection control (UIC) program;

9. land application of livestock wastes, within expected crop nitrogen uptake;

10. individual subsurface wastewater disposal systems approved by local health departments or large subsurface wastewater disposal systems approved by the Board;

11. produced water pits, and other oil field waste treatment, storage, and disposal facilities regulated by the Division of Oil, Gas, and Mining in accordance with Section 40-6-5(3)(d) and R649-9, Disposal of Produced Water;

12. reserve pits regulated by the Division of Oil, Gas and

Mining in accordance with Section 40-6-5(3)(a) and R649-3-7, Drilling and Operating Practices;

13. storage tanks installed or operated under regulations adopted by the Utah Solid and Hazardous Waste Control Board;

14. coal mining operations or facilities regulated under the Coal Mining and Reclamation Act by the Utah Division of Oil, Gas, and Mining (DOGM). The submission of an application for ground water discharge permit under R317-6-6.2.C may be required only if the Executive Secretary, after consideration of recommendations, if any, by DOGM, determines that the discharge violates applicable ground water quality standards, applicable Class TDS limits, or is interfering with a reasonable foreseeable beneficial use of the ground water. DOGM is not required to establish any administrative or regulatory requirements which are in addition to the rules of DOGM for coal mining operations or facilities to implement these ground water regulations;

15. hazardous waste or solid waste management units managed or undergoing corrective action under R315-1 through R315-14;

16. solid waste landfills permitted under the requirements of R315-303;

17. animal feeding operations, as defined in UAC R317-8-3.5(2), which are not located within Zone 1 (100) feet for wells in a confined aquifer or Zone 2 (250 day time of travel) for wells and springs in unconfined aquifers, in accordance with the Public Drinking Water Rule R309-113, and which meet either of the following criteria:

a) operations which incorporate low volume liquid waste handling systems of less than 4 million gallons capacity, or

b. operations with fewer than the following numbers of animals confined:

i. 1,000 slaughter and feeder cattle,

ii. 700 mature dairy cattle, whether milked or dry cows,

iii. 2,500 swine each weighing over 25 kilograms (approximately 55 pounds), for facilities without animal waste collection and treatment systems approved by the Executive Secretary,

iv. 1,000,000 pounds steady state live animal weight of swine for facilities with animal waste collection and treatment systems for which a construction permit has been issued by the Executive Secretary,

v. 500 horses,

vi. 10,000 sheep or lambs,

vii. 55,000 turkeys,

viii. 100,000 laying hens or broilers, if the facility has continuous over flow watering,

ix. 30,000 hens or broilers, if the facility has a liquid manure handling system,

x. 5,000 ducks, or

xi. 1,000 animal units;

18. animal feeding operations which do not utilize liquid waste handling systems;

19. mining, processing or milling facilities handling less than 10 tons per day of metallic and/or nonmetallic ore and waste rock, not to exceed 2500 tons/year in aggregate unless the processing or milling uses chemical leaching;

20. pipelines and above-ground storage tanks;

21. drilling operations for metallic minerals, nonmetallic minerals, water, hydrocarbons, or geothermal energy sources when done in conformance with applicable regulations of the Utah Division of Oil, Gas, and Mining or the Utah Division of Water Rights;

22. land application of municipal sewage sludge for beneficial use, at or below the agronomic rate and in compliance with the requirements of 40 CFR 503, July 1, 1993 edition;

23. land application of municipal sewage sludge for mine-reclamation at a rate higher than the agronomic rate and in compliance with 40 CFR 503, July 1, 1993 edition;

24. municipal wastewater treatment lagoons receiving no wastewater from a significant industrial discharger as defined in R317-8-8.2(12); and

25. facilities and modifications thereto which the Executive Secretary determines after a review of the application will have a de minimis actual or potential effect on ground water quality.

B. No facility permitted by rule under R317-6-6.2.A may cause ground water to exceed ground water quality standards or the applicable class TDS limits in R317-6-3.1 to R317-6-3.7. If the background concentration for affected ground water exceeds the ground water quality standard, the facility may not cause an increase over background. This section, R317-6-6.2B. does not apply to facilities undergoing corrective action under R317-6-6.15A.3.

C. The submission of an application for a ground water discharge permit may be required by the Executive Secretary for any discharge permitted by rule under R317-6-6.2 if it is determined that the discharge may be causing or is likely to cause increases above the ground water quality standards or applicable class TDS limits under R317-6-3 or otherwise is interfering or may interfere with probable future beneficial use of the ground water.

6.3 APPLICATION REQUIREMENTS FOR A GROUND WATER DISCHARGE PERMIT

Unless otherwise determined by the Executive Secretary, the application for a permit to discharge wastes or pollutants to ground water shall include the following complete information:

A. The name and address of the applicant and the name and address of the owner of the facility if different than the applicant. A corporate application must be signed by an officer of the corporation. The name and address of the contact, if different than above, and telephone numbers for all listed names shall be included.

B. The legal location of the facility by county, quarter-quarter section, township, and range.

C. The name of the facility and the type of facility, including the expected facility life.

D. A plat map showing all water wells, including the status and use of each well, topography, springs, water bodies, drainages, and man-made structures within a one-mile radius of the discharge. The plat map must also show the location and depth of existing or proposed wells to be used for monitoring ground water quality.

E. Geologic, hydrologic, and agricultural description of the geographic area within a one-mile radius of the point of discharge, including soil types, aquifers, ground water flow direction, ground water quality, aquifer material, and well logs.

F. The type, source, and chemical, physical, radiological,

and toxic characteristics of the effluent or leachate to be discharged; the average and maximum daily amount of effluent or leachate discharged (gpd), the discharge rate (gpm), and the expected concentrations of any pollutant (mg/l) in each discharge or combination of discharges. If more than one discharge point is used, information for each point must be given separately.

G. Information which shows that the discharge can be controlled and will not migrate into or adversely affect the quality of any other waters of the state, including the applicable surface water quality standards, that the discharge is compatible with the receiving ground water, and that the discharge will comply with the applicable class TDS limits, ground water quality standards, class protection levels or an alternate concentration limit proposed by the facility.

H. For areas where the ground water has not been classified by the Board, information on the quality of the receiving ground water sufficient to determine the applicable protection levels.

I. The proposed monitoring plan, which includes a description, where appropriate, of the following:

1. ground water monitoring to determine ground water flow direction and gradient, background quality at the site, and the quality of ground water at the compliance monitoring point;

2. installation, use and maintenance of monitoring devices;

3. description of the compliance monitoring area defined by the compliance monitoring points including the dimensions and hydrologic and geologic data used to determine the dimensions;

4. monitoring of the vadose zone;

5. measures to prevent ground water contamination after the cessation of operation, including post-operational monitoring;

6. monitoring well construction and ground water sampling which conform to A Guide to the Selection of Materials for Monitoring Well Construction and Ground Water Sampling, (1983) and RCRA Ground Water Monitoring Technical Enforcement Guidance Manual (1986), unless otherwise specified by the Executive Secretary;

7. description and justification of parameters to be monitored.

J. The plans and specifications relating to construction, modification, and operation of discharge systems.

K. The description of the ground water most likely to be affected by the discharge, including water quality information of the receiving ground water prior to discharge, a description of the aquifer in which the ground water occurs, the depth to the ground water, the saturated thickness, flow direction, porosity, hydraulic conductivity, and flow systems characteristics.

L. The compliance sampling plan which includes, where appropriate, provisions for sampling of effluent and for flow monitoring in order to determine the volume and chemistry of the discharge onto or below the surface of the ground and a plan for sampling compliance monitoring points and appropriate nearby water wells. Sampling and analytical methods proposed in the application must conform with the most appropriate methods specified in the following references unless otherwise specified by the Executive Secretary:

1. Standard Methods for the Examination of Water and Wastewater, eighteenth edition, 1992; Library of Congress catalogue number: ISBN:0-87553- 207-1.

2. E.P.A. Methods, Methods for Chemical Analysis of Water and Wastes, 1983; Stock Number EPA-600/4-79-020.

3. Techniques of Water Resource Investigation of the U.S. Geological Survey, (1982); Book 5, Chapter A3.

4. Monitoring requirements in 40 CFR parts 141 and 142, 1991 ed., Primary Drinking Water Regulations and 40 CFR parts 264 and 270, 1991 ed.

5. National Handbook of Recommended Methods for Water-Data Acquisition, GSA-GS edition; Book 85 AD-2777, U.S. Government Printing Office Stock Number 024-001-03489-1.

6. Manual of Analytical Methods for the Analysis of Pesticide Residues in Humans and Environmental Samples, 1980; Stock Number EPA-600/8-80-038, U.S. Environmental Protection Agency.

M. A description of the flooding potential of the discharge site, including the 100-year flood plain, and any applicable flood protection measures.

N. Contingency plan for regaining and maintaining compliance with the permit limits and for reestablishing best available technology as defined in the permit.

O. Methods and procedures for inspections of the facility operations and for detecting failure of the system.

P. For any existing facility, a corrective action plan or identification of other response measures to be taken to remedy any violation of applicable ground water quality standards, class TDS limits or permit limit established under R317-6-6.4E. which has resulted from discharges occurring prior to issuance of a ground water discharge permit.

Q. Other information required by the Executive Secretary.

6.4 ISSUANCE OF DISCHARGE PERMIT

A. The Executive Secretary may issue a ground water discharge permit for a new facility if the Executive Secretary determines, after reviewing the information provided under R317-6-6.3, that:

1. the applicant demonstrates that the applicable class TDS limits, ground water quality standards protection levels, and permit limits established under R317-6-6.4E will be met;

2. the monitoring plan, sampling and reporting requirements are adequate to determine compliance with applicable requirements;

3. the applicant is using best available technology to minimize the discharge of any pollutant; and

4. there is no impairment of present and future beneficial uses of the ground water.

B. The Board may approve an alternate concentration limit for a new facility if:

1. The applicant submits a petition for an alternate concentration limit showing the extent to which the discharge will exceed the applicable class TDS limits, ground water standards or applicable protection levels and demonstrates that:

a. the facility is to be located in an area of Class III ground water;

b. the discharge plan incorporates the use of best available technology;

c. the alternate concentration limit is justified based on substantial overriding social and economic benefits; and,

d. the discharge would pose no threat to human health and the environment.

2. One or more public hearings have been held by the Board in nearby communities to solicit comment.

C. The Executive Secretary may issue a ground water discharge permit for an existing facility provided:

1. the applicant demonstrates that the applicable class TDS limits, ground water quality standards and protection levels will be met;

2. the monitoring plan, sampling and reporting requirements are adequate to determine compliance with applicable requirements;

3. the applicant utilizes treatment and discharge minimization technology commensurate with plant process design capability and similar or equivalent to that utilized by facilities that produce similar products or services with similar production process technology; and,

4. there is no current or anticipated impairment of present and future beneficial uses of the ground water.

D. The Board may approve an alternate concentration limit for a pollutant in ground water at an existing facility or facility permitted by rule under R317-6-6.2 if the applicant for a ground water discharge permit shows the extent the discharge exceeds the applicable class TDS limits, ground water quality standards and applicable protection levels that correspond to the otherwise applicable ground water quality standards and demonstrates that:

1. steps are being taken to correct the source of contamination, including a program and timetable for completion;

2. the pollution poses no threat to human health and the environment; and

3. the alternate concentration limit is justified based on overriding social and economic benefits.

E. An alternate concentration limit, once adopted by the Board under R317-6-6.4B or R317-6-6.4D, shall be the pertinent permit limit.

F. A facility permitted under this provision shall meet applicable class TDS limits, ground water quality standards, protection levels and permit limits.

G. The Board may modify a permit for a new facility to reflect standards adopted as part of corrective action.

6.5 NOTICE OF INTENT TO ISSUE A GROUND WATER DISCHARGE PERMIT

The Executive Secretary shall publish a notice of intent to approve in a newspaper in the affected area and shall allow 30 days in which interested persons may comment to the Board. Final action will be taken by the Executive Secretary following the 30-day comment period.

6.6 PERMIT TERM

A. The ground water discharge permit term will run for 5 years from the date of issuance. Permits may be renewed for 5-year periods or extended for a period to be determined by the Executive Secretary but not to exceed 5 years.

B. In the event that new ground water quality standards are adopted by the Board, permits may be reopened to extend the terms of the permit or to include pollutants covered by new standards. The holder of a permit may apply for a variance under the conditions outlined in R317-6-6.4.D.

6.7 GROUND WATER DISCHARGE PERMIT RENEWAL

The permittee for a facility with a ground water discharge permit must apply for a renewal or extension for a ground water discharge permit at least 180 days prior to the expiration of the existing permit. If a permit expires before an application for renewal or extension is acted upon by the Executive Secretary, the permit will continue in effect until it is renewed, extended or denied.

6.8 TERMINATION OF A GROUND WATER DISCHARGE PERMIT BY THE EXECUTIVE SECRETARY

A ground water discharge permit may be terminated or a renewal denied by the Executive Secretary if one of the following applies:

A. noncompliance by the permittee with any condition of the permit where the permittee has failed to take appropriate action in a timely manner to remedy the permit violation;

B. the permittee's failure in the application or during the permit approval process to disclose fully all significant relevant facts at any time;

C. a determination that the permitted facility endangers human health or the environment and can only be regulated to acceptable levels by plan modification or termination; or

D.the permittee requests termination of the permit.

6.9 PERMIT COMPLIANCE MONITORING

A. Ground Water Monitoring

The Executive Secretary may include in a ground water discharge permit requirements for ground water monitoring, and may specify compliance monitoring points where the applicable class TDS limits, ground water quality standards, protection levels or other permit limits are to be met.

The Executive Secretary will determine the location of the compliance monitoring point based upon the hydrology, type of pollutants, and other factors that may affect the ground water quality. The distance to the compliance monitoring points must be as close as practicable to the point of discharge. The compliance monitoring point shall not be beyond the property boundaries of the permitted facility without written agreement of the affected property owners and approval by the Executive Secretary..

B. Performance Monitoring

The Executive Secretary may include in a ground water discharge permit requirements for monitoring performance of best available technology standards.

6.10 BACKGROUND WATER QUALITY DETERMINATION

A. Background water quality contaminant concentrations shall be determined and specified in the ground water discharge permit. The determination of background concentration shall take into account any degradation.

B. Background water quality contaminant concentrations may be determined from existing information or from data collected by the permit applicant. Existing information shall be used, if the permit applicant demonstrates that the quality of the information and its means of collection are adequate to determine background water quality. If existing information is not adequate to determine background water quality, the permit applicant shall submit a plan to determine background water quality to the Executive Secretary for approval prior to data

collection. One or more up-gradient, lateral hydraulically equivalent point, or other monitoring wells as approved by the Executive Secretary may be required for each potential discharge site.

C. After a permit has been issued, permittee shall continue to monitor background water quality contaminant concentrations in order to determine natural fluctuations in concentrations. Applicable up-gradient, and on-site ground water monitoring data shall be included in the ground water quality permit monitoring report.

6.11 NOTICE OF COMMENCEMENT AND DISCONTINUANCE OF GROUND WATER DISCHARGE OPERATIONS

A. The permittee shall notify the Division of Water Quality immediately upon commencement of the ground water discharge and submit a written notice within 30 days of the commencement of the discharge.

B. The permittee shall notify the Division of Water Quality of the date and reason for discontinuance of ground water discharge within 30 days.

6.12 SUBMISSION OF DATA

A. Laboratory Analyses

All laboratory analysis of samples collected to determine compliance with these regulations shall be performed in accordance with standard procedures by the Utah Division of Laboratory Services or by a laboratory certified by the Utah Department of Health.

B. Field Analyses

All field analyses to determine compliance with these regulations shall be conducted in accordance with standard procedures specified in R317-6-6.3.L.

C. Periodic Submission of Monitoring Reports

Results obtained pursuant to any monitoring requirements in the discharge permit and the methods used to obtain these results shall be periodically reported to the Executive Secretary according to the schedule specified in the ground water discharge permit.

6.13 REPORTING OF MECHANICAL PROBLEMS OR DISCHARGE SYSTEM FAILURES

The permittee shall notify the Executive Secretary within 24 hours of the discovery of any mechanical or discharge system failures that could affect the chemical characteristics or volume of the discharge. A written statement confirming the oral report shall be submitted to the Executive Secretary within five days of the failure.

6.14 CORRECTION OF ADVERSE EFFECTS REQUIRED

A. If monitoring or testing indicates that the permit conditions may be or are being violated by ground water discharge operations or the facility is otherwise in an out-of-compliance status, the permittee shall promptly make corrections to the system to correct all violations of the discharge permit.

B. The permittee, operator, or owner may be required to take corrective action as described in R317-6-6.15 if a pollutant concentration has exceeded a permit limit.

6.15 CORRECTIVE ACTION

It is the intent of the Board that the provisions of these regulations should be considered when making decisions under any state or federal superfund action; however, the protection levels are not intended to be considered as applicable, relevant or appropriate clean-up standards under such other regulatory programs.

A. Application of R317-6-6.15

1. Generally - R317-6-6.15 shall apply to any person who discharges pollutants into ground water in violation of Section 19-5-107, or who places or causes to be placed any wastes in a location where there is probable cause to believe they will cause pollution of ground water in violation of Section 19-5-107.

2. Corrective Action shall include, except as otherwise provided in R317-6-6.15, preparation of a Contamination Investigation and preparation and implementation of a Corrective Action Plan.

3. The procedural provisions of R-317-6-6.15 shall not apply to any facility where a corrective or remedial action for ground water contamination, that the Executive Secretary determines meets the substantive standards of this rule, has been initiated under any other state or federal program. Corrective or remedial action undertaken under the programs specified in Table 2 are considered to meet the substantive standards of this rule unless otherwise determined by the Executive Secretary.

TABLE 2

PROGRAM

Leaking Underground Storage Tank, Sections 19-6-401, et seq.

Federal Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Sections 9601, et seq.

Hazardous Waste Mitigation Act, Sections 19-6-301 et seq.

Utah Solid and Hazardous Waste Act, Sections 19-6-101 et seq.

B. Notification and Interim Action

1. Notification - A person who spills or discharges any oil or other substance which may cause pollution of ground waters in violation of Section 19-5-107 shall notify the Executive Secretary within 24 hours of the spill or discharge. A written notification shall be submitted to the Executive Secretary within five days after the spill or discharge.

2. Interim Actions - A person is encouraged to take immediate, interim action without following the steps outlined in R317-6-6.15 if such action is required to control a source of pollutants. Interim action is also encouraged if required to protect public safety, public health and welfare and the environment, or to prevent further contamination that would result in costlier clean-up. Such interim actions should include source abatement and control, neutralization, or other actions as appropriate. A person that has taken these actions shall remain subject to R317-6-6.15 after the interim actions are completed unless he demonstrates that:

a. no pollutants have been discharged into ground water in violation of 19-5-107; and

b. no wastes remain in a location where there is probable cause to believe they will cause pollution of ground water in violation of 19-5-107.

C. Contamination Investigation and Corrective Action Plan - General

1. The Executive Secretary may require a person that is subject to R317-6-6.15 to submit for the Executive Secretary's approval a Contamination Investigation and Corrective Action Plan, and may require implementation of an approved Corrective Action Plan. A person subject to this rule who has been notified that the Executive Secretary is exercising his or her authority under R317-6-6.15 to require submission of a Contamination Investigation and Corrective Action Plan, shall, within 30 days of that notification, submit to the Executive Secretary a proposed schedule for those submissions, which may include different deadlines for different elements of the Investigation and Plan. The Executive Secretary may accept, reject, or modify the proposed schedule.

2. The Contamination Investigation or the Corrective Action Plan may, in order to meet the requirements of this Part, incorporate by reference information already provided to the Executive Secretary in the Contingency Plan or other document.

3. The requirements for a Contamination Investigation and a Corrective Action Plan specified in R317-6-6.15.D are comprehensive. The requirements are intended to be applied with flexibility, and persons subject to this rule are encouraged to contact the Executive Secretary's staff to assure its efficient application on a site-specific basis.

4. The Executive Secretary may waive any or all Contamination Investigation and Corrective Action Plan requirements where the person subject to this rule demonstrates that the information that would otherwise be required is not necessary to the Executive Secretary's evaluation of the Contamination Investigation or Corrective Action Plan. Requests for waiver shall be submitted to the Executive Secretary as part of the Contamination Investigation or Corrective Action Plan, or may be submitted in advance of those reports.

D. Contamination Investigation and Corrective Action Plan - Requirements

1. Contamination Investigation - The contamination investigation shall include a characterization of pollution, a characterization of the facility, a data report, and, if the Corrective Action Plan proposes standards under R317-6-6.15.F.2. or Alternate Corrective Action Concentration Limits higher than the ground water quality standards, an endangerment assessment.

a. The characterization of pollution shall include a description of:

(1) The amount, form, concentration, toxicity, environmental fate and transport, and other significant characteristics of substances present, for both ground water contaminants and any contributing surficial contaminants;

(2) The areal and vertical extent of the contaminant concentration, distribution and chemical make-up; and

(3) The extent to which contaminant substances have migrated and are expected to migrate.

b. The characterization of the facility shall include descriptions of:

(1) Contaminant substance mixtures present and media of occurrence;

(2) Hydrogeologic conditions underlying and, upgradient and downgradient of the facility;

(3) Surface waters in the area;

(4) Climatologic and meteorologic conditions in the area of the facility; and

(5) Type, location and description of possible sources of the pollution at the facility;

(6) Groundwater withdrawals, pumpage rates, and usage within a 2-mile radius.

c. The report of data used and data gaps shall include:

(1) Data packages including quality assurance and quality control reports;

(2) A description of the data used in the report; and

(3) A description of any data gaps encountered, how those gaps affect the analysis and any plans to fill those gaps.

d. The endangerment assessment shall include descriptions of any risk evaluation necessary to support a proposal for a standard under R317-6-6.15.F.2 or for an Alternate Corrective Action Concentration Limit.

e. The Contamination Investigation shall include such other information as the Executive Secretary requires.

2. Proposed Corrective Action Plan

The proposed Corrective Action Plan shall include an explanation of the construction and operation of the proposed Corrective Action, addressing the factors to be considered by the Executive Secretary as specified in R317-6-6.15.E. and shall include such other information as the Executive Secretary requires. It shall also include a proposed schedule for completion.

E. Approval of the Corrective Action Plan

After public notice in a newspaper in the affected area and a 30-day period for opportunity for public review and comment, the Executive Secretary shall issue an order approving, disapproving, or modifying the proposed Corrective Action Plan. The Executive Secretary shall consider the following factors and criteria in making that decision:

1. Completeness and Accuracy of Corrective Action Plan.

The Executive Secretary shall consider the completeness and accuracy of the Corrective Action Plan and of the information upon which it relies.

2. Action Protective of Public Health and the Environment

a.The Corrective Action shall be protective of the public health and the environment.

b.Impacts as a result of any off-site activities shall be considered under this criterion (e.g., the transport and disposition of contaminated materials at an off-site facility).

3. Action Meets Concentration Limits

The Corrective Action shall meet Corrective Action Concentration Limits specified in R317-6-6.15.F, except as provided in R317-6-6.15.G.

4. Action Produces a Permanent Effect

a. The Corrective Action shall produce a permanent effect.

b. If the Corrective Action Plan provides that any potential sources of pollutants are to be controlled in place, any cap or other method of source control shall be designed so that the discharge from the source following corrective action achieves ground water quality standards or, if approved by the Board, alternate corrective action concentration limits (ACACLs). For purposes of this paragraph, sources of pollutants are controlled "in place" even though they are moved within the facility boundaries provided that they are not moved to areas with unaffected ground water.

5. Action May Use Other Additional Measures

The Executive Secretary may consider whether additional measures should be included in the Plan to better assure that the criteria and factors specified in R317-6-6.15.E are met. Such measures may include:

a. Requiring long-term ground water or other monitoring;

b. Providing environmental hazard notices or other security measures;

c. Capping of sources of ground water contamination to avoid infiltration of precipitation;

d. Requiring long-term operation and maintenance of all portions of the Corrective Action; and

e. Periodic review to determine whether the Corrective Action is protective of public health and the environment.

F. Corrective Action Concentration Limits

1. Contaminants with specified levels

Corrective Actions shall achieve ground water quality standards or, where applicable, alternate corrective action concentration limits (ACACLs).

2. Contaminants without specified levels

For contaminants for which no ground water quality standard has been established, the proposed Corrective Action Plan shall include proposed Corrective Action Concentration Limits. These levels shall be approved, disapproved or modified by the Executive Secretary after considering U.S. Environmental Protection Agency maximum contaminant level goals, health advisories, risk-based contaminant levels or standards established by other regulatory agencies and other relevant information.

G. Alternate Corrective Action Concentration Limits

An Alternate Corrective Action Concentration Limit that is higher or lower than the Corrective Action Concentration Limits specified in R317-6-6.15.F may be required as provided in the following:

1. Higher Alternate Corrective Action Concentration Limits

A person submitting a proposed Corrective Action Plan may request approval by the Board of an Alternate Corrective Action Concentration Limit higher than the Corrective Action Concentration Limit specified in R317-6-6.15.F. The proposed limit shall be protective of human health, and the environment, and shall utilize best available technology. The Corrective Action Plan shall include the following information in support of this request:

a. The potential for release and migration of any contaminant substances or treatment residuals that might remain after Corrective Action in concentrations higher than Corrective Action Concentration Limits;

b. An evaluation of residual risks, in terms of amounts and concentrations of contaminant substances remaining following implementation of the Corrective Action options evaluated, including consideration of the persistence, toxicity, mobility, and propensity to bioaccumulate such contaminants substances and their constituents; and

c. Any other information necessary to determine whether the conditions of R317-6-6.15.G have been met.

2. Lower Alternate Corrective Action Concentration Limits

The Board may require use of an Alternate Corrective Action Concentration Limit that is lower than the Corrective Action Concentration Limit specified in R317-6-6.15.F if necessary to protect human health or the environment. Any person requesting that the Board consider requiring a lower Alternate Corrective Action Concentration Limit shall provide supporting information as described in R317-6-6.15.G.3.

3. Protective of human health and the environment

The Alternate Corrective Action Concentration Limit must be protective of human health and the environment. In making this determination, the Board may consider:

a. Information presented in the Contamination Investigation;

b. Other relevant cleanup or health standards, criteria, or guidance;

c. Relevant and reasonably available scientific information;

d. Any additional information relevant to the protectiveness of a Corrective Action; and

e. The impact of additional proposed measures, such as those described in R317-6-6.15.E.5.

4. Good cause

An Alternate Corrective Action Concentration Limit shall not be granted without good cause.

a. The Board may consider the factors specified in R317-6-6.15.E in determining whether there is good cause.

b. The Board may also consider whether the proposed remedy is cost-effective in determining whether there is good cause. Costs that may be considered include but are not limited to:

(1) Capital costs;

(2) Operation and maintenance costs;

(3) Costs of periodic reviews, where required;

(4) Net present value of capital and operation and maintenance costs;

(5) Potential future remedial action costs; and

(6) Loss of resource value.

5. Conservative

An Alternate Corrective Action Concentration Limit that is higher than the Corrective Action Concentration Limits specified in R317-6-6.15.F must be conservative. The Board may consider the concentration level that can be achieved using best available technology if attainment of the Corrective Action Concentration Limit is not technologically achievable.

6. Relation to background and existing conditions

a. The Board may consider the relationship between the Corrective Action Concentration Limits and background concentration limits in considering whether an Alternate Corrective Action Concentration Limit is appropriate.

b. No Alternate Corrective Action Concentration Limit higher than existing ground water contamination levels or ground water contamination levels projected to result from existing conditions will be granted.

6.16 OUT-OF-COMPLIANCE STATUS

A. Accelerated Monitoring for Probable Out-of-Compliance Status

If the concentration of a pollutant in any compliance monitoring sample exceeds an applicable permit limit, the facility shall:

1. Notify the Executive Secretary in writing within 30 days

of receipt of data;

2. Initiate monthly sampling, unless the Executive Secretary determines that other periodic sampling is appropriate, for a period of two months or until the compliance status of the facility can be determined.

B. Violation of Permit Limits

Out-of-compliance status exists when:

1. two consecutive samples from a compliance monitoring point exceed:

a. one or more permit limits; and

b. the mean ground water pollutant concentration for that pollutant by two standard deviations (the standard deviation and mean being calculated using values for the ground water pollutant at that compliance monitoring point); or

2. the concentration value of any pollutant in two or more consecutive samples is statistically significantly higher than the applicable permit limit. The statistical significance shall be determined using the statistical methods described in Statistical Methods for Evaluating Ground Water Monitoring Data from Hazardous Waste Facilities, Vol. 53, No. 196 of the Federal Register, Oct. 11, 1988.

C. Failure to Maintain Best Available Technology Required by Permit

1. Permittee to Provide Information

In the event that the permittee fails to maintain best available technology or otherwise fails to meet best available technology standards as required by the permit, the permittee shall submit to the Executive Secretary a notification and description of the failure according to R317-6-6.13. Notification shall be given orally within 24 hours of the permittee's discovery of the failure of best available technology, and shall be followed up by written notification, including the information necessary to make a determination under R317-6-6.16.C.2, within five days of the permittee's discovery of the failure of best available technology.

2. Executive Secretary

The Executive Secretary shall use the information provided under R317-6-6.16.C.1 and any additional information provided by the permittee to determine whether to initiate a compliance action against the permittee for violation of permit conditions. The Executive Secretary shall not initiate a compliance action if the Executive Secretary determines that the permittee has met the standards for an affirmative defense, as specified in R317-6-6.16.C.3.

3. Affirmative Defense

In the event a compliance action is initiated against the permittee for violation of permit conditions relating to best available technology, the permittee may affirmatively defend against that action by demonstrating the following:

a. The permittee submitted notification according to R317-6-6.13;

b. The failure was not intentional or caused by the permittee's negligence, either in action or in failure to act;

c. The permittee has taken adequate measures to meet permit conditions in a timely manner or has submitted to the Executive Secretary, for the Executive Secretary's approval, an adequate plan and schedule for meeting permit conditions; and

d. The provisions of 19-5-107 have not been violated.

6.17 PROCEDURE WHEN A FACILITY IS OUT-OF-COMPLIANCE

A. If a facility is out of compliance the following is required:

1. The permittee shall notify the Executive Secretary of the out of compliance status within 24 hours after detection of that status, followed by a written notice within 5 days of the detection.

2. The permittee shall initiate monthly sampling, unless the Executive Secretary determines that other periodic sampling is appropriate, until the facility is brought into compliance.

3. The permittee shall prepare and submit within 30 days to the Executive Secretary a plan and time schedule for assessment of the source, extent and potential dispersion of the contamination, and an evaluation of potential remedial action to restore and maintain ground water quality and insure that permit limits will not be exceeded at the compliance monitoring point and best available technology will be reestablished.

4. The Executive Secretary may require immediate implementation of the contingency plan submitted with the original ground water discharge permit in order to regain and maintain compliance with the permit limit standards at the compliance monitoring point or to reestablish best available technology as defined in the permit.

5. Where it is infeasible to re-establish BAT as defined in the permit, the permittee may propose an alternative BAT for approval by the Executive Secretary.

6.18 GROUND WATER DISCHARGE PERMIT TRANSFER

A. The permittee shall give written notice to the Executive Secretary of any transfer of the ground water discharge permit, within 30 days of the transfer.

B. The notice shall include a written agreement between the existing and new permittee establishing a specific date for transfer of permit responsibility, coverage and liability.

6.19 ENFORCEMENT

These rules are subject to enforcement under Section 19-5-115 of the Utah Water Quality Act.

6.20 HEARING AND APPEALS

A. Any person may request a hearing before the Board who:

1. is denied a permit by rule by the Executive Secretary under R317-6-6.2;

2. objects to a discharge limit established by the Executive Secretary;

3. objects to conditions or limitations proposed or established by the Executive Secretary in the ground water discharge permit; or

4. objects to monitoring, sampling, information, or other requests or requirements made by the Executive Secretary;

5. objects to denial by the Executive Secretary of a proposed Corrective Action Plan under R317-6-6.15; or

6. objects to conditions proposed or established by the Executive Secretary in a Corrective Action Plan under R317-6-6.15.

B. Any person who is denied a permit or whose permit is proposed to be terminated or revoked by the Executive Secretary may appeal that decision to the Executive Director of the Department of Environmental Quality pursuant to Section 19-5-112(2).

C. Hearings under R317-6 will be conducted using the Utah Administrative Procedures Act, Title 63, Chapter 46b.

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R317. Environmental Quality, Water Quality.
R317-8. Utah Pollutant Discharge Elimination System (UPDES).
R317-8-1. General Provisions and Definitions.

1.1 Comparability With the CWA. The UPDES rules promulgated pursuant to the Utah Water Quality Act are intended to be compatible with the Federal regulations adopted pursuant to CWA.

1.2 Conflicting Provisions. The provisions of the UPDES rules are to be construed as being compatible with and complementary to each other. In the event that any of these rules are found by a court of competent jurisdiction to be contradictory, the more stringent provisions shall apply.

1.3 Severability. In the event that any provision of these rules is found to be invalid by a court of competent jurisdiction, the remaining UPDES rules shall not be affected or diminished thereby.

1.4 Administration of the UPDES Program. The Executive Secretary of the Utah Water Quality Board has responsibility for the administration of the UPDES program, including pretreatment. The responsibility for the program is delegated to the Executive Secretary in accordance with UCA Subsection 19-5-104(11) and UCA Subsection 19-5-107(2)(a). The Executive Secretary has the responsibility for issuance, denial, modification, revocation and enforcement of UPDES permits, including general permits, Federal facilities permits, and sludge permits; and approval and enforcement authority for the pretreatment program.

In accordance with UCA Subsection 19-5-112(2), a hearing for a person who has been denied a permit or who has had a permit revoked shall be conducted before the Executive Director or his (or her) designee. The decision of the Executive Director is final and binding on all parties unless a judicial appeal is made. Appeals of permit conditions are also made to the Executive Director. The Executive Secretary is under the administrative direction of the Executive Director of the Department of Environmental Quality.

1.5 Definitions. The following terms have the meaning as set forth unless a different meaning clearly appears from the context or unless a different meaning is stated in a definition applicable to only a portion of these rules:

(1) "Administrator" means the Administrator of the United States Environmental Protection Agency, or an authorized representative.

(2) "Applicable standards and limitations" means all standards and limitations to which a discharge, a sewage sludge use or disposal practice, or a related activity is subject under Subsection 19-5-104(6) of the Utah Water Quality Act and regulations promulgated pursuant thereto, including but not limited to effluent limitations, water quality standards, standards of performance, toxic effluent standards or prohibitions, best management practices, pretreatment standards, and standards for sewage sludge use or disposal.

(3) "Application" means the forms approved by the Utah Water Quality Board, which are the same as the EPA standard NPDES forms, for applying for a UPDES permit, including any additions, revisions or modifications.

(4) "Average monthly discharge limit" means the highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharge measured during a calendar month divided by the number of daily discharges measured during the month.

(5) "Average weekly discharge limit" means the highest allowable average of daily discharges over a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week.

(6) "Best management practices (BMPs)" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the state. BMPs also include treatment requirements, operating procedures, practices to control plant site runoff, spillage or leaks, sludge or waste disposal or drainage from raw material storage.

(7) "Class I sludge management facility" means any POTW required to have an approved pretreatment program under R317-8-8 and any other treatment works treating domestic sewage classified as a Class I sludge management facility by the Executive Secretary, because of the potential for its sludge use or disposal practices to adversely affect public health and the environment.

(8) "Continuous discharge" means a discharge which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

(9) "CWA" means the Clean Water Act as subsequently amended (33 U.S.C. 1251 et seq.).

(10) "Daily discharge" means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day.

(11) "Direct discharge" means the discharge of a pollutant.

(12) "Discharge of a pollutant" means any addition of any pollutants to "waters of the State" from any "point source." This definition includes additions of pollutants into waters of the State from: surface runoff which is collected or channelled by man; discharges through pipes, sewers, or other conveyances owned by the State, a municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any "indirect discharger."

(13) "Economic impact consideration" means the reasonable consideration given by the Executive Secretary to the

economic impact of water pollution control on industry and agriculture; provided, however, that such consideration shall be consistent and in compliance with the CWA and EPA promulgated regulations.

(14) "Executive Secretary" means the Executive Secretary of the Utah Water Quality Board or its authorized representative.

(15) "Discharge Monitoring Report (DMR)" means EPA uniform national form or equivalent State form, including any subsequent additions, revisions or modifications, for the reporting of self-monitoring results by permittees.

(16) "Draft permit" means a document prepared under R317-8-6.3 indicating the Executive Secretary's preliminary decision to issue or deny, modify, revoke and reissue, terminate, or reissue a permit. A notice of intent to terminate a permit, and a notice of intent to deny a permit are types of draft permits. A denial of a request for modification, revocation and reissuance, or termination as provided in R317-8-5.6 is not a draft permit. A proposed permit prepared after the close of the public comment period is not a draft permit.

(17) "Effluent limitation" means any restriction imposed by the Executive Secretary on quantities, discharge rates, and concentrations of pollutants which are discharged from point sources into waters of the State.

(18) "Effluent limitations guidelines" means a regulation published by the Administrator under section 304(b) of CWA to adopt or revise effluent limitations.

(19) "Environmental Protection Agency (EPA)" means the United States Environmental Protection Agency.

(20) "Facility or activity" means any UPDES point source, or any other facility or activity, including land or appurtenances thereto, that is subject to regulation under the UPDES program.

(21) "General permit" means any UPDES permit authorizing a category of discharges within a geographical area, and issued under R317-8-2.5.

(22) "Hazardous substance" means any substance designated under 40 CFR Part 116.

(23) "Indirect discharge" means a nondomestic discharger introducing pollutants to a publicly owned treatment works.

(24) "Interstate agency" means an agency of which Utah and one or more states is a member, established by or under an agreement or compact, or any other agency, of which Utah and one or more other states are members, having substantial powers or duties pertaining to the control of pollutants.

(25) "Major facility" means any UPDES facility or activity classified as such by the Executive Secretary in conjunction with the Regional Administrator.

(26) "Maximum daily discharge limitation" means the highest allowable daily discharge.

(27) "Municipality" means a city, town, district, county, or other public body created by or under the State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes. For purposes of these rules, an agency designated by the Governor under Section 208 of the CWA is also considered to be a municipality.

(28) "National Pollutant Discharge Elimination System (NPDES)" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements under Sections 307, 402, 318 and 405 of the CWA.

(29) "New discharger" means any building, structure, facility, or installation:

(a) From which there is or may be a "discharge of pollutants;"

(b) That did not commence the "discharge of pollutants" at a particular "site" prior to August 13, 1979;

(c) Which is not a "new source;" and

(d) Which has never received a finally effective UPDES permit for discharges at that "site."

This definition includes an "indirect discharger" which commenced discharging into waters of the state after August 13, 1979.

(30) "New source" means any building, structure, facility, or installation from which there is or may be a direct or indirect discharge of pollutants, the construction of which commenced;

(a) After promulgation of EPA's standards of performance under Section 306 of CWA which are applicable to such source, or

(b) After proposal of Federal standards of performance in accordance with Section 306 of CWA which are applicable to such source, but only if the Federal standards are promulgated in accordance with Section 306 within 120 days of their proposal.

(31) "Owner or operator" means the owner or operator of any facility or activity subject to regulation under the UPDES program.

(32) "Permit" means an authorization, license, or equivalent control document issued by the Executive Secretary to implement the requirements of the UPDES regulations. "Permit" includes a UPDES "general permit." The term does not include any document which has not yet been the subject of final agency action, such as a draft permit or a proposed permit.

(33) "Person" means any individual, corporation, partnership, association, company or body politic, including any agency or instrumentality of the United States government.

(34) "Point source" means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft, from which pollutants are or may be discharged. This term does not include agricultural storm-water runoff or return flows from irrigated agriculture.

(35) "Pollutant" means, for the purpose of these regulations, dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean:

(a) Sewage from vessels; or

(b) Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the State in which the well is located, and if the State determines that the injection

or disposal will not result in the degradation of ground or surface water resources.

(36) "Pollution" means any man-made or man-induced alteration of the chemical, physical, biological, or radiological integrity of any waters of the State, unless such alteration is necessary for the public health and safety. Alterations which are not consistent with the requirements of the CWA and implementing regulations shall not be deemed to be alterations necessary for the public health and safety. A discharge not in accordance with Utah Water Quality Standards, stream classification, and UPDES permit requirements, including technology-based standards shall be deemed to be pollution.

(37) "Primary industry category" means any industry category listed in R317-8-3.10.

(38) "Privately owned treatment works" means any device or system which is used to treat wastes from any facility whose operator is not the operator of the treatment works and which is not a POTW.

(39) "Process wastewater" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.

(40) "Proposed permit" means a UPDES permit prepared after the close of the public comment period and, when applicable, any public hearing and administrative appeals, which is sent to EPA for review before final issuance by the Executive Secretary. A proposed permit is not a draft permit.

(41) "Publicly-owned treatment works" (POTW) means any facility for the treatment of pollutants owned by the State, its political subdivisions, or other public entity. For the purposes of these regulations, POTW includes sewers, pipes or other conveyances conveying wastewater to a POTW providing treatment, treatment of pollutants includes recycling and reclamation, and pollutants refers to municipal sewage or industrial wastes of a liquid nature.

(42) "Recommencing discharger" means a source which resumes discharge after terminating operation.

(43) "Regional Administrator" means the Regional Administrator of the Region VIII office of the EPA or the authorized representative of the Regional Administrator.

(44) "Schedule of compliance" means a schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements leading to compliance with the Utah Water Quality Act and rules promulgated pursuant thereto.

(45) "Secondary industry category" means any industry category which is not a primary industry category.

(46) "Septage" means the liquid and solid material pumped from a septic tank, cesspool, or similar domestic sewage treatment system, or a holding tank when the system is cleaned or maintained.

(47) "Seven (7) consecutive day discharge limit" means the highest allowable average of daily discharges over a seven (7) consecutive day period.

(48) "Sewage from vessels" means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes that are discharged from vessels and regulated under Section 312 of CWA.

(49) "Sewage sludge" means any solid, semi-solid, or liquid residue removed during the treatment of municipal wastewater or domestic sewage. Sewage sludge includes, but is not limited to, solids removed during primary, secondary or advanced wastewater treatment, scum, septage, portable toilet dumpings, type III marine sanitation device pumpings, and sewage sludge products. Sewage sludge does not include grit or screenings, or ash generated during the incineration of sewage sludge.

(50) "Sewage sludge use or disposal practice" means the collection, storage, treatment, transportation, processing, monitoring, use, or disposal of sewage sludge.

(51) "Site" means the land or water area where any "facility or activity" is physically located or conducted, including adjacent land used in connection with the facility or activity.

(52) "Sludge-only facility" means any treatment works treating domestic sewage whose methods of sewage sludge use or disposal are subject to rules promulgated pursuant to Section 19-5-104 of the Utah Water Quality Act and which is required to obtain a permit under R317-8-2.1.

(52a) "Standards for sewage sludge use or disposal" means the rules promulgated pursuant to Section 19-5-104 of the Utah Water Quality Act which govern minimum requirements for sludge quality, management practices, and monitoring and reporting applicable to sewage sludge or the use or disposal of sewage sludge by any person.

(53) "State/EPA Agreement" means an agreement between the State and the Regional Administrator which coordinates State and EPA activities, responsibilities and programs, including those under the CWA programs.

(54) "Thirty (30) consecutive day discharge limit" means the highest allowable average of daily discharges over a thirty (30) consecutive day period.

(55) "Toxic pollutant" means any pollutant listed as toxic in R317-8-7.5 or, in the case of sludge use or disposal practices, any pollutant identified as toxic in State adopted rules for the disposal of sewage sludge.

(56) "Treatment works treating domestic sewage" means a POTW or any other sewage sludge or waste water treatment devices or systems, regardless of ownership (including federal facilities), used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated for the disposal of sewage sludge. This definition does not include septic tanks or similar devices. For purposes of this definition, "domestic sewage" includes waste and waste water from humans or household operations that are discharged to or otherwise enter a treatment works.

(57) "Variance" means any mechanism or provision under the UPDES regulations which allows modification to or waiver of the generally applicable effluent limitation requirements or time deadlines.

(58) "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 or wildlife, shall not be considered to be "waters of the State." The exception for confined bodies of water does not apply to any waters which meet the definition of "waters of the United States" under 40 CFR 122.2. Waters are considered to be confined to and retained within the limits of private property only if there is no discharge or seepage to either surface water or groundwater. Waters of the State includes "wetlands" as defined in the Federal Clean Water Act.

(59) "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstance do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

(60) "Whole effluent toxicity" means the aggregate toxic effect of an effluent as measured directly by a toxicity test.

(61) "Utah Pollutant Discharge Elimination System (UPDES)" means the State-wide program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements under the Utah Water Quality Act.

1.6 Definitions Applicable to Storm-water Discharges.

(1) "Co-Permittee" means a permittee to a UPDES permit that is only responsible for permit conditions relating to the discharge for which it is operator.

(2) "Illicit discharge" means any discharge to a municipal separate storm sewer that is not composed entirely of storm water except discharges pursuant to a UPDES permit (other than the UPDES permit for discharges from the municipal separate storm sewer) and discharges resulting from fire fighting activities.

(3) "Incorporated place" means a city or town that is incorporated under the laws of Utah.

(4) "Large municipal separate storm sewer system" means all municipal separate storm sewers that are:

(a) Located in an incorporated place with a population of 250,000 or more as determined by the latest Decennial Census by the Bureau of Census; or

(b) Located in counties with unincorporated urbanized areas with a population of 250,000 or more according to the latest Decennial Census by the Bureau of Census, except municipal separate storm sewers that are located in the incorporated places, townships or towns within the County; or

(c) Owned or operated by a municipality other than those described in R317-8-1.6(4)(a) or (b) and that are designated by the Executive Secretary as part of a large or medium municipal separate storm sewer system. See R317-8-3.8(6)(a) for provisions regarding this definition.

(5) "Major municipal separate storm sewer outfall" (or "major outfall") means a municipal separate storm sewer outfall that discharges from a single pipe with an inside diameter of 36 inches or more or its equivalent (discharge from a single conveyance other than circular pipe which is associated with a drainage area of more than 50 acres); or for municipal separate storm sewers that receive storm water from lands zoned for industrial activity (based on comprehensive zoning plans or the equivalent), an outfall that discharges from a single pipe with an inside diameter of 12 inches or more or from its equivalent (discharge from other than a circular pipe associated with a drainage area of 2 acres or more).

(6) "Major outfall" means a major municipal separate storm sewer outfall.

(7) "Medium municipal separate storm sewer system" means all municipal separate storm sewers that are:

(a) Located in an incorporated place with a population of 100,000 or more but less than 250,000, as determined by the latest Decennial Census by the Bureau of Census;

(b) Located in counties with unincorporated urbanized areas with a population greater than 100,000 but less than 250,000 as determined by the latest decennial census by the Bureau of the Census; or

(c) Owned or operated by a municipality other than those described in R317-8-1.6(4)(a) and (b) and that are designated by the Executive Secretary as part of the large or medium municipal separate storm sewer system. See R317-8-3.8(6)(b) for provisions regarding this definition.

(8) "Municipal separate storm sewer" means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) which is:

(a) Owned or operated by the state, city, town, county, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the State; and

(b) Designed or used for collecting or conveying storm water;

(c) Not a combined sewer;

(d) Not part of a Publicly Owned Treatment Works (POTW).

(9) "Outfall" means a point source at the point where a municipal separate storm sewer discharges to waters of the State and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other waters of the State and are used to convey waters of the State.

(10) "Overburden" means any material of any nature, consolidated or unconsolidated, that overlies a mineral deposit, excluding topsoil or similar naturally occurring surface materials that are not disturbed by mining operations.

(11) "Runoff coefficient" means the fraction of total rainfall that will appear at a conveyance as runoff.

(12) "Significant materials" means, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under section 101(14) of CERCLA: any chemical the facility is required to report pursuant to section 313 of Title III of SARA: fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with storm water discharges.

(13) "Storm water" means storm water runoff, snow melt runoff, and surface runoff and drainage.

(14) "Storm water discharge associated with industrial activity" means the discharge from any conveyance which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the UPDES program. See R317-8-3.8(6)(c) and (d) for provisions applicable to this definition.

1.7 Abbreviations and Acronyms. The following abbreviations and acronyms, as used throughout the UPDES regulations, shall have the meaning given below:

(1) "BAT" means best available technology economically achievable;

(2) "BCT" means best conventional pollutant control technology;

(3) "BMPs" means best management practices;

(4) "BOD" means biochemical oxygen demands;

(5) "BPT" means best practicable technology currently available;

(6) "CFR" means Code of Federal Regulations;

(7) "COD" means chemical oxygen demand;

(8) "CWA" means the Federal Clean Water Act;

(9) "DMR" means discharge monitoring report;

(10) "NPDES" means National Pollutant Discharge Elimination System;

(11) "POTW" means publicly owned treatment works;

(12) "SIC" means standard industrial classification;

(13) "TDS" means total dissolved solids;

(14) "TSS" means total suspended solids;

(15) "UPDES" means Utah Pollutant Discharge Elimination System;

(16) "UWQB" means the Utah Water Quality Board;

(17) "WET" means whole effluent toxicity.

1.8 Upgrade and Reclassification. Upgrading or reclassification of waters of the State by the Utah Water Pollution Control Committee may be done periodically, but only using procedures and in a manner consistent with the requirements of State and Federal law.

1.9 Public Participation. In addition to hearings required under the State Administrative Procedures Act and proceedings otherwise outlined or referenced in these regulations, the Executive Secretary will investigate and provide written response to all citizen complaints. In addition, the Executive Secretary shall not oppose intervention in any civil or administrative proceeding by any citizen where permissive intervention may be authorized by statute, rule or regulation. The Executive Secretary will publish notice of and provide at least 30 days for public comment on any proposed settlement of any enforcement action.

1.10 Incorporation of Federal Regulations by Reference. The State adopts the following Federal standards and procedures, effective as of July 1, 1994, which are incorporated by reference:

(1) 40 CFR 129 (Toxic Effluent Standards) with the following exceptions:

(a) Substitute "UPDES" for all federal regulation references to "NPDES".

(b) Substitute "Executive Secretary" for all federal regulation references to "State Director".

(c) Substitute "R317-4.4, R317-6, and R317-8-7" for all federal regulation references to "40 CFR Parts 124 and 125".

(2) 40 CFR 133 (Secondary Treatment Regulation) with the following exceptions:

(a) 40 CFR 133.102 for which R317-1-3.2 is substituted.

(b) 40 CFR 133.105.

(c) Substitute "UPDES" or "Utah Pollutant Discharge Elimination System" for all federal regulation references for "NPDES" or "National Pollutant Discharge Elimination System", respectively.

(d) Substitute "Executive Secretary" for all federal regulation references to "State Director" in 40 CFR 133.103.

(3) 40 CFR 136 (Guidelines Establishing Test Procedures for the Analysis of Pollutants)

(4) 40 CFR 403.6 (National Pretreatment Standards and Categorical Standards) with the following exception:

(a) Substitute "Executive Secretary" for all federal regulation references to "Director".

(5) 40 CFR 403.7 (Removal Credits)

(6) 40 CFR 403.13 (Variances from Categorical Pretreatment Standards for Fundamentally Different Factors)

(7) 40 CFR 403.15 (Net/Gross Calculation)

(8) 40 CFR Parts 405 through 471

(9) 40 CFR 503 (Standards for the Use or Disposal of Sewage Sludge), effective as of the date that responsibility for implementation of the federal Sludge Management Program is delegated to the State except as provided in R317-1-6.4, with the following changes:

(a) Substitute "Executive Secretary" for all federal regulation references to "Director".

R317-8-2. Scope and Applicability.

2.1 Applicability of the UPDES Requirements. The UPDES program requires permits for the discharge of pollutants from any point source into waters of the State. The program also applies to owners or operators of any treatment works treating domestic sewage, whether or not the treatment works is otherwise required to obtain a UPDES permit in accordance with R317-8-8. Prior to promulgation of State rules for sewage sludge use and disposal, the Executive Secretary shall impose interim conditions in permits issued for publicly owned treatment works or take such other measures as the Executive Secretary deems appropriate to protect public health and the environment from any adverse affects which may occur from toxic pollutants in sewage sludge.

(1) Specific inclusions. The following are examples of specific categories of point sources requiring UPDES permits for discharges. These terms are further defined in R317-8-3.4 through R317-8-8.9.

(a) Concentrated animal feeding operations;

(b) Concentrated aquatic animal production facilities;

(c) Discharges into aquaculture projects;

(d) Storm water discharges; and

(e) Silvicultural point sources.

(2) Specific exclusions. The following discharges do not require UPDES permits:

(a) Any discharge of sewage from vessels, effluent from properly functioning marine engines, laundry, shower, and

galley sink wastes, or any other discharge incidental to the normal operation of a vessel. This exclusion does not apply to rubbish, trash, garbage, or other such materials discharged overboard; nor to other discharges when the vessel is operating in a capacity other than as a means of transportation such as when used as an energy or mining facility, a storage facility or a seafood processing facility, or when secured to storage facility or a seafood processing facility, or when secured in waters of the state for the purpose of mineral or oil exploration or development.

(b) Discharges of dredged or fill material into waters of the State which are regulated under Section 404 of CWA.

(c) The introduction of sewage, industrial wastes, or other pollutants into publicly owned treatment works by indirect dischargers. Plans or agreements to switch to this method of disposal in the future do not relieve dischargers of the obligation to have and comply with permits until all discharges of pollutants to waters of the State are eliminated. This exclusion does not apply to the introduction of pollutants to privately owned treatment works or to other discharges through pipes, sewers, or other conveyances owned by the State, a municipality, or other party not leading to treatment works.

(d) Any discharge in compliance with the instructions of an on-scene coordinator pursuant to 40 CFR 300 (The National Oil and Hazardous Substances Pollution Contingency Plan) or 33 CFR 153.10(e) (Pollution by Oil and Hazardous Substances).

(e) Any introduction of pollutants from non-point source agricultural and silvicultural activities, including storm water runoff from orchards, cultivated crops, pastures, rangelands, and forest lands, but not discharges from concentrated animal feeding operations as defined in R317-8-3.5, discharges from concentrated aquatic animal production facilities as defined in R317-8-3.6, discharges to aquaculture projects as defined in R317-8-3.7, and discharges from silvicultural point sources as defined in R317-8-3.9.

(f) Return flows from irrigated agriculture.

(g) Discharges into a privately owned treatment works, except as the Executive Secretary may otherwise require under R317-8-4.2(12).

(h) Authorizations by permit or by rule which are prepared to assure that underground injection will not endanger drinking water supplies, and which are issued under the state's Underground Injection Control program; and underground injections and disposal wells which are permitted by the Utah Water Pollution Control Committee pursuant to Part VII of the Utah Wastewater Disposal Regulations or the Board of Oil, Gas and Mining, Class II.

(i) Discharges which are not regulated by the U.S. EPA under Section 402 of the Clean Water Act.

(3) Requirements for permits on a case-by-case basis.

(a) Various sections of R317-8 allow the Executive Secretary to determine, on a case-by-case basis, that certain concentrated animal feeding operations, concentrated aquatic animal production facilities, separate storm sewers and certain other facilities covered by general permits that do not generally require an individual permit may be required to obtain an individual permit because of their contributions to water pollution.

(b) Whenever the Executive Secretary decides that an individual permit is required as specified in R317-8-2.1(3)(a), the Executive Secretary shall notify the discharger in writing of that decision and the reasons for it, and shall send an application form with the notice. The discharger shall apply for a permit within 60 days of receipt of notice, unless permission for a later date is granted by the Executive Secretary. The question whether the determination was proper will remain open for consideration during the public comment period and in any subsequent hearing.

(c) Prior to a case-by-case determination that an individual permit is required for a storm water discharge, the Executive Secretary may require the discharger to submit a permit application or other information regarding the discharge. In requiring such information, the Executive Secretary shall notify the discharger in writing and shall send an application form with the notice. The discharger must apply for a permit within 60 days of notice, unless permission for a later date is granted by the Executive Secretary. The question whether the determination was proper will remain open for consideration during the public comment period and in any subsequent hearing.

2.2 Prohibitions. No permit may be issued by the Executive Secretary:

(1) When the conditions of the permit do not provide for compliance with the applicable requirements of the Utah Water Quality Act, as amended, or rules promulgated pursuant thereto;

(2) When the Regional Administrator has objected to issuance of the permit in writing under the procedures specified in 40 CFR 123.44;

(3) When the imposition of conditions cannot ensure compliance with the applicable water quality requirements of Utah and all affected states;

(4) When, in the judgment of the Secretary of the U.S. Army, acting through the Chief of Engineers, anchorage and navigation in or on any of the waters of the United States would be substantially impaired by the discharge;

(5) For the discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste;

(6) For any discharge inconsistent with a plan or plan amendment approved under Section 208(b) of CWA.

(7) To a new source or a new discharger, if the discharge from its construction or operation will cause or contribute to the violation of water quality standards. The owner or operator of a new source or new discharger proposing to discharge into a water segment which does not meet Utah water quality standards or is not expected to meet those standards even after the application of the effluent limitations required by the UPDES regulations and for which the Executive Secretary has performed a wasteload allocation for the pollutants to be discharged, must demonstrate, before the close of the public comment period, that:

(a) There are sufficient remaining wasteload allocations to allow for the discharge; and

(b) The existing dischargers into the segment are subject to schedules of compliance designed to bring the segment into compliance with Utah Water Quality Standards. (See R317-2.)

2.3 Variance Requests by Non-POTW's. A discharger which is not a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations

under any of the following statutory or regulatory provisions within the time period specified in this section:

(1) Fundamentally different factors.

(a) A request for a variance based on the presence of "fundamentally different factors" from those on which the effluent limitations guideline was based shall be filed as follows:

1. For a request for a variance from best practicable control technology currently available (BPT) by the close of the public comment period under R317-8-6.5.

2. For a request for a variance from best available technology economically achievable (BAT) and/or best conventional pollutant control technology (BCT) by no later than:

a. July 3, 1989, for a request on an effluent limitation guideline promulgated before February 4, 1987, to the extent July 3, 1989 is not later than that provided under previously promulgated regulations: or

b. 180 days after the date on which an effluent limitation guideline is published in the Federal Register for a request based on an effluent limitation guideline promulgated on or after February 4, 1987.

3. Requests should be filed with the Executive Secretary. A request filed with EPA shall be considered to be a request filed under the UPDES program.

(b) The request shall explain how the requirements of the applicable regulatory and statutory criteria have been met.

(2) Non-conventional pollutants. A request for a variance from the BAT requirements for CWA section 301(b)(2)(F) pollutants (commonly called "non-conventional" pollutants) pursuant to Section 301(c) of CWA because of the economic capability of the owner or operator, or pursuant to section 301(g) of the CWA (provided, however, that 301(g) variance may only be requested for ammonia; chlorine; color; iron; total phenols (4AAP) (when determined by the Executive Secretary to be a pollutant covered by section 301(b)(2)(F)) and any other pollutant listed by the Administrator under Section 301((g)(4) of the CWA) must be filed as follows:

(a) For those requests for a variance from an effluent limitation based upon an effluent limitation guideline by:

1. Filing an initial request with the Executive Secretary stating the name of the discharger, the permit number, the outfall number(s), the applicable effluent guideline, and the nature of the modification being requested. This request must have been filed not later than:

a. September 25, 1978, for a pollutant which is controlled by a BAT effluent limitation guideline promulgated before December 27, 1977: or

b. 270 days after promulgation of an applicable effluent limitation guideline for guidelines promulgated after December 27, 1977: and

2. Submitting a completed request no later than the close of the public comment period under R317-8-6.5 demonstrating that the requirements of R317-8-6.8 and the applicable requirements of R317-8-8.7 have been met. Notwithstanding this provision, the complete application for a request shall be filed 180 days before the Executive Secretary must make a decision (unless the Executive Secretary establishes a shorter or longer period). For those requests for a variance from effluent limitations not based on effluent limitation guidelines, the request need only comply with R317-8-2.3(2)(a)(2) and need not be preceded by an initial request under R317-8-2.3(2)(a)(2).

3. Requests should be filed with the Executive Secretary. A request filed with EPA shall be considered to be a request filed under the UPDES program.

(3) Delay in construction of POTW. An extension of the Federal statutory deadlines based on delay in completion of a POTW into which the source is to discharge must have been requested on or before June 26, 1978 or 180 days after the relevant POTW requested an extension under R317-8-2.7, whichever is later, but in no event may this date have been later than January 30, 1988. The request shall explain how the requirements of 40 CFR Part 125, Subpart J have been met.

(4) Innovative technology. An extension from the Federal statutory deadline for best available technology, or for best conventional pollutant control technology, based on the use of innovative technology may be requested no later than the close of the public comment period under Section R317-8-6.5 for the discharger's initial permit requiring compliance with best available technology or best conventional pollutant control technology. The request shall demonstrate that the requirements of Section R317-8-6.8 and 8-5.6 have been met.

(5) Thermal discharges. A variance for the thermal component of any discharge must be filed with a timely application for a permit under R317-8-3 except that if thermal effluent limitations are established by EPA or are based on water quality standards the request for a variance may be filed by the close of the public comment period under R317-8-6.5.

(6) Water Quality Related Effluent Limitations. A modification of requirements for achieving water quality-related effluent limitations may be requested no later than the close of the public comment period under R317-8-6.5 on the permit from which the modification is sought.

2.4 Expedited Variance Procedures and Time Extensions. Notwithstanding the time requirements in R317-8-2.3, the Executive Secretary may notify a permit applicant before a draft permit is issued under R317-8-6.3 that the draft permit will likely contain limitations which are eligible for variances.

(1) In the notice the Executive Secretary may require that the applicant, as a condition of consideration of any potential variance request, submit a request explaining how the requirements of R317-8-7 applicable to the variance have been met. The Executive Secretary may require the submittal within a specified reasonable time after receipt of the notice. The notice may be sent before the permit application has been submitted. The draft or final permit may contain the alternative limitations which may become effective upon final grant of the variance.

(2) A discharger who cannot file a timely complete request required under R317-8-2.3(2) may request an extension. The extension may be granted or denied at the discretion of the Executive Secretary. Extensions will be no more than six months in duration.

2.5 General Permits

(1) Coverage. The Executive Secretary may issue a general permit in accordance with the following:

(a) Area. The general permit will be written to cover a category of discharges or sludge use or disposal practices or facilities described in the permit under paragraph (b) of this

subsection, except those covered by individual permits, within a geographic area. The area will correspond to existing geographic or political boundaries, such as:

1. Designated planning areas under Sections 208 and 303 of CWA;

2. City, county, or state political boundaries;

3. State highway systems;

4. Standard metropolitan statistical areas as defined by the U.S. Office of Management and Budget;

5. Urbanized areas as designated by the U.S. Bureau of the Census, consistent with the U.S. Office of Management and Budget;

6. Any other appropriate division or combination of boundaries as determined by the Executive Secretary.

(b) Sources. The general permit will be written to regulate, within the area described in R317-8-2.5(a), either;

1. Storm water point sources; or

2. A category of point sources other than storm water point sources, or a category of treatment works, treating domestic sewage, if the sources or treatment works treating domestic sewage all:

a. Involve the same or substantially similar types of operations;

b. Discharge the same types of wastes or engage in the same types of sludge use or disposal practices.

c. Require the same effluent limitations, operating conditions, or standards for sludge use or disposal;

d. Require the same or similar monitoring; and

e. In the opinion of the Executive Secretary, are more appropriately controlled under a general permit than under individual permits.

(2) Administration.

(a) General permits may be issued, modified, revoked and reissued, or terminated in accordance with applicable requirements of R317-8-6.

(b) Requiring an individual permit.

1. The Executive Secretary may require any person authorized by a general permit to apply for and obtain an individual UPDES permit. Any interested person may petition the Executive Secretary to take action under R317-8-2.4. Cases where an individual UPDES permit may be required include the following:

a. The discharge(s) is a significant contributor of pollutants. In making this determination, the Executive Secretary may consider the following factors:

i. The location of the discharge with respect to waters of the State;

ii. The size of the discharge;

iii. The quantity and nature of the pollutants discharged to waters of the State; and

iv. Other relevant factors;

b. The discharger or treatment works treating domestic sewage is not in compliance with the conditions of the general UPDES permit;

c. A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source or treatment works treating domestic sewage;

d. Effluent limitation guidelines are promulgated for point sources covered by the general UPDES permit;

e. A Utah Water Quality Management Plan containing requirements applicable to such point sources is approved;

f. Standards for sewage sludge use or disposal have been promulgated for the sludge use and disposal practices covered by the general UPDES permit; or

2. Any owner or operator authorized by a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit. The owner or operator shall submit an application under R317-8-3.1 to the Executive Secretary with reasons supporting the request. The request shall be submitted no later than ninety (90) days after the notice by the Executive Secretary in accordance with R317-8-6.5. If the reasons cited by the owner or operator are adequate to support the request, the Executive Secretary may issue an individual permit.

3. When an individual UPDES permit is issued to an owner or operator otherwise subject to a general UPDES permit, the applicability of the general permit to the individual UPDES permittee is automatically terminated on the effective date of the individual permit.

4. A source excluded from a general permit solely because he already has an individual permit may request that the individual permit be revoked. The permittee shall then request to be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply to the source.

2.6 Disposal of Pollutants into Wells, into POTWs or By Land Application

(1) The Executive Secretary may issue UPDES permits to control the disposal of pollutants into wells when necessary to protect the public health and welfare, and to prevent the pollution of ground and surface waters.

(2) When part of a discharger's process wastewater is not being discharged into waters of the State (including groundwater) because it is disposed of into a well, into a POTW, or by land application, thereby reducing the flow or level of pollutants being discharged into waters of the State, applicable effluent standards and limitations for the discharge in a UPDES permit shall be adjusted to reflect the reduced raw waste resulting from such disposal. Effluent limitations and standards in the permit shall be calculated by one of the following methods:

(a) If none of the waste from a particular process is discharged into waters of the State and effluent limitations guidelines provide separate allocation for wastes from that process, all allocations for the process shall be eliminated from calculation of permit effluent limitations or standards.

(b) In all cases other than those described in R317-8-2.6(2)(a), effluent limitations shall be adjusted by multiplying the effluent limitation derived by applying effluent limitation guidelines to the total waste stream by the amount of wastewater to be treated and discharged into waters of the State and dividing the result by the total wastewater flow. Effluent limitations and standards so calculated may be further adjusted under R317-8-7.3 to make them more or less stringent if discharges to wells, publicly owned treatment works, or by land application change the character or treatability of the pollutants being discharged to receiving waters.

This method may be algebraically expressed as: P=E x

N/T

Where P is the permit effluent limitation, E is the limitation derived by applying effluent guidelines to the total waste stream, N is the wastewater flow to be treated and discharged to waters of the State and T is the total wastewater flow.

(3) R317-8-2.6(2) shall not apply to the extent that promulgated effluent limitations guidelines:

(a) Control concentrations of pollutants discharged but not mass; or

(b) Specify a different specific technique for adjusting effluent limitations to account for well injection, land application, or disposal into POTWs.

(4) R317-8-2.6(2) does not alter a dischargers obligation to meet any more stringent requirements established under R317-8-4.

2.7 Variance Requests by POTWs. A discharger which is a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under the following provision:

(1) Water Quality Based Effluent Limitation. A permit modification of the requirements for achieving water quality based effluent limitations shall be requested no later than the close of the public comment period under R317-8-6.5 on the permit for which the modification is sought.

(2) Delay in construction. An extension of a Federal statutory deadline based on delay in the construction of the POTW must have been requested on or before August 3, 1987.

2.8 Decision on Variances

(1) The Executive Secretary may deny or forward to the Administrator (or his delegate) with a written concurrence, a completed request for:

(a) Extensions under CWA section 301(i) based on delay in completion of a publicly owned treatment works;

(b) After consultation with the Regional Administrator, extensions based on the use of innovative technology; or

(c) Variances under R317-8-2.3(4) for thermal pollution.

(2) The Executive Secretary may deny or forward to the Regional Administrator with a written concurrence, or submit to EPA without recommendation a completed request for:

(a) A variance based on the presence of "fundamentally different factors" from those on which an effluent limitations guideline was based;

(b) A variance based on the economic capability of the applicant;

(c) A variance based upon certain water quality factors (See CWA section 301(g)); or

(d) A variance based on water quality related effluent limitations.

(e) Except for information required by R317-8-3.1(4)(c) which shall be retained for a period of at least five years from the date the application is signed, applicants shall keep records of all data used to complete permit applications and any supplemental information for a period of at least three years from the date the application is signed.

R317-8-3. Application Requirements.

3.1 Applying for a UPDES Permit

(1) Application requirements

(a) Any person who is required to have a permit, including new applicants and permittees with expiring permits shall complete, sign, and submit an application to the Executive Secretary as described in this regulation and R317-8-2 Scope and Applicability. On the date of UPDES program approval by EPA, all persons permitted or authorized under NPDES shall be deemed to hold a UPDES permit, including those expired permits which EPA has continued in effect according to 40 CFR 122.6. For the purpose of this section the Executive Secretary will accept the information required under R317-8-3.4 for existing facilities, which has been submitted to EPA as part of a NPDES renewal. The applicant may be requested to update any information which is not current.

(b) Any person who (1) discharges or proposes to discharge pollutants and (2) owns or operates a sludge-only facility and does not have an effective permit, shall submit a complete application to the Executive Secretary in accordance with this section and R317-8-6. A complete application shall include a BMP program, if necessary, under R317-8-4.2(10). The following are exceptions to the application requirements:

1. Persons covered by general permits under R317-8-4.2(10);

2. Discharges excluded under R317-8-2.1(2);

3. Users of a privately owned treatment works unless the Executive Secretary requires otherwise under R317-8-4.2(12).

(2) Time to apply. Any person proposing a new discharge shall submit an application at least 180 days before the date on which the discharge is to commence, unless permission for a later date has been granted by the Executive Secretary. Facilities proposing a new discharge of storm water associated with industrial activity shall submit an application 180 days before that facility commences industrial activity which may result in a discharge of storm water associated with that industrial activity. Facilities described under R317-8-3.8(6)11 shall submit applications at least 90 days before the date on which construction is to commence. Different submittal dates may be required under the terms of applicable general permits. Persons proposing a new discharge are encouraged to submit their applications well in advance of the 90 or 180 day requirements to avoid delay.

(3) Who Applies. When a facility or activity is owned by one (1) person but is operated by another person, it is the operator's duty to obtain a permit.

(4) Duty to reapply.

(a) Any POTW with a currently effective permit shall submit a new application at least 180 days before the expiration date of the existing permit, unless permission for a later date has been granted by the Executive Secretary. The Executive Secretary shall not grant permission for applications to be submitted later than the expiration date of the existing permit.

(b) All other permittees with currently effective permits shall submit a new application 180 days before the existing permit expires, except that:

1. The Executive Secretary may grant permission to submit an application later than the deadline for submission otherwise applicable, but no later than the permit expiration date; and

2. The Executive Secretary may grant permission to submit the information required by R317-8-3.4(7), (9) and (10) after the permit expiration date.

(c) All applicants for permits, other than POTWs, new sources, and sludge-only facilities must complete EPA Forms 1 and either 2B or 2C or 2F or equivalent State forms as directed by the Executive Secretary to apply under R317-8-3. Forms may be obtained from the Executive Secretary. In addition to any other applicable requirements in this section, all POTWs and other treatment works treating domestic sewage, including sludge-only facilities, must submit with their applications the information listed at 40 CFR 501.15(a)(2) within the time frames established in R317-8-3.1(7)(a) and (b).

(d) Continuation of expiring permits. The conditions of an expired permit continue in force until the effective date of a new permit if:

1. The permittee has submitted a timely application under subsection (2) of this section which is a complete application for a new permit; and

2. The Executive Secretary, through no fault of the permittee, does not issue a new permit with an effective date under R317-8-6.11 on or before the expiration date of the previous permit.

3. Effect Permits continued under this paragraph remain fully effective and enforceable until the effective date of a new permit.

4. Enforcement. When the permittee is not in compliance with the conditions of the expiring or expired permit the Executive Secretary may choose to do any or all of the following:

a. Initiate enforcement action based upon the permit which has been continued;

b. Issue a notice of intent to deny the new permit under R317-8-6.3(2);

c. Issue a new permit under R317-8-6 with appropriate conditions; or

d. Take other actions authorized by the UPDES regulations.

(5) Completeness. The Executive Secretary will not issue a UPDES permit before receiving a complete application for a permit except for UPDES General Permits. A permit application is complete when the Executive Secretary receives an application form with any supplemental information which is completed to his or her satisfaction.

(6) Information requirements. All applicants for UPDES permits shall provide the following information to the Executive Secretary, using the application form provided by the Executive Secretary.

(a) The activities being conducted which require the applicant to obtain UPDES permit.

(b) Name, mailing address, and location of the facility for which the application is submitted.

(c) From one (1) to four (4) SIC codes which best reflect the principal products or services provided by the facility.

(d) The operators name, address, telephone number, ownership status, and status as to Federal, State, private, public, or other entity.

(e) Whether the facility is located on Indian lands.

(f) A listing of all other relevant environmental permits, or construction approvals issued by the Executive Secretary or other state or federal permits.

(g) A topographic map, or other map if a topographic map is unavailable, extending one (1) mile beyond the property boundaries of the source, depicting the facility and each of its intake and discharge structures, each of its hazardous waste treatment, storage, or disposal facilities; each well where fluids from the facility are injected underground and those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant in the map area.

(h) A brief description of the nature of the business.

(i) Additional information may also be required of new sources, new dischargers and major facilities to determine any significant adverse environmental effects of the discharge pursuant to new source regulations promulgated by the Executive Secretary.

(7) Permits Under Section 19-5-107 of the Utah Water Quality Act.

(a) POTWs with currently effective UPDES permits shall submit the application information required by R317-8-3.1(4)(c) with the next application submitted in accordance with R317-8-3.1(4) of this section or within 120 days after promulgation of a standard for sewage sludge use or disposal applicable to the POTW's sludge use or disposal practice(s), whichever occurs first.

(b) Any other existing treatment works treating domestic sewage not covered in R317-8-3.1(7)(a) shall submit an application to the Executive Secretary within 120 days after promulgation of a standard for sewage sludge use or disposal applicable to its sludge use or disposal practice(s) or upon request of the Executive Secretary prior to the promulgation of an applicable standard for sewage sludge use or disposal if the Executive Secretary determines that a permit is necessary to protect to public health and the environment from any potential adverse effects that may occur from toxic pollutants in sewage sludge.

(c) Any treatment works treating domestic sewage that commences operations after promulgation of an applicable standard for sewage sludge use or disposal shall submit an application to the Executive Secretary at least 180 days prior to the date proposed for commencing operations.

(8) Recordkeeping. Except for information required by R317-8-3.1(7)(c) which shall be retained for a period of at least five years from the date the application is signed or longer as required by the Executive Secretary, applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under this regulation for a period of at least three (3) years from the date the application is signed.

(9) Service of process. Every applicant and permittee shall provide the Executive Secretary an address for receipt of any legal paper for service of process. The last address provided to the Executive Secretary pursuant to this provision shall be the address at which the Executive Secretary may tender any legal notice, including but not limited to service of process in connection with any enforcement action. Service, whether by bond or by mail, shall be complete upon tender of the notice, process or order and shall not be deemed incomplete because of refusal to accept or if the addressee is not found.

(10) Application Forms. The State will use EPA-developed NPDES application forms or State equivalents in

administering the UPDES program.

3.1A Application Requirements for New Sources and New Discharges. New manufacturing, commercial, mining and silvicultural dischargers applying for UPDES permits (except for new discharges of facilities subject to the requirements of R317-8-3.4 or new discharges of storm water associated with industrial activity which are subject to R317-8-3.8(2)(a) except as provided by R317-8-3.8(2)(a)2, shall provide the following information to the Executive Secretary, using application forms provided by the Executive Secretary:

(1) Expected outfall location. The latitude and longitude to the nearest 15 seconds and the name of the receiving water.

(2) Discharge dates. The expected date of commencement of discharge.

(3) Flows, Sources of Pollution and Treatment Technologies

(a) Expected treatment of wastewater. Description of the treatment that the wastewater will receive, along with all operations contributing wastewater to the effluent, average flow contributed by each operation, and the ultimate disposal of any solid or liquid wastes not discharged.

(b) Line drawing. A line drawing of the water flow through the facility with a water balance as described in R317-8-3.4(2).

(c) Intermittent Flows. If any of the expected discharges will be intermittent or seasonal, a description of the frequency, duration and maximum daily flow rate of each discharge occurrence (except for storm water runoff, spillage, or leaks).

(4) Production. If a new source performance standard or an effluent limitation guideline applies to the applicant and is expressed in terms of production (or other measure of operation), a reasonable measure of the applicant's expected actual production reported in the units used in the applicable effluent guideline or new source performance standard as required by R317-8-4.3(2)(b) for each of the first three years. Alternative estimates may also be submitted if production is likely to vary.

(5) Effluent Characteristics. The requirements in R317-8-3.4(7) that an applicant must provide estimates of certain pollutants expected to be present do not apply to pollutants present in a discharge solely as a result of their presence in intake water; however, an applicant must report such pollutants as present. Net credits may be provided for the presence of pollutants in intake water if the requirements of R317-8-4.3(7) are met. All levels (except for discharge flow, temperature and pH) must be estimated as concentration and as total mass.

(a) Each applicant must report estimated daily maximum, daily average and source of information for each outfall for the following pollutants or parameters. The Executive Secretary may waive the reporting requirements for any of these pollutants and parameters if the applicant submits a request for such a waiver before or with his application which demonstrates that information adequate to support issuance of the permit can be obtained through less stringent reporting requirements.

1. Biochemical Oxygen Demand (BOD).
2. Chemical Oxygen Demand (COD).
3. Total Organic Carbon (TOC).
4. Total Suspended Solids (TSS).
5. Flow.
6. Ammonia (as N).
7. Temperature (winter and summer).
8. pH.

(b) Each applicant must report estimated daily maximum, daily average, and source of information for each outfall for the following pollutants, if the applicant knows or has reason to believe they will be present or if they are limited by an effluent limitation guideline or new source performance standard either directly or indirectly through limitations on an indicator pollutant: all pollutants in Table IV, R317-8-3.11(4) (certain conventional and nonconventional pollutants).

(c) Each applicant must report estimated daily maximum, daily average and source of information for the following pollutants if he knows or has reason to believe that they will be present in the discharges from any outfall:

1. The pollutants listed in Table III, R317-8-3.11(3) (the toxic metals, in the discharge from any outfall: Total cyanide, and total phenols);

2. The organic toxic pollutants in R317-8-3.11(2) (except bis (chloromethyl) ether, dichlorofluoromethane and trichlorofluoromethane). This requirement is waived for applicants with expected gross sales of less than $100,000 per year for the next three years, and for coal mines with expected average production of less than 100,000 tons of coal per year.

(d) The applicant is required to report that 2,3,7,8 Tetrachlorodibenzo-P-Dioxin (TCDD) may be discharged if he uses or manufactures one of the following compounds, or if he knows or has reason to believe that TCDD will or may be present in an effluent:

1. 2,4,5-trichlorophenoxy acetic acid (2,4,5-T) (CAS #93-76-5);

2. 2-(2,4,5-trichlorophenoxy) propanic acid (Silvex, 2,4,5-TP) (CAS #93-72-1);

3. 2-(2,4,5-trichlorophenoxy) ethyl 2,2-dichloropropionate (Erbon) (CAS #136-25-4);)

4. 0,0-dimethyl 0-(2,4,5-trichlorophenyl) phosphorothioate (Ronnel) (CAS #299-84-3);

5. 2,4,5-trichlorophenol (TCP) (CAS #95-95-4); or

6. Hexachlorophene (HCP) (CAS #70-80-4);

(e) Each applicant must report any pollutants listed in Table V, R317-8-3.11(5) (certain hazardous substances) if he believes they will be present in any outfall (no quantitative estimates are required unless they are already available).

(f) No later than two years after the commencement of discharge from the proposed facility, the applicant is required to complete and submit Items V and VI of NPDES application Form 2c (see R317-8-3.4). However, the applicant need not complete those portions of Item V requiring tests which he has already performed and reported under the discharge monitoring requirements of his UPDES permit.

(6) Engineering Report. Each applicant must report the existence of any technical evaluation concerning his wastewater treatment, along with the name and location of similar plants of which he has knowledge.

(7) Other information. Any optional information the permittee wishes to have considered.

(8) Certification. Signature of certifying official under R317-8-3.3.

3.2 Confidentiality of Information

(1) Any information submitted to the Executive Secretary pursuant to the UPDES regulations may be claimed as confidential by the person submitting the information. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions or, in the case of other submissions, by stamping the words "confidential business information" on each page containing such information. If no claim is made at the time of submission, the Executive Secretary may make the information available to the public without further notice. If a claim is asserted, it will be treated according to the standards of 40 CFR Part 2.

(2) Information which includes effluent data and records required by UPDES application forms provided by the Executive Secretary under R317-8-3.1 may not be claimed as confidential.

(3) Information contained in UPDES permits may not be claimed as confidential.

3.3 Signatories to Permit Applications and Reports

(1) Applications. All permit applications shall be signed as follows:

(a) For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (i) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(b) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

(c) For a municipality, State, Federal, or other public agency: By either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes: (i) The chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

(2) Reports. All reports required by permits and other information requested by the Executive Secretary under R317-8-3.8(2)(c) shall be signed by a person described in subsection (1), or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(a) The authorization is made in writing by a person described in subsection (1) of this section:

(b) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company; and

(c) The written authorization is submitted to the Executive Secretary.

(3) Changes to authorization. If an authorization under subsection (2) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subsection (2) of this section must be submitted to the Executive Secretary prior to or together with any reports, information, or applications to be signed by an authorized representative.

(4) Certification. Any person signing a document under this section shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

3.4 Application Requirements for Existing Manufacturing, Commercial, Mining, and Silvicultural Dischargers

Existing manufacturing, commercial, mining, and silvicultural dischargers applying for UPDES permits shall provide the following information to the Executive Secretary, using application forms provided by the Executive Secretary:

(1) Outfall location. The latitude and longitude to the nearest fifteen (15) seconds and the name of the receiving water.

(2) Line drawing. A line drawing of the water flow through the facility with a water balance, showing operations contributing wastewater to the effluent and treatment units. Similar processes, operations, or production areas may be indicated as a single unit, labeled to correspond to the more detailed identification under R317-8-3.4. The water balance shall show approximate average flows at intake and discharge points and between units, including treatment units. If a water balance cannot be determined, the applicant may provide a pictorial description of the nature and amount of any sources of water and any collection and treatment measures.

(3) Average flows and treatment. A narrative identification of each type of process, operation, or production area which contributes wastewater to the effluent for each outfall, including process wastewater, cooling water; and storm water runoff; the average flow which each process contributes; and a description of the treatment the wastewater receives, including the ultimate disposal of any solid or fluid wastes other than by discharge. Processes, operations or production areas may be described in general terms, (for example, "dye-making reactor," "distillation tower.") For a privately owned treatment works, this information shall include the identity of each user of the treatment works. The average flow of point sources composed of storm water may be estimated. The basis for the rainfall event and the method of estimation must be indicated.

(4) Intermittent flows. If any of the discharges described in R317-8-3.4 (3) are intermittent or seasonal, a description of the frequency, duration and flow rate of each discharge occurrence, except for storm water runoff, spillage, or leaks.

(5) Maximum production levels. If an EPA effluent guideline applies to the applicant and is expressed in terms of production or other measure of operation, a reasonable measure of the applicant's actual production reported in the units used in

the applicable effluent guideline. The reported measure shall reflect the actual production of the facility as required by R317-8-4.3(2).

(6) Improvements. If the applicant is subject to any present requirements or compliance schedules for construction, upgrading or operation of waste treatment equipment, an identification of the abatement requirement, a description of the abatement project, and a listing of the required and projected final compliance dates.

(7) Effluent characteristics. Information on the discharge of pollutants specified in this subsection shall be provided, except information on storm water discharges which is to be provided as specified in R317-8-3.8. When quantitative data for a pollutant are required, the applicant must collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR 136. When no particular analytical method is required the applicant may use any suitable method but must provide a description of the method. The Executive Secretary may allow the applicant to test only one outfall and report that the quantitative data also applies to the substantially identical outfalls. The requirements in paragraphs (c) and (d) of this subsection that an applicant shall provide quantitative data for certain pollutants known or believed to be present do not apply to pollutants present in a discharge solely as the result of their presence in intake water; however, an applicant shall report such pollutants as present. Grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine,, oil and grease, and fecal coliform. For all other pollutants, twenty-four (24)-hour composite samples must be used. However, a minimum of one grab sample may be taken for effluents from holding ponds or other impoundments with a retention period greater than 24 hours. In addition, the Executive Secretary may waive composite sampling for any outfall for which the applicant demonstrates that the use of an automatic sampler is infeasible and that the minimum of four (4) grab samples will be a representative sample of the effluent being discharged. For storm water discharges, all samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inch and at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. Where feasible, the variance in the duration of the event and the total rainfall of the event should not exceed 50 percent from the average or median rainfall event in that area. For all applicants, a flow-weighted composite shall be taken for either the entire discharge or for the first three hours of the discharge. The flow-weighted composite sample for a storm water discharge may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of fifteen minutes (applicants submitting permit applications for storm water discharges under R317-8-3.8(3) may collect flow weighted composite samples using different protocols with respect to the time duration between the collection of sample aliquots, subject to the approval of the Executive Secretary). However, a minimum of one grab sample may be taken for storm water discharges from holding ponds or other impoundments with a retention period greater than 24 hours. For a flow-weighted composite sample, only one analysis of the composite of aliquots is required. For storm water discharge samples taken from discharges associated with industrial activities, quantitative data must be reported for the grab sample taken during the first thirty minutes (or as soon thereafter as practicable) of the discharge for all pollutants specified in R317-8-3.8(2)(a). For all storm water permit applicants taking flow-weighted composites, quantitative data must be reported for all pollutants specified in R317-8-3.8 except pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, and fecal streptococcus. The Executive Secretary may allow or establish appropriate site-specific sampling procedures or requirements, including sampling locations, the season in which the sampling takes place, the minimum duration between the previous measurable storm event and the storm event sampled, the minimum or maximum level of precipitation required for an appropriate storm event, the form of precipitation sampled (snow melt or rainfall), protocols for collecting samples under 40 CFR 136, and additional time for submitting data on a case-by-case basis. An applicant is expected to know or have reason to believe that a pollutant is present in an effluent based on an evaluation of the expected use, production, or storage of the pollutant, or on any previous analyses for the pollutant.

(a) Every applicant shall report quantitative data for every outfall for the following pollutants:

1. Biochemical Oxygen Demand (BOD)
2. Chemical Oxygen Demand
3. Total Organic Carbon
4. Total Suspended Solids
5. Ammonia (as N)
6. Temperature (both winter and summer)
7. pH

(b) The Executive Secretary may waive the reporting requirements for one or more of the pollutants listed in R317-8-3.4(7)(a) if the applicant has demonstrated that the waiver is appropriate because information adequate to support issuance of a permit can be obtained with less stringent requirements.

(c) Each applicant with processes in one or more primary industry category, listed in R317-8-3.10 of this regulation, and contributing to a discharge, shall report quantitative data for the following pollutants in each outfall containing process wastewater:

1. The organic toxic pollutants in the fractions designated in Table 1 of R317-8-3.11 for the applicant's industrial category or categories unless the applicant qualifies as a small business under R317-8-3.4(8). Table II of R317-8-3.11 of this part lists the organic toxic pollutants in each fraction. The fractions result from the sample preparation required by the analytical procedure which uses gas chromatography/mass spectrometry. A determination that an applicant falls within a particular industrial category for the purposes of selecting fractions for testing is not conclusive as to the applicant's inclusion in that category for any other purposes.

2. The pollutants listed in Table III of R317-8-3.11 (the toxic metals, cyanide, and total phenols).

(d) 1. Each applicant must indicate whether it knows or has reason to believe that any of the pollutants in Table IV of R317-8-3.11 (certain conventional and nonconventional pollutants) is discharged from each outfall. If an applicable

effluent limitations guideline either directly limits the pollutant or, by its express terms, indirectly limits the pollutant through limitations on an indicator, the applicant must report quantitative data. For every pollutant discharged which is not so limited in an effluent limitations guideline, the applicant must either report quantitative data or briefly describe the reasons the pollutant is expected to be discharged.

2. Each applicant must indicate whether it knows or has reason to believe that any of the pollutants listed in Table II or Table III of R317-8-3.11 (the toxic pollutants and total phenols) for which quantitative data are not otherwise required under paragraph (b) of this section, is discharged from each outfall. For every pollutant expected to be discharged in concentrations of 10 ppb or greater the applicant must report quantitative data. For acrolein, acrylonitrile, 2.4 dinitrophenol, and 2-methyl-4,6 dinitrophenol, where any of these four pollutants are expected to be discharged in concentrations of 100 ppb or greater, the applicant must report quantitative data. For every pollutant expected to be discharged in concentrations less than 10 ppb, or in the case of acrolein, acrylonitrile, 2.4 dinitrophenol, and 2-methyl-4,6 dinitrophenol, in concentration less than 100 ppb, the applicant must either submit quantitative data or briefly describe the reasons the pollutant is expected to be discharged. An applicant qualifying as a small business under R317-8-3.4(8) is not required to analyze for pollutants listed in Table II of R317-8-3.11 (the organic toxic pollutants).

(e) Each applicant shall indicate whether it knows or has reason to believe that any of the pollutants in R317-8-3.11(5) of this regulation, certain hazardous substances and asbestos are discharged from each outfall. For every pollutant expected to be discharged, the applicant shall briefly describe the reasons the pollutant is expected to be discharged, and report any quantitative data for the pollutant.

(f) Each applicant shall report qualitative data, generated using a screening procedure not calibrated with analytical standards, for 2,3,7,8-tetrachlorodibenzo-p-dioxin(TCDD) if it:

1. Uses or manufactures 2,4,5-trichlorophenoxy acetic acid (2,4,5-T); 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5-TP); 2-(2.4.5-trichlorophenoxy) ethyl 2,2-dichloropropionate (Erbon); O,O-dimethyl O-(2,4,5-trichlorophenyl) phosphorothioate (Ronnel); 2,4,5-trichlorophenol (TCP); or hexachlorophene (HCP); or

2. Knows or has reason to believe that TCDD is or may be present in an effluent.

(8) Small business exemption. An applicant which qualifies as a small business under one of the following criteria is exempt from the requirements in R317-8-3.4(7)(c) and (d) to submit quantitative data for the pollutants listed in R317-8-3.11(2), organic toxic pollutants:

(a) For coal mines, a probable total annual production of less than 100,000 tons per year.

(b) For all other applicants, gross total annual sales averaging less than $100,000 per year, in second quarter 1980 dollars.

(9) Used or manufactured toxics. The application shall include a listing of any toxic pollutant which the applicant currently uses or manufactures as an intermediate or final product or byproduct. The Executive Secretary may waive or modify this requirement for any applicant if the applicant demonstrates that it would be unduly burdensome to identify each toxic pollutant and the Executive Secretary has adequate information to issue the permit.

(10) Biological toxicity tests. The applicant shall identify any biological toxicity tests which it knows or has reason to believe have been made within the last three (3) years on any of the applicant's discharges or on a receiving water in relation to a discharge.

(11) Contract analyses. If a contract laboratory or consulting firm performed any of the analyses required by R317-8-3.4(7), the identity of each laboratory or firm and the analyses performed shall be included in the application.

(12) Additional information. In addition to the information reported on the application form, applicants shall provide to the Executive Secretary, upon request, other information as the Executive Secretary may reasonably be required to assess the discharges of the facility and to determine whether to issue a UPDES permit. The additional information may include additional quantitative data and bioassays to assess the relative toxicity of discharges to aquatic life and requirements to determine the cause of the toxicity.

3.5 Concentrated Animal Feeding Operations

(1) Permit required. Concentrated animal feeding operations are point sources subject to the UPDES permit program.

(2) Definitions.

(a) "Animal feeding operation" means a lot or facility, other than an aquatic animal production facility, where the following conditions are met:

1. Animals, other than aquatic animals, have been, are or will be stabled or confined and fed or maintained for a total of forty-five (45) days or more in any twelve (12) month period; and

2. Crops, vegetation forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility; or

3. Two (2) or more animal feeding operations under common ownership if they adjoin each other or if they use a common area or system for the disposal of wastes and meet the conditions of a(1) and (2) above.

b. "Concentrated animal feeding operation" means an "animal feeding operation" which meets the criteria in this Section or which the Executive Secretary designates under subsection (3) of this section.

(c) "Animal unit" means a unit of measurement for any animal feeding operation calculated by adding the following numbers; the number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4 plus the number of swine weighing over 25 kilograms (approximately 55 pounds) multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0.

(d) "Manmade" means constructed by man and used for the purpose of transporting wastes.

(3) Case-by-Case designation of concentrated animal feeding operations.

(a) The Executive Secretary may designate any animal feeding operation as a concentrated animal feeding operation upon determining that it is a significant contributor of pollution

to the waters of the State. In making this designation the Executive Secretary shall consider the following factors:

1. The size of the animal feeding operation and the amount of wastes reaching waters of the State;

2. The location of the animal feeding operation relative to waters of the State;

3. The means of conveyance of animal wastes and process waste waters into waters of the State;

4. The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes and process wastewaters into waters of the State; and

5. Other relevant factors.

(b) No animal feeding operation with less than the numbers of animals set forth in R317-8-3.5(5)(a) or (b) will be designated as a concentrated animal feeding operation unless:

1. Pollutants are discharged into waters of the state through a manmade ditch, flushing system, or other similar manmade device; or

2. Pollutants are discharged directly into the waters of the State which originate outside of the facility and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operations.

(c) A permit application will not be required from a concentrated animal feeding operation designated under this section until the Executive Secretary or authorized representative has conducted an on-site inspection of the operation and determined that the operation could and should be regulated under the UPDES permit program.

(4) Information required. New and existing concentrated animal feeding operations shall provide the following information to the Executive Secretary, using the application form provided:

(a) The type and number of animals in open confinement and housed under roof.

(b) The number of acres used for confinement feeding.

(c) The design basis for the runoff diversion and control system, if one exists, including the number of acres of contributing drainage, the storage capacity, and the design safety factor.

(5) Criteria for determining a concentrated animal feeding operation. An animal feeding operation is a concentrated animal feeding operation for purposes of this regulation if either of the following criteria are met.

(a) Criteria of number only. The facility meets the criteria if more than the numbers of animals specified in any of the following categories are confined:

1. 1,000 slaughter and feeder cattle,

2. 700 mature dairy cattle, whether milked or dry cows,

3. 2,500 swine each weighing over 25 kilograms, (approximately 55 pounds),

4. 500 horses,

5. 10,000 sheep or lambs,

6. 55,000 turkeys,

7. 100,000 laying hens or broilers, if the facility has continuous over flow watering,

8. 30,000 laying hens or broilers, if the facility has a liquid manure handling system,

9. 5,000 ducks, or

10. 1,000 animal units.

(b) Criteria of number and condition of the discharge. The facility meets the criteria if more than the following number and types of animals are confined:

1. 300 slaughter or feeder cattle,

2. 200 mature dairy cattle, whether milked or dry cows,

3. 750 swine, each weighing over 25 kilograms (approximately 55 pounds),

4. 150 horses,

5. 3,000 sheep or lambs,

6. 16,500 turkeys,

7. 30,000 laying hens or broilers, if the facility has continuous overflow watering,

8. 9,000 laying hens or broilers, if the facility has a liquid manure handling system,

9. 1,500 ducks, or

10. 300 animal units; and

11. Either one of the following conditions are met:

- Pollutants are discharged into waters of the state through a manmade ditch, flushing system or other similar manmade device; or

- Pollutants are discharged directly into waters of the State which originate outside of and pass over, across or through the facility or otherwise come into direct contact with the animals confined in the operation.

(6) Special provision. No animal feeding operation is a concentrated animal feeding operation as defined in R317-8-3.5(5)(a) and (b) if such animal feeding operation discharges only in the event of a twenty-five (25) year, twenty-four (24) hour storm event.

3.6 Concentrated Aquatic Animal Production Facilities

(1) Permit required. Concentrated aquatic animal production facilities, as defined in this section, are point sources subject to the UPDES permit program.

(2) Definitions. "Concentrated aquatic animal production facility" means a hatchery, fish farm, or other facility which meets the criteria in R317-8-3.6(5) or which the Executive Secretary designates under R317-8-3.6(3).

(3) Case-by-Case designation of concentrated aquatic animal production facilities.

(a) The Executive Secretary may designate any warm or cold water aquatic animal production facility as a concentrated aquatic animal production facility upon determining that it is a significant contributor of pollution to the waters of the State. In making this designation the Executive Secretary will consider the following factors:

1. The location and quality of the receiving waters of the State;

2. The holding, feeding, and production capacities of the facility;

3. The quantity and nature of the pollutants reaching waters of the State; and

4. Other relevant factors.

(b) A permit application will not be required from a concentrated aquatic animal production facility designated under this section until the Executive Secretary or authorized representative has conducted an on-site inspection of the facility and has determined that the facility could and should be regulated under the UPDES permit program.

(4) Information required. New and existing concentrated

aquatic animal production facilities shall provide the following information to the Executive Secretary using the application form provided:

(a) The maximum daily and average monthly flow from each outfall.

(b) The number of ponds, raceways, and similar structures.

(c) The name of the receiving water and the source of intake water.

(d) For each species of aquatic animals, the total yearly and maximum harvestable weight.

(e) The calendar month of maximum feeding and the total mass of food fed during that month.

(5) Criteria for determining a concentrated aquatic animal production facility. A hatchery, fish farm, or other facility is a concentrated aquatic animal production facility for purposes of this regulation if it contains, grows, or holds aquatic animals in either of the following categories:

(a) Cold water aquatic animals. Cold water fish species or other cold water aquatic animals in ponds, raceways, or other similar structures which discharge at least thirty (30) days per year but does not include:

1. Facilities which produce less than 9,090 harvest weight kilograms (approximately 20,000 pounds) of aquatic animals per year; and

2. Facilities which feed less than 2,272 kilograms (approximately 5,000 pounds) of food during the calendar month of maximum feeding.

3. Cold water aquatic animals include, but are not limited to the Salmonidae family of fish.

(b) Warm water aquatic animals. Warm water fish species or other warm water aquatic animals in ponds, raceways, or other similar structures which discharge at least thirty (30) days per year, but does not include:

1. Closed ponds which discharge only during periods of excess runoff; or

2. Facilities which produce less than 45,454 harvest weight kilograms (approximately 100,000) pounds) of aquatic animals per year.

3. "Warm water aquatic animals" include, but are not limited to, the Ameiuride, Centrachidae and Cyprinidae families of fish.

3.7 Aquaculture Projects

(1) Permit required. Discharges into aquaculture projects, as defined in this section, are subject to the UPDES permit program.

(2) Definitions.

(a) "Aquaculture project" means a defined managed water area which uses discharges of pollutants into that designated area for the maintenance or production of harvestable freshwater plants and animals.

(b) "Designated project areas" means the portions of the waters of the State within which the permittee or permit applicant plans to confine the cultivated species, using a method or plan of operation, including, but not limited to, physical confinement, which on the basis of reliable scientific evidence, is expected to ensure that specific individual organisms comprising an aquaculture crop will enjoy increased growth attributable to the discharge of pollutants, and be harvested within a defined geographic area.

3.8 Storm Water Discharges

(1) Permit requirement.

(a) Prior to October 1, 1992, a permit shall not be required for a discharge composed entirely of storm water, except for:

1. A discharge with respect to which a permit has been issued prior to February 4, 1987;

2. A discharge associated with industrial activity;

3. A discharge from a large municipal separate storm sewer system;

4. A discharge from a medium municipal separate storm sewer system;

5. A discharge which the Executive Secretary determines contributes to a violation of water quality standard or is a significant contributor of pollutants to waters of the State. This designation may include a discharge from any conveyance or system of conveyances used for collecting and conveying storm water runoff or a system of discharges from municipal separate storm sewers, except for those discharges from conveyances which do not require a permit under this section or agricultural storm water runoff which is exempted from the definition of point source. The Executive Secretary may designate discharges from municipal separate storm sewers on a system-wide or jurisdiction-wide basis. In making this determination the Executive Secretary may consider the following factors:

a. The location of the discharge with respect to waters of the State;

b. The size of the discharge;

c. The quantity and nature of the pollutants discharged to waters of the State; and

d. Other relevant factors.

(b) The Executive Secretary may not require a permit for discharges of storm water runoff from mining operations or oil and gas exploration, production, processing, or treatment operations or transmission facilities, composed entirely of flows which are from conveyances or systems of conveyances (including but not limited to pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and which are not contaminated by contact with or do not come into contact with any overburden, raw material, intermediate products, finished product, by product, or waste products located on the site of such operations.

(c) Large and medium municipal separate storm sewer systems.

1. Permits must be obtained for all discharges from large and medium municipal separate storm sewer systems.

2. The Executive Secretary may either issue one system-wide permit covering all discharges from municipal separate storm sewers within a large or medium municipal storm sewer system or issue distinct permits for appropriate categories of discharges within a large or medium municipal separate storm sewer system including, but not limited to: all discharges owned or operated by the same municipality; located within the same jurisdiction; all discharges within a system that discharge to the same watershed; discharges within a system that are similar in nature; or individual discharges from municipal separate storm sewers within the system.

3. The operator of a discharge from a municipal separate storm sewer which is part of a large or medium municipal separate storm sewer system must either:

a. Participate in a permit application (to be a permittee or a co-permittee) with one or more other operators of discharges from the large or medium municipal storm sewer system which covers all, or a portion of all, discharges from the municipal separate storm sewer system;

b. Submit a distinct permit application which only covers discharges from the municipal separate storm sewers for which the operator is responsible; or

4. A regional authority may be responsible for submitting a permit application under the following guidelines:

i. The regional authority together with co-applicants shall have authority over a storm water management program that is in existence, or shall be in existence at the time part 1 of the application is due;

ii. The permit applicant or co-applicants shall establish their ability to make a timely submission of part 1 and part 2 of the municipal application;

iii. Each of the operators of municipal separate storm sewers within the systems described in R317-8-1.6(4)(a),(b) and (c) or R317-8-1.6(7)(a),(b), and (c), that are under the purview of the designated regional authority, shall comply with the application requirements of R317-8-3.8(3).

5. One permit application may be submitted for all or a portion of all municipal separate storm sewers within adjacent or interconnected large or medium municipal separate storm sewer systems. The Executive Secretary may issue one system-wide permit covering all, or a portion of all municipal separate storm sewers in adjacent or interconnected large or medium municipal separate storm sewer systems.

6. Permits for all or a portion of all discharges from large or medium municipal separate storm sewer systems that are issued on a system-wide, jurisdiction-wide, watershed or other basis may specify different conditions relating to different discharges covered by the permit, including different management programs for different drainage areas which contribute storm water to the system.

7. Co-permittees need only comply with permit conditions relating to discharges from the municipal separate storm sewers for which they are operators.

(d) Discharges through large and medium municipal separate storm sewer systems. In addition to meeting the requirements of R317-8-3.8(2), an operator of a storm water discharge associated with industrial activity which discharges through a large or medium municipal separate storm sewer system shall submit, to the operator of the municipal separate storm sewer system receiving the discharge no later than May 15, 1991, or 180 days prior to commencing such discharge: the name of the facility; a contact person and phone number; the location of the discharge; a description, including Standard Industrial Classification, which best reflects the principal products or services provided by each facility; and any existing UPDES permit number.

(e) Other municipal separate storm sewers. The Executive Secretary may issue permits for municipal separate storm sewers that are designated under R317-8-3.8(1)(a)(5) on a system-wide basis, jurisdiction-wide basis, watershed basis or other appropriate basis, or may issue permits for individual discharges.

(f) Non-municipal separate storm sewers. For storm water discharges associated with industrial activity from point sources which discharge through a non-municipal or non-publicly owned separate storm sewer system, the Executive Secretary, in his discretion, may issue: a single UPDES permit, with each discharger a co-permittee to a permit issued to the operator of the portion of the system that discharges into waters of the State; or, individual permits to each discharger of storm water associated with industrial activity through the non-municipal conveyance system.

1. All storm water discharges associated with industrial activity that discharge through a storm water discharge system that is not a municipal separate storm sewer must be covered by an individual permit, or a permit issued to the operator of the portion of the system that discharges to waters of the State, with each discharger to the non-municipal conveyance a co-permittee to that permit.

2. Where there is more than one operator of a single system of such conveyances, all operators of storm water discharges associated with industrial activity must submit applications.

3. Any permit covering more than one operator shall identify the effluent limitations, or other permit conditions, if any, that apply to each operator.

(g) Combined sewer systems. Conveyances that discharge storm water runoff combined with municipal sewage are point sources that must obtain UPDES permits and that are not subject to the provisions of this section.

(2) Application requirements for storm water discharges associated with industrial activity.

(a) Individual application. Dischargers of storm water associated with industrial activity are required to apply for an individual permit, apply for a permit through a group application, or seek coverage under a promulgated storm water general permit. Facilities that are required to obtain an individual permit, or any discharge of storm water which the Executive Secretary is evaluating under R317-8-3.8(1)(a)5 and is not a municipal separate storm sewer, and which is not part of a group application described under paragraph R317-8-3.8(2)(b) of this section, shall submit an UPDES application in accordance with R317-8-3.1 and supplemented by the provisions of the remainder of this paragraph. Applicants for discharges composed entirely of storm water shall submit Forms 1 and 2F. Applicants for discharges composed of storm water and non-storm water shall submit EPA Forms 1, 2C, and 2F. Applicants for new sources or new discharges composed of storm water and non-storm water shall submit EPA Forms 1, 2D, and 2F.

1. Except as provided in R317-8-3.8(2)(a)2, 3, and 4, the operator of a storm water discharge associated with industrial activity subject to this section shall provide:

a. A site map showing topography (or indicating the outline of drainage areas served by the outfall(s) covered in the application if a topographic map is unavailable) of the facility including: each of its drainage and discharge structures; the drainage area of each storm water outfall; paved areas and buildings within the drainage area of each storm water outfall; each past or present area used for outdoor storage or disposal of significant materials; each existing structural control measure to reduce pollutants in storm water runoff; materials loading and

access areas; areas where pesticides, herbicides, soil conditioners and fertilizers are applied; each of its hazardous waste treatment, storage or disposal facilities (including each area not required to have a RCRA permit which is used for accumulating hazardous waste); each well where fluids from the facility are injected underground; springs, and other surface water bodies which receive storm water discharges from the facility;

b. An estimate of the area of impervious surfaces (including paved areas and building roofs) and the total area drained by each outfall (within a mile radius of the facility) and a narrative description of the following: Significant materials that in the three years prior to the submittal of this application have been treated, stored or disposed in a manner to allow exposure to storm water; method of treatment, storage or disposal of such materials; materials management practices employed, in the three years prior to the submittal of this application, to minimize contact by these materials with storm water runoff; materials loading and access areas; the location, manner and frequency in which pesticides, herbicides, soil conditioners and fertilizers are applied; the location and a description of existing structural and non-structural control measures to reduce pollutants in storm water runoff; and a description of the treatment the storm water receives, including the ultimate disposal of any solid or fluid wastes other than by discharge;

c. A certification that all outfalls that should contain storm water discharges associated with industrial activity have been tested or evaluated for the presence of non-storm water discharges which are not covered by a UPDES permit; tests for such non-storm water discharges may include smoke tests, fluorometric dye tests, analysis of accurate schematics, as well as other appropriate tests. The certification shall include a description of the method used, the date of any testing, and the on-site drainage points that were directly observed during a test;

d. Existing information regarding significant leaks or spills of toxic or hazardous pollutants at the facility that have taken place within the three years prior to the submittal of this application;

e. Quantitative data based on samples collected during storm events and collected in accordance with R317-8-3.1 from all outfalls containing a storm water discharge associated with industrial activity for the following parameters:

i. Any pollutant limited in an effluent guideline to which the facility is subject;

ii. Any pollutant listed in the facility's UPDES permit for its process wastewater (if the facility is operating under an existing UPDES permit);

iii. Oil and grease, pH, BOD_5, COD, TSS, total phosphorus, total Kjeldahl nitrogen, and nitrate plus nitrite nitrogen;

iv. Any information on the discharge required under R317-8-3.4(7)(d) and (e);

v. Flow measurements or estimates of the flow rate, and the total amount of discharge for the storm event(s) sampled, and the method of flow measurement or estimation; and

vi. The date and duration (in hours) of the storm event(s) sampled, rainfall measurements or estimates of the storm event (in inches) which generated the sampled runoff and the duration between the storm event sampled and the end of the previous measurable (greater than O.1 inch rainfall) storm event (in hours);

f. Operators of a discharge which is composed entirely of storm water are exempt from R317-8-3.4(2),(3),(4),(5),(7)(a),(c), and (f); and

g. Operators of new sources or new discharges which are composed in part or entirely of storm water must include estimates for the pollutants or parameters listed in R317-8-3.8(2)(a)1e instead of actual sampling data, along with the source of each estimate. Operators of new sources or new discharges composed in part or entirely of storm water must provide quantitative data for the parameters listed in R317-8-3.4(2)(a)1e within two years after commencement of discharge, unless such data has already been reported under the monitoring requirements of the UPDES permit for the discharge. Operators of a new source or new discharge which is composed entirely of storm water are exempt from the requirements of R317-8-3.1A3(b)(c) and 3.1A5.

2. The operator of an existing or new storm water discharge that is associated with industrial activity solely under R317-8-3.8(6)(c)11, is exempt from the requirements of R317-8-3.4 and R317-8-3.8(2)(a)1. Such operator shall provide a narrative description of:

a. The location (including a map) and the nature of the construction activity;

b. The total area of the site and the area of the site that is expected to undergo excavation during the life of the permit;

c. Proposed measures, including best management practices, to control pollutants in storm water discharges during construction, including a brief description of applicable State and local erosion and sediment control requirements;

d. Proposed measures to control pollutants in storm water discharges that will occur after construction operations have been completed, including a brief description of applicable State or local erosion and sediment control requirements;

e. An estimate of the runoff coefficient of the site and the increase in impervious area after the construction addressed in the permit application is completed, the nature of fill material and existing data describing the soil or the quality of the discharge; and

f. The name of the receiving water.

3. The operator of an existing or new discharge composed entirely of storm water from an oil or gas exploration, production, processing, or treatment operation, or transmission facility is not required to submit a permit application in accordance with R317-8-3.8(2)(a)1, unless the facility:

a. Has had a discharge of storm water resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 117.21 or 40 CFR 302.6 at anytime since November 16, 1987;

b. Has had a discharge of storm water resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 110.6 at any time since November 16, 1987; or

c. Contributes to a violation of a water quality standard.

4. The operator of an existing or new discharge composed entirely of storm water from a mining operation is not required to submit a permit application unless the discharge has come

into contact with any overburden, raw material, intermediate products, finished product, byproduct or waste products located on the site of such operations.

5. Applicants shall provide such other information the Executive Secretary may reasonably require to determine whether to issue a permit and may require any facility subject to R317-8-3.8(2)(a)2 to comply with R317-8-3.8(2)(a)1.

(b) Group application for discharges associated with industrial activity. Group applications submitted to the State by EPA will be accepted for consideration. However, the State may issue individual permits, general permits or no permits as the circumstances warrant. Additional information, including specific site information, other than that provided in the group application, may be required of any or all applicants. Facilities that are rejected by EPA as members of the group shall submit an individual application to the Executive Secretary no later than 12 months after the date of receipt of the notice of rejection or October 1, 1992, whichever comes first.

(3) Application requirements for large and medium municipal separate storm sewer discharges. The operator of a discharge from a large or medium municipal separate storm sewer or a municipal separate storm sewer that is designated by the Executive Secretary under R317-8-3.8(1)(a)5, may submit a jurisdiction-wide or system-wide permit application. Where more than one public entity owns or operates a municipal separate storm sewer within a geographic area (including adjacent or interconnected municipal separate storm sewer systems), such operators may be a coapplicant to the same application. Permit applications for discharges from large and medium municipal storm sewers or municipal storm sewers designated under R317-8-3.8(1)(a)5 shall include:

(a) Part 1. Part 1 of the application shall consist of:

1. General information. The applicants' name, address, telephone number of contact person, ownership status and status as a State or local government entity.

2. Legal authority. A description of existing legal authority to control discharges to the municipal separate storm sewer system. When existing legal authority is not sufficient to meet the criteria provided in R317-8-3.8(3)(b)1, the description shall list additional authorities as will be necessary to meet the criteria and shall include a schedule and commitment to seek such additional authority that will be needed to meet the criteria.

3. Source identification.

a. A description of the historic use of ordinances, guidance or other controls which limited the discharge of non-storm water discharges to any Publicly Owned Treatment Works serving the same area as the municipal separate storm sewer system.

b. A USGS 7.5 minute topographic map (or equivalent topographic map with a scale between 1:10,000 and 1:24,000 if cost effective) extending one mile beyond the service boundaries of the municipal storm sewer system covered by the permit application. The following information shall be provided:

i. The location of known municipal storm sewer system outfalls discharging to waters of the State;

ii. A description of the land use activities (e.g. divisions indicating undeveloped, residential, commercial, agriculture and industrial uses) accompanied with estimates of population densities and projected growth for a ten year period within the drainage area served by the separate storm sewer. For each land use type, and estimate of an average runoff coefficient shall be provided;

iii. The location and a description of the activities of the facility of each currently operating or closed municipal landfill or other treatment, storage or disposal facility for municipal waste;

iv. The location and the permit number of any known discharge to the municipal storm sewer that has been issued a UPDES permit;

v. The location of major structural controls for storm water discharge (retention basins, detention basins, major infiltration devices, etc.); and

vi. The identification of publicly owned parks, recreational areas, and other open lands.

4. Discharge characterization.

a. Monthly mean rain and snow fall estimates (or summary of weather bureau data) and the monthly average number of storm events.

b. Existing quantitative data describing the volume and quality of discharges from the municipal storm sewer, including a description of the outfalls sampled, sampling procedures and analytical methods used.

c. A list of water bodies that receive discharges from the municipal separate storm sewer system, including downstream segments, lakes and estuaries, where pollutants from the system discharges may accumulate and cause water degradation and a brief description of known water quality impacts. At a minimum, the description of impacts shall include a description of whether the water bodies receiving such discharges have been:

i. Assessed and reported in CWA 305(b) reports submitted by the State, the basis for the assessment (evaluated or monitored), a summary of designated use support and attainment of Clean Water Act (CWA) goals (fishable and swimmable waters), and causes of nonsupport of designated uses;

ii. Listed under section 304(l)(1)(A)(i), section 304(l)(1)(A)(ii), or section 304(l)(1)(B) of the CWA that is not expected to meet water quality standards or water quality goals;

iii. Listed in Utah Nonpoint Source Assessments that, without additional action to control nonpoint sources of pollution, cannot reasonably be expected to attain or maintain water quality standards due to storm sewers, construction, highway maintenance and runoff from municipal landfills and municipal sludge adding significant pollution (or contributing to a violation of water quality standards);

iv. Identified and classified according to eutrophic condition of publicly owned lakes listed in State reports required under section 314(a) of the CWA (include the following: A description of those publicly owned lakes for which uses are known to be impaired; a description of procedures, processes and methods to control the discharge of pollutants from municipal separate storm sewers into such lakes; and a description of methods and procedures to restore the quality of such lakes);

v. Recognized by the applicant as highly valued or sensitive waters;

vi. Defined by the state or U.S. Fish and Wildlife Service's National Wetlands Inventory as wetlands; and

vii. Found to have pollutants in bottom sediments, fish tissue or biosurvey data.

d. Field screening. Results of a field screening analysis for illicit connections and illegal dumping for either selected field screening points or major outfalls covered in the permit application. At a minimum, a screening analysis shall include a narrative description, for either each field screening point or major outfall, of visual observations made during dry weather periods. If any flow is observed, two grab samples shall be collected during a 24 hour period with a minimum period of four hours between samples. For all such samples, a narrative description of the color, odor, turbidity, the presence of an oil sheen or surface scum as well as any other relevant observations regarding the potential presence of non-storm water discharges or illegal dumping shall be provided. In addition, a narrative description of the results of a field analysis using suitable methods to estimate pH, total chlorine, total copper, total phenol, and detergents (or surfactants) shall be provided along with a description of the flow rate. Where the field analysis does not involve analytical methods approved under 40 CFR part 136, the applicant shall provide a description of the method used including the name of the manufacturer of the test method along with the range and accuracy of the test. Field screening points shall be either major outfalls or other outfall points (for any other point of access such as manholes) randomly located throughout the storm sewer system by placing a grid over a drainage system map and identifying those cells of the grid which contain a segment of the storm sewer system or major outfall. The field screening points shall be established using the following guidelines and criteria:

i. A grid system consisting of perpendicular north-south and east-west lines spaced 1/4 mile apart shall be overlayed on a map of the municipal storm sewer system, creating a series of cells;

ii. All cells that contain a segment of the storm sewer system shall be identified; one field screening point shall be selected in each cell; major outfalls may be used as field screening points;

iii. Field screening points should be located downstream of any sources of suspected illegal or illicit activity;

iv. Field screening points shall be located to the degree practicable at the farthest manhole or other accessible location downstream in the system, within each cell; however, safety of personnel and accessibility of the location should be considered in making this determination;

v. Hydrological conditions; total drainage area of the site; population density of the site; traffic density; age of the structures or building in the area; history of the area; and land use types;

vi. For medium municipal separate storm sewer systems, no more than 250 cells need to have identified field screening points; in large municipal separate storm sewer systems, no more than 500 cells need to have identified field screening points; cells established by the grid that contain no storm sewer segments will be eliminated from consideration; if fewer than 250 cells in medium municipal sewers are created, and fewer than 500 in large systems are created by the overlay on the municipal sewer map, then all those cells which contain a segment of the sewer system shall be subject to field screening (unless access to the separate storm sewer system is impossible); and

vii. Large or medium municipal separate storm sewer systems which are unable to utilize the procedures described in R317-8-3.8(3)(a)4di-vi, because a sufficiently detailed map of the separate storm sewer systems is unavailable, shall field screen no more than 500 or 250 major outfalls respectively (or all major outfalls in the system, if less); in such circumstances, the applicant shall establish a grid system consisting of north-south and east-west lines spaced 1/4 mile apart as an overlay to the boundaries of the municipal storm sewer system, thereby creating a series of cells; the applicant will then select major outfalls in as many cells as possible until at least 500 major outfalls (large municipalities) or 250 major outfalls (medium municipalities) are selected; a field screening analysis shall be undertaken at these major outfalls.

e. Characterization plan. Information and a proposed program to meet the requirements of R317-8-3.8(3)(b)3. Such description shall include: the location of outfalls or field screening points appropriate for representative data collection under R317-8-3.8(3)(b)3.a, a description of why the outfall or field screening point is representative, the seasons during which sampling is intended, a description of the sampling equipment. The proposed location of outfall or field screening points for such sampling should reflect water quality concerns to the extent practicable.

5. Management programs.

a. A description of the existing management programs to control pollutants from the municipal separate storm sewer system. The description shall provide information on existing structural and source controls, including operation and maintenance measures for structural controls, that are currently being implemented. Such controls may include, but are not limited to: Procedures to control pollution resulting from construction activities; floodplain management controls; wetland protection measures; best management practices for new subdivisions; and emergency spill response programs. The description may address controls established under State law as well as local requirements.

b. A description of the existing program to identify illicit connections to the municipal storm sewer system. The description should include inspection procedures and methods for detecting and preventing illicit discharges, and describe areas where this program has been implemented.

6. Financial resources. A description of the financial resources currently available to the municipality to complete part 2 of the permit application. A description of the municipality's budget for existing storm water programs, including an overview of the municipality's financial resources and budget, including overall indebtedness and assets, and sources of funds for storm water programs.

(b) Part 2. Part 2 of the application shall consist of:

1. Adequate legal authority. A demonstration that the applicant can operate pursuant to legal authority established by statute, ordinance or series of contracts which authorizes or enables the applicant at a minimum to:

a. Control through ordinance, permit, contract, order or similar means, the contribution of pollutants to the municipal storm sewer by storm water discharges associated with

industrial activity and the quality of storm water discharged from sites of industrial activity;

b. Prohibit through ordinance, order or similar means, illicit discharges to the municipal separate storm sewer;

c. Control through ordinance, order or similar means the discharge to a municipal separate storm sewer of spills, dumping or disposal of materials other than storm water;

d. Control through interagency agreements among coapplicants the contribution of pollutants from one portion of the municipal system to another portion of the municipal system;

e. Require compliance with conditions in ordinances, permits, contracts or orders; and

f. Carry out all inspection, surveillance and monitoring procedures necessary to determine compliance and noncompliance with permit conditions including the prohibition on illicit discharges to the municipal separate storm sewer.

2. Source identification. The location of any major outfall that discharges to waters of the State that was not reported under R317-8-3.8(3)(a)3b 1. Provide an inventory, organized by watershed of the name and address, and a description (such as SIC codes) which best reflects the principal products or services provided by each facility which may discharge, to the municipal separate storm sewer, storm water associated with industrial activity;

3. Characterization data. When "quantitative data" for a pollutant are required, the applicant must collect a sample of effluent in accordance with R317-8-3.4(7) and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR part 136. When no analytical method is approved the applicant may use any suitable method but must provide a description of the method. The applicant must provide information characterizing the quality and quantity of discharges covered in the permit application, including:

a. Quantitative data from representative outfalls designated by the Executive Secretary (based on information received in part 1 of the application, the Executive Secretary shall designate between five and ten outfalls or field screening points as representative of the commercial, residential and industrial land use activities of the drainage area contributing to the system or, where there are less than five outfalls covered in the application, the Executive Secretary shall designate all outfalls) developed as follows:

i. For each outfall or field screening point designated, samples shall be collected of storm water discharges from three storm events occurring at least one month apart in accordance with R317-8-3.4(7) (the Executive Secretary may allow exemptions to sampling three storm events when climatic conditions create good cause for such exemptions);

ii. A narrative description shall be provided of the date and duration of the storm event(s) sampled, rainfall estimates of the storm event which generated the sampled discharge and the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event;

iii. For samples collected and described under R317-8-3.8(3)(b)3.a i and ii, quantitative data shall be provided for: the organic pollutants listed in Table II; the pollutants listed in Table III (other toxic pollutants metals, cyanide, and total phenols) of R317-8-3.12, and for the following pollutants:

Total suspended solids (TSS)
Total dissolved solids (TDS)
COD
BOD_5
Oil and grease
Fecal coliform
Fecal streptococcus
pH
Total Kjeldahl nitrogen
Nitrate plus nitrite
Dissolved phosphorus
Total ammonia plus organic nitrogen
Total phosphorus

iv. Additional limited quantitative data required by the Executive Secretary for determining permit conditions (the Executive Secretary may require that quantitative data shall be provided for additional parameters, and may establish sampling conditions such as the location, season of sample collection, form of precipitation and other parameters necessary to insure representativeness);

b. Estimates of the annual pollutant load of the cumulative discharges to waters of the State from all identified municipal outfalls and the event mean concentration of the cumulative discharges to waters of the State from all identified municipal outfalls during a storm event for BOD_5, COD, TSS, dissolved solids, total nitrogen, total ammonia plus organic nitrogen, total phosphorus, dissolved phosphorus, cadmium, copper, lead, and zinc. Estimates shall be accompanied by a description of the procedures for estimating constituent loads and concentrations, including any modelling, data analysis, and calculation methods;

c. A proposed schedule to provide estimates for each major outfall identified in either R317-8-3.8(3)(b)2 or R317-8-3.8(3)(a)3b 1 of the seasonal pollutant load and of the event mean concentration of a representative storm for any constituent detected in any sample required under R317-8-3.8(3)(b)3a of this section; and

d. A proposed monitoring program for representative data collection for the term of the permit that describes the location of outfalls or field screening points to be sampled (or the location of instream stations), why the location is representative, the frequency of sampling, parameters to be sampled, and a description of sampling equipment.

4. Proposed management program. A proposed management program covers the duration of the permit. It shall include a comprehensive planning process which involves public participation and where necessary intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable using management practices, control techniques and system, design and engineering methods, and such other provisions which are appropriate. The program shall also include a description of staff and equipment available to implement the program. Separate proposed programs may be submitted by each coapplicant. Proposed programs may impose controls on a system wide basis, a watershed basis, a jurisdiction basis, or on individual outfalls. Proposed programs will be considered by the Executive Secretary when developing permit conditions to reduce pollutants in discharges to the maximum extent practicable. Proposed management programs shall

describe priorities for implementing controls. Such programs shall be based on:

a. A description of structural and source control measures to reduce pollutants from runoff from commercial and residential areas that are discharged from the municipal storm sewer system that are to be implemented during the life of the permit, accompanied with an estimate of the expected reduction of pollutant loads and a proposed schedule for implementing such controls. At a minimum, the description shall include:

i. A description of maintenance activities and a maintenance schedule for structural controls to reduce pollutants (including floatables) in discharges from municipal separate storm sewers;

ii. A description of planning procedures including a comprehensive master plan to develop, implement and enforce controls to reduce the discharge of pollutants from municipal separate storm sewers which receive discharges from areas of new development and significant redevelopment. Such plan shall address controls to reduce pollutants in discharges from municipal separate storm sewers after construction is completed. Controls to reduce pollutants in discharges from municipal separate storm sewers containing construction site runoff are addressed in R317-8-3.8(3)(b)4d;

iii. A description of practices for operating and maintaining public streets, roads and highways and procedures for reducing the impact on receiving waters of discharges from municipal storm sewer systems, including pollutants discharged as a result of deicing activities;

iv. A description of procedures to assure that flood management projects assess the impacts on the water quality of receiving water bodies and that existing structural flood control devices have been evaluated to determine if retrofitting the device to provide additional pollutant removal from storm water is feasible.

v. A description of a program to monitor pollutants in runoff from operating or closed municipal landfills or other treatment, storage or disposal facilities for municipal waste, which shall identify priorities and procedures for inspections and establishing and implementing control measures for such discharges (this program can be coordinated with the program developed under R317-8-3.8(3)(b)4c); and

vi. A description of a program to reduce to the maximum extent practicable, pollutants in discharges from municipal separate storm sewers associated with the application of pesticides, herbicides and fertilizer which will include, as appropriate, controls such as educational activities, permits, certifications and other measures for commercial applicators and distributors, and controls for application in public right-of-ways and at municipal facilities.

b. A description of a program, including a schedule, to detect and remove illicit discharges and improper disposal into the storm sewer. The proposed program shall include:

i. A description of a program, including inspections, to implement and enforce an ordinance, orders or similar means to prevent illicit discharges to the municipal separate storm sewer system; this program description shall address all types of illicit discharges, however the following category of non-storm water discharges or flows shall be addressed where such discharges are identified by the municipality as sources of pollutants to waters of the State: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration to separate storm sewers, uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water (program descriptions shall address discharges or flows from fire fighting only where such discharges or flows are identified as significant sources of pollutants to waters of the State);

ii. A description of procedures to conduct on-going field screening activities during the life of the permit, including areas or locations that will be evaluated by such field screens;

iii. A description of procedures to be followed to investigate portions of the separate storm sewer system that, based on the results of the field screen, or other appropriate information, indicate a reasonable potential of containing illicit discharges or other sources of non-storm water (such procedures may include: sampling procedures for constituents such as fecal coliform, fecal streptococcus, surfactants (MBAS), residual chlorine, fluorides and potassium; testing with fluorometric dyes; or conducting in storm sewer inspections where safety and other considerations allow. Such description shall include the location of storm sewers that have been identified for such evaluation);

iv. A description of procedures to prevent, contain, and respond to spills that may discharge into the municipal separate storm sewer;

v. A description of a program to promote, publicize and facilitate public reporting of the presence of illicit discharges or water quality impacts associated with discharges from municipal separate storm sewers;

vi. A description of educational activities, public information activities, and other appropriate activities to facilitate the proper management and disposal of used oil and toxic materials; and

vii. A description of controls to limit infiltration of seepage from municipal sanitary sewers to municipal separate storm sewer systems where necessary;

c. A description of a program to monitor and control pollutants in storm water discharges to municipal systems from municipal landfills, hazardous waste treatment, disposal and recovery facilities, industrial facilities that are subject to section 313 of title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA), and industrial facilities that the municipal permit applicant determines are contributing a substantial pollutant loading to the municipal storm sewer system. The program shall:

i. Identify priorities and procedures for inspection and establishing and implementing control measures for such discharges;

ii. Describe a monitoring program for storm water discharges associated with the industrial facilities identified in R317-8-3.8(b)4c to be implemented during the term of the permit, including the submission of quantitative data on the following constituents: any pollutants limited in effluent guidelines subcategories, where applicable; any pollutant listed

in an existing UPDES permit for a facility; oil and grease, COD, pH, BOD_5, TSS, total phosphorus, total Kjeldahl nitrogen, nitrate plus nitrite nitrogen, and any information on discharges required under R317-8-3.4(7)(d) 1, 2, and (e).

d. A description of a program to implement and maintain structural and non-structural best management practices to reduce pollutants in storm water runoff from construction sites to the municipal storm sewer system, which shall include:

i. A description of procedures for site planning which incorporate consideration of potential water quality impacts;

ii. A description of requirements for nonstructural and structural best management practices;

iii. A description of procedures for identifying priorities for inspecting sites and enforcing control measures which consider the nature of the construction activity, topography, and the characteristics of soils and receiving water quality; and

iv. A description of appropriate educational and training measures for construction site operators.

v. Assessment of controls. Estimated reductions in loadings of pollutants from discharges of municipal storm sewer constituents from municipal storm sewer systems expected as the result of the municipal storm water quality management program. The assessment shall also identify known impacts of storm water controls on ground water.

vi. Fiscal analysis. For each fiscal year to be covered by the permit, a fiscal analysis of the necessary capital and operation and maintenance expenditures necessary to accomplish the activities of the programs under R317-8-3.8(8)(b) 3 and 4. Such analysis shall include a description of the source of funds that are proposed to meet the necessary expenditures, including legal restrictions on the use of such funds.

vii. Where more than one legal entity submits an application, the application shall contain a description of the rules and responsibilities of each legal entity and procedures to ensure effective coordination.

viii. Where requirements under R317-8-3.8(3)(a)4e, 3.8(3)(b)3b, and 3.8(3)(b)4 are not practicable or are not applicable, the Executive Secretary may exclude any operator of a discharge from a municipal separate storm sewer which is designated under R317-8-3.8(1)(a)5, R317-8-1.6(4)(b) or R317-8-1.6(7)(b) from such requirements. The Executive Secretary shall not exclude the operator of a discharge from a municipal separate storm sewer located in incorporated places with populations greater than 100,000 and less than 250,000 according to the latest decennial census by Bureau of Census; or located in counties with unincorporated urbanized areas with a population of 250,000 or more according to the latest decennial census by the Bureau of Census, from any of the permit application requirements except where authorized.

(4) Application deadlines. Any operator of a point source required to obtain a permit under R317-8-3.8(1)(a) that does not have an effective UPDES permit covering its storm water outfalls shall submit an application in accordance with the following deadlines:

(a) For any storm water discharge associated with industrial activity identified in R317-8-3.8(2) that is not part of a group application or which is not covered under a promulgated storm water general permit, a permit application shall be submitted to the Executive Secretary by October 1, 1992.

(b) For any discharge from a large municipal separate storm sewer system:

1. Part 1 of the application shall be submitted to the Executive Secretary by November 18, 1991;

2. Based on information received in the part 1 application the Executive Secretary will approve or deny a sampling plan within 90 days after receiving the part 1 application;

3. Part 2 of the application shall be submitted to the Executive Secretary by November 16, 1992.

(c) For any discharge from a medium municipal separate storm sewer system;

1. Part 1 of the application shall be submitted to the Executive Secretary by May 18, 1992.

2. Based on information received in the part 1 application the Executive Secretary will approve or deny a sampling plan within 90 days after receiving the part 1 application.

3. Part 2 of the application shall be submitted to the Executive Secretary by May 17, 1993.

(d) A permit application shall be submitted to the Executive Secretary within 60 days of notice, unless permission for a later date is granted by the Executive Secretary for;

1. A storm water discharge which the Executive Secretary determines contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the State.

2. A storm water discharge subject to R317-8-3.8(2)(a)5.

(e) Facilities with existing UPDES permits for storm water discharges associated with industrial activity shall maintain existing permits. New applications shall be submitted 180 days before the expiration of such permits. Facilities with expired permits or permits due to expire before May 18, 1992, shall submit applications in accordance with the deadline set forth in R317-8-3.8(4)(a).

(5) Petitions.

(a) Any operator of a municipal separate storm sewer system may petition the Executive Secretary to require a separate UPDES permit for any discharge into the municipal separate storm sewer system.

(b) Any person may petition the Executive Secretary to require a UPDES permit for a discharge which is composed entirely of storm water which contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the State.

(c) The owner or operator of a municipal separate storm sewer system may petition the Executive Secretary to reduce the Census estimates of the population served by such separate system to account for storm water discharge to combined sewers that is treated in a publicly owned treatment works. In municipalities in which combined sewers are operated, the Census estimates of population may be reduced proportional to the fraction, based on estimated lengths, of the length of combined sewers over the sum of the length of combined sewers and municipal separate storm sewers where an applicant has submitted the UPDES permit number associated with each discharge point and a map indicating areas served by combined sewers and the location of any combined sewer overflow discharge point.

(d) Any person may petition the Executive Secretary for the designation of a large or medium municipal separate storm

sewer system.

(e) The Executive Secretary shall make a final determination on any petition received under this section within 90 days after receiving the petition.

(6) Provisions Applicable to Storm Water Definitions.

(a) The Executive Secretary may designate a municipal separate storm sewer system as part of a large system due to the interrelationship between the discharges of designated storm sewer and the discharges from the municipal separate storm sewers described under R317-8-1.6(4)(a) or (b). In making the determination under R317-8-1.6(4)(b) the Executive Secretary may consider the following factors:

1. Physical interconnections between the municipal separate storm sewers;

2. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in R317-8-1.6(3)(a);

3. The quantity and nature of pollutants discharged to waters of the State;

4. The nature of the receiving waters; and

5. Other relevant factors; or

The Executive Secretary may, upon petition, designate as a large municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a storm water management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in R317-8-1.6(4).

(b) The Executive Secretary may designate a municipal separate storm sewer system as part of a medium system due to the interrelationship between the discharges of designated storm sewer and the discharges from the municipal separate storm sewers describer under R317-8-1.6(7)(a) or (b). In making the determination under R317-8-1.6(7)(b) the Executive Secretary may consider the following factors;

1. Physical interconnections between the municipal separate storm sewers;

2. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in R317-8-1.6(7)(a);

3. The quantity and nature of pollutants discharged to waters of the State;

4. The nature of the receiving waters; or

5. Other relevant factors; or

The Executive Secretary may, upon petition, designate as a medium municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a storm water management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in R317-8-1.6(7)(a), (b), and (c).

(c) Storm water discharges associated with industrial activity - specific industries

1. For the categories of industries identified in R317-8-3.8(6)(c) 1 through 10, the term "storm water discharge associated with industrial activity" includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters; sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and finished products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water.

2. For the categories of industries identified in R317-8-3.8(6)(c)11, the term "storm water discharges associated with industrial activity" includes only storm water discharges from all the areas (except access roads and rail lines) that are listed in the previous sentence where material handing equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, or industrial machinery are exposed to storm water. For the purposes of this paragraph, material handling activities include the storage, loading and unloading, transportation or conveyance of any raw material, intermediate product, finished product, by-product or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. Industrial facilities (including industrial facilities that are Federally, State, or municipally owned or operated that meet the description of the facilities listed in R317-8-3.8(6)(c)1 through 11 include those facilities designated under the provisions of R317-8-3.8(1)(a)5.

d. Storm water discharge associated with industrial activity - industrial activity The following categories of facilities are considered to be engaging in "industrial activity".

1. Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards, or toxic pollutant effluent standards under 40 CFR subchapter N except facilities with toxic pollutant effluent standards which are exempted under category R317-8-3.8(6)(c)11;

2. Facilities classified as Standard Industrial Classifications 24 (except 2434), 26 (except 265 and 267), 28 (except 283 and 285), 29, 311, 32 (except 323), 33, 3441, 373;

3. Facilities classified as Standard Industrial Classifications 10 through 14 (mineral industry) including active or inactive mining operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area because the performance bond issued to the facility by the appropriate SMCRA authority has been released, or except for areas of non-coal mining operations which have been released from applicable State or Federal reclamation requirements after December 17, 1990) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts or waste products located on the site of such operations; (inactive mining operations are mining sites that are not being actively mined, but which have an identifiable owner/operator; inactive mining sites do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of

mined materials, nor sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim);

4. Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under subtitle C of RCRA;

5. Landfills, land application sites, and open dumps that receive or have received any industrial wastes (waste that is received from any of the facilities described under this subsection) including those that are subject to regulation under subtitle D of RCRA;

6. Facilities involved in the recycling of materials, including metal scrap yards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093;

7. Steam electric power generating facilities, including coal handling sites;

8. Transportation facilities classified as Standard Industrial Classifications 40, 41, 42 (except 4221-25), 43, 44, 45, and 5171 which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, airport deicing operations, or which are otherwise identified under R317-8-3.8(6)(c) 1 through 7 or R317-8-3.8(6)(c) 9 through 11 are associated with industrial activity;

9. Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of 1.0 mgd or more, or required to have an approved pretreatment program. Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with requirements for disposal of sewage sludge.

10. Construction activity including clearing, grading and excavation activities except: operations that result in the disturbance of less than five acres of total land area which are not part of a larger common plan of development or sale;

11. Facilities under Standard Industrial Classifications 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 285, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, 4221-25, (and which are not otherwise included within R317-8-3.8(6)(c) 2 through 9.

3.9 Silvicultural Activities

(1) Permit requirements. Silvicultural point sources, as defined in this section, are point sources subject to the UPDES permit program.

(2) Definitions.

(a) "Silvicultural point source" means any discernible, confined, and discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage facilities which are operated in connection with silvicultural activities and from which pollutants are discharged into waters of the State. The term does not include non-point source silvicultural activities such as nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance from which there is natural runoff.

(b) "Rock crushing and gravel washing facilities" means facilities which process crushed and broken stone, gravel, and riprap.

(c) "Log sorting and log storage facilities" means facilities whose discharges result from the holding of unprocessed wood, for example, logs or roundwood with bark or after removal of bark held in self-contained bodies of water or stored on land where water is applied intentionally on the logs.

3.10 Application Requirements for New and Existing POTWs.

(1) The following POTWs shall provide the results of valid whole effluent biological toxicity testing to the Executive Secretary.

(a) All POTWs with design influent flows equal to or greater than one million gallons per day; and

(b) All POTWs with approved pretreatment programs or POTWs required to develop a pretreatment program;

(2) In addition to the POTWs listed in R317-8-3.10(1)(a) and (b) the Executive Secretary may require other POTWs to submit the results of toxicity tests with their permit applications, based on consideration of the following factors:

(a) The variability of the pollutants or pollutant parameters in the POTW effluent (based on chemical-specific information, the type of treatment facility, and types of industrial contributors);

(b) The dilution of the effluent in the receiving water (ratio of effluent flow to receiving stream flow);

(c) Existing controls on point or nonpoint sources, including total maximum daily load calculations for the waterbody segment and the relative contribution of the POTW;

(d) Receiving stream characteristics, including possible or known water quality impairment, and whether the POTW discharges to a water designated as an outstanding natural resource; or

(e) Other considerations (including but not limited to the history of toxic impact and compliance problems at the POTW), which the Executive Secretary determines could cause or contribute to adverse water quality impacts.

(3) For POTWs required under R317-8-3.10(1) or (2) to conduct toxicity testing. POTWs shall use EPA's methods or other established protocols which are scientifically defensible and sufficiently sensitive to detect aquatic toxicity. Such testing must have been conducted since the last UPDES permit reissuance or permit modification under R317-8-5.6(1) whichever occurred later. Prior to conducting toxicity testing, permittees shall contact the Executive Secretary regarding the testing methodology to be used.

(4) All POTWs with approved pretreatment programs shall provide to the Executive Secretary a written technical evaluation of the need to revise local limits.

3.11 Primary Industry Categories. Any UPDES permit issued to dischargers in the following categories shall include effluent limitations and a compliance schedule to meet the requirements of the UPDES regulations and Sections 301(b)(2)(A),(C),(D),(E) and (F) of the CWA whether or not applicable effluent limitations guidelines have been

promulgated.

(1) Adhesives and sealants
(2) Aluminum forming
(3) Auto and other laundries
(4) Battery manufacturing
(5) Coal mining
(6) Coil coating
(7) Copper forming
(8) Electrical and electronic components
(9) Electroplating
(10) Explosives manufacturing
(11) Foundries
(12) Gum and wood chemicals
(13) Inorganic chemicals manufacturing
(14) Iron and steel manufacturing
(15) Leather tanning and finishing
(16) Mechanical products manufacturing
(17) Nonferrous metals manufacturing
(18) Ore mining
(19) Organic chemicals manufacturing
(20) Paint and ink formulation
(21) Pesticides
(22) Petroleum refining
(23) Pharmaceutical preparations
(24) Photographic equipment and supplies
(25) Plastics processing
(26) Plastic and synthetic materials manufacturing
(27) Porcelain enameling
(28) Printing and publishing
(29) Pulp and paper mills
(30) Rubber processing
(31) Soap and detergent manufacturing
(32) Steam electric power plants
(33) Textile mills
(34) Timber products processing

3.12 UPDES Permit Application Testing Requirements

TABLE I
Testing Requirements for Organic Toxic Pollutants
by Industrial Category for Existing Dischargers

Industrial category	GC/MS fraction (1) Volatile	Acid	Base/	Pesticide
Adhesives and sealants	(*)	(*)	(*)	...
Aluminum Forming	(*)	(*)	(*)	...
Auto and Other Laundry	(*)	(*)	(*)	(*)
Battery Manufacturing	(*)	...	(*)	...
Coal Mining	(*)	(*)	(*)	(*)
Coil Coating	(*)	(*)	(*)	...
Copper Forming	(*)	(*)	(*)	...
Electric and Electronic Components	(*)	(*)	(*)	(*)
Electroplating	(*)	(*)	(*)	...
Explosives Manufacturing	...	(*)	(*)	...
Foundries	(*)	(*)	(*)	...
Gum and Wood Chemicals	(*)	(*)	(*)	...
Inorganic Chemicals Manufacturing	(*)	(*)	(*)	...
Iron and Steel Manufacturing	(*)	(*)	(*)	...
Leather Tanning and Finishing	(*)	(*)	(*)	(*)
Mechanical Products Manufacturing	(*)	(*)	(*)	(*)
Nonferrous Metals Manufacturing	(*)	(*)	(*)	(*)
Ore Mining	(*)	(*)	(*)	(*)
Organic Chemicals Manufacturing	(*)	(*)	(*)	(*)
Paint and Ink Formulation	(*)	(*)	(*)	(*)
Pesticides	(*)	(*)	(*)	(*)
Petroleum Refining	(*)	(*)	(*)	(*)
Pharmaceutical Preparations	(*)	(*)	(*)	(*)
Photographic Equipment and Supplies	(*)	(*)	(*)	(*)
Plastic and Synthetic Materials Manufacturing	(*)	(*)	(*)	(*)
Plastic Processing	(*)	...	...	...
Porcelain Enameling	(*)	...	(*)	(*)
Printing and Publishing	(*)	(*)	(*)	(*)
Pulp and Paper Mills	(*)	(*)	(*)	(*)
Rubber Processing	(*)	(*)	(*)	...
Soap and Detergent Manufacturing	(*)	(*)	(*)	...
Steam Electric Power Plant	(*)	(*)	(*)	...
Textile Mills	(*)	(*)	(*)	(*)
Timber Products Processing	(*)	(*)	(*)	(*)

(1) The toxic pollutants in each fraction are listed in Table II.
* Testing required.

TABLE II
Organic Toxic Pollutants in Each of Four Fractions in Analysis
by Gas Chromatography/Mass Spectroscopy (GC/MS)

(a) VOLATILES

1V acrolein
2V acrylonitrile
3V benzene
4V bis (chloromethyl) ether
5V bromoform
6V carbon tetrachloride
7V chlorobenzene
8V chlorodibromomethane
9V chloroethane
10V 2-chloroethylvinyl ether
11V chloroform
12V dichlorobromomethane
13V dichlorodifluoromethane
14V 1,1-dichloroethane
15V 1,2-dichloroethane
16V 1,1-dichloroehtylene
17V 1,2-dichloropropane
18V 1,2-dichloropropylene
19V ethylbenzene
20V metyl bromide
21V methyl chloride
22V methoylene chloride
23V 1,1,2,2-tetrachloroethane
24V tetrachloroethylene
25V toluene
26V 1,2-trans-dichloroethylene
27V 1,1,1-trichloroethane
28V 1,1,2-trichloroethane
29V trichloroethylene
30V trichlorofluoromethane
31V vinyl chloride

(b) ACID COMPOUNDS

1A 2-chlorophenol
2A 2,4-dichlorophenol
3A 2.4-dimethylphenol
4A 4,6-dinitro-o-cresol

5A 2,4-dinitrophenol
6A 2-nitrophenol
7A 4-nitrophenol
8A p-chloro-m-cresol
9A pentachlorophenol
10A phenol
11A 2,4,6-trichlorophenol

(c) BASE/NEUTRAL

1B acenaphthene
2B acenaphthylene
3B anthracene
4B benzidine
5B benzo(a)anthracene
6B benzo(a)pyrene
7B 3,4-benzofluoranthene
8B benzo(ghi)perylene
9B benzo(k)fluoranthene
10B bis(2-chloroethoxy)methane
11B bis(2-chloroethyl)ether
12B bis(2-chloroethyl)ether
13B bis(2-ethylhexyl)phthalate
14B 4-bromophenyl phenyl ether
15B butylbenzyl phthalate
16B 2-chloronaphthanlene
17B 4-chlorophenyl phenyl ether
18B chrysene
19B dibenxo(a,h)anthracene
20B 1,2-dichlorobenzen
21B 1,3-dichlorobenzene
22B 1,4-dichlorobenzene
23B 3,3-dichlorobenzidine
24B diethyl phthalate
25B dimethyl phtahalate
26B di-n-butyl phthalate
27B 2,4-dinitrotoluene
28B 2,6-dinitrotoluene
29B di-n-octyl phthalate
30B 1,2-diphenylhydrazine (as azobenzene)
31B fluoranthene
32B fluorene
33B hexachlorobenzene
34B hexachlorobutadiene
35B hexachlorocyclopentadiene
36B hexachloroethane
37B indeno(1,2,3-cd)pyrene
38B isophorone
39B naphthalene
40B nitrobenzene
41B N-nitrosodimethylamine
42B N-nitrosodi-n-propylamine
43B N-nitrosodiphenylamine
44B phenanthrene
45B pyrene
46B 1,2,4-trichlorobenzene

(d) PESTICIDES

1P aldrin
2P alpha-BHC
3P beta-BHC
4P gamma-BHC
5P delta-BHC
6P chlordane
7P 4,4'-DDT
8P 4,4'-DDE
10P dieldrin
11P alpha-endosulfan
12P beta-endosulfan
13P endosulfan sulfate
14P endrin
15P endrin aldehyde
16P heptachlor
17P heptachlor epoxide
18P PCB-1242
19P PCB-1254
20P PCB-1221
21P PCB-1232
22P PCB-1248
23P PCB-1260
24P PCB-1016
25P toxaphene

TABLE III
Other Toxic Pollutants; Metals, Cyanide, and Total Phenols

(a) Antimony, Total
(b) Arsenic, Total
(c) Beryllium, total
(d) Cadmium, Total
(e) Chromium, Total
(f) Copper, Total
(g) Lead, Total
(h) Mercury, Total
(i) Nickel, Total
(j) Selenium, Total
(k) Silver, Total
(l) Thallium, Total
(m) Zinc, Total
(n) Cyanide, Total
(o) Phenols, Total

TABLE IV
Conventional and Nonconventional Pollutants Required to be Tested
by Existing Dischargers if Expected to be Present

(a) Bromide
(b) Chlorine, Total Residual
(c) Color
(d) Fecal Coliform
(e) Fluoride
(f) Nitrate-Nitrite
(g) Nitrogen, total Organic
(h) Oil and Grease
(i) Phosphorus, Total
(j) Radioactivity
(k) Sulfate
(l) Sulfide
(m) Sulfite
(n) Surfactants
(o) Aluminum, Total
(p) Barium, Total
(q) Boron, Total
(r) Cobalt, Total
(s) Iron, Total
(t) Magnesium, Total
(u) Molybdenum, Total
(v) Manganese, Total
(w) Tin, Total
(x) Titanium, Total

TABLE V
28 Toxic Pollutants and Hazardous Substances Required
to be Identified by Existing Dischargers
if Expected to be Present

(a) Toxic Pollutants - Asbestos
(b) Hazardous Substances

1. Acetaldhyde
2. Allyl alcohol
3. Allyl chloride

4. Amyl acetate
5. Aniline
6. Benzonitrile
7. Benzyl chloride
8. Butyl acetate
9. Butylamine
10. Captan
11. Carbaryl
12. Carbofuran
13. Carbon disulfide
14. Chlorpyrifos
15. Coumaphos
16. Cresol
17. Crotonaldehyde
18. Cyclohexane
19. 2,4-D(2.4-Dichlorophenoxy acetic acid)
20. Diazinon
21. Dicamba
22. Dichlobenil
23. Dichlone
24. 2,2-Dichloropropionic acid
25. Dichlorvos
26. Diethyl amine
27. Dimethyl amine
28. Dintrobenzene
29. Diquat
30. Disulfoton
31. Diuron
32. Epichloropydrin
33. Ethanolamine
34. Ethion
35. Ethylene diamine
36. Ethylene dibromide
37. Formaldehyde
38. Furfural
39. Guthion
40. Isoprene
41. Isopropanolamine dodecylbenzenesulfonate
42. Kelthane
43. Kepone
44. Malathion
45. Mercaptodimethur
46. Methoxychlor
47. Methyl mercaptan
48. Methyl methacrylate
49. Methyl parathion
50. Mevinphos
51. Mexacarbate
52. Monoethyl amine
53. Monomethyl amine
54. Naled
55. Npathenic acid
56. Nitrotouene
57. Parathion
58. Phenolsulfanante
59. Phosgene
60. Propargite
61. Propylene oxide
62. Pyrethrins
63. Quinoline
64. Resorconol
65. Strontium
66. Strychnine
67. Styrene
68. 2,4,5-T(2,4,5-Trichlorophenoxy acetic acid)
69. TDE(Tetrachlorodiphenylethane)
70. 2,4,5-TP (2-(2,4,5 - trichlorophenoxy)propanic acid)
71. Trichlorofan
72. Triethanolamine dodecylbenzenesulfonate
73. Triethylamine
74. Trimethylamine
75. Uranium
76. Vanadium
77. Vinyl Acetate
78. Xylene
79. Xylenol
80. Zirconium

3.13 Application Requirements of R317-8-3.7(7)(e) Suspended for Certain Categories and Subcategories of Primary Industries. The application requirements of R317-8-3.4 (7)(c) are suspended for the following categories and subcategories of the primary industries listed in R317-8-3.10:

(1) Coal mines.

(2) Testing and reporting for all four organic fractions in the Greige Mills subcategory of the Textile Mills Industry and testing and reporting for the pesticide fraction in all other subcategories of this industrial category.

(3) Testing and reporting for the volatile, base/neutral and pesticide fractions in the Base and Precious Metals Subcategory of the Ore Mining and Dressing industry, and testing and reporting for all four fractions in all other subcategories of this industrial category.

(4) Testing and reporting for all four GC/MS fractions in the Porcelain Enameling industry.

(5) Testing and reporting for the pesticide fraction in the Tall Oil Resin Subcategory and Rosin-Based Derivatives Subcategory of the Gum and Wood Chemicals industry and testing and reporting for the pesticide and base/neutral fractions in all other subcategories of this industrial category.

(6) Testing and reporting for the pesticide fraction in the Leather Tanning and Finishing, Paint and Ink Formulation, and Photographic Supplies industrial categories.

(7) Testing and reporting for the acid, base/neutral and pesticide fractions in the Petroleum Refining industrial category.

(8) Testing and reporting for the pesticide fraction in the Papergrade Sulfite subcategories of the Pulp and Paper industry; testing and reporting for the base/neutral and pesticide fractions in the following subcategories: Deink Dissolving Kraft and Paperboard from Waste Paper; testing and reporting for the volatile, base/neutral and pesticide fractions in the following subcategories: BCT Bleached Kraft, Semi-Chemical and Nonintegrated Fine Papers; and testing and reporting for the acid, base/neutral, and pesticide fractions in the following subcategories: Fine Bleached Kraft, Dissolving, Sulfite Pulp, Groundwood-Fine Papers, Market Bleached Kraft, Tissue from Wastepaper, and Nonintegrated-Tissue Papers.

(9) Testing and reporting for the base/neutral fraction in the Once-Through Cooling Water, Fly Ash and Bottom Ash Transport Water process wastestreams of the Steam Electric Power Plant industrial category.

R317-8-4. Permit Conditions.

4.1 Conditions Applicable to All UPDES Permits. The following conditions apply to all UPDES permits. Additional conditions applicable to UPDES permits are in R317-8-4.1(15). All conditions applicable shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these regulations must be given in the permit. In addition to conditions required in all UPDES permits, the Executive Secretary will establish conditions as required on a case-by-case basis under R317-8-4.2 and R317-8-5.

(1) Duty to Comply.

(a) General requirement. The permittee must comply with all conditions of the UPDES permit. Any permit noncompliance is a violation of the Utah Water Quality Act, as amended and is grounds for enforcement action; permit termination, revocation and reissuance or modification; or denial of a permit renewal application.

(b) Specific duties.

1. The permittee shall comply with effluent standards or prohibitions for toxic pollutants and with standards for sewage sludge use or disposal established by the State within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement (40 CFR, 129).

2. The Utah Water Quality Act, in 19-5-115, provides that any person who violates the Act, or any permit, rule, or order adopted under it is subject to a civil penalty not to exceed $10,000 per day of such violation. Any person who willfully or with gross negligence violates the Act, or any permit, rule or order adopted under it is subject to a fine of not more than $25,000 per day of violation. Any person convicted under 19-5-115 a second time shall be punished by a fine not exceeding $50,000 per day.

(2) Duty to Reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of the permit, the permittee shall apply for and obtain a new permit as required in R317-8-3.1.

(3) Need to Halt or Reduce Activity Not a Defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit. (Upon reduction, loss, or failure of the treatment facility, the permittee, to the extent necessary to maintain compliance with the permit, shall control production of all discharges until the facility is restored or an alternative method of treatment is provided.)

(4) Duty to Mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of the UPDES permit which has a reasonable likelihood of adversely affecting human health or the environment.

(5) Proper Operation and Maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control and related appurtenances which are installed or used by the permittee to achieve compliance with the conditions of the permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

(6) Permit Actions. The permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

(7) Property Rights. This permit does not convey any property rights of any kind, or any exclusive privilege.

(8) Duty to Provide Information. The permittee shall furnish to the Executive Secretary, within a reasonable time, any information which the Executive Secretary may request to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with this permit. The permittee shall also furnish to the Executive Secretary, upon request, copies of records required to be kept by the permit.

(9) Inspection and Entry. The permittee shall allow the Executive Secretary, or an authorized representative, including an authorized contractor acting as a representative of the Executive Secretary) upon the presentation of credentials and other documents as may be required by law to:

(a) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of the permit;

(b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

(c) Inspect at reasonable times any facilities, equipment, including monitoring and control equipment, practices or operations regulated or required under the permit; and

(d) Sample or monitor at reasonable times for the purposes of assuring UPDES program compliance or as otherwise authorized by the Utah Water Pollution Control Act any substances or parameters, or practices at any location.

(10) Monitoring and records.

(a) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

(b) The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by the permit, and records of all data used to complete the application for the permit for a period of at least three (3) years from the date of the sample, measurement, report or application. This period may be extended by request of the Executive Secretary at any time. Records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, shall be retained for a period of at least five years or longer as required by State promulgated standards for sewage sludge use and disposal.

(c) Records of monitoring information shall include:

1. The date, exact place, and time of sampling or measurements;

2. The individual(s) who performed the sampling or measurements;

3. The date(s) and times analyses were performed;

4. The individual(s) who performed the analyses;

5. The analytical techniques or methods used; and

6. The results of such analyses.

(d) Monitoring shall be conducted according to test procedures approved under 40 CFR 136 or in the case of sludge use or disposal, approved under 40 CFR 136 unless otherwise specified in State standards for sludge use or disposal, unless other test procedures, approved by EPA under 40 CFR 136, have been specified in the permit.

(e) Section 19-5-115(3) of the Utah Water Quality Act provides that any person who falsifies, tampers with, or

knowingly renders inaccurate any monitoring device or method required to be maintained under the permit shall, upon conviction, be punished by a fine not exceeding $10,000 or imprisonment for not more than six months or by both.

(11) Signatory Requirement. All applications, reports, or information submitted to the Executive Secretary shall be signed and certified as indicated in R317-8-3.3. The Utah Water Pollution Control Act provides that any person who knowingly makes any false statements, representations, or certifications in any record or other document submitted or required to be maintained under the permit, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than $10,000 or by imprisonment for not more than six months or by both.

(12) Reporting Requirements.

(a) Planned changes. The permittee shall give notice to the Executive Secretary as soon as possible of any planned physical alteration or additions to the permitted facility. Notice is required only when:

1. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in R317-8-8; or

2. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit nor to notification requirements under R317-8-4.1(15).

3. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.

(b) Anticipated Noncompliance. The permittee shall give advance notice to the Executive Secretary of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

(c) Transfers. The permit is not transferable to any person except after notice to the Executive Secretary. The Executive Secretary may require modification on and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the Utah Water Quality Act, as amended. (In some cases, modification, revocation and reissuance is mandatory.)

(d) Monitoring reports. Monitoring results shall be reported at the intervals specified elsewhere in the permit. Monitoring results shall be reported as follows:

1. Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the Executive Secretary for reporting results of monitoring of sludge use or disposal practices.

2. If the permittee monitors any pollutant more frequently than required by the permit, using test procedures approved under 40 CFR 136 or the in the case of sludge use or disposal, approved under 40 CFR 136 unless otherwise specified in State standards for sludge use and disposal, or as specified in the permit according to procedures approved by EPA, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Executive Secretary.

3. Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in the permit.

(e) Compliance Schedules. Reports of compliance or noncompliance with, or any progress report on, interim and final requirements contained in any compliance schedule of the permit shall be submitted no later than fourteen days following each scheduled date.

(f) Twenty-Four Hour Reporting. The permittee shall (orally) report any noncompliance which may endanger health or the environment. Any information shall be provided orally within twenty-four hours from the time the permittee becomes aware of the circumstances. (The report shall be in addition to and not in lieu of any other reporting requirement applicable to the noncompliance.) A written submission shall also be provided within five days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance. (The Executive Secretary may waive the written report on a case-by-case basis if the oral report has been received within twenty-four hours.) The following shall be included as events which must be reported within twenty-four hours:

1. Any unanticipated bypass which exceeds any effluent limitation in the permit, as indicated in R317-8-4.1(13).

2. Any upset which exceeds any effluent limitation in the permit.

3. Violation of a maximum daily discharge limitation for any of the pollutants listed by the Executive Secretary in the permit to be reported within twenty-four hours, as indicated in R317-8-4.2(7). The Executive Secretary may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

(g) Other NonCompliance. The permittee shall report all instances of noncompliance not reported under R317-8-4.1(12)(d), (e), and (f) at the time monitoring reports are submitted. The reports shall contain the information listed in R317-8-4.1(12)(f).

(h) Other Information. Where the permittee becomes aware that it failed to submit any relevant fact in a permit application, or submitted incorrect information in its permit application or in any report to the Executive Secretary, it shall promptly submit such facts or information.

(13) Occurrence of a Bypass.

(a) Definitions.

1. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

2. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(b) Bypass Not Exceeding Limitations. The permittee may

allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to R317-8-4.1(13)(c) 1 and 2 or R317-8-4.1(13)(d).

(c) Notice.

1. Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of bypass.

2. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in R317-8-4.1(12)(f).

(d) Prohibition of Bypass.

1. Bypass is prohibited, and the Executive Secretary may take enforcement action against a permittee for bypass, unless:

a. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

b. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgement to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance, and

c. The permittee submitted notices as required under R317-8-4.1(13)(c).

2. The Executive Secretary may approve an anticipated bypass, after considering its adverse effects, if the Executive Secretary determines that it will meet the three conditions listed in R317-8-4.1(13)(d) a, b, and c.

(14) Occurrence of an Upset.

(a) Definition. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(b) Effect of an Upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of R317-8-4.1(14)(c) are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, if final administrative action subject to judicial review.

(c) Conditions Necessary for a Demonstration of Upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate through properly signed, contemporaneous operating logs, or other relevant evidence that:

1. An upset occurred and that the permittee can identify the specific cause(s) of the upset;

2. The permitted facility was at the time being properly operated; and

3. The permittee submitted notice of the upset as required in R317-8-4.1(12)(f) (twenty-four hour notice).

4. The permittee complied with any remedial measures required under R317-8-4.1(4).

(d) Burden of Proof. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

(15) Additional Conditions Applicable to Specified Categories of UPDES Permits. The following conditions, in addition to others set forth in these regulations apply to all UPDES permits within the categories specified below:

(a) Existing Manufacturing, Commercial, Mining, and Silvicultural Dischargers. In addition to the reporting requirements under R317-8-4.1(12),(13), and (14), any existing manufacturing, commercial, mining, and silvicultural discharger shall notify the Executive Secretary as soon as it knows or has reason to believe:

1. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

a. One hundred micrograms per liter (100 ug/l);

b. Two hundred micrograms per liter (200 ug/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 ug/l) for 2,4 dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;

c. Five times the maximum concentration value reported for that pollutant in the permit application in accordance with R317-8-3.4(7) or (10).

d. The level established by the Executive Secretary in accordance with R317-8-4.2(6).

2. That any activity has occurred or will occur which would result in any discharge on a non-routine or infrequent basis of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

a. Five hundred micrograms per liter (500 ug/l).

b. One milligram per liter (1 mg/l) for antimony.

c. Ten times the maximum concentration value reported for that pollutant in the permit application in accordance with R317-8-3.4(9).

d. The level established by the Executive Secretary in accordance with R317-8-4.2(6).

(b) POTWs. POTWs shall provide adequate notice to the Executive Secretary of the following:

1. Any new introduction of pollutants into that POTW from an indirect discharger which would be subject to the UPDES regulations if it were directly discharging those pollutants; and

2. Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of issuance of the permit.

3. For purposes of this paragraph, adequate notice shall include information on the quality and quantity of effluent introduced into the POTW; and any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.

(c) Municipal separate storm sewer systems. The operator of a large or medium municipal separate storm sewer system or a municipal separate storm sewer that has been determined by the Executive Secretary under R317-883.8(1)(a)5 of this part must submit an annual report by the anniversary of the date of the issuance of the permit for such system. The report shall

include:

(1) The status of implementing the components of the storm water management program that are established as permit conditions;

(2) Proposed changes to the storm water management programs that are established as permit conditions. Such proposed changes shall be consistent with R317-8-3.8(3)(b)3; and

(3) Revisions, if necessary, to the assessment of controls and the fiscal analysis reported in the permit application under R317-8-3.8(3)(b)4 and 3.8(3)(b)5;

(4) A summary of data, including monitoring data, that is accumulated throughout the reporting year;

(5) Annual expenditures and budget for year following each annual report;

(6) A summary describing the number and nature of enforcement actions, inspections, and public education programs;

(7) Identification of water quality improvements or degradation.

4.2 Establishing Permit Conditions. For the purposes of this section, permit conditions include any statutory or regulatory requirement which takes effect prior to the final administrative disposition of a permit. An applicable requirement may be any requirement which takes effect prior to the modification or revocation or reissuance of a permit, to the extent allowed in R317-8-5.6. New or reissued permits, and to the extent allowed under R317-8-5.6, modified or revoked and reissued permits shall incorporate each of the applicable requirements referenced in this section. In addition to the conditions established under R317-8-4.1 each UPDES permit will include conditions on a case by case basis to provide for and ensure compliance with all applicable Utah statutory and regulatory requirements and the following, as applicable:

(1) Technology-based effluent limitations and standards, based on effluent limitations and standards promulgated under Section 19-5-104 of the Utah Water Quality Act or new source performance standards promulgated under Section 19-5-104 of the Utah Water Quality Act, on case-by-case effluent limitations, or a combination of the two in accordance with R317-8-7.1.

(2) Toxic Effluent Standards and Other Effluent Limitations. If any applicable toxic effluent standard or prohibition, including any schedule of compliance specified in such effluent standard or prohibition, is promulgated under Section 307(a) of CWA for a toxic pollutant and that standard or prohibition is more stringent than any limitation on the pollutant in the permit, the Executive Secretary shall institute proceedings under these regulations to modify or revoke and reissue the permit to conform to the toxic effluent standard or prohibition.

(3) Reopener Clause. For any discharger within a primary industry category, as listed in R317-8-3.10, requirements will be incorporated as follows:

(a) On or before June 30, 1981:

1. If applicable standards or limitations have not yet been promulgated, the permit shall include a condition stating that, if an applicable standard or limitation is promulgated and that effluent standard or limitation is more stringent than any effluent limitation in the permit or controls a pollutant not limited in the permit, the permit shall be promptly modified or revoked and reissued to conform to that effluent standard or limitation.

2. If applicable standards or limitations have been promulgated or approved, the permit shall include those standards or limitations.

(b) On or after the statutory deadline set forth in Section 301(b)(2) (A), (C), and (E) of CWA, any permit issued shall include effluent limitations to meet the requirements of Section 301(b)(2) (A), (C), (D), (E), (F), whether or not applicable effluent limitations guidelines have been promulgated or approved. These permits need not incorporate the clause required by R317-8-4.2(3)(a)1.

(c) The Executive Secretary shall promptly modify or revoke and reissue any permit containing the clause required under R317-8-4.2(3)(a)1 to incorporate an applicable effluent standard or limitation which is promulgated or approved after the permit is issued if that effluent standard or limitation is more stringent than any effluent limitation in the permit, or controls a pollutant not limited in the permit.

(d) For any permit issued to a treatment works treating domestic sewage (including sludge-only facilities), the Executive Secretary shall include a reopener clause to incorporate any applicable standard for sewage sludge use or disposal adopted by the State. The Executive Secretary may promptly modify or revoke and reissue any permit containing the reopener clause required by this paragraph if the standard for sewage sludge use or disposal is more stringent than any requirements for sludge use or disposal in the permit, or controls a pollutant or practice not limited in the permit.

(4) Water quality standards and state requirements shall be included as applicable. Any requirements in addition to or more stringent than EPA's effluent limitation guidelines or standards will be included, when necessary to:

(a) Achieve water quality standards established under the Utah Water Quality Act, as amended and regulations promulgated pursuant thereto, including State narrative criteria for water quality.

1. Permit limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Executive Secretary determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard, including State narrative criteria for water quality.

2. When determining whether a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative or numeric criteria within a State water quality standard, the Executive Secretary shall use procedures which account for existing controls on point and nonpoint sources of pollution, the variability of the pollutant or pollutant parameter in the effluent, the sensitivity of the species to toxicity testing (when evaluating whole effluent toxicity), and where appropriate, the dilution of the effluent in the receiving water.

3. When the Executive Secretary determines, using the procedures in R317-8-4.2(4)(2), that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the allowable ambient concentration of a State numeric criteria within a State water quality standard for an

individual pollutant, the permit must contain effluent limits for that pollutant.

4. When the Executive Secretary determines, using the procedures in R317-8-4.2(4)(2), that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the numeric criterion for whole effluent toxicity, the permit will contain effluent limits for whole effluent toxicity.

5. Except as provided in R317-8-4.2, when the Executive Secretary determines, using the procedures in R317-8-4.2(4)(2), toxicity testing data, or other information, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative criterion within an applicable State water quality standard, the permit will contain effluent limits for whole effluent toxicity. Limits on whole effluent toxicity are not necessary where the Executive Secretary determines in the fact sheet or statement of basis of the UPDES permit, using the procedures in R317-8-4.2(4)(2), that chemical specific limits for effluent are sufficient to attain and maintain applicable numeric and narrative State water quality standards.

6. Where the State has not established a water quality criterion for a specific chemical pollutant that is present in an effluent at a concentration that causes, has the reasonable potential to cause, or contributes to an excursion above a narrative criterion within an applicable State water quality standard the Executive Secretary will establish effluent limits using one or more of the following options:

a. Establish effluent limits using a calculated numeric water quality criterion for the pollutant which the Executive Secretary determines will attain and maintain applicable narrative water quality criteria and will fully protect the designated use. Such a criterion may be derived using a proposed State criterion, or an explicit State policy or regulation interpreting its narrative water quality criteria supplemented with other relevant information which may include: EPA's Water Quality Standards Handbook, October 1983, risk assessment data, exposure data, information about the pollutant from the Food and Drug Administration, and current EPA criteria documents:

b. Establish effluent limits on a case-by-case basis, using EPA's water quality criteria, published under section 307(a) of the CWA, supplemented where necessary by other relevant information; or

c. Establish effluent limitations on an indicator parameter for the pollutant of concern, provided:

(i) The permit identifies which pollutants are intended to be controlled by the use of the effluent limitations;

(ii) The fact sheet as required by .4 sets forth the basis for the limit, including a finding that compliance with the effluent limit on the indicator parameter will result in controls on the pollutant of concern which are sufficient to attain and maintain applicable water quality standards;

(iii) The permit requires all effluent and ambient monitoring necessary to show that during the term of the permit the limit on the indicator parameter continues to attain and maintain applicable water quality standards; and

(iv) The permit contains a reopener clause allowing the Executive Secretary to modify or revoke and reissue the permit if the limits on the indicator parameter no longer attain and maintain applicable water quality standards.

7. When developing water quality-based effluent limits under this paragraph the Executive Secretary shall ensure that:

a. The level of water quality to be achieved by limits on point sources established under this paragraph is derived from, and complies with all applicable water quality standards; and

b. Effluent limits developed to protect a narrative water quality criterion, a numeric water quality criterion, or both, are consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by the State and approved by EPA pursuant to 40 CFR 130.7.

(b) Attain or maintain a specified water quality through water quality related effluent limits established under the Utah Water Quality Act;

(c) Conform to applicable water quality requirements when the discharge affects a state other than Utah;

(d) Incorporate any more stringent limitations, treatment standards, or schedule of compliance requirements established under federal or state law or regulations.

(e) Ensure consistency with the requirements of any Utah Water Quality Management Plan approved by EPA.

(f) Incorporate alternative effluent limitations or standards where warranted by "fundamentally different factors," under R317-8-7.3.

(5) Technology-based Controls for Toxic Pollutants. Limitations established under R317-8-4.2 (1), (2), or (4) to control pollutants meeting the criteria listed in R317-8-4.2(5)(a) will be included in the permit, if applicable. Limitations will be established in accordance with R317-8-4.2(5)(6). An explanation of the development of these limitations will be included in the fact sheet under R317-8-6.4.

(a) Limitations will control all toxic pollutants which:

1. The Executive Secretary determines, based on information reported in a permit application under R317-8-3.4(7) and (10), or in a notification under R317-8-4.1(15)(a) of this regulation or on other information, are or may be discharged at a level greater than the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under R317-8-7.1(3)(a),(b) and (c).

2. The discharger does or may use or manufacture as an intermediate or final product or byproduct.

(b) The requirement that the limitations control the pollutants meeting the criteria of paragraph (a) of this subsection will be satisfied by:

1. Limitations on those pollutants; or

2. Limitations on other pollutants which, in the judgment of the Executive Secretary, will provide treatment of the pollutants under paragraph (a) of this subsection to the levels required by R317-8-7.1(3)(a), (b) and (c).

(6) Notification Level. A "notification level" which exceeds the notification level of R317-8-4.1(15) upon a petition from the permittee or on the Executive Secretary's initiative will be incorporated as a permit condition, if applicable. This new notification level may not exceed the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under R317-8-7.1(3).

(7) Twenty-Four (24) Hour Reporting. Pollutants for which the permittee will report violations of maximum daily discharge limitations under R317-8-4.1(12)(f) shall be listed in

the permit. This list will include any toxic pollutant or hazardous substance, or any pollutant specifically identified as the method to control a toxic pollutant or hazardous substance.

(8) Monitoring Requirements. The permit will incorporate, as applicable in addition to R317-8-4.1(12) the following monitoring requirements:

(a) To assure compliance with permit limitations, requirements to monitor;

1. The mass, or other measurement specified in the permit, for each pollutant limited in the permit;

2. The volume of effluent discharged from each outfall;

3. Other measurements as appropriate, including pollutants in internal waste streams under R317-8-4.3(8); pollutants in intake water for net limitations under R317-8-4.3(7); frequency and rate of discharge for noncontinuous discharges under R317-8-4.3(5); pollutants subject to notification requirements under R317-8-4.1(15)(a); and pollutants in sewage sludge or other monitoring as specified in State rules for sludge use or disposal or as determined to be necessary pursuant to R317-8-2.1.

4. According to test procedures approved under 40 CFR Part 136 for the analyses of pollutants having approved methods under the federal regulation, and according to a test procedure specified in the permit for pollutants with no approved methods.

(b) Requirements to report monitoring results with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year. For sewage sludge use or disposal practices, requirements to monitor and report results with a frequency dependent on the nature and effect of the sewage sludge use or disposal practice; this shall be as specified in State rules governing sludge use or disposal, but in no cases less than once a year.

(9) Pretreatment Program for POTWs. If applicable to the facility the permit will incorporate as a permit condition, requirements for POTWs to:

(a) Identify, in terms of character and volume of pollutants, any significant indirect dischargers into the POTW subject to pretreatment standards under the UPDES regulations.

(b) Submit a local program when required by and in accordance with R317-8-8.9 to assure compliance with pretreatment standards to the extent applicable in the UPDES regulations. The local program will be incorporated into the permit as described in R317-8-8.9. The program shall require all indirect dischargers to the POTW to comply with the applicable reporting requirements.

(c) For POTWs which are "sludge-only facilities", a requirement to develop a pretreatment program under R317-8-8 when the Executive Secretary determines that a pretreatment program is necessary to assure compliance with State rules governing sludge use or disposal.

(10) Best management practices shall be included as a permit condition, as applicable, to control or abate the discharge of pollutants when:

(a) Authorized under the Utah Water Quality Act as amended and the UPDES rule for the control of toxic pollutants and hazardous substances from ancillary activities;

(b) Numeric effluent limitations are infeasible, or

(c) The practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the Utah Water Quality Act, as amended.

(11) Reissued Permits.

(a) Except as provided in R317-8-4.2(11)(b), when a permit is renewed or reissued, interim limitations, standards or conditions must be at least as stringent as the final limitations, standards, or conditions in the previous permit unless the circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification or revocation and reissuance under R317-8-5.6.

(b) In the case of effluent limitations established on the basis of Section 19-5-104 of the Utah Water Quality Act, a permit may not be renewed, reissued, or modified on the basis of effluent guidelines promulgated by EPA under section 304(b) of the CWA subsequent to the original issuance of such permit, to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit.

(c) Exceptions--A permit with respect to which R317-8-4.2(11)(b) applies may be renewed, reissued or modified to contain a less stringent effluent limitation applicable to a pollutant, if--

1. Material and substantial alterations or additions to the permitted facility occurred after permit issuance which justify the application of a less stringent effluent limitation; and

2. a. Information is available which was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) which would have justified the application of a less stringent effluent limitation at the time of permit issuance; or

b. The Executive Secretary determines that technical mistakes or mistaken interpretations of law were made in issuing the permit;

3. A less stringent effluent limitation is necessary because of events over which the permittee has no control and for which there is no reasonably available remedy;

4. The permittee has received a permit modification under R317-8-5.6; or

5. The permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations, in which case the limitations in the reviewed, reissued, or modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance, or modification).

(d). Limitations. In no event may a permit with respect to which R317-8-4.2(11)(b) applies be renewed, reissued or modified to contain an effluent limitation which is less stringent than required by effluent guidelines in effect at the time the permit is renewed, reissued, or modified. In no event may such a permit to discharge into waters be renewed, issued, or modified to contain a less stringent effluent limitation if the implementation of such limitation would result in a violation of the water quality standard applicable to such waters.

(12) Privately Owned Treatment Works. For a privately owned treatment works, any conditions expressly applicable to any user, as a limited co-permittee, that may be necessary in the permit issued to the treatment works to ensure compliance with applicable requirements under this regulation will be imposed

as applicable. Alternatively, the Executive Secretary may issue separate permits to the treatment works and to its users, or may require a separate permit application from any user. The Executive Secretary's decision to issue a permit with no conditions applicable to any user, to impose conditions on one or more users, to issue separate permits or to require separate applications, and the basis for that decision will be stated in the fact sheet for the draft permit for the treatment works.

(13) Grants. Any conditions imposed in grants or loans made by the Executive Secretary to POTWs which are reasonably necessary for the achievement of federally issued effluent limitations will be required as applicable.

(14) Sewage Sludge. Requirements governing the disposal of sewage sludge from publicly owned treatment works or any other treatment works treating domestic sewage for any use for which rules have been established, in accordance with any applicable regulations.

(15) Coast Guard. When a permit is issued to a facility that may operate at certain times as a means of transportation over water, the permit will be conditioned to require that the discharge comply with any applicable federal regulation promulgated by the Secretary of the department in which the Coast Guard is operating, and such condition will establish specifications for safe transportation, handling, carriage, and storage of pollutants, if applicable.

(16) Navigation. Any conditions that the Secretary of the Army considers necessary to ensure that navigation and anchorage will not be substantially impaired, in accordance with R317-8-6.9 will be included.

(17) State standards for sewage sludge use or disposal. When there are no applicable standards for sewage sludge use or disposal, the permit may include requirements developed on a case-by-case basis to protect public health and the environment from any adverse effects which may occur from toxic pollutants in sewage sludge. If any applicable standard for sewage sludge use or disposal is promulgated under Section 19-5-104 of the Utah Water Quality Act, and that standard is more stringent than any limitation on the pollutant or practice in the permit, the Executive Secretary may initiate proceedings under these rules to modify or revoke and reissue the permit to conform to the standard for sewage sludge use or disposal.

4.3 Calculating UPDES Permit Conditions. The following provisions will be used to calculate terms and conditions of the UPDES permit.

(1) Outfalls and Discharge Points. All permit effluent limitations, standards, and prohibitions will be established for each outfall or discharge point of the permitted facility, except as otherwise provided under R317-8-4.2(10) with BMPs where limitations are infeasible; and under R317-8-4.3(8), limitations on internal waste streams.

(2) Production-Based Limitations.

(a) In the case of POTWs, permit effluent limitations, standards, or prohibitions will be calculated based on design flow.

(b) Except in the case of POTWs, calculation of any permit limitations, standards, or prohibitions which are based on production, or other measure of operation, will be based not upon the designed production capacity but rather upon a reasonable measure of actual production of the facility. For new sources or new dischargers, actual production shall be estimated using projected production. The time period of the measure of production will correspond to the time period of the calculated permit limitations; for example, monthly production will be used to calculate average monthly discharge limitations. The Executive Secretary may include a condition establishing alternate permit standards or prohibitions based upon anticipated increased (not to exceed maximum production capability) or decreased production levels.

(c) For the automotive manufacturing industry only, the Executive Secretary may establish a condition under R317-8-4.3(2)(b)2 if the applicant satisfactorily demonstrates to the Executive Secretary at the time the application is submitted that its actual production, as indicated in R317-8-4.3(2)(b)1, is substantially below maximum production capability and that there is a reasonable potential for an increase above actual production during the duration of the permit.

(d) If the Executive Secretary establishes permit conditions under and R317-8-4.3(2)(c):

1. The permit shall require the permittee to notify the Executive Secretary at least two business days prior to a month in which the permittee expects to operate at a level higher than the lowest production level identified in the permit. The notice shall specify the anticipated level and the period during which the permittee expects to operate at the alternate level. If the notice covers more than one month, the notice shall specify the reasons for the anticipated production level increase. New notice of discharge at alternate levels is required to cover a period or production level not covered by prior notice or, if during two consecutive months otherwise covered by a notice, the production level at the permitted facility does not in fact meet the higher level designated in the notice.

2. The permittee shall comply with the limitations, standards, or prohibitions that correspond to the lowest level of production specified in the permit, unless the permittee has notified the Executive Secretary under R317-8-4.3(2)(d)1, in which case the permittee shall comply with the lower of the actual level of production during each month or the level specified in the notice.

3. The permittee shall submit with the DMR the level of production that actually occurred during each month and the limitations, standards, or prohibitions applicable to that level of production.

(3) Metals. All permit effluent limitations, standards, or prohibitions for a metal will be expressed in terms of the total recoverable metal, that is, the sum of the dissolved and suspended fractions of the metal, unless:

(a) An applicable effluent standard or limitation has been promulgated by EPA and specifies the limitation for the metal in the dissolved or valent form; or total form; or

(b) In establishing permit limitations on a case-by-case basis under R317-8-7, it is necessary to express the limitation on the metal in the dissolved or valent form in order to carry out the provisions of the Utah Water Pollution Control Act; or

(c) All approved analytical methods for the metal inherently measure only its dissolved form.

(4) Continuous Discharges. For continuous discharges all permit effluent limitations, standards, and prohibitions, including those necessary to achieve water quality standards,

unless impracticable will be stated as:

(a) Maximum daily and average monthly discharge limitations for all dischargers other than publicly owned treatment works; and

(b) Average weekly and average monthly discharge limitations for POTWs.

(5) Non-continuous Discharges. Discharges which are not continuous, as defined in R317-8-1.5(7), shall be particularly described and limited, considering the following factors, as appropriate:

(a) Frequency; for example, a batch discharge shall not occur more than once every three (3) weeks;

(b) Total mass; for example, not to exceed 100 kilograms of zinc and 200 kilograms of chromium per batch discharge;

(c) Maximum rate of discharge of pollutants during the discharge for example, not to exceed 2 kilograms of zinc per minute; and

(d) Prohibition or limitation of specified pollutants by mass, concentration, or other appropriate measure, (for example, shall not contain at any time more than 0.05 mg/l zinc or more than 250 grams (0.25 kilogram) of zinc in any discharge).

(6) Mass Limitations.

(a) All pollutants limited in permits shall have limitations, standards, or prohibitions expressed in terms of mass except:

1. For pH, temperature, radiation, or other pollutants which cannot appropriately be expressed by mass;

2. When applicable standards and limitations are expressed in terms of other units of measurement; or

3. If, in establishing permit limitations on a case-by-case basis under R317-8-7.1, limitations expressed in terms of mass are infeasible because the mass of the pollutant discharged cannot be related to a measure of operation; (for example, discharges of TSS from certain mining operations), and permit conditions ensure that dilution will not be used as a substitute for treatment.

(b) Pollutants limited in terms of mass additionally may be limited in terms of other units of measurement, and the permit will require the permittee to comply with both limitations.

(7) Pollutants in Intake Water.

(a) Upon request of the discharger, technology-based effluent limitations or standards shall be adjusted to reflect credit for pollutants in the discharger's intake water if:

1. The applicable effluent limitations and standards contained in effluent guidelines and standards provide that they shall be applied on a net basis; or

2. The discharger demonstrates that the control system it proposes or used to meet applicable technology-based limitations and standards would, if properly installed and operated, meet the limitations and standards in the absence of pollutants in the intake waters.

(b) Credit for generic pollutants such as biochemical oxygen demand (BOD) or total suspended solids (TSS) should not be granted unless the permittee demonstrates that the constituents of the generic measure in the effluent are substantially similar to the constituents of the generic measure in the intake water or unless appropriate additional limits are placed on process water pollutants either at the outfall or elsewhere.

(c) Credit shall be granted only to the extent necessary to meet the applicable limitation or standard, up to a maximum value equal to the influent value. Additional monitoring may be necessary to determine eligibility for credits and compliance with permit limits.

(d) Credit shall be granted only if the discharger demonstrates that the intake water is drawn from the same body of water into which the discharge is made. The Executive Secretary may waive this requirement if he finds that no environmental degradation will result.

(e) This section does not apply to the discharge of raw water clarifier sludge generated from the treatment of intake water.

(8) Internal Waste Streams.

(a) When permit effluent limitations or standards imposed at the point of discharge are impractical or infeasible, effluent limitations or standards for discharges of pollutants may be imposed on internal waste streams before mixing with other waste streams or cooling water streams. In those instances, the monitoring required by R317-8-4.2(8) shall also be applied to the internal waste streams.

(b) Limits on internal waste streams will be imposed only when the fact sheet under R317-8-6.4 sets forth the exceptional circumstances which make such limitations necessary, such as when the final discharge point is inaccessible, for example, under 10 meters of water, the wastes at the point of discharge are so diluted as to make monitoring impracticable, or the interferences among pollutants at the point of discharge would make detection or analysis impracticable.

(9) Disposal of Pollutants Into Wells, Into POTWs, or by Land Application. Permit limitations and standards shall be calculated as provided in R317-8-2.6.

(10) Secondary Treatment Information. Permit conditions that involve secondary treatment will be written as provided in 40 CFR Part 133, except that Utah effluent limits for secondary treatment will be used.

4.4 Stays of Contested Permit Conditions.

(1) Stays

(a) If a request to the Executive Director for review of a UPDES permit is granted or if conditions of a RCRA or UIC permit are consolidated for reconsideration in a hearing on a UPDES permit, the effect of the contested permit conditions shall be stayed and shall not be subject to judicial review pending final action by the Executive Director. If the permit involves a new source, new discharger or a recommencing discharger, the applicant shall be without a permit for the proposed new facility, source or discharger pending final action by the Executive Director.

(b) Uncontested conditions which are not severable from those contested shall be stayed together with the contested conditions. Stayed provisions of permits for existing facilities and sources shall be identified by the Executive Director. All other provisions of the permit for the existing facility or source shall remain fully effective and enforceable.

(2) Stays based on cross effects. A stay may be granted based on the grounds that an appeal to the Executive Director of one permit may result in changes to another state-issued permit only when each of the permits involved has been appealed to the Executive Director and he or she has accepted each appeal.

R317-8-5. Permit Provisions.

5.1 Duration of Permits

(1) UPDES permits shall be effective for a fixed term not to exceed 5 years.

(2) Except as provided in R317-8-3.1(4) (d), the term of a permit shall not be extended by modification beyond the maximum duration specified in this section.

(3) The Executive Secretary may issue any permit for a duration that is less than the full allowable term under this section.

(4) A permit that would expire on or after the Federal statutory deadline set forth in section 301(b)(2) (A), (C), and (E) of the CWA, may be issued to expire after the deadline if the permit includes effluent limitations to meet the requirements of section 301(b)(2) (A), (C), (D), (E) and (F), whether or not applicable effluent limitations guidelines have been promulgated or approved.

(5) A determination that a particular discharger falls within a given industrial category for purposes of setting a permit expiration date under paragraph (d) of this section is not conclusive as to the discharger's inclusion in that industrial category for any other purposes, and does not prejudice any rights to challenge or change that inclusion at the time that a permit based on that determination is formulated.

5.2 Schedules of Compliance

(1) The permit may, when appropriate, specify a schedule of compliance leading to compliance with the Utah Water Quality Act, as amended, and regulations promulgated pursuant thereto.

(a) Time for compliance. Any schedules of compliance under this section will require compliance as soon as possible, but not later than the applicable statutory deadline under the CWA.

(b) The first UPDES permit issued to a new source or a new discharger shall contain a schedule of compliance only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised after commencement of construction but less than three years before commencement of the relevant discharge. For recommencing discharges, a schedule of compliance shall be available only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised less than three years before recommencement of discharge.

(c) Interim dates. Except as provided in R317-8-5.2(2)(a)2 if a permit establishes a schedule of compliance which exceeds one (1) year from the date of permit issuance, the schedule will set forth interim requirements and the dates for their achievement.

1. The time between interim dates will not exceed one (1) year, except that in the case of a schedule for compliance with standards for sewage sludge use and disposal, the time between interim dates will not exceed six months.

2. If the time necessary for completion of any interim requirement, such as the construction of a control facility, is more than one (1) year and is not readily divisible into stages for completion, the permit will specify interim dates, (but not more than one interim date per calendar year per project phase or segment), for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

(d) Reporting. The permit shall be written to require that no later than fourteen (14) days following each interim date and the final date of compliance, the permittee shall notify the Executive Secretary in writing of its compliance or noncompliance with the interim or final requirements, or submit progress reports.

(2) Alternative Schedules of Compliance. A UPDES permit applicant or permittee may cease conducting regulated activities (by termination of direct discharge for UPDES sources), rather than continue to operate and meet permit requirements as follows:

(a) If the permittee decides to cease conducting regulated activities at a given time within the term of a permit which has already been issued:

1. The permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or

2. The permittee shall cease conducting permitted activities before noncompliance with any interim or final compliance schedule requirement already specified in the permit.

(b) If the decision to cease conducting regulated activities is made before issuance of a permit whose term will include the termination date, the permit will contain a schedule leading to termination which will ensure timely compliance with applicable requirements no later than the statutory deadline.

(c) If the permittee is undecided whether to cease conducting regulated activities, the Executive Secretary may issue or modify a permit to contain two schedules as follows:

1. Both schedules will contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date which ensures sufficient time to comply with applicable requirements in a timely manner if the decision is to continue conducting regulated activities;

2. One schedule shall lead to timely compliance no later than the statutory deadline in the CWA;

3. The second schedule will lead to cessation of regulated activities by a date which will ensure timely compliance with the applicable requirements no later than the deadline specified in R317-8-7;

4. Each permit containing two schedules will include a requirement that after the permittee has made a final decision under R317-8-5.2(2)(c), it shall follow the schedule leading to compliance if the decision is to continue conducting regulated activities, and follow the schedule leading to termination if the decision is to cease conducting regulated activities.

(d) The applicant's or permittee's decision to cease conducting regulated activities shall be evidenced by a firm public commitment satisfactory to the Executive Secretary, such as a resolution of the Board of Directors of a corporation.

5.3 Requirements for Recording and Reporting of Monitoring Results. All permits shall specify:

(1) Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods, (including biological monitoring methods when appropriate);

(2) Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the

monitored activity including, when appropriate, continuous monitoring;

(3) Applicable reporting requirements based upon the impact of the regulated activity and as specified in R317-8-4.1 and 4.2. Reporting shall be no less frequent than specified in the above section.

5.4 Effect of a Permit

(1) Except for any toxic effluent standards and prohibitions included in R317-8-4.1(1)(b) and any standards adopted by the State for sewage sludge use or disposal, compliance with a UPDES permit during its term constitutes compliance, for purposes of enforcement, with the UPDES program. However, a permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in R317-8-5.6 and 5.7.

(2) The issuance of a permit does not convey any property rights or any exclusive privilege.

(3) The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of state or local law or regulations.

(4) Compliance with a permit condition which implements a particular standard for sewage sludge use or disposal shall be an affirmative defense in any enforcement action brought for a violation of that standard for sewage use or disposal under the UPDES program.

5.5 Transfer of Permits

(1) Transfers by Modification. Except as provided in R317-8-5.5(2) a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued, under R317-8-5.6 or if a minor modification has been made to identify the new permittee and incorporate such other requirements as may be necessary under the UPDES regulations.

(2) Automatic Transfers. As an alternative to transfers under subsection (1) of this section, any UPDES permit may be automatically transferred to a new permittee if:

(a) The current permittee notifies the Executive Secretary at least thirty (30) days in advance of the proposed transfer date in R317-8-5.5(2)(b).

(b) The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them.

(c) The Executive Secretary does not notify the existing permittee and the proposed new permittee of an intent to modify or revoke and reissue the permit. A modification under this subparagraph may also be a minor modification under R317-8-5.6(3). If this notice is not received, the transfer is effective on the date specified in the agreement under R317-8-5.5(2)(b).

5.6 Modification or Revocation and Reissuance of Permit

The Executive Secretary may determine whether or not one or more of the causes, listed in R317-8-5.6(1) and (2) for modification or revocation and reissuance or both, exist. If cause exists, the Executive Secretary may modify or revoke and reissue the permit accordingly, and may request an updated application if necessary. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term. If cause does not exist under this section, the Executive Secretary shall not modify or revoke and reissue the permit. If a permit modification satisfies the criteria in R317-8.5.6(3) for "minor modifications" the permit may be modified without a draft permit or public review. Otherwise, a draft permit must be prepared and the procedures in R317-8-6 must be followed.

(1) Causes for Modification. The following are causes for modification but not revocation and reissuance of permits except when the permittee requests or agrees to revocation and reissuance as well as modification of a permit.

(a) Alterations. If there are material and substantial alterations or additions made to the permitted facility or activity which occurred after permit issuance, such alterations may justify the application of revised permit conditions which are different or absent in the existing permit.

(b) Information. Information received by the Executive Secretary regarding permitted activities may show cause for modification. UPDES permits may be modified during their terms for this cause only if the information was not available at the time of permit issuance, (except for revised regulations, guidance or test methods) and would have justified application of different conditions at the time of permit issuance. In addition, the applicant must show that the information would have justified the application of different permit conditions at the time of issuance. For UPDES general permits this cause shall include any information indicating that cumulative effects on the environment are unacceptable.

(c) New Regulations. If the standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued permits may be modified during their terms for this case only as follows:

1. For promulgation of amended standards or regulations, when:

a. The permit condition requested to be modified was based on promulgated effluent limitation guidelines or promulgated water quality standards; or the Secondary Treatment Regulations; and

b. EPA has revised, withdrawn, or modified that portion of the regulation or effluent limitation guideline on which the permit condition was based or has approved the Executive Secretary's action with regard to a water quality standard on which the permit condition was based; and

c. A permittee requests modification in accordance with R317-8-6.1 within ninety (90) days after the amendment, revision or withdrawal is promulgated.

2. For judicial decisions, a court of competent jurisdiction has remanded and stayed EPA promulgated regulations or effluent limitation guidelines, if the remand and stay concern that portion of the regulations or guidelines on which the permit condition was based and a request is filed by the permittee in accordance with R317-8-6.2 within ninety (90) days of judicial remand.

(d) Compliance Schedules. A permit may be modified if the Executive Secretary determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood or materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy. However, in no case will a

UPDES compliance schedule be modified to extend beyond an applicable statutory deadline in R317-8-7.

(e) In addition the Executive Secretary may modify a permit:

1. When the permittee has filed a request for a variance under R317-8-2.3, R317-8-2.7 or for "fundamentally different factors" within the time specified in R317-8-3 or R317-8-7.6(8)a (and the Executive Secretary processes the request under the applicable provisions).

2. When required to incorporate an applicable toxic effluent standard or prohibition under R317-8-4.2(2).

3. When required by the "reopener" conditions in a permit, which are established in the permit under R317-8-4.2(3) for toxic effluent limitations and standards for sewage sludge use or disposal.

4. Upon request of a permittee who qualifies for effluent limitations on a net basis under R317-8-4.3(8).

5. When a discharger is no longer eligible for net limitations, as provided in R317-8-4.3(8).

6. As necessary under EPA effluent limitations guidelines concerning compliance schedule for development of a pretreatment program.

7. When the level of discharge of any pollutant which is not limited in the permit exceeds the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under R317-8-7.1(2)(c).

8. To establish a "notification level" as provided in R317-8-4.2(6).

9. To modify a schedule of compliance to reflect the time lost during the construction of an innovative or alternative facility in the case of the POTW which has received a grant from EPA of 100% of the cost to modify or replace the facilities. In no case will the compliance schedule be modified to extend beyond an applicable statutory deadline for compliance.

10. Upon failure of the Executive Secretary to notify an affected state whose waters may be affected by a discharge from Utah.

11. To correct technical mistakes, such as errors in calculation, or mistaken interpretations of law made in determining permit conditions.

12. When the discharger has installed the treatment technology considered by the permit writer in setting effluent limitations and has properly operated and maintained the facilities but nevertheless has been unable to achieve those effluent limitations. In this case, the limitations in the modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by a subsequently promulgated effluent limitations guideline).

13. When required by a permit condition to incorporate a land application plan for beneficial reuse of sewage sludge, to revise an existing land application plan, or to add a land application plan.

(2) Causes for Modification or Revocation and Reissuance. The following are causes to modify or alternatively revoke or reissue a permit:

(a) Cause exists for termination under R317-8-5.7 and the Executive Secretary determines that modification or revocation and reissuance is appropriate.

(b) The Executive Secretary has received notification of a proposed transfer of the permit. A permit also may be modified to reflect a transfer after the effective date of an automatic transfer but will not be revoked and reissued after the effective date of the transfer except upon the request of the new permittee.

(3) Minor modifications of permits. Upon the consent of the permittee, the Executive Secretary may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this section, without following the procedures of R317-8-6. Any permit modification not processed as a minor modification under this section must be made for cause and with a Section R317-8-6 draft permit and public notice as required under this section. Minor modifications may only:

(a) Correct typographical errors;

(b) Require more frequent monitoring or reporting by the permittee;

(c) Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement;

(d) Allow for a change in ownership or operational control of a facility where the Executive Secretary determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the Executive Secretary;

(e) Change the construction schedule for a discharger which is a new source. No such change shall affect a disclosure obligation to have all pollution control equipment installed and in operation prior to discharge; or

(f) Delete a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits.

(g) Incorporate conditions of a POTW pretreatment program that has been approved in accordance with the procedures in R317-8-8.9 (or a modification thereto that has been approved in accordance with the procedures in R317-8-8.15 as enforceable conditions of the POTW's permits).

5.7 Termination of Permit

(1) The following are causes for terminating a permit during its term, or for denying a renewal application:

(a) Noncompliance by the permittee with any condition of the permit;

(b) The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant fact at any time;

(c) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination; or

(d) When there is a change in any condition that requires either a temporary or a permanent reduction or elimination of any discharge or sludge use or disposal practice controlled by the permit; for example, plant closure or termination of discharge by connection to a POTW.

(2) The Executive Secretary will follow the applicable procedures of R317-8-6.2 in terminating UPDES permits under this section.

R317-8-6. Review Procedures.

6.1 Review of the Application

(1) Any person who requires a permit under the UPDES program shall complete, sign and submit to the Executive Secretary an application for the permit as required under R317-8-3.1. Applications are not required for UPDES general permits. (However, operators who elect to be covered by a general permit shall submit written notification to the Executive Secretary at such time as the Executive Secretary indicates in R317-8-6.3)

(2) The Executive Secretary will not begin the processing of a permit until the applicant has fully complied with the application requirements for the permit, as required by R317-8-3.1.

(3) Permit applications must comply with the signature and certification requirements of R317-8-3.1.

(4) Each application submitted by a UPDES new source or UPDES new discharger should be reviewed for completeness by the Executive Secretary within thirty (30) days of its receipt. Each application for a UPDES permit submitted by an existing source or sludge-only facility will be reviewed for completeness within sixty (60) days of receipt. Upon completing the review, the Executive Secretary shall notify the applicant in writing whether the application is complete. If the application is incomplete, the Executive Secretary shall list the information necessary to make the application complete. When the application is for an existing source or sludge-only facility, the Executive Secretary shall specify in the notice of deficiency a date for submitting the necessary information. The Executive Secretary shall notify the applicant that the application is complete upon receiving this information. After the application is completed, the Executive Secretary may request additional information from an applicant when necessary to clarify, modify, or supplement previously submitted material. Requests for such additional information will not render an application incomplete.

(5) If an applicant fails or refuses to correct deficiencies in the application, the permit may be denied and appropriate enforcement actions may be taken under the Utah Water Pollution Control Act, as amended and regulations promulgated pursuant thereto.

(6) If the Executive Secretary decides that a site visit is necessary for any reason in conjunction with the processing of an application, the applicant will be notified and a date scheduled.

(7) The effective date of an application is the date on which the Executive Secretary notified the applicant that the application is complete as provided in subsection (4) of this section.

(8) For each application from a major facility new source, or major facility new discharger, the Executive Secretary shall no later than the effective date of the application, prepare and mail to the applicant a project decision schedule. The schedule will specify target dates by which the Executive Secretary intends to:

(a) Prepare a draft permit;

(b) Give public notice;

(c) Complete the public comment period, including any public hearing;

(d) Issue a final permit; and

(e) Complete any formal proceedings under the UPDES regulations.

6.2 Review Procedures for Permit Modification, Revocation and Reissuance, or Termination of Permits

(1) Permits may only be modified, revoked and reissued, or terminated for the reasons specified in R317-8-5.6. Permits may be modified, revoked and reissued, or terminated either at the request of any interested person (including the permittee) or upon the Executive Secretary's initiative. All requests shall be in writing and shall contain facts or reasons supporting the request.

(2) If the Executive Secretary decides the request is not justified, he or she shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice, comment, or hearings.

(3) If the Executive Secretary tentatively decides to modify or revoke and reissue a permit under R317-8-5.6, he or she shall prepare a draft permit under R317-8-6.3 incorporating the proposed changes. The Executive Secretary may request additional information and, in the case of a modified permit, may require the submission of an updated application. In the case of revoked and reissued permits, the Executive Secretary shall require the submission of a new application.

(a) In a permit modification under .2, only those conditions to be modified will be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued under .2, the entire permit is reopened just as if the permit had expired and was being reissued. During any revocation and reissuance proceeding, the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

(b) "Minor modifications" as defined in R317-8-5.6(3) are not subject to the requirements of .2.

(4) If the Executive Secretary tentatively decides to terminate a permit under R317-8-5.7, he or she shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under R317-8-6.3.

6.3 Draft Permits

(1) Once an application is complete, the Executive Secretary shall tentatively decide whether to prepare a draft permit or to deny the application.

(2) If the Executive Secretary tentatively decides to deny the permit application, then he or she shall issue a notice of intent to deny. A notice of intent to deny the permit application is a type of draft permit which follows the same procedure as any draft permit prepared under this section. If the Executive Secretary's final decision (under R317-8-6.11) is that the tentative decision to deny the permit application was incorrect, he or she shall withdraw the notice of intent to deny and proceed to prepare a draft permit under R317-8-6.3(4).

(3) If the Executive Secretary tentatively decides to issue a UPDES general permit, he or she shall prepare a draft general permit in accordance with R317-8-6.3(4).

(4) If the Executive Secretary decides to prepare a draft permit he or she shall prepare a draft permit that contains the

following information:

(a) All conditions under R317-8-4.1;

(b) All compliance schedules under R317-8-5.2;

(c) All monitoring requirements under R317-8-5.3;

(d) Effluent limitations, standards, prohibitions, standards for sewage sludge use or disposal, and conditions under R317-8-3, 8-4, 8-5, 8-6, and 8-7 and all variances that are to be included.

(5) All draft permits prepared under this section shall be accompanied by a statement of basis or fact sheet and shall be based on the administrative record, publicly noticed, and made available for public comment. The Executive Secretary will give notice of opportunity for a public hearing, issue a final decision and respond to comments. A request for a hearing may be made pursuant to the Utah Water Pollution Control Act, as amended, following the issuance of a final decision.

(6) Statement of Basis. A statement of basis shall be prepared for every draft permit for which a fact sheet is not prepared. The statement of basis shall briefly describe the derivation of the conditions of the draft permit and the reasons for them or, in the case of notices of intent to deny or terminate, reasons supporting the tentative decision. The statement of basis shall be sent to the applicant and, on request, to any other person.

6.4 Fact Sheets

(1) A fact sheet shall be prepared for every draft permit for a major UPDES facility or activity, for every UPDES general permit, for every UPDES draft permit that incorporates a variance or requires an explanation under R317-8-6.4(4), for every Class I Sludge Management Facility, for every draft permit that includes a sewage sludge land application plan and for every draft permit which the Executive Secretary finds is the subject of widespread public interest or raises major issues. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The Executive Secretary shall send this fact sheet to the applicant and, on request, to any other persons.

(2) The fact sheet shall include, when applicable:

(a) A brief description of the type of facility or activity which is the subject of the draft permit;

(b) The type and quantity of wastes, fluids or pollutants which are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged;

(c) A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions;

(d) Reasons why any requested variances or alternatives to required standards do or do not appear justified;

(e) A description of the procedures for reaching a final decision on the draft permit including:

1. The beginning and ending dates of the comment period and the address where comments will be received;

2. Procedures for requesting a hearing and the nature of that hearing; and

3. Any other procedures by which the public may participate in the final decision.

(f) Name and telephone number of a person to contact for additional information.

(3) Any calculations or other necessary explanation of the derivation of specific effluent limitations and conditions, or standards for sewage sludge use and disposal, including a citation to the applicable effluent limitation guideline or performance standard provisions, and reasons why they are applicable or an explanation of how the alternate effluent limitations were developed;

(4)(a) When the draft permit contains any of the following conditions, an explanation of the reasons why such conditions are applicable:

1. Limitations to control toxic pollutants under R317-8-4.2(5);

2. Limitations on internal waste streams under R317-8-4.3(8);

3. Limitations on indicator pollutant;

4. Limitations set on a case-by-case basis under R317-8-7.1(3)(b) or (c).

(b) For every permit to be issued to a treatment works owned by a person other than the State or a municipality, an explanation of the Executive Secretary's decision on regulation of users under R317-8-4.2(12).

(5) When appropriate, a sketch or detailed description of the location of the discharge or regulated activity described in the application.

(6) For permits that include a sewage sludge land application plan, a brief description of how each of the required elements of the land application plan are addressed in the permit.

(7) Any calculations or other necessary explanation of the derivation of specific effluent limitations and conditions or standards for sewage sludge use or disposal, including a citation to the applicable effluent limitation guideline, performance standard, or standard for sewage sludge use or disposal and reasons why they are applicable or an explanation of how the alternate effluent limitations were developed.

6.5 Public Notice of Permit Actions and Public Comment Period

(1) Scope.

(a) The Executive Secretary will give public notice that the following actions have occurred:

1. A permit application has been tentatively denied under R317-8-6.3(2); or

2. A draft permit has been prepared under R317-8-6.3(4);

3. A hearing has been scheduled under R317-8-6.7; and

4. A UPDES new source determination has been made in accordance with the definition in R317-8-1.

(b) No public notice is required when a request for permit modification, revocation and reissuance, or termination is denied under .2. Written notice of the denial will be given to the requester and to the permittee.

(c) Public notices may describe more than one permit or permit action.

(2) Timing.

(a) Public notice of the preparation of a draft permit, including a notice of intent to deny a permit application, required under R317-8-6.5(1) will allow at least thirty (30) days for public comment.

(b) Public notice of a public hearing shall be given at least thirty (30) days before the hearing. (Public notice of the hearing

may be given at the same time as public notice of the draft permit and the two notices may be combined.)

(3) Methods. Public notice of activities described in R317-8-6.5(1)(a) will be given by the following methods:

(a) By mailing a copy of a notice to the following persons (Any person otherwise entitled to receive notice under this paragraph may waive their rights to receive notice for any classes and categories of permits.):

1. The applicant, except for UPDES general permittees, and Region VIII, EPA.

2. Federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources, the Advisory Council on Historic Preservation, Utah Historic Society and other appropriate government authorities, including any affected states;

3. The U.S. Army Corps of Engineers and the U.S. Fish and Wildlife Service.

4. Any user identified in the permit application of a privately owned treatment works; and

5. Persons on a mailing list developed by:

a. Including those who request in writing to be on the list;

b. Soliciting persons for area lists from participants in past permit proceedings in that area; and

c. Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as newsletters, environmental bulletins, or state law journals. The Executive Secretary may update the mailing list from time to time by requesting written indication of continued interest from those listed. The name of any person who fails to respond to such a request may be deleted from the list.

6. Any unit of local government having jurisdiction over the area where the facility is proposed to be located and each State agency having any authority under State law with respect to construction or operation of such facility.

7. Any other agency which the Executive Secretary knows has issued or is required to issue a RCRA, UIC, PSD (or other permit under the Federal Clean Air Act, NPDES, 404, or sludge management permit).

(b) For major permits, UPDES general permits, and permits that include sewage sludge and application plans, the Executive Secretary will publish a notice in a daily or weekly newspaper within the area affected by the facility or activity;

(c) In a manner constituting legal notice to the public under Utah law; and

(d) Any other method reasonably determined to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

(4) Contents.

(a) All public notices issued under this part shall contain the following minimum information:

1. Name and address of the office processing the permit action for which notice is being given;

2. Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit, except in the case of UPDES draft general permits under R317-8-2.5;

3. A brief description of the business conducted at the facility or activity described in the permit application or the draft permit, for UPDES general permits when there is no application;

4. Name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit or draft general permit as the case may be, statement of basis or fact sheet, and the application; and

5. A brief description of the comment procedures and the time and place of any hearing that will be held, including a statement of procedures to request a hearing, unless a hearing has already been scheduled, and other procedures by which the public may participate in the final permit decision;

6. For UPDES permits only (including those for sludge-only facilities), a general description of the location of each existing or proposed discharge point and the name of the receiving water and the sludge use and disposal practice(s) and the location of each sludge treatment works treating domestic sewage and use or disposal sites known at the time of permit application. For draft general permits, this requirement will be satisfied by a map or description of the permit area;

7. Any additional information considered necessary or appropriate.

(b) Public notices for hearings. In addition to the general public notice described in .5(4) the public notice for a permit hearing under R317-8-6.7 will contain the following information:

1. Reference to the date of previous public notices relating to the permit;

2. Date, time, and place of the hearing;

3. A brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

(c) Requests under R317-8-2.3(4). In addition to the information required under R317-8-6.5(4)(a) public notice of a UPDES draft permit for a discharge when a R317-8-2.3(4) request has been filed will include:

1. A statement that the thermal component of the discharge is subject to effluent limitations under R317-8-4.2(1) and a brief description, including a quantitative statement of the thermal effluent limitations; and

2. A statement that a R317-8-2.3(4) request has been filed and that alternative less stringent effluent limitations may be imposed on the thermal component of the discharge and a brief description, including a quantitative statement, of the alternative effluent limitations, if any, included in the request.

3. If the applicant has filed an early screening request under R317-8-7.4(4) for a variance, a statement that the applicant has submitted such a plan.

(5) In addition to the general public notice described in .5(4) all persons identified in .5(3)(a)1-4 will be mailed a copy of the fact sheet, the permit application and the draft permit.

6.6 Public Comments and Requests for Public Hearings

During the public comment period provided under R317-8-6.5, any interested person may submit written comments on the draft permit and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments will be considered in making the final decision and shall be answered as provided in

R317-8-6.12.

6.7 Public Hearings

(1) The Executive Secretary shall hold a public hearing when he or she finds on the basis of request(s), a significant degree of public interest in draft permits. The Executive Secretary also may hold a public hearing at his or her discretion whenever a hearing might clarify one or more issues involved in the permit decision.

(2) Public notice of the hearing will be given as specified in R317-8-6.5.

(3) Any person may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period under R317-8-6.5 will automatically be extended to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the hearing.

(4) A tape recording or written transcript of the hearing shall be made available to the public.

6.8 Obligation to Raise Issues and Provide Information During the Public Comment Period

All persons, including applicants, who believe any condition of a draft permit is inappropriate or that the Executive Secretary's tentative decision to deny an application, terminate a permit, or prepare a draft permit is inappropriate, must raise all reasonably ascertainable issues and submit all reasonably available arguments and factual grounds supporting their position, including all supporting material, by the close of the public comment period including any public hearing under R317-8-6.5. All supporting materials shall be included in full and may not be incorporated by reference, unless they are already part of the administrative records in the same proceeding or consist of state or federal statutes and regulations, EPA or the Executive Secretary's documents of general applicability, or other generally available reference materials. Persons making comment shall make supporting material not already included in the administrative record available to the Executive Secretary. Additional time shall be granted under R317-8-6.5 to the extent that a person desiring to comment who requests additional time demonstrates need for such time. Nothing in this section shall be construed to prevent any person aggrieved by a final permit decision from filing a request for a hearing under R317-8-6.13.

6.9 Conditions Requested by the Corps of Engineers and Other Government Agencies

(1) If, during the comment period for a UPDES draft permit, the District Engineer of the Corps of Engineers advises the Executive Secretary in writing that anchorage and navigation of the waters of the State would be substantially impaired by the granting of a permit, the permit shall be denied and the applicant so notified. If the District Engineer advises the Executive Secretary that imposing specified conditions upon the permit is necessary to avoid any substantial impairment of anchorage or navigation, then the Executive Secretary shall include the specified conditions in the permit. Review or appeal of denial of a permit or of conditions specified by the District Engineer shall be made through the applicable procedures of the Corps of Engineers and may not be made through the procedures provided in this regulation. If the conditions are stayed by a court of competent jurisdiction or by applicable procedures or the Corps of Engineers, those conditions shall be considered stayed in the UPDES permit for the duration of that stay.

(2) If, during the comment period, the U.S. Fish and Wildlife Service or any other state or federal agency with jurisdiction over fish, wildlife, or public health advises the Executive Secretary in writing that the imposition of specified conditions upon the permit is necessary to avoid substantial impairment of fish, shellfish, or wildlife resources, the Executive Secretary may include the specified conditions in the permit to the extent they are determined necessary to carry out the provisions of the Utah Water Quality Act, as amended, and of CWA.

(3) In appropriate cases the Executive Secretary may consult with one or more of the agencies referred to in this section before issuing a draft permit and may reflect their views in the statement of basis or fact sheet, or the draft permit.

6.10 Reopening of the Public Comment Period

(1) The Executive Secretary may order the public comment period reopened if the procedures of this section could expedite the decision making process. When the public comment period is reopened under this paragraph, all persons, including applicants, who believe any condition of a draft permit is inappropriate or that the Executive Secretary's tentative decision to deny an application, terminate a permit, or prepare a draft permit is inappropriate, must submit all reasonably available factual grounds supporting their position, including all supporting material, by a date not less than sixty days after public notice under paragraph (2) of this section, set by the Executive Secretary. Thereafter, any person may file a written response to the material filed by any other person, by a date not less than twenty days after the date set for filing of the material, set by the Executive Secretary.

(2) Public notice of any comment period under this paragraph shall identify the issues to which the requirements of this section shall apply.

(3) On his own motion or on the request of any person, the Executive Secretary may direct that the requirements of paragraph (1) of this section shall apply during the initial comment period where it reasonably appears that issuance of the permit will be contested and that applying the requirements of paragraph (1) of this section will substantially expedite the decision making process. The notice of the draft permit shall state whenever this has been done.

(4) A comment period of longer than 60 days will often be necessary in complicated proceedings to give persons desiring to comment a reasonable opportunity to comply with the requirements of this section. Persons desiring to comment may request longer comment periods and they shall be granted under R317-8-6.5 to the extent they appear necessary.

(5) If any data information or arguments submitted during the public comment period, including information or arguments required under R317-8-6.8, appear to raise substantial new questions concerning a permit, the Executive Secretary may take one or more of the following actions:

(a) Prepare a new draft permit, appropriately modified, under R317-8-6.3;

(b) Prepare a revised statement of basis under R317-8-6.3(6) a fact sheet or revised fact sheet under R317-8-6.4 and

reopen the comment period under R317-8-6.10; or

(c) Reopen or extend the comment period under R317-8-6.5 to give interested persons an opportunity to comment on the information or arguments submitted.

(6) Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening. The public notice under R317-8-6.5 shall define the scope of the reopening.

(7) For UPDES permits, the Executive Secretary may also, in the circumstances described above, elect to hold further proceedings. This decision may be combined with any of the actions enumerated in paragraph (5) of this section.

(8) Public notice of any of the above actions shall be issued under R317-8-6.5.

6.11 Issuance and Effective Date of Permit

(1) After the close of the public comment period under R317-8-6.5, the Executive Secretary will issue a final permit decision. The Executive Secretary will notify the applicant and each person who has submitted written comments or requested notice of that decision. The notice shall include reference to the procedures for appealing the decision. For the purpose of this section, a final permit decision shall mean a final decision to issue, deny, modify, revoke and reissue, or terminate a permit.

(2) A final permit decision shall become effective 30 days after the service of notice of the decision under R317-8-6.11(1) unless:

(a) A later effective date is specified in the decision; or an evidentiary hearing is requested as per these regulations; or

(b) A stay is granted pursuant to the Utah Water Pollution Control Act, as amended and R317-8-6.13;

(c) No comments requested a change in the draft permit, in which case the permit shall become effective immediately upon issuance.

(3) The order or determination which is a condition precedent to requesting a hearing under the Utah Water Quality Act, as amended and R317-8-6.13 shall be the final permit decision. The thirty (30) day appeal period shall begin on the date the order is entered by the Executive Secretary and shall not begin on the date the permit decision becomes effective.

6.12 Response to Comments

(1) At the time that any final permit decision is issued under R317-8-6.11, the Executive Secretary shall issue a response to comments. This response shall:

(a) Specify which provisions, if any, of the draft permit have been changed in the final permit decision and the reasons for the change; and

(b) Briefly describe and respond to all significant comments on the draft permit raised during the public comment period or during any hearing. The response will fully consider all comments resulting from any hearing conducted under this regulation.

(c) The response to the comments shall be available to the public. Any request for a hearing on the response shall be filed according to procedures specified in the Utah Water Quality Act, as amended and rules promulgated pursuant thereto.

6.13 Hearings Under the Water Quality Act, As Amended

(1) A determination under R317-8-6.11, when issued by the Executive Secretary, will be subject to a request for a hearing pursuant to the Utah Water Quality Act, as amended.

(2) Any person aggrieved by the issuance of a final permit may demand a hearing pursuant to the Utah Water Quality Act, as amended.

(3) Any hearing held pursuant to this section will be subject to the provisions of the Utah Water Quality Act, as amended.

(4) Failure to raise issues pursuant to R317-8-6.8 will not preclude an aggrieved person from making a demand for a hearing pursuant to the Utah Water Quality Act, as amended.

R317-8-7. Criteria and Standards.

7.1 Criteria and Standards for Technology-Based Treatment Requirements

(1) Purpose and scope. This section establishes criteria and standards for the imposition of technology-based treatment requirements and represents the minimum level of control that must be imposed in a UPDES permit. Permits will contain the following technology-based treatment requirements in accordance with the deadlines indicated herein:

(a) For POTW's effluent limitations based upon:

1. Utah secondary treatment from date of permit issuance; and

2. The best practicable waste treatment technology from date of permit issuance.

(b) For dischargers other than POTWs, except as otherwise provided, effluent limitations requiring:

1. The best practicable control technology currently available (BPT) --

a. For effluent limitations promulgated after January 1, 1982 and requiring a level of control substantially greater or based on fundamentally different control technology than under permits for an industrial category issued before such date, compliance as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated and in no case later than March 31, 1989;

b. For effluent limitations established on a case-by-case basis based on Best Professional Judgment (BPJ) in a permit issued after February 4, 1987, compliance as expeditiously as practicable but in no case later than three years after the date such limitations are established and in no case later than May 31, 1989;

c. For all other BPT effluent limitations compliance is required from the date of permit issuance.

2. For conventional pollutants the best conventional pollutant control technology (BCT) --

a. For effluent limitations promulgated under section 304(b) of the CWA, as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated, and in no case later than March 31, 1989;

b. For effluent limitations established on a case-by-case (BPJ) basis in a permit issued after February 4, 1987 compliance as expeditiously as practicable but in no case later than three years after the date such limitations are established and in no case later than March 31, 1989;

c. For all other BCT effluent limitations compliance is required from the date of permit issuance.

3. For all toxic pollutants referred to in Committee Print No. 95-30, House Committee on Public Works and Transportation, the best available technology economically

achievable (BAT) --

a. For effluent limitations established under section 304(b) of the CWA, as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated and in no case later than March 31, 1989;

b. For permits issued on a case-by-case (BPJ) basis after February 4, 1987 establishing BAT effluent limitations, compliance is required as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under Section 304(b)of the CWA and in no case later than March 31, 1989.

c. For all other BAT effluent limitations, compliance is required from the date of permit issuance.

4. For all toxic pollutants other than those listed on Committee Print No. 95-30, effluent limitations based on BAT --

a. For effluent limitations promulgated under Section 304(b) of the CWA, compliance is required as expeditiously as practicable, but in no case later than three years after the date such limitations are promulgated, and in no case later than March 31, 1989.

b. For permits issued on a case-by-case (BPJ) basis under section 402(a)(1)(B) of the CWA after February 4, 1987 establishing BAT effluent limitations, compliance is required as expeditiously as practicable but in no case later than 3 years after the date such limitations are established and in no case later than March 31, 1989.

c. For all other BAT effluent limitations, compliance is required from the date of permit issuance.

5. For all pollutants which are neither toxic nor conventional pollutants, effluent limitations based on BAT --

a. For effluent limitations promulgated under section 304(b), compliance is required as expeditiously as practicable but in no case later than 3 years after the date such limitations are established and in no case later than March 31, 1989.

b. For permits issued on a case-by-case (BPJ) basis under section 402(a)(1)(B) of the CWA after February 4, 1987 establishing BAT effluent limitations compliance is required as expeditiously as practicable but in no case later than March 31, 1989.

c. For all other BAT effluent limitations, compliance is required from the date of permit issuance.

(2) Variances and Extensions.

(a) The following variance from technology-based treatment requirements may be applied for under R317-8-2 for dischargers other than POTWs:

1. Economic variance from BAT, as indicated in R317-8-2.3(2);

2. Section 301(g) water quality related variance from BAT;

3. Thermal variance from BPT, BCT and BAT, under R317-8-7.4. may be authorized.

(b) An extension of the BPT deadline may be applied for under R317-8-2.3(3) for dischargers other than POTW's, for use of innovative technology. Compliance extensions may not extend beyond July 1, 1987.

(3) Methods of imposing technology-based treatment requirements in permits. Technology-based treatment requirements may be imposed through one of the following three methods:

(a) Application of EPA-promulgated effluent limitations to dischargers by category or subcategory. These effluent limitations are not applicable to the extent that they have been withdrawn by EPA or remanded. In the case of a court remand, determinations underlying effluent limitations shall be binding in permit issuance proceedings where those determinations are not required to be reexamined by a court remanding the regulations. In addition, dischargers may seek fundamentally different factors variance from these effluent limitations under R317-8-2.3(1) and R317-8-7.3;

(b) On a case-by-case basis to the extent that EPA-promulgated effluent limitations are inapplicable. The permit writer shall apply the appropriate factors and shall consider:

1. The appropriate technology for the category or class of point sources of which the applicant is a member, based upon all available information.

2. Any unique factors relating to the applicant.

(c) Through a combination of the methods in paragraphs (a) and (b) of this section. Where EPA promulgated effluent limitations guidelines only apply to certain aspects of the discharger's operation, or to certain pollutant, other aspects or activities are subject to regulation on case-by-case basis in order to carry out the provisions of the CWA;

(d) Limitations developed under paragraph (c)2 of this section may be expressed, where appropriate, in terms of toxicity provided it is shown that the limits reflect the appropriate requirements of the act;

(e) In setting case-by-case limitations pursuant to R317-8-7.1(3), the permit writer must consider the following factors:

1. For BPT requirements:

a. The total cost of application of technology in relation to the effluent reduction benefits to be achieved from such application;

b. The age of equipment and facilities involved;

c. The process employed;

d. The engineering aspects of the application of various types of control techniques;

e. Process changes; and

f. Non-water quality environmental impact (including energy requirements).

2. For BCT requirements:

a. The reasonableness of the relationship between the costs of attaining a reduction in effluent and the effluent reduction benefits derived;

b. The comparison of the cost and level of reduction of such pollutants from the discharge from publicly owned treatment works to the cost and level of reduction of such pollutants from a class or category of industrial sources;

c. The age of equipment and facilities involved;

d. The process employed;

e. The engineering aspects of the application of various types of control techniques;

f. Process changes; and

g. Non-water quality environmental impact (including energy requirements).

3. For BAT requirement:

a. The age of equipment and facilities involved;

b. The process employed;

c. The engineering aspects of the application of various

types of control techniques;

d. The cost of achieving such effluent reduction; and

e. Non-water quality environmental impact (including energy requirements).

(f) Technology-based treatment requirements are applied prior to or at the point of discharge.

(4) Technology-based treatment requirements cannot be satisfied through the use of "non-treatment" techniques such as flow augmentation and in-stream mechanical aerators. However, these techniques may be considered as a method of achieving water quality standards on a case-by-case basis when:

(a) The technology based treatment requirements applicable to the discharge are not sufficient to achieve the standards;

(b) The discharger agrees to waive any opportunity to request a variance under R317-8-2.3;

(c) The discharger demonstrates that such a technique is the preferred environmental and economic method to achieve the standards after consideration of alternatives such as advanced waste treatment, recycle and reuse, land disposal, changes in operating methods, and other available methods.

(5) Technology-based effluent limitations will be established for solids, sludges, filter backwash, and other pollutants removed in the course of treatment or control of wastewaters in the same manner as for other pollutants.

(6)(a) The Executive Secretary may set a permit limit for a conventional pollutant at a level more stringent than the best conventional pollution control technology (BCT), or limit for a nonconventional pollutant which shall not be subject to modification where:

1. Effluent limitations guidelines specify the pollutant as an indicator for a toxic pollutant; or

2.a. The limitation reflects BAT-level control of discharges of one or more toxic pollutants which are present in the waste stream, and a specific BAT limitation upon the toxic pollutant(s) is not feasible for economic or technical reasons;

b. The permit identifies which toxic pollutants are intended to be controlled by use of the limitation; and

c. The fact sheet required by R317-8-6.4 sets forth the basis for the limitation, including a finding that compliance with the limitations will result in BAT-level control of the toxic pollutant discharges identified in (6)(l)(b)(ii) of this section, and a finding that it would be economically or technically infeasible to directly limit the toxic pollutant(s).

(b) The Executive Secretary may set a permit limit for a conventional pollutant at a level more stringent than BCT when:

1. Effluent limitations guidelines specify the pollutant as an indicator for a hazardous substances; or

2.a The limitation reflects BAT-level, co-control of discharges, or an appropriate level of one or more hazardous substance(s) which are present in the waste stream, and a specific BAT or other appropriate limitation upon the hazardous substance which are present in the waste stream, and a specific BAT, or other appropriate limitation upon the hazardous substance is not feasible for economic or technical reasons;

b. The permit identifies which hazardous substances are intended to be controlled by use of the limitation; and

c. The fact sheet required by R317-8-6.4 sets forth the basis for the limitation, including a finding that compliance with the limitations will result in BAT-level, or other appropriate level, control of the hazardous substances discharges identified in (6)(l)(b)(ii) of this section, and a finding that it would be economically or technically infeasible to directly limit the hazardous substance(s).

d. Hazardous substances which are also toxic pollutants are subject to R317-8-7.1(6).

(3) The Executive Secretary may not set more stringent limits under the preceding paragraphs if the method of treatment required to comply with the limit differs from that which would be required if the toxic pollutant(s) or hazardous substances) controlled by the limit were limited directly.

(d) Toxic pollutants identified under R317-8-7.1(6) remain subject to R317-8-4.1(15) which requires notification of increased discharges of toxic pollutants above levels reported in the application form.

7.2. Criteria for Issuance of Permits to Aquaculture Projects

(1) Purpose and scope.

(a) This section establishes guidelines for approval of any discharge of pollutants associated with an aquaculture project.

(b) This section authorizes, on a selective basis, controlled discharges which would otherwise be unlawful under the Utah Water Quality Act in order to determine the feasibility of using pollutants to grow aquatic organisms which can be harvested and used beneficially.

(c) Permits issued for discharges into aquaculture projects under this section are UPDES permits and are subject to all applicable requirements. Any permit will include such conditions, including monitoring and reporting requirements, as are necessary to comply with the UPDES regulations. Technology-based effluent limitations need not be applied to discharges into the approved project except with respect to toxic pollutants.

(2) Criteria.

(a) No UPDES permit will be issued to an aquaculture project unless:

1. The Executive Secretary determines that the aquaculture project:

a. Is intended by the project operator to produce a crop which has significant direct or indirect commercial value, or is intended to be operated for research into possible production of such a crop; and

b. Does not occupy a designated project area which is larger than can be economically operated for the crop under cultivation or than is necessary for research purposes.

2. The applicant has demonstrated, to the satisfaction of the Executive Secretary, that the use of the pollutant to be discharged to the aquaculture project shall result in an increased harvest of organisms under culture over what would naturally occur in the area;

3. The applicant has demonstrated, to the satisfaction of the Executive Secretary, that if the species to be cultivated in the aquacultural project is not indigenous to the immediate geographical area, there shall be minimal adverse effects on the flora and fauna indigenous to the area, and the total commercial value of the introduced species is at least equal to that of the displaced or affected indigenous flora and fauna;

4. The Executive Secretary determines that the crop will

not have significant potential for human health hazards resulting from its consumption;

5. The Executive Secretary determines that migration of pollutants from the designated project area to waters of the State outside of the aquaculture project will not cause or contribute to a violation of the water quality or applicable standards and limitations applicable to the supplier of the pollutant that would govern if the aquaculture project were itself a point source. The approval of an aquaculture project shall not result in the enlargement of a pre-existing mixing zone area beyond what had been designated by the State for the original discharge.

(b) No permit will be issued for any aquaculture project in conflict with a water quality management plan or an amendment to a 208 plan approved by EPA.

(c) Designated project areas shall not include a portion of a body of water large enough to expose a substantial portion of the indigenous biota to the conditions within the designated project area.

(d) Any pollutants not required by or beneficial to the aquaculture crop shall not exceed applicable standards and limitations when entering the designated project area.

7.3 Criteria and Standards for Determining Fundamentally Different Factors

(1) Purpose and scope.

(a) This section establishes the criteria and standards to be used in determining whether effluent limitations required by effluent limitations guidelines hereinafter referred to as "national limits", should be imposed on a discharger because factors relating to the discharger's facilities, equipment, processes or other factors related to the discharger are fundamentally different from the factors considered by EPA in development of the national limits. This section applies to all national limits promulgated except for best practicable treatment (BPT) standards for stream electric plants.

(b) In establishing national limits, EPA takes into account all the information it can collect, develop and solicit regarding the factors listed in sections 304(g) of the Clean Water Act. In some cases, however, data which could affect these national limits as they apply to a particular discharge may not be available or may not be considered during their development. As a result, it may be necessary on a case-by-case basis to adjust the national limits, and make them either more or less stringent as they apply to certain dischargers within an industrial category or subcategory. This will only be done if data specific to that discharger indicates it presents factors fundamentally different from those considered in developing the limit at issue. Any interested person believing that factors relating to a discharger's facilities, equipment, processes or other facilities related to the discharger are fundamentally different from the factors considered during development of the national limits may request a fundamentally different factors variance under R317-8-2.3(1). In addition, such a variance may be proposed by the Executive Secretary in the draft permit.

(2) Criteria.

(a) A request for the establishment of effluent limitations under this section shall be approved only if:

1. There is an applicable national limit which is applied in the permit and specifically controls the pollutant for which alternative effluent limitations or standards have been requested; and

2. Factors relating to the discharge controlled by the permit are fundamentally different from those considered by EPA in establishing the national limit; and

3. The request for alternative effluent limitations or standards is made in accordance with the procedural requirements of R317-8-6.

(b) A request for the establishment of effluent limitations less stringent than those required by national limits guidelines will be approved only if:

1. The alternative effluent limitation requested is not less stringent than justified by the fundamental difference; and

2. The alternative effluent limitation or standard will ensure compliance with the UPDES regulations and the Utah Water Quality Act.

3. Compliance with the national limits, either by using the technologies upon which the national limits are based or by other control alternative, would result in:

a. A removal cost wholly out of proportion to the removal cost considered during development of the national limits; or

b. A non-water quality environmental impact, including energy requirements, fundamentally more adverse than the impact considered during development of the national limits.

(c) A request for alternative limits more stringent than required by national limits shall be approved only if:

1. The alternative effluent limitation or standard requested is no more stringent than justified by the fundamental difference; and

2. Compliance with the alternative effluent limitation or standard would not result in:

a. A removal cost wholly out of proportion to the removal cost considered during development of the national limits; or

b. A non-water quality environmental impact, including energy requirements, fundamentally more adverse than the impact considered during development of the national limits.

(d) Factors which may be considered fundamentally different are:

1. The nature or quality of pollutants contained in the raw wasteload of the applicant's process wastewater;

2. The volume of the discharger's process wastewater and effluent discharged;

3. Non-water quality environmental impact of control and treatment of the discharger's raw waste load;

4. Energy requirements of the application of control and treatment technology;

5. Age, size, land availability, and configuration as they relate to the discharger's equipment or facilities; processes employed; process changes; and engineering aspects of the application of control technology;

6. Cost of compliance with required control technology.

(c) A variance request or portion of such a request under this section will not be granted on any of the following grounds:

1. The infeasibility of installing the required waste treatment equipment within the time allowed in R317-8-7.1.

2. The assertion that the national limits cannot be achieved with the appropriate waste treatment facilities installed, if such assertion is not based on factor(s) listed in paragraph (d) of this section;

3. The discharger's ability to pay for the required waste-

treatment; or

4. The impact of a discharge on local receiving water quality.

(3) Method of application.

(a) A written request for a variance under this regulation shall be submitted in duplicate to the Executive Secretary in accordance with R317-8-6.

(b) The burden is on the person requesting the variance to explain that:

1. Factor(s) listed in subsection (2) of this section regarding the discharger's facility are fundamentally different from the factors EPA considered in establishing the national limits. The person making the request shall refer to all relevant material and information, such as the published guideline regulations development document, all associated technical and economic data collected for use in developing each national limit, all records of legal proceedings, and all written and printed documentation including records of communication relevant to the regulations.

2. The alternative limitations requested are justified by the fundamental difference alleged in subparagraph l of this subsection; and

3. The appropriate requirements of subsection 2 of this section have been met.

7.4 Criteria for Determining Alternative Effluent Limitations

(1) Purpose and scope. The factors, criteria and standards for the establishment of alternative thermal effluent limitations will be used in UPDES permits and will be referred to as R317-8-2.3(4) variances.

(2) Definitions. For the purpose of this section:

(a) "Alternative effluent limitations" means all effluent limitations or standards of performance for the control of the thermal component of any discharge which are established under R317-8-2.3(4).

(b) "Representative important species" means species which are representative of a balanced, indigenous community of shellfish and wildlife in the body of water into which a discharge of heat is made.

(c) The term "balanced, indigenous community" means a biotic community typically characterized by diversity, the capacity to sustain itself through cyclic seasonal changes, presence of necessary food chain species and by a lack of domination by pollution tolerant species. Such a community may include historically non-native species introduced in connection with a program of wildlife management and species whose presence or abundance results from substantial, irreversible environmental modification. Normally, however, such a community will not include species whose presence or abundance is attributable to the introduction of pollutants that will be eliminated by compliance by all sources with R317-8-4.1(l)(6) and may not include species whose presence of abundance is attributable to alternative effluent limitations imposed pursuant to R317-8-2.3(4).

(3) Early screening of applications for R317-8-2.3(4) variance.

(a) Any initial application for the variance shall include the following early screening information:

1. A description of the alternative effluent limitation requested;

2. A general description of the method by which the discharger proposes to demonstrate that the otherwise applicable thermal discharge effluent limitations are more stringent than necessary;

3. A general description of the type of data, studies, experiments and other information which the discharger intends to submit for the demonstration; and

4. Such data and information as may be available to assist the Executive Secretary in selecting the appropriate representative important species.

(b) After submitting the early screening information under paragraph (a) of this subsection, the discharger shall consult with the Executive Secretary at the earliest practicable time, but not later than thirty (30) days after the application is filed, to discuss the discharger's early screening information. Within sixty (60) days after the application is filed, the discharger shall submit for the Executive Secretary's approval a detailed plan of study which the discharger will undertake to support its R317-8-2.3(4) demonstration. The discharger shall specify the nature and extent of the following type of information to be included in the plan of study: biological, hydrographical and meteorological data; physical monitoring data; engineering or diffusion models; laboratory studies: representative important species; and other relevant information. In selecting representative important species, special consideration shall be given to species mentioned in applicable water quality standards. After the discharger submits its detailed plan of study, the Executive Secretary will either approve the plan or specify any necessary revisions to the plan. The discharger shall provide any additional information or studies which the Executive Secretary subsequently determines necessary to support the demonstration, including such studies or inspections as may be necessary to select representative important species. The discharger may provide any additional information or studies which the discharger feels are appropriate to support the administration.

(c) Any application for the renewal of R317-8-2.3(4) variance shall include only such information described in R317-8-7.4(3)(a) and (b) and R317-8-6 as the Executive Secretary requests within sixty (60) days after receipt of the permit application.

(d) The Executive Secretary shall promptly notify the Secretaries of the U.S. Departments of Commerce and Interior and any affected state of the filing of the request and shall consider any timely recommendations they submit.

(e) In making the demonstration the discharger shall consider any information or guidance published by EPA to assist in making such demonstrations.

(f) If an applicant desires a ruling on a R317-8-2.7 (4) application before the ruling on any other necessary permit terms and conditions, it shall so request upon filing its application under paragraph (a) of this subsection. This request will be granted or denied at the discretion of the Executive Secretary.

(4) Criteria and standards for the determination of alternative effluent limitations.

(a) Thermal discharge effluent limitations or standards established in permits may be less stringent than those required

by applicable standards and limitations if the discharger demonstrates to the satisfaction of the Executive Secretary that such effluent limitations are more stringent than necessary to assure the protection and propagation of a balanced, indigenous community of shellfish, fish and wildlife in and on the body of water into which the discharge is made. This demonstration shall show that the alternative effluent desired by the discharger, considering the cumulative impact of its thermal discharge together with all other significant impacts on the species affected, will assure the protection and propagation of a balanced indigenous community of shellfish, fish and wildlife in and on the body of water into which the discharge is to be made.

(b) In determining whether or not the protection and propagation of the affected species will be assured, the Executive Secretary may consider any information contained or referenced in any applicable thermal water quality criteria and information published by the Administrator under CWA section 304(a) (33 U.S.C. Section 1314(a)) or any other information which may be relevant.

(c) Existing dischargers may base their demonstration upon the absence of prior appreciable harm in lieu of predictive studies. Any such demonstrations shall show:

1. That no appreciable harm has resulted from the normal component of the discharge, taking into account the interaction of such thermal component with other pollutants and the additive effect of other thermal sources to a balanced, indigenous community of shellfish, fish and wildlife in and on the body of water into which the discharge has been made; or

2. That despite the occurrence of such previous harm, the desired alternative effluent limitations, or appropriate modifications thereof, shall nevertheless assure the protection and propagation of a balanced, indigenous community of shellfish, fish and wildlife in and on the body of water into which the discharge is made.

(5) In determining whether or not appreciable harm has occurred, the Executive Secretary will consider the length of time in which the applicant has been discharging and the nature of the discharge.

7.4A Criteria and Standards for Best Management Practices

(1) Purpose and Scope.

Best management practices (BMPs) for ancillary industrial activities shall be reflected in permits, including best management practices promulgated in effluent limitations and established on a case-by-case basis in permits.

(2) Definition.

"Manufacture" means to produce as an intermediate or final product, or by-product.

(3) Applicability of best management practices.

Dischargers who use, manufacture, store, handle or discharge any pollutant listed as toxic or any pollutant listed as hazardous are subject to the requirements of R317-8-7.4A for all activities which may result in significant amounts of those pollutants reaching waters of the State. These activities are ancillary manufacturing operations including: Materials storage areas; in-plant transfer, process and material handling areas; loading and unloading operations; plant site runoff; and sludge and waste disposal areas.

(4) Permit terms and conditions.

(a) Best management practices shall be expressly incorporated into a permit where required by an applicable promulgated effluent limitations guideline;

(b) Best management practices may be expressly incorporated into a permit on a case-by-case basis where determined necessary. In issuing a permit containing BMP requirements, the Executive Secretary shall consider the following factors:

1. Toxicity of the pollutant(s);

2. Quantity of the pollutants(s) used, produced, or discharged;

3. History of UPDES permit violations;

4. History of significant leaks or spills of toxic or hazardous pollutants;

5. Potential for adverse impact on public health (e.g., proximity to a public water supply) or the environment (e.g., proximity to a sport or commercial fishery); and

6. Any other factors determined to be relevant to the control of toxic or hazardous pollutants.

(c) Best management practices may be established in permits under R317-8-7.4A(4)(b) alone or in combination with those required under R317-8-7.4A(4)(a).

(d) In addition to the requirements of R317-8-7.4A(4)(a) and (b), dischargers covered under R317-8-7.4A(4) shall develop and implement a best management practices program in accordance with R317-8-7.4A(5) which prevents, or minimizes the potential for, the release of toxic or hazardous pollutants from ancillary activities to waters of the State.

(5) Best management practices programs.

(a) BMP programs shall be developed in accordance with good engineering practices and with the provisions of this subpart.

(b) The BMP program shall:

1. Be documented in narrative form, and shall include any necessary plot plans, drawings or maps;

2. Establish specific objectives for the control of toxic and hazardous pollutants.

a. Each facility component or system shall be examined for its potential for causing a release of significant amounts of toxic or hazardous pollutants to waters of the State due to equipment failure, improper operation, natural phenomena such as rain or snowfall.

b. Where experience indicates a reasonable potential for equipment failure (e.g., a tank overflow or leakage), natural condition (e.g., precipitation), or other circumstances to result in significant amounts of toxic or hazardous pollutants reaching surface waters, the program should include a prediction of the direction, rate of flow and total quantity of toxic or hazardous pollutants which could be discharged from the facility as a result of each condition or circumstance;

3. Establish specific best management practices to meet the objectives identified under R317-8-7.4A(5)(b)2, addressing each component or system capable of causing a release of significant amounts of toxic or hazardous pollutants to the waters of the State;

4. The BMP program: a. May reflect requirements for Spill Prevention Control and Countermeasure (SPCC) plans under section 311 of the CWA and 40 CFR Part 151, and Storm Water Pollution Prevention Plans (SWPP),and may incorporate

any part of such plans into the BMP program by reference;

b. Shall assure the proper management of solid and hazardous waste in accordance with regulations promulgated under the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA). Management practices required under RCRA regulations shall be expressly incorporated into the BMP program; and

c. Shall address the following points for the ancillary activities in R317-8-7.4A(3):

i. Statement of policy;

ii. Spill Control Committee;

iii. Material inventory;

iv. Material compatibility;

v. Employee training;

vi. Reporting and notification procedures;

vii. Visual inspections;

viii. Preventative maintenance;

ix. Housekeeping; and

x. Security.

5. The BMP program must be clearly described and submitted as part of the permit application. An application which does not contain a BMP program shall be considered incomplete. Upon receipt of the application, the Executive Secretary shall approve or modify the program in accordance with the requirements of this subpart. The BMP program as approved or modified shall be included in the draft permit. The BMP program shall be subject to the applicable permit issuance requirements of R317-8, resulting in the incorporation of the program (including any modifications of the program resulting from the permit issuance procedures) into the final permit.

6. Proposed modifications to the BMP program which affect the discharger's permit obligations shall be submitted to the Executive Secretary for approval. If the Executive Secretary approves the proposed BMP program modification, the permit shall be modified in accordance with R317-8-5.6, provided that the Executive Secretary may waive the requirements for public notice and opportunity for hearing on such modification if he or she determines that the modification is not significant. The BMP program, or modification thereof, shall be fully implemented as soon as possible but not later than one year after permit issuance, modification, or revocation and reissuance unless the Executive Secretary specifies a later date in the permit.

(c) The discharger shall maintain a description of the BMP program at the facility and shall make the description available to the Executive Secretary upon request.

(d) The owner or operator of a facility subject to this subpart shall amend the BMP program in accordance with the provisions of this subpart whenever there is a change in facility design, construction, operation, or maintenance which materially affects the facility's potential for discharge of significant amounts of hazardous or toxic pollutants into the waters of the State.

(e) If the BMP program proves to be ineffective in achieving the general objective of preventing the release of significant amounts of toxic or hazardous pollutants to those waters and the specific objectives and requirements under R317-8-7.4A(5)(b), the permit and/or the BMP program shall be subject to modification to incorporate revised BMP requirements.

7.5 Toxic Pollutants. References throughout the UPDES regulations establish specific requirements for discharges of toxic pollutants. Toxic pollutants are listed below:

(1) Acenaphthene
(2) Acrolein
(3) Acrylonitrile
(4) Aldrin/Dieldrin
(5) Antimony and compounds
(6) Arsenic and compounds
(7) Asbestos
(8) Benzene
(9) Benzidine
(10) Beryllium and compounds
(11) Cadmium and compounds
(12) Carbon tetrachloride
(13) Chlordane (technical mixture and metabolites)
(14) Chlorinated benzenes (other than dichlorobenzenes)
(15) Chlorinated ethanes (including 1,2-dichloroethan, 1,1,1-trichloroethane, and hexachloroethane)
(16) Chloroalkyl ethers (chloromethyl, chloroethyl, and moxed ethers)
(17) Chlorinated naphthalene
(18) Chlorinated phenols (other than those listed elsewhere; includes trichlorophenols and chlorinated cresols)
(19) Chloroform
(20) 2-chlorophenol
(21) Chromium and compounds
(22) Copper and compounds
(23) Cyanides
(24) DDT and metabolites
(25) Dichlorobenzenes (1,2-, 1,3-, and 1,4-dichlorobenzenes)
(26) Dichlorobenzidine
(27) Dichloroethylenes (1,1- and 1,2-dichloroethylene)
(28) 2,4-dimethylphenol
(29) Dichloropropane and dichloropropene
(30) 2,4-dimethylphenol
(31) Dinitrotoluene
(32) Diphenylhydrazine
(33) Endosulfan and metabolities
(34) Ethylbenzene
(35) Enthylbenzene
(36) Fluoranthene
(37) Haloethers (other than those listed elsewhere; includes chlorophenylphenyl ethers, bromophenylphenyl ether, bis(dichloroisopropyl) ether, bis-(chloroethoxy) methane and polychlorinated diphenyl ethers)
(38) Halomethanes (other than those listed elsewhere; includes methylene chloride, methylchloride, methylbromide, bromoform, dichlorobromomethane
(39) Heptachlor and metabolites
(40) Hexachlorobutadiene
(41) Hexachlorocyclohexane
(42) Hexachlorocyclopentadiene
(43) Isophorone
(44) Lead and compounds
(45) Mercury and compounds
(46) Naphthalene

(47) Nickel and compounds
(48) Nitrobenze
(49) Nitrophenols (including 2,4-dinitrophenol, dinitrocresol)
(50) Nitrosamines
(51) Pentachlorophenol
(52) Phenol
(53) Phthalate esters
(54) Polychlorinated biphenyls (PCBs)
(55) Polynuclear aromatic hydrocarbons (including benzanthracenes, benzopyrenes, benzofluranthene, chrysenes, dibenzanthracenes, and indenopyrenes)
(56) Selenium and compounds
(57) Silver and compounds
(58) 2,3,7,8-tetrachloro/dibenzo-p-dioxin (TCDD)
(59) Tetrachloroethylene
(60) Thallium and compounds
(61) Toluene
(62) Toxaphene
(63) Trichloroethylene
(64) Vinyl chloride
(65) Zinc and compounds

7.6 Criteria for Extending Compliance Dates for Facilities Installing Innovative Technology

(1) Purpose and Scope. This Section establishes the criteria and procedures to be used in determining whether an industrial discharger will be granted a compliance extension for the installation of an innovative technology.

(2) Authority. The Executive Secretary, in consultation with the Administrator, may grant a compliance extension for BAT limitations to a discharger which installs an innovative technology. The innovative technology must produce either a significantly greater effluent reduction than that achieved by the best available technology economically achievable (BAT) or the same level of treatment as BAT at a significantly lower cost. The Executive Secretary is authorized to grant compliance extensions to a date no later than 2 years after the date for compliance with the effluent limitations which would otherwise be applicable.

(3) Definitions.

(a) The term "innovative technology" means a production process, a pollution control technique, or a combination of the two which satisfies one of the criteria in 8.7.7(4) and which has not been commercially demonstrated in the industry of which the requesting discharger is a part.

(b) The term "potential for industry-wide application" means that an innovative technology can be applied in two or more facilities which are in one or more industrial categories.

(c) The term "significantly greater effluent reduction than BAT" means that the effluent reduction over BAT produced by an innovative technology is significant when compared to the effluent reduction over best practicable control technology currently available (BPT) produced by BAT.

(d) The term "significantly lower cost" means that an innovative technology must produce a significant cost advantage when compared to the technology used to achieve BAT limitations in terms of annual capital costs and annual operation and maintenance expenses over the useful life of the technology.

(4) Request for Compliance Extension. The Executive Secretary shall grant a compliance extension to a date no later than 2 years after the date for compliance with the effluent limitations which would otherwise be applicable to a discharger that demonstrates:

(a) That the installation and operation of its proposed innovative technology at its facility will result in a significantly greater effluent reduction than BAT and has the potential for industry-wide application; or

(b) That the installation and operation of its proposed innovative technology at its facility will result in the same effluent reduction as BAT at a significantly lower cost and has the potential for industry-wide application.

(5) Permit conditions. The Executive Secretary may include any of the following conditions in the permit of a discharger to which a compliance extension beyond the otherwise applicable date is granted:

(a) A requirement that the discharger report annually on the installation, operation and maintenance costs of the innovative technology;

(b) Alternative BAT limitations that the discharger must meet as soon as possible and not later than 2 years after the date for compliance with the effluent limitation which would otherwise be applicable if the innovative technology limitations that are more stringent than BAT are not achievable.

(6) Signatories to Request for Compliance Extension.

(a) All requests must be signed in accordance with the provisions of R317-8-3.3.

(b) Any person signing a request under paragraph (a) of this section shall make the following certification:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

(c) A professional engineer shall certify that the estimates by the applicant of the costs for the BAT control equipment and for the innovative technology are made in accordance with good engineering practice and represent, in his judgement, the best information available. The Executive Secretary may waive the requirements for certification under this subsection if, in his opinion, the cost of such certification is unreasonable when compared to the annual sales of the applicant.

(7) Supplementary Information and Record keeping.

(a) In addition to the information submitted in support of the request, the applicant shall provide the Executive Director, at his or her request, such other information as the Executive Director may reasonably require to assess the performance and cost of the innovative technology.

(b) Applicants shall keep records of all data used to complete the request for a compliance extension for the life of the permit containing the compliance extension.

(8) Procedures.

(a) The procedure for requesting a section 301(k) compliance extension is contained in R317-8-2.8. In addition, notwithstanding R317-8-2.3(3), the Executive Secretary may accept applications for such extensions after the close of the

public comment period on the permit if the applicant can show that information necessary to the development of the innovation was not available at the time the permit was written and that the innovative technology can be installed and operated in time to comply no later than 2 years after the date for compliance with the effluent limitation which would otherwise be applicable.

(b) A decision on a request for a compliance extension may be appealed under the Utah Water Quality Act to the Executive Director of the Department of Environmental Quality.

R317-8-8. Pretreatment.

8.1 Applicability

(1) This section applies to the following:

(a) Pollutants from non-domestic sources covered by pretreatment standards which are indirectly discharged, transported by truck or rail, or otherwise introduced into POTWs;

(b) POTWs which receive wastewater from sources subject to national pretreatment standards; and

(c) Any new or existing source subject to national pretreatment standards.

(2) National pretreatment standards do not apply to sources which discharge to a sewer which is not connected to a POTW.

8.2 Definitions. The following definitions pertain to indirect dischargers and POTWs subject to pretreatment standards and the UPDES program.

(1) "Approved POTW pretreatment program" means a program administered by a POTW that meets the criteria established in R317-8-8.7 and 8.8 and which has been approved by the Executive Secretary in accordance with R317-8-8.9.

(2) "Indirect discharge" or "discharge" means the introduction of pollutants into a POTW from any non-domestic source regulated by the UPDES program.

(3) "Industrial user" or "user" means a source of indirect discharge.

(4) "Interference" means a discharge which, alone or in conjunction with a discharge or discharges from other sources both:

(a) Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and

(b) Therefore is a cause of a violation of any requirement of the POTW's UPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with the following statutory provisions and regulations or permits issued thereunder.

(5) "National pretreatment standard" means any regulation containing pollutant discharge limits promulgated by EPA in accordance with section 307 (b) and (c) of the CWA, which applies to industrial users. This includes prohibitive discharge limits established pursuant to R317-8-8.4.

(5a) "New Source" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced after publication of proposed Pretreatment Standards under section 307(c) of the Federal Clean Water Act which will be applicable to such source, if such standards are thereafter promulgated in accordance with that section. See R317-8-8.2A for provisions applicable to this definition.

(6) "Pass through" means a discharge which exits the POTW into waters of the State in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of violation of any requirement of the POTW's UPDES permit (including an increase in the magnitude or duration of violation).

(7) "POTW treatment plant" means that portion of the POTW which is designed to provide treatment, including recycling and reclamation of municipal sewage and industrial waste.

(8) "Pretreatment" means the reduction of the amount of pollutants, the elimination of pollutants or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration may be obtained by physical, chemical or biological processes, process changes or by other means, except as prohibited by 40 CFR 403.6(d). Appropriate pretreatment technology includes control equipment, such as equalization tanks or facilities, for protection against surges or slug loading that might interfere with or otherwise be incompatible with the POTW. However, where wastewater from a regulated process is mixed in an equalization facility with unregulated wastewater or with wastewater from another regulated process, the effluent from the equalization facility must meet an adjusted pretreatment limit calculated in accordance with 40 CFR 403.6(e).

(9) "Pretreatment requirements" means any substantive or procedural requirements related to pretreatment, other than a National Pretreatment Standard, imposed on an industrial user.

(10) The term "Publicly Owned Treatment Works" or "POTW" means a treatment works which is owned by State or municipality within the State. This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey wastewater to a POTW Treatment Plant. The term also means the municipality which has jurisdiction over the Indirect Discharges to and the discharges from such a treatment works.

(11) The term "POTW Treatment Plant" means that portion of the POTW which is designed to provide treatment (including recycling and reclamation) of municipal sewage and industrial waste.

(12) "Significant Industrial User"

(a) Except as provided in R317-8-8.2(10)(a)2, the term Significant Industrial User means:

1. All industrial users subject to Categorical Pretreatment standards under 40 CFR 403.6 and 40 CFR Parts 405 through 471; and

2. Any other industrial user that discharges an average of 25,000 gallons per day or more of process wastewater to the POTW (excluding sanitary noncontact cooling and boiler blowdown wastewater); contributes a process wastestream which makes up 5 percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or designated as such by the Control Authority as defined in R317-8-8.10(1) on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operation or for

violating any pretreatment standard or requirement.

(b) Upon a finding that an industrial user meeting the criteria in R317-8-8.1(10)(a)2 has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the Control Authority (as defined in R317-8-8.10(1)) may at any time, on its own initiative or in response to a petition received from an industrial user or POTW, determine that such industrial user is not a significant industrial user.

(13) "Submission" means (a) a request by a POTW for approval of a pretreatment program to the Executive Secretary or (b) a request by a POTW for authority to revise the discharge limits in categorical pretreatment standards to reflect POTW pollutant removals.

8.2A Provisions Applicable to Definitions. The following provisions are applicable to the definition of "New Source" provided that:

(1) The building, structure, facility or installation is constructed at a site at which no other source is located, or

(2) The building, structure, facility or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source, or

(3) The production or wastewater generating process of the building, structure, facility or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source should be considered.

(4) Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility or installation meeting the criteria of R317-8-8.2A(2) or (3) but otherwise alters, replaces, or adds to existing process or production equipment.

(5) construction of a new source as defined has commenced if the owner or operator has:

(a) Begun, or caused to begin as part of a continuous on-site construction program:

1. Any placement, assembly, or installation of facilities or equipment: or

2. Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly or installation of new source facilities or equipment: or

3. Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation.

8.3 Local Law. Nothing in this rule is intended to affect any pretreatment requirements, including any standards or prohibitions established by local law as long as the local requirements are not less stringent than any set forth in national pretreatment standards, or any other requirements or prohibitions established by the Executive Secretary.

8.4 National Pretreatment Standards: Prohibited Discharges

(1) General Prohibitions. Pollutants introduced into POTWs by a non-domestic source shall not pass through the POTW or interfere with the operation or performance of the works. These general prohibitions and the specific prohibitions in R317-8-8.4(3) apply to all non-domestic sources introducing pollutants into a POTW whether or not the source is subject to other National Pretreatment Standards or any national, State or local pretreatment requirements.

(2) Affirmative Defenses. A user shall have an affirmative defense in any action brought against it alleging a violation of the general prohibitions established in R317-8-8.4(1) and the specific prohibitions in R317-8-8.4(3)(c),(d),(e), and (g) where the user can demonstrate that:

(a) It did not know or have reason to know that its discharge, alone or in conjunction with a discharge or discharges from other sources, would cause pass through or interference; and

(b)i. A local limit designed to prevent pass through and/or interference, as the case may be, was developed in accordance with R317-8-8.4(4) for each pollutant in the user's discharge that caused pass through or interference, and the user was in compliance with each such local limit directly prior to and during the pass through or interference; or

ii. If a local limit designed to prevent pass through and/or interference, as the case may be, has not been developed in accordance with R317-8-8.4(4) for the pollutant(s) that caused the pass through or interference, the user's discharge directly prior to and during the pass through or interference did not change substantially in nature or constituents from the user's prior discharge activity when the POTW was regularly in compliance with the POTW's UPDES permit requirements and, in the case of interference, applicable requirements for sewage sludge use or disposal.

(3) Specific Prohibitions. In addition, the following pollutants shall not be introduced into a POTW:

(a) Pollutants which create a fire or explosion hazard in the POTW, including, but not limited to, wastestreams with a closed cup flashpoint of less than 140 degrees Fahrenheit or 60 degrees Centigrade using the test methods specified in R315-2-1.

(b) Pollutants which will cause corrosive structural damage to the POTW, but in no case discharges with pH lower than 5.0, unless the works is specifically designed to accommodate such discharges;

(c) Solid or viscous pollutants in amounts which will cause obstruction to the flow in the POTW resulting in interference;

(d) Any pollutant, including oxygen demanding pollutants (BOD, etc.) released in a discharge at a flow rate and/or pollutant concentration which will cause interference with the POTW:

(e) Heat in amounts which will inhibit biological activity in the POTW resulting in interference, but in no case heat in such quantities that the temperature at the POTW treatment plant exceeds 40 degrees C (104 degrees F) unless the Executive Secretary, upon request of the POTW, approves alternate temperature limits.

(f) Petroleum oil, nonbiodegrable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass through;

(g) Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems; and

(h) Any trucked or hauled pollutants, except at discharge points designated by the POTW.

(4) When specific limits must be developed by POTW.

(a) POTWs developing POTW pretreatment programs shall develop and enforce specific limits to implement the prohibitions listed in R317-8-8.4(1) and R317-8-8.4(3). Each POTW with an approved pretreatment program shall continue to develop these limits as necessary and effectively enforce such limits;

(b) All other POTWs shall, in cases where pollutants contributed by user(s) result in interference or pass-through, and such violation is likely to recur, develop and enforce specific effluent limits for industrial user(s), and all other users, as appropriate, which, together with appropriate changes in the POTW treatment plant's facilities or operation, are necessary to ensure renewed and continued compliance with the POTW's UPDES permit or sludge use or disposal practices;

(c) Specific effluent limits shall not be developed and enforced without individual notice to persons or groups who have requested such notice and an opportunity to respond.

(5) Local Limits. Where specific prohibitions or limits on pollutants or pollutant parameters are developed by a POTW in accordance with R317-8-8.4(4), such limits shall be deemed pretreatment standards for purposes of 19-5-108 of the Utah Water Quality Act.

(6) State enforcement actions. If, within 30 days after notice of an interference or pass through violation has been sent by the Executive Secretary to the POTW, and to persons or groups who have requested such notice, the POTW fails to commence appropriate enforcement action to correct the violation, the Executive Secretary may take appropriate enforcement action.

8.5 National Pretreatment Standards: Categorical Standards

(1) In addition to the general prohibitions in R317-8-8.4(1), all indirect dischargers shall comply with national pretreatment standards in 40 CFR Chapter I, Subchapter N. Compliance shall be required within the time specified in the appropriate subpart of Subchapter N.

(2) Industrial users may request the Executive Secretary to provide written certification on whether an industrial user falls within a particular subcategory. The Executive Secretary will act upon that request in accordance with the procedures in 40 CFR 403.6.

(3) Limitations for industrial users will be imposed in accordance with 40 CFR 403.6 (c) - (e).

8.6 Removal Credits. POTWs may revise pollutant discharge limits specified in categorical pretreatment standards to reflect removal of pollutants by the POTW. Revisions must be made in accordance with the provisions of 40 CFR 403.7.

8.7 POTW Pretreatment Programs: Development by POTW

(1) POTW required to develop a pretreatment program. Any POTW, or combination of POTWs operated by the same authority, with a total design flow greater than 5 million gallons per day (mgd) and receiving from industrial users pollutants which pass through or interfere with the operation of the POTW or are otherwise subject to pretreatment standards shall be required to establish a POTW pretreatment program unless the Executive Secretary exercises the option to assume local responsibility as provided for in R317-8-8.7(6)(b)(12). The Executive Secretary may require that a POTW with a design flow of 5 mgd or less develop a POTW pretreatment program if it is found that the nature or volume of the industrial influent, treatment process upsets, violations of POTW effluent limitations, contamination of municipal sludge, or other circumstances so warrant in order to prevent interference or pass through.

(2) Deadline for Program Approval. POTWs identified as being required to develop a POTW pretreatment program under R317-8-8.7(1) shall develop and submit such a program for approval as soon as possible, but in no case later than one year after written notification from the Executive Secretary of such identification. The POTW pretreatment program shall meet the criteria set forth in R317-8-8.7(6) and shall be administered by the POTW to ensure compliance by industrial users with applicable pretreatment standards and requirements.

(3) Incorporation of Approved Programs in Permits. A POTW may develop an approvable POTW pretreatment program any time before the time limit set forth in R317-8-8.7(2). The POTW's UPDES permit will be modified under R317-8-5.6(3)(g) to incorporate the approved program conditions as enforceable conditions of the permit.

(4) Incorporation of Compliance Schedules in Permits. If the POTW does not have an approved pretreatment program at the time the POTWs existing permit is reissued or modified, the reissued or modified permit will contain the shortest reasonable compliance schedule, not to exceed three years, for the approval of the legal authority, procedures and funding required by paragraph (6) of this subsection.

(5) Cause for Reissuance or Modification of Permits. The Executive Secretary may modify or revoke and reissue a POTW's permit in order to:

(a) Put the POTW on a compliance schedule for the development of a POTW pretreatment program where the addition of pollutants into a POTW by an industrial user or combination of industrial users presents a substantial hazard to the functioning of the treatment works, quality of the receiving waters, human health, or the environment;

(b) Coordinate the issuance of a CWA Section 201 construction grant with the incorporation into a permit of a compliance schedule for POTW pretreatment program;

(c) Incorporate an approved POTW pretreatment program in the POTW permit;

(d) Incorporate a compliance schedule for the development of a POTW pretreatment program in the POTW permit.

(e) Incorporate a modification of the permit approved under R317-8-5.6; or

(f) Incorporate the removal credits established under R317-8-8.6.

(6) Pretreatment Program Requirements: Development and Implementation by POTW. A POTW pretreatment program

must be based on the following legal authority and include the following procedures. These authorities and procedures shall at all times be fully and effectively exercised and implemented.

(a) Legal authority. The POTW shall operate pursuant to legal authority enforceable in Federal, State or local courts which authorizes or enables the POTW to apply and to enforce the requirements of this section. The authority may be contained in a statute, ordinance, or series of contracts or joint powers agreements which the POTW is authorized to enact, enter into or implement, and which are authorized by State law. At a minimum, this legal authority shall enable the POTW to:

1. Deny or condition new or increased contributions of pollutants, or changes in the nature of pollutants, to the POTW by industrial users where such contributions do not meet applicable pretreatment standards and requirements or where such contributions would cause the POTW to violate its UPDES permit;

2. Require compliance with applicable pretreatment standards and requirements by industrial users;

3. Control, through permit, order or similar means, the contribution to the POTW by each industrial user to ensure compliance with applicable pretreatment standards and requirements. In the case of industrial users identified as significant under R317-8-8.2(10), this control shall be achieved through permits or equivalent individual control mechanisms issued to each such user. Such control mechanisms must be enforceable and contain, at a minimum, the following conditions:

a. Statement of duration (in no case more than five years);

b. Statement of non-transferability without, at a minimum, prior notification to the POTW and provision of a copy of the existing control mechanism to the new owner or operator;

c. Effluent limits based on applicable general pretreatment standards, categorical pretreatment standards, local limits and State and local law;

d. Self-monitoring, sampling, reporting, notification and record keeping requirements, including identification of the pollutants to be monitored, sampling location, sampling frequency, and sample type, based on the applicable general pretreatment standards, categorical pretreatment standards, local limits, and State and local law;

e. Statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements, and any applicable compliance schedule. Such schedules may not extend the compliance date beyond applicable federal deadlines.

4. Require the development of a compliance schedule by each industrial user for the installation of technology required to meet applicable pretreatment standards and requirements; including but not limited to the reports required in R317-8-8.10 of this section;

5. Require the submission of all notices and self-monitoring reports from industrial users as are necessary to assess and assure compliance by industrial users with pretreatment standards and requirements;

6. Carry out all inspection, surveillance and monitoring procedures necessary to determine, independent of information supplied by industrial users, compliance or noncompliance with applicable pretreatment standards and requirements by industrial users. Representatives of the POTW shall be authorized to enter any premises of any industrial user in which a discharge source or treatment system is located or in which records are required to be kept under R317-8-8.10 of this section to assure compliance with pretreatment standards. Such authority shall be at least as extensive as the authority provided under Section 19-5-106(4) of the Utah Water Quality Act.

7. Obtain remedies for noncompliance by industrial users with any pretreatment standard and requirement. A POTW shall be able to seek injunctive relief for noncompliance and shall have authority to seek or assess civil or criminal penalties in at least the amount of $1,000 a day for each violation of pretreatment standards and requirements by industrial users. POTWs whose approved pretreatment programs require modification to conform to the requirements of this paragraph shall submit a request for approval of a program modification in accordance with Section R317-8-8.15 by November 16, 1989.

8. Pretreatment requirements enforced through the remedies set forth in R317-8-8.7(6)(a)(7) shall include, but not be limited to, the duty to allow or carry out inspection entry or monitoring activities; any rules, regulations or orders issued by the POTW; any requirements set forth in individual control mechanisms issued by the POTW; or any reporting requirements imposed by the POTW or R317-8-8. The POTW shall have authority and procedures (after informal notice to the discharger) immediately and effectively to halt or prevent any discharge of pollutants to the POTW which reasonably appears to present an imminent danger to the health or welfare of persons. The POTW shall also have authority and procedures (which shall include notice to the affected industrial user and opportunity to respond) to halt or prevent any discharge to the POTW which presents or may present a danger to the environment or which threatens to interfere with the operation of the POTW. The Executive Secretary shall have authority to seek judicial relief for noncompliance by industrial users when the POTW has acted to seek such relief but has sought a penalty which the Executive Secretary finds to be insufficient. The procedures for notice to dischargers where the POTW is seeking ex parte temporary judicial injunctive relief will be governed by applicable State or Federal law and not by this provision, and will comply with the confidentiality requirements set forth in R317-8-3.2.

(b) Procedures. The POTW shall develop and implement procedures to ensure compliance with the requirements of a pretreatment program. At a minimum, these procedures shall enable the POTW to:

1. Identify and locate all possible industrial users which might be subject to the POTW pretreatment program. Any compilation, index or inventory of industrial users made under this paragraph shall be made available to the Executive Secretary upon request;

2. Identify the character and volume of pollutants contributed to the POTW by the industrial user identified under subparagraph (1) above. This information shall be made available to the Executive Secretary upon request;

3. Notify industrial users identified under R317-8-8.7(6)(b) of applicable pretreatment standards and any other applicable requirements. Within 30 days of approval of a list of significant industrial users, notify each significant industrial user of its status as such and of all requirements applicable to it

as a result of such status.

4. Receive and analyze self-monitoring reports and other notices submitted by industrial users in accordance with the requirements of R317-8-8.10.

5. Randomly sample and analyze the effluent from industrial users and conduct surveillance and inspection activities in order to identify, independent of information supplied by industrial users, occasional and continuing noncompliance with pretreatment standards. Inspect and sample the effluent from each significant industrial user at least once a year. Evaluate, at least once every two years, whether each such significant industrial user needs a plan to control slug discharges. For purposes of this subsection, a slug discharge is any discharge of a non-routine episodic nature, including but not limited to an accidental spill or a non-customary batch discharge. The results of such activities shall be available to the Executive Secretary upon request. If the POTW decides that a slug control plan is needed, the plan shall contain, at a minimum, the following elements:

a. Description of discharge practices, including non-routine batch discharges;

b. Description of stored chemicals;

c. Procedures for immediately notifying the POTW of slug discharges, including any discharge that would violate a prohibition under R317-8-8.4 with procedures for follow-up written notification within five days;

d. If necessary, procedures to prevent adverse impact from accidental spills, including inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site run-off, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants (including solvents), and/or measures and equipment for emergency response. The results of these activities shall be made available to the Executive Secretary upon request;

6. Investigate instances of noncompliance with pretreatment standards and requirements, as indicated in the reports and notices required by R317-8-8.10, or indicated by analysis, inspection, and surveillance activities. Sample taking and analysis and the collection of other information shall be performed with sufficient care to produce evidence admissible in enforcement proceedings or in judicial actions;

7. Comply with all applicable public participation requirements of State law and rules. These procedures shall include provision for at least annually providing public notification, in the largest daily newspaper published in the municipality in which the POTW is located, of industrial users which, at anytime during the previous 12 months, were in significant noncompliance with applicable pretreatment requirements. For the purposes of this provision, an industrial user is in significant noncompliance if its violation meets one or more of the following criteria:

a. Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent or more of all of the measurements taken during a six month period exceed (by any magnitude) the daily maximum limit or the average limit for the same pollutant parameter;

b. Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent or more of all of the measurements for each pollutant parameter taken during a six-month period equal or exceed the product of the daily maximum limit or the average limit multiplied by the applicable TRC. TRC = 1.4 for BOD, TSS, fats, oil and grease, and 1.2 for all other pollutants except pH.

c. Any other violation of a pretreatment effluent limit (daily maximum or longer-term average) that the Control Authority determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of POTW personnel or the general public);

d. Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the POTW's exercise of its emergency authority under R317-8-8.7(6)(a)8 to halt or prevent such a discharge:

e. Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance:

f. Failure to provide within 30 days after the due date, required reports such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;

g. Failure to accurately report noncompliance; and

h. Any other violation or group of violations which the Control Authority determines will adversely affect the operation or implementation of the local pretreatment program.

8. Funding. The POTW shall have sufficient resources and qualified personnel to carry out all required authorities and procedures. In some limited circumstances, funding and personnel may be delayed by the Executive Secretary when the POTW has adequate legal authority and procedures to carry out the pretreatment program requirements and a limited aspect of the program does not need to be implemented immediately.

9. Local Limits. The POTW shall develop local limits as required in section R317-8-8.4(4) or demonstrate that they are not necessary.

10. Enforcement Response Plan. The POTW shall develop and implement an enforcement response plan. This plan shall contain detailed procedures indicating how the POTW will investigate and respond to instances of industrial user noncompliance. The plan shall, at a minimum;

a. Describe how the POTW will investigate instances of noncompliance;

b. Describe the types of escalating enforcement responses the POTW will take in response to all anticipated types of industrial user violations and the time periods within which responses will take place;

c. Identify (by title) the official(s) responsible for each type of response;

d. Adequately reflect the POTW's primary responsibility to enforce all applicable pretreatment requirements and standards, as detailed in R317-8-8.7(6)(a) and (b).

11. List of Industrial Users. The POTW shall prepare a list of its industrial users meeting the criteria of R317-8-8.2(10)(a). The list shall identify the criteria in R317-8-8.2(10)(a)(1) applicable to each industrial user and, for industrial users meeting the criteria in R317-8-8.2(10)(a)(2),

shall also indicate whether the POTW has made a determination pursuant to R317-8-8.2(10)(b) that such industrial user should not be considered a significant industrial user. This list and any subsequent modifications thereto, shall be submitted to the Executive Secretary as a nonsubstantial program modification. Discretionary designations or de-designations by the Control Authority shall be deemed to be approved by the Executive Secretary 90 days after submission of the list or modifications thereto, unless the Executive Secretary determines that a modification is in fact a substantial modification.

12. State Program in Lieu of POTW Program. Notwithstanding the provision of R317-8-8.7(1), the State may assume responsibility for implementing the POTW pretreatment program requirements set forth in R317-8-8.7(6) in lieu of requiring the POTW to develop a pretreatment program. However, this does not preclude POTW's from independently developing pretreatment programs.

8.8 POTW Pretreatment Programs and/or Authorization to Revise Pretreatment Standards: Submission for Approval

(1) Who Approves the Program. A POTW requesting approval of a POTW pretreatment program shall develop a program description which includes the information set forth in R317-8-8.8(2)(a),(b),(c) and (d). This description shall be submitted to the Executive Secretary, who will make a determination on the request for program approval in accordance with the procedure described in R317-8-8.9.

(2) Contents of POTW Program Submission.

(a) The program submission shall contain a statement from the city attorney or a city official acting in comparable capacity or the attorney for those POTWs which have independent legal counsel, that the POTW has authority adequate to carry out the programs described in R317-8-8.7. This statement shall:

1. Identify the provision of the legal authority under R317-8-8.7(6)(a) which provides the basis for each procedure under R317-8-8.7(6)(b);

2. Identify the manner in which the POTW will implement the program requirements set forth in R317-8-8.7 including the means by which pretreatment standards will be applied to individual industrial users (e.g., by order, permit, ordinance, etc.); and

3. Identify how the POTW intends to ensure compliance with pretreatment standards and requirements, and to enforce them in the event of noncompliance by industrial users.

(b) The program submission shall contain a copy of any statutes, ordinances, regulations, agreements, or other authorities relied upon by the POTW for its administration of the program. This submission shall include a statement reflecting the endorsement or approval of the local boards or bodies responsible for supervising and/or funding the POTW pretreatment program if approved.

(c) The program submission shall contain a brief description, including organization charts, of the POTW organization which will administer the pretreatment program. If more than one agency is responsible for administration of the program the responsible agencies should be identified, their respective responsibilities delineated and their procedures for coordination set forth.

(d) The program submission shall contain a description of the funding levels and full and part time manpower available to implement the program.

(3) Conditional POTW Program Approval. The POTW may request conditional approval of the pretreatment program pending the acquisition of funding and personnel for certain elements of the program. The request for conditional approval shall meet the requirements of R317-8-8.8(2) of this subsection except that the requirements of this section may be relaxed if the submission demonstrates that:

(a) A limited aspect of the program does not need to be implemented immediately;

(b) The POTW had adequate legal authority and procedures to carry out those aspects of the program which will not be implemented immediately; and

(c) Funding and personnel for the program aspects to be implemented at a later date will be available when needed. The POTW shall describe in the submission the mechanism by which this funding will be acquired. Upon receipt of a request for conditional approval, the Executive Secretary will establish a fixed date for the acquisition of the needed funding and personnel. If funding is not acquired by this date the conditional approval of the POTW pretreatment program and any removal allowances granted to the POTW may be modified or withdrawn.

(4) Content of Removal Credit Submission. The request for authority to revise categorical pretreatment standards shall contain the information required in 40 CFR 403.7.

(5) Approval Authority Action. A POTW requesting POTW pretreatment program approval shall submit to the Executive Secretary three copies of the submission described in R317-8-8.8(2). Within 60 days after receiving a submission, the Executive Secretary shall make a preliminary determination of whether the submission meets the requirements of this section. Upon a preliminary determination that the submission meets the requirements of this section, the Executive Secretary will:

(a) Notify the POTW that the submission has been received and is under review; and

(b) Commence the public notice and evaluation activities set forth in R317-8-8.9.

(6) Notification Where Submission is Defective. If, after review of the submission as provided for in paragraph (5) above, the Executive Secretary determines that the submission does not comply with the requirements of R317-8-8.8(2), (3) and, if appropriate, (4), the Executive Secretary will provide notice in writing to the applying POTW and each person who has requested individual notice. This notification will identify any defects in the submission and advise the POTW and each person who has requested individual notice of the means by which the POTW can comply with the applicable requirements of R317-8-8.8(2), (3) and, if appropriate, (4).

(7) Consistency With Water Quality Management Plans.

(a) In order to be approved, the POTW pretreatment program shall be consistent with any approved water quality management plan, when the plan includes management agency designations and addresses pretreatment in a manner consistent with R317-8-8. In order to assure such consistency, the Executive Secretary will solicit the review and comment of the appropriate water quality planning agency during the public comment period provided for in R317-8-8.9(2)(a)(2) prior to approval or disapproval of the program.

(b) Where no plan has been approved or when a plan has been approved but lacks management agency designations and/or does not address pretreatment in a manner consistent with this section, the Executive Secretary will solicit the review and comment of the appropriate 208 planning agency.

8.9 Approval Procedures for POTW Pretreatment Programs and POTW Granting of Removal Credits. The following procedure will be adopted in approving or denying requests for approval of POTW pretreatment programs and applications for removal credit authorization.

(1) Deadline for Review of Submission. The Executive Secretary will have 90 days from the date of public notice of a submission complying with the requirements of R317-8-8.8(2), and where removal credit authorization is sought with the requirements of R317-8-8.6 and 8.8.8(4) to review the submission. The Executive Secretary shall review the submission to determine compliance with the requirements of R317-8-8.7(2) and (6), and where removal credit is sought, with R317-8-8.6. The Executive Secretary may have up to an additional 90 days to complete the evaluation of the submission if the public comment period provided for in R317-8-8.9(2) is extended beyond thirty (30) days or if a public hearing is held as provided for in R317-8-8.9(a)2. In no event, however, will the time for evaluation of the submission exceed a total of 180 days from the date of public notice of a submission.

(2) Public Notice and Opportunity for Hearing. Upon receipt of a submission the Executive Secretary will commence his review. Within 20 days after making a determination that a submission meets the requirements of R317-8-8.8(2), and when a removal credit authorization is sought under R317-8-8.6 the Executive Secretary will:

(a) Issue a public notice of request for approval of the submission:

1. This public notice will be circulated in a manner designed to inform interested and potentially interested persons of the submission. Procedures for the circulation of public notice will include: mailing notices of the request for approval of the submission to designated CWA section 208 planning agencies, federal and state fish, shellfish, and wildlife resource agencies; and to any other person or group who has requested individual notice, including those on appropriate mailing lists; and publication of a notice of request for approval of the submission in the largest daily newspaper within the jurisdiction served by the POTW.

2. The public notice will provide a period of not less than 30 days following the date of the public notice during which time interested persons may submit their written views on the submission;

3. All written comments submitted during the 30-day comment period will be retained by the Executive Secretary and considered in the decision on whether or not to approve the submission. The period for comment may be extended at the discretion of the Executive Secretary.

(b) The Executive Secretary will also provide an opportunity for the applicant, any affected State, any interested state or federal agency, person or group of persons to request a public hearing with respect to the submission.

1. This request for public hearing shall be filed within the thirty (30) day or extended comment period described in R317-8-8.9(2)(a)(2) of this subsection and will indicate the interest of the person filing such a request and the reasons why a hearing is warranted.

2. The Executive Secretary will hold a hearing if the POTW so requests. In addition, a hearing will be held if there is a significant public interest in issues relating to whether or not the submission should be approved. Instances of doubt will be resolved in favor of holding the hearing.

3. Public notice of a hearing to consider a submission and sufficient to inform interested parties of the nature of the hearing and right to participate will be published in the same newspaper as the notice of the original request. In addition, notice of the hearing will be sent to those persons requesting individual notice.

(3) Executive Secretary Decision. At the end of the thirty (30) day or extended comment period and within the ninety (90) day or extended period provided for in R317-8-8.9(1) of this section, the Executive Secretary will approve or deny the submission based upon the evaluation in R317-8-8.9(1) and taking into consideration comments submitted during the comment period and the record of the public hearing, the Executive Secretary will so notify the POTW and each person who has requested individual notice. This notification will include suggested modification and the Executive Secretary may allow the requestor additional time to bring the submission into compliance with applicable requirements.

(4) EPA Objection to Executive Secretary's Decision. No POTW pretreatment program or authorization to grant removal allowances will be approved by the Executive Secretary if following the thirty (30)-day or extended evaluation period provided for in R317-8-8.9(2)(a)(2) and any public hearing held pursuant to this section, the Regional Administrator sets forth in writing objections to the approval of such submission and the reasons for such objections. A copy of the Regional Administrator's objections will be provided to the applicant and to each person who has requested individual notice. The Regional Administrator shall provide an opportunity for written comments and many convene a public hearing on his or her objections. Unless retracted, the Regional Administrator's objections shall constitute a final ruling to deny approval of a POTW pretreatment program or authorization to grant removal allowances 90 days after the date the objections are issued.

(5) Notice of Decision. The Executive Secretary will notify those persons who submitted comments and participated in the public hearing, if held, of the approval or disapproval of the submission. In addition, the Executive Secretary will cause to be published a notice of approval or disapproval in the same newspapers as the original notice of request was published. The Executive Secretary will identify any authorization to modify categorical pretreatment standards which the POTW may make for removal of pollutants subject to the pretreatment standards.

(6) Public Access to Submission. The Executive Secretary will ensure that the submission and any comments on the submission are available to the public for inspection and copying.

8.10 Reporting Requirements for POTWs and Industrial Users

(1) Definition. "Control Authority" means the POTW if the POTW's submission for its pretreatment program has been

approved or the Executive Secretary if the submission has not been approved.

(2) Reporting Requirement for Industrial Users Upon Effective Date of Categorical Pretreatment Standards Baseline Report. Within 180 days after the effective date of a categorical pretreatment standard or 180 days after the final administrative decision made upon a category determination submission under R317-8-8.5, whichever is later, existing industrial users subject to such categorical pretreatment standards and currently discharging to or scheduled to discharge to a POTW shall be required to submit to the Control Authority a report which contains the information listed in paragraphs (a) through (g) of this Section. Where reports containing this information have already been submitted to the Executive Secretary, the industrial user will not be required to submit this information again. At least 90 days prior to commencement of discharge, new sources and sources that become Industrial Users subsequent to promulgation of an applicable categorical standard, shall be required to submit to the Control Authority a report which contains the information listed in R317-8-10(2)(a), (b), (c), (d) and R317-8-10(3). New sources shall also be required to include in this report information on the method of pretreatment the source intends to use to meet applicable pretreatment standards. New Sources shall give estimates of the information requested in R317-8-8.10(2)(d) and (e).

(a) Identifying Information. The user shall submit the name and address of the facility, including the name of the operator and owners.

(b) Permits. The user shall submit a list of any environmental control permits held by or for the facility.

(c) Description of Operations. The user shall submit a brief description of the nature, average rate of production and Standard Industrial Classification of the operation carried out by the industrial user. This description should include a schematic process diagram which indicates points of discharge to the POTW from the regulated process.

(d) Flow measurement. The user shall submit information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from each of the following: regulated process streams and other streams as necessary to allow use of the combined wastestream formula (see Section 40 CFR 403.6(e)). The Control Authority may allow for verifiable estimates of these flows where justified by cost or feasibility considerations.

(e) Measurement of pollutants.

1. The user shall identify the pretreatment standards applicable to each regulated process.

2. The user shall submit the results of sampling and analysis identifying the nature and concentration, or mass, of regulated pollutants in the discharge from each regulated process when required by the Control Authority. Both daily maximum and average concentration or mass, where required shall be reported. The sample shall be representative of daily operations.

3. A minimum of four grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organics. For all other pollutants, 24-hour composite samples must be obtained through flow-proportional composite sampling techniques where feasible. The Control authority may waive flow-proportional composite sampling for any Industrial Users that demonstrate that flow-proportional sampling is infeasible. In such cases, samples may be obtained through time-proportional composite sampling techniques or through a minimum of four grab samples where the User demonstrates that this will provide a representative sample of the effluent being discharged.

4. The User shall take a minimum of one representative sample to compile that data necessary to comply with the requirements of R317-8-8.10.

5. Samples shall be taken immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated process if no pretreatment exists. If other wastewaters are mixed with the regulated wastewater prior to pretreatment the user should measure the flows and concentrations necessary to allow use of the combined wastestream formula in order to evaluate compliance with the pretreatment standards. When an alternate concentration or mass limit has been calculated in accordance with the combined wastestream formula this adjusted limit along with supporting data shall be submitted to the Control Authority.

6. Sampling and analysis shall be performed in accordance with the techniques prescribed in 40 CFR 136. When 40 CFR 136 does not contain sampling or analytical techniques for the pollutant in question, or when the Administrator determines that the 40 CFR 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the POTW or other parties, approved by the Administrator.

7. The Control Authority may allow the submission of a baseline report which utilizes only historical data so long as the data provides information sufficient to determine the need for industrial pretreatment measures.

8. The baseline report shall indicate the time, date and place of sampling, and methods of analysis, and shall certify that such sampling and analysis is representative of normal work cycles and expected pollutant discharges to the POTW.

(f) Certification. The user shall submit a statement, reviewed by an authorized representative of the industrial user and certified by a qualified professional, indicating whether pretreatment standards are being met on a consistent basis and, if not, whether additional operation and maintenance and/or additional pretreatment is required for the industrial user to meet the pretreatment standards and requirements.

(g) Compliance Schedule. If additional pretreatment and/or operation and maintenance are required to meet the pretreatment standards, the user shall submit the shortest schedule by which the industrial user will provide such additional pretreatment and/or operation and maintenance. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard.

1. When the industrial user's categorical pretreatment standard has been modified by a removal allowance under R317-8-8.6, the combined wastestream formula under R317-8-8.5,or by a fundamentally different factors variance under R317-8-8.14 at the time the user submits the report required by R317-

8-8.10(2), the information required by R317-8-8.10(2)(f) and (g) shall pertain to the modified limits.

2. If the categorical pretreatment standard is modified by a removal allowance under R317-8-8.6, the combined wastestream formula under R317-8-8.5, or by a fundamentally different factors variance under R317-8-8.14 after the user submits the report required by R317-8-8.10(2) of this subsection, any necessary amendments to the information requested by R317-8-8.10(2)(f) and (g) shall be submitted by the user to the Control Authority within 60 days after the modified limit is approved.

(3) Compliance Schedule for Meeting Categorical Pretreatment Standards. The following conditions shall apply to the schedule required by R317-8-8.10(2)(g):

(a) The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the industrial user to meet the applicable categorical pretreatment standards;

(b) No increment referred to in paragraph (a) of above shall exceed 9 months;

(c) Not later than 14 days following each date in the schedule and the final date for compliance, the industrial user shall submit a progress report to the Control Authority including, at a minimum, whether or not it complied with the increment of progress to be met on that date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps being taken by the industrial user to return the construction to the schedule established. In no event shall more than 9 months elapse between such progress reports to the Control Authority;

(4) Report on Compliance with Categorical Pretreatment Standard Deadline. Within 90 days following the date for final compliance with applicable categorical pretreatment standards or in the case of a new source following commencement of the introduction of wastewater into the POTW, any industrial user subject to pretreatment standards and requirements shall submit to the Control Authority a report containing the information described in R317-8-8.10(2)(d. e. and f). For industrial users subject to equivalent mass or concentration limits established by the Control Authority in accordance with the procedures in R317-8-8.5 this report shall contain a reasonable measure of the user's long term production rate. For all other industrial users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the user's actual production during the appropriate sampling period.

(5) Periodic Reports on Continued Compliance.

(a) Any industrial user subject to a categorical pretreatment standard after the compliance date of such pretreatment standard or, in the case of a new source, after commencement of the discharge into the POTW, shall submit to the Control Authority during the months of June and December, unless required more frequently in the pretreatment standard or by the Executive Secretary, a report indicating the nature and concentration of pollutants in the effluent which are limited by such categorical pretreatment standards. In addition, this report shall include a record of measured or estimated average and maximum daily flows for the reporting period for the discharge reported in R317-8-8.10(2)(d) of this section except that the Control Authority may require more detailed reporting of flows. At the discretion of the Control Authority and in consideration of such factors as local high or low flow rates, holidays and budget cycles, the Control Authority may agree to alter the months during which the above reports are to be submitted.

(b) When the Control Authority has imposed mass limitations on industrial users as provided by R317-8-8.5, the report required by paragraph (a) of this subsection shall indicate the mass of pollutants regulated by pretreatment standards in the discharge from the industrial user.

(c) For industrial users subject to equivalent mass or concentration limits established by the Control authority in accordance with the procedures in R317-8-8.5 the report required by R317-8-8.10(5)(a) shall contain a reasonable measure of the user's long term production rate. For all other industrial users subject to categorical pretreatment standards expressed only in terms of allowable pollutant discharge per unit of production (or other measure of operation), the report required by R317-8-10(5)(a) shall include the user's actual average production rate for the reporting period.

(6) Notice of Potential Problems Including Slug Loading. All categorical and non-categorical industrial users shall notify the POTW immediately of all discharges that could cause problems to the POTW, including any slug loadings, as defined in R317-8-8.4.

(7) Monitoring and Analysis to Demonstrate Continued Compliance.

(a) The reports required in R317-8-8.10(2), 8.10(4) and (5) shall contain the results of sampling and analysis of the discharge, including the flow, the nature and concentration, or production and mass where requested by the Control Authority, of pollutants contained therein which are limited by the applicable pretreatment standards. This sampling and analysis may be performed by the Control Authority in lieu of the industrial user. Where the POTW performs the required sampling and analysis in lieu of the industrial user, the user will not be required to submit the compliance certification. In addition, where the POTW itself collects all the information required for the report, including flow data, the industrial user will not be required to submit the report.

(b) If sampling performed by an industrial user indicates a violation, the user shall notify the Control Authority within 24 hours of becoming aware of the violation. The user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the Control Authority within 30 days after becoming aware of the violation, except the industrial user is not required to resample if;

1. The Control Authority performs sampling at the industrial user at a frequency of at least once per month, or

2. The Control Authority performs sampling at the user between the time when the user performs its initial sampling and the time when the user receives the results of this sampling.

(c) The reports required in this section shall be based upon data obtained through appropriate sampling and analysis performed during the period covered by the report, which data is representative of conditions occurring during the reporting period. The Control Authority shall require that frequency of monitoring necessary to assess and assure compliance by

industrial users with applicable Pretreatment Standards and Requirements.

(d) All analyses shall be performed in accordance with procedures contained in 40 CFR 136 or with any other test procedures approved by the Administrator. Sampling shall be performed in accordance with the techniques approved by the Administrator. Where 40 CFR 136 does not include sampling or analytical techniques are inappropriate for the pollutant in question, sampling and analyses shall be performed using validated analytical methods or any other sampling and analytical procedures, including procedures suggested by the POTW or other parties and approved by the Administrator.

(e) If an industrial user subject to the reporting requirement in R317-8-8.10(5) monitors any pollutant more frequently than required by the Control Authority, using the procedures prescribed in, R317-8-8.10(7)(d), the results of this monitoring shall be included in the report.

(8) Compliance Schedule for POTWs. The following conditions and reporting requirements shall apply to the compliance schedule for development of an approvable POTW pretreatment program.

(a) The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the development and implementation of a POTW pretreatment program.

(b) No increment referred to in paragraph (a) above shall exceed nine months.

(c) Not later than 14 days following each date in the schedule and the final date for compliance, the POTW shall submit a progress report to the Executive Secretary including, as a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps taken by the POTW to return to the schedule established. In no event shall more than nine months elapse between such progress reports to the Executive Secretary.

(9) Reporting requirements for industrial user not subject to categorical pretreatment standards. The Control Authority shall require appropriate reporting from those industrial users with discharges that are not subject to categorical pretreatment standards. Significant Noncategorical Industrial Users shall submit to the Control Authority at least once every six months (on dates specified by the Control Authority) a description of the nature, concentration, and flow of the pollutants required to be reported by the Control Authority. These reports shall be based on sampling and analysis performed in the period covered by the report and performed in accordance with the techniques described in 40 CFR 136. Where 40 CFR 136 does not contain sampling or analytical techniques for the pollutant in question, or where the Executive Secretary determines that the 40 CFR 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the POTW or other persons, approved by the Administrator. This sampling and analysis may be performed by the Control Authority in lieu of the significant noncategorical industrial user. Where the POTW itself collects all the information required for the report, the noncategorical significant industrial user will not be required to submit the report.

(10) Annual POTW reports. POTWs with approved pretreatment programs shall provide the Executive Secretary with a report that briefly describes the POTW's program activities, including activities of all participating agencies, if more than jurisdiction is involved in the local program. The report required by this section shall be submitted no later than one year after approval of the POTW's pretreatment program and at least annually thereafter, and shall include, at a minimum, the following:

(a) An updated list of the POTW's industrial users, including their names and addresses, or a list of deletions and additions keyed to a previously submitted list. The POTW shall provide a brief explanation of each deletion. This list shall identify which industrial users are subject to categorical pretreatment standards and specify which standards are applicable to each industrial user. The list shall indicate which industrial users are subject to local standards that are more stringent than the categorical pretreatment standards. The POTW shall also list the industrial users that are subject only to local requirements.

(b) A summary of the status of industrial user compliance over the reporting period;

(c) A summary of compliance and enforcement activities (including inspections) conducted by the POTW during the reporting period; and

(d) Any other relevant information requested by the Executive Secretary.

(11) Notification of changed discharge. All industrial users shall promptly notify the POTW in advance of any substantial change in the volume or character of pollutants in their discharge including the listed or characteristic hazardous wastes for which the industrial user has submitted initial notification under R317-8-8.10.

(12) Signatory Requirements for Industrial User Reports. The reports required by R317-8-8.10(2), (4) and (5) shall include the certification statement as set forth in 40 CFR and 403.6(2)(B). and shall be signed as follows;

(a) By a responsible corporate officer if the industrial user submitting the reports is a corporation. A responsible corporate officer means (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing production, or operation facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(b) By a general partner or proprietor if the industrial user submitting the reports is a partnership or sole proprietorship respectively.

(c) By a duly authorized representative of the individual designated in paragraph (a) or (b) above, if;

1. The authorization is made in writing by the individual described in paragraph (a) or (b) above.

2. The authorization specifies either an individual or a

position having responsibility for the overall operation of the facility from which the Industrial Discharge originates, such as the position of plant manager, operator of a well, or well field superintendent, or a position of equivalent responsibility, or having overall responsibility for environmental matters for the company; and

3. The written authorization is submitted to the Control Authority.

(d) If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, or overall responsibility for environmental matters for the company, a new authorization satisfying the requirements must be submitted to the Control Authority prior to or together with any reports to be signed by an authorized representative.

(13) Signatory Requirements for POTW Reports. Reports submitted to the Executive Secretary by the POTW in accordance with R317-8-8.10(8), (9) and (10) shall be signed by a principal executive officer, ranking elected official or other duly authorized employee if such employee is responsible for overall operation of the POTW.

(14) Provisions Governing Fraud and False Statements. The reports and other documents required to be submitted or maintained by R317-8-8.10(2), (4), (5), (8), (9), (12) and (13) shall be subject to the Utah Water Pollution Control Act as amended and all other State and Federal laws pertaining to fraud and false statements.

(15) Record-Keeping Requirements.

(a) Any industrial user and POTW subject to the reporting requirements established in this subsection shall maintain records of all information resulting from any monitoring activities required by this section. Such records shall include for all samples:

1. The date, exact place, method, and time of sampling and the names of the person or persons taking the samples;

2. The dates and times analyses were performed;

3. Who performed the analyses;

4. The analytical techniques or methods used; and

5. The results of the analyses.

(b) Any industrial user or POTW subject to these reporting requirements established shall be required to retain for a minimum of 3 years any records of monitoring activities and results, whether or not such monitoring activities are required by this section, and shall make such records available for inspection and copying by the Executive Secretary, and by the POTW in the case of an industrial user. This period of retention shall be extended during the course of any unresolved litigation regarding the industrial user or POTW or when requested by the Executive Secretary.

(c) A POTW to which reports are submitted by an industrial user pursuant to R317-8-8.10(2)(4), and (5) shall retain such reports for a minimum of 3 years and shall make such reports available for inspection and copying by the Executive Secretary. This period of retention shall be extended during the course of any unresolved litigation regarding the discharge of pollutants by the industrial user or the operation of the POTW pretreatment program or when requested by the Executive Secretary.

(d) Notification to POTW by Industrial User.

1. The industrial user shall notify the Executive Secretary, the POTW, and State hazardous waste authorities in writing of any discharge into the POTW of a substance, which if otherwise disposed of, would be a hazardous waste under R315-2-1. Such notification must include the name of the hazardous waste as set forth in R315-2-1, the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the industrial user discharges more than 100 kilograms of such waste per calendar month to the POTW, the notification shall also contain the following information to the extent such information is known and readily available to the industrial user: An identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the wastestream discharged during that calendar month and an estimation of the mass of constituents in the wastestream expected to be discharged during the following twelve months. All notifications must take place within 180 days of the effective date of this rule. Industrial users who commence discharging after the effective date of this rule shall provide the notification no later than 180 days after the discharge of the listed or characteristic hazardous waste. Any notification under this paragraph need be submitted only once for each hazardous waste discharged. However, notifications of changed discharges must be submitted under R317-8-8.10(11). The notification requirement in this section does not apply to pollutants already reported under the self-monitoring requirements of R317-8-8.10(2), (4), and (5).

2. Dischargers are exempt from the requirements of R317-8-8.10(15)(d) during a calendar month in which they discharge no more than fifteen kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in R315-2-1. Discharge of more than fifteen kilograms of non-acute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in 40 R315-2-1, requires a one-time notification. Subsequent months during which the industrial user discharges more than such quantities of any hazardous waste do not require additional notification.

3. In the case of any new regulations adopted by EPA or the Utah Solid and Hazardous Waste Board identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the industrial user must notify the POTW, the EPA Regional Waste Management Division Director, and State hazardous waste authorities of the discharge of such substance within 90 days of the effective date of such regulations.

4. In the case of notification made under R317-8-8.15(d)1, the industrial user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.

8.11 Confidentiality of Information. Any information submitted to the Executive Secretary pursuant to these regulations may be claimed as confidential by the person making the submission. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions, or, in the case of other submissions, by stamping the words "confidential business information" on each page containing such information. If no claim is made at the time of submission, the Executive Secretary may make the information available to the public without further notice. If a

claim is asserted, the information will be treated in accordance with the procedures in the 40 CFR Part 2. Information and data provided to the Executive Secretary pursuant to this part which is effluent data shall be available to the public without restriction. All other information which is submitted to the State or POTW shall be available to the public at least to the standards of 40 CFR 2.302.

8.12 Net/Gross Calculation. Categorical pretreatment standards may be adjusted to reflect the presence of pollutants in an industrial user's intake water in accordance with this section.

(1) Application. Any industrial user wishing to obtain credit for intake pollutants must make application to the Control Authority. Upon request of the industrial user, the applicable standard will be calculated on a "net" basis (i.e., adjusted to reflect credit for pollutants in the intake water) if the requirements of R317-8-8.12(2) and (3) are met.

(2) Criteria

a. The industrial user must demonstrate that the control system it proposes or uses to meet applicable categorical pretreatment standards would, if properly installed and operated, meet the standards in the absence of pollutants in the intake water.

b. Credit for generic pollutants such as biochemical oxygen demand (BOD), total suspended solids (TSS) and oil and grease should not be granted unless the industrial user demonstrates that the constituents of the generic measure in the user's effluent are substantially similar to the constituents of the generic measure in the intake water or unless appropriate additional limits are placed on process water pollutants either at the outfall or elsewhere.

c. Credit shall be granted only to the extent necessary to meet the applicable categorical pretreatment standard(s), up to a maximum value equal to the influent value. Additional monitoring may be necessary to determine eligibility for credits and compliance with standard(s) adjusted under this section.

d. Credit shall be granted only if the user demonstrates that the intake water is drawn from the same body of water as that into which the POTW discharges. The Control Authority may waive this requirement if it finds that no environmental degradation will result.

(3) The applicable categorical pretreatment standards contained in 40 CFR Subchapter N specifically provide that they shall be applied on a net basis.

8.13 Upset Provision

(1) Definition. "Upset" as used in this subsection means an exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards because of factors beyond the reasonable control of the industrial user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(2) Effect of an Upset. An upset constitutes an affirmative defense to an action brought for noncompliance with categorical pretreatment standards if the requirements of R317-8-8.13(3) are met.

(3) Conditions Necessary for a Demonstration of Upset. An industrial user who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(a) An upset occurred and the industrial user can identify the cause(s) of the upset;

(b) The facility was at the time being operated in a prudent and workmanlike manner and in compliance with applicable operation and maintenance procedures;

(c) The industrial user has submitted the following information to the POTW and Control Authority within 24 hours of becoming aware of the upset or if this information is provided orally, a written submission within five days:

1. A description of the indirect discharge and cause of noncompliance;

2. The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue;

3. Steps being taken and/or planned to reduce, eliminate and prevent recurrence of the noncompliance.

4. Burden of Proof. In any enforcement proceeding the industrial user seeking to establish the occurrence of an upset shall have the burden of proof.

5. Reviewability of Agency Consideration of Claims of Upset. In the usual exercise of prosecutorial discretion, State enforcement personnel will review any claims that noncompliance was caused by an upset. No determinations made in the course of the review constitutes final agency action subject to judicial review. Industrial users will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with categorical pretreatment standards.

6. User responsibility in case of upset. The industrial user shall control production or discharges to the extent necessary to maintain compliance with categorical pretreatment standards upon reduction, loss or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost or fails.

8.14 Bypass Provision

(1) Definitions.

(a) "Bypass" means the intentional diversion of wastestreams from any portion of an industrial user's treatment facility.

(b) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(2) Bypass not violating applicable pretreatment standards or requirements. An industrial user may allow any bypass to occur which does not cause pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of R317-8-8.14(3) and (4).

(3) Notice.

(a) If an industrial user knows in advance of the need for a bypass, it shall submit prior notice to the Control Authority,

if possible at least ten days before the date of the bypass.

(b) An industrial user shall submit oral notice of an unanticipated bypass that exceeds applicable pretreatment standards to the Control Authority within 24 hours from the time the industrial user becomes aware of the bypass. A written submission shall also be provided within 5 days of the time the industrial user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times and if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The Control Authority may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

(4) Prohibition of bypass.

(a) Bypass is prohibited and the Control Authority may take enforcement action against an industrial user for a bypass, unless:

1. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

2. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated waters, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventative maintenance; and

3. The industrial user submitted notices as required under R317-8-8.14(3).

(b) The Control Authority may approve an anticipated bypass, after considering its adverse effects, if the Control Authority determines that it will meet the three conditions listed in R317-8-8.14(4)(a).

8.15 Modification of POTW Pretreatment Programs

(1) General. Either the Executive Secretary or a POTW with an approved POTW Pretreatment Program may initiate program modification at any time to reflect changing conditions at the POTW. Program modification is necessary whenever there is a significant change in the operation of a POTW pretreatment program that differs from the information in the POTW's submission, as approved under Section R317-8-8.9.

(2) Procedures. POTW pretreatment program modifications shall be accomplished as follows:

(a) For substantial modifications, as defined in R317-8-8.15(3):

1. The POTW shall submit to the Executive Secretary a statement of the basis for the desired modification, a modified program description or such other documents the Executive Secretary determines to be necessary under the circumstances.

2. The Executive Secretary shall approve or disapprove the modification based on its regulatory requirements.

3. The modification shall be incorporated into the POTW's UPDES permit after approval. The permit will be modified to incorporate the approved modification in accordance with R317-8-5.6(3)(g).

4. The modification shall become effective upon approval by the Executive Secretary. Notice of approval shall be published in the same newspaper as the notice of the original request for approval of the modification.

(b) The POTW shall notify the Executive Secretary of any other (i.e. non-substantial) modifications to its pretreatment program at least 30 days prior to when they are to be implemented by the POTW, in a statement similar to that provided for in R317-8-8.15(2)(a)1. Such non-substantial program modifications shall be deemed to be approved by the Executive Secretary, unless the Executive Secretary determines that a modification submitted is in fact a substantial modification, 90 days after the submission of the POTW's statement. Following such "approval" by the Executive Secretary such modifications shall be incorporated in the POTW's permit in accordance with R317-8-5.6(2)(g). If the Executive Secretary determines that a modification reported by a POTW is in fact a substantial modification, the Executive Secretary shall notify the POTW and initiate the procedures in R317-8-8.15(2)(a).

(3) Substantial modifications.

(a) The following are substantial modifications for purposes of this section:

1. Changes to the POTW's legal authorities;

2. Changes to local limits, which result in less stringent local limits;

3. Changes to the POTW's control mechanism;

4. Changes to the POTW's method for implementing categorical Pretreatment Standards (e.g., incorporation by reference, separate promulgation, etc.):

5. A decrease in the frequency of self-monitoring or reporting required of industrial users;

6. A decrease in the frequency of industrial user inspections or sampling by the POTW;

7. Changes to the POTW's confidentiality procedures;

8. Significant reductions in the POTW's Pretreatment Program resources (including personnel commitments, equipment, and funding levels); and

9. Changes in the POTW's sludge disposal and management practices.

(b) The Executive Secretary may designate other specific modifications in addition, to those listed in R317-8-8.15(3)(a), as substantial modifications.

(c) A modification that is not included in R317-8-8.15(3)(a) is nonetheless a substantial modification for purposes of this section if the modification:

1. Would have a significant impact on the operation of the POTW's Pretreatment Program;

2. Would result in an increase in pollutant loadings at the POTW; or

3. Would result in less stringent requirements being imposed on industrial users of the POTW.

8.16 Variances From Categorical Pretreatment Standards for Fundamentally Different Factors (FDF). A variance may be granted, using the procedures of 40 CFR 403.13, to an industrial user if data specific to the user indicates it presents factors fundamentally different from those considered by EPA in developing the limit at issue.

KEY: water pollution, discharge permits
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40 CFR 503

R317. Environmental Quality, Water Quality.
R317-10. Certification of Wastewater Works Operators.
R317-10-1. Objectives.

The certification program is established in order to assist in protecting the quality of waters in the state of Utah by helping ensure that personnel in charge of wastewater works are trained, experienced, reliable and efficient; to protect the public health and the environment and provide for the health and safety of wastewater works operators; and to establish standards and methods whereby wastewater works operating personnel can demonstrate competency.

R317-10-2. Scope.

These certification rules apply to all wastewater works and sewerage systems operated by political subdivisions, with the exception of Individual Wastewater Disposal Systems and Large Underground Disposal Systems as defined in R317-1. This includes both wastewater collection systems and wastewater treatment systems except underground wastewater disposal systems. The requirements of these rules must be met by December 31, 1994.

R317-10-3. Authority.

The Certification Program for Wastewater Works Operators is authorized by Section 19-5-104 of the Utah Code Annotated.

R317-10-4. Definitions.

A. "Board" means the Water Quality Board.

B. "Category" means type of certification (collection or wastewater treatment).

C. "Certificate" means a certificate issued by the Council, stating that the recipient has met the minimum requirements for the specified operator grade described in this rule.

D. "Certified Operator" means a person with the appropriate education and experience, as specified in this rule, that has successfully completed the certification exam or otherwise meets the requirements of this rule.

E. "Chief Operator" means the supervisor in direct responsible charge of all shift operators for a collection or treatment system.

F. "Collection System" means the system designed to collect and transport sewage from the beginning points that the collection entity regards as their responsibility to maintain and operate, to the points where the treatment facility assumes responsibility for operation and maintenance.

G. "Council" means the Utah Wastewater Operator Certification Council.

H. "Continuing Education Unit (CEU)" means ten contact hours of participation in and successful completion of an organized and approved continuing education experience. College credit in approved courses may be substituted for CEUs on an equivalency basis as defined in this rule.

I. "Direct Responsible Charge (DRC)" means active on-site charge and performance of operation duties. The person in direct responsible charge is generally a supervisor over wastewater treatment or collection who independently makes decisions affecting all treatment or system processes during normal operation which may effect the quality, safety, and adequacy of treatment of wastewater discharged from the plant. In cases where only one operator is employed, this operator shall be considered to be in direct responsible charge.

J. "Executive Secretary" means the Executive Secretary of the Water Quality Board.

K. "Grade Level" means any one of the possible steps within a certification category of either wastewater collection or wastewater treatment. There are four levels each for collection and treatment system operators, Grade I being the lowest and Grade IV the highest level. There is one level for lagoon operators.

L. "Grandfather Certificate" means a certificate issued to an operator, without taking an examination, by virtue of the operator meeting experience and other requirements in R317-10-11.G of this rule.

M. "Operator" means any person who is responsible for, or may be responsible for, operation of any publicly owned wastewater works or facilities treating primarily sanitary wastewater.

N. "Population Equivalent (P.E.)" means the population which would contribute an equivalent waste load based on the calculation of total pounds of B.O.D. contributed divided by 0.2. This calculation may be used where a significant amount of industrial waste is discharged to a wastewater system.

O. "Restricted Certificate" means a certificate issued upon passing the certification examination when other requirements have not been met.

P. "Small Lagoon System" means a wastewater lagoon system designed to serve fewer than 3500 design population equivalent.

Q. "Wastewater Works" means facilities for collecting, pumping, treating or disposing of sanitary wastewater.

R317-10-5. Wastewater Works Owner Responsibilities.

A. The chief operator and supervisors who make process decisions for the system must be certified at the level of the facility classification. All other operators in direct responsible charge must be certified at no less than one grade lower than the facility classification or at the lowest required facility classification except as provided in B below. All facilities must have an operator certified at the facility level on duty or on call. If a facility or system undergoes a re-rating, all operators considered to be in DRC must be certified at the appropriate level within one year after notification of the new rating.

B. Upon termination of employment of the Chief Operator, or operator(s) considered in DRC, the Executive Secretary must be notified within 10 working days by the facility owner. The wastewater works must have a certified operator at the appropriate level within one year from the date of hire, or in no case longer than 18 months from the date the vacancy occurred. If the wastewater works is newly constructed, a certified operator at the appropriate level must be employed within one year after the system is deemed operable. It is recommended that during the time no certified operator is employed, a certified operator be on call to assist as needed in the operation of the wastewater works.

C. Those required to be certified may operate a system with a restricted certificate of the required grade for up to one year for a Grade I or Grade II facility, or up to two years for a Grade III or Grade IV facility, but may not continue to operate a system if they are unable to obtain an unrestricted certificate at the end of the stipulated period.

R317-10-6. Facility Classification System.

A. Treatment plants and collection systems shall be classified in accordance with Table 1.

TABLE 1

FACILITY CLASSIFICATION SYSTEM

FACILITY CATEGORY		CLASS I	II	III	IV
Collection and (1)	Pop. Served	3,500 and less	3,501 to 15,000	15,001 to 50,000	50,001 greater
Treatment Plant (2)	Range of Fac. Points	30 and less	31 to 55	56 to 75	76 and greater
Small Lagoon Systems(3)	Design Pop. Equiv.	3,500 and less			

(1) Simple "in-line" treatment (such as booster pumping, preventive chlorination, or odor control) is considered an integral part of a collection system.

(2) Treatment plants shall be assigned "facility points" in accordance with Table 2 "Wastewater Treatment Plant Classification System".

(3) A combined certificate shall be issued for treatment works/collection system operation.

TABLE 2

WASTEWATER TREATMENT PLANT CLASSIFICATION SYSTEM

Each Unit process should have points assigned only once.

Item	Points
SIZE (2 PT Minimum - 20 PT Maximum)	
Max. Population equivalent (PE) served, peak day(1)	1 - 10
Design flow average day or peak month average, whichever is larger(2)	1 - 10
Variation in raw waste:(3)	
Variations do not exceed those normally or typically expected	0
Recurring deviations or excessive variations of 100 - 200% in strength and/or flow	2
Recurring deviations or excessive variations of more than 200% in strength and/or flow	4
Raw wastes subject to toxic waste discharges	6
Impact of septage of truck-hauled waste	0 - 4
PRELIMINARY TREATMENT	
Plant pumping of main flow	3
Screening, comminution	3
Grit removal	3
Equalization	1
PRIMARY TREATMENT	
Clarifiers	5
Imhoff tanks or similar	5
SECONDARY TREATMENT	
Fixed Film reactor trickling filters, RBC's	10
Activated sludge	15
Stabilization ponds w/o aeration	5
Stabilization ponds w/aeration	8
TERTIARY TREATMENT	
Polishing ponds, wetlands for advanced waste treatment	2
Chemical/physical advanced waste treatment w/o secondary	15
Chemical/physical advanced waste treatment following secondary	10
Biological or chemical/biological advanced waste treatment	12
Nitrification by designed extended aeration only	2
Ion exchange for advanced waste treatment	10
Reverse osmosis, electrodialysis for advanced waste treatment	15
Advanced waste treatment chemical recovery, carbon regeneration	4
Media Filtration	4
ADDITIONAL TREATMENT PROCESSES	
Chemical additions (2 pts./each for max. Of 6 pts.)	2 - 6
Dissolved air flotation (for other than sludge thickening)	8
Intermittent sand filter	2
Recirculating intermittent sand filter	3
Microscreens	5
Generation of oxygen	5
SOLIDS HANDLING	
Solids conditioning	2
Solids thickening	5
Anaerobic digestion of solids	10
Utilization of digester gas for heating or cogeneration	5
Aerobic digestion of solids	6
Evaporative sludge drying	2
Mechanical dewatering of solids	8
Solids reduction (including incineration, wet oxidation)	12
On-site landfill for solids	2
Solids composting	10
Land application of biosolids by contractor	2
Land application of biosolids under direction of DRC operator	10
Disinfection: 0-	10
Chlorination or ultraviolet irradiation	5
Ozonation	10
Effluent discharge: (0-10 pt max.)	
Mechanical Post aeration	2
Direct recycle and reuse	6
INSTRUMENTATION (0-6 Pt. Max.)	
Use of SCADA, similar instrumentation systems to provide data with no process operation	0
Use of SCADA, similar instrumentation systems to provide data with limited process operation	2
Use of SCADA, similar instrumentation systems to provide data with moderate process operation	4
Use of SCADA, similar instrumentation systems to provide data with extensive/total process operation	6
Laboratory Control: (0-15 pt. Max))	
Bacteriological/biological (0-5 pt. Max)):	
Lab work done outside the plant	0
Membrane filter procedures	3
Use of fermentation tubes or any dilution method (fecal coliform determination)	5
Chemical/physical (0-10):	
Lab work done outside the plant	0
Push-button, visual methods for simple tests (i.e. pH, settleable solids)	3
Additional procedures (ie, DO, COD, BOD, gas analysis, titrations, solids volatile	5

content)	
More advanced determinations (ie, specific constituents; nutrients, total oils, phenols)	7
Highly sophisticated instrumentation (i.e., atomic absorption, gas chromatography) 1-10	10

(1) 1 pt. per 10,000 P.E. or part; maximum of 10 points
(2) 1 pt. per MGD or part
(3) Key concept is frequency and/or intensity of deviation or excessive variation from normal or typical fluctuations; such deviation may be in terms of strength, toxicity, shock loads, inflow and infiltration, with point values ranging from 0 - 6.
(4) Key concept is the degree of dilution provided under low flow conditions with point values ranging from 0 - 6.
(5) Key concept is to credit laboratory analyses done on-site by plant personnel with point values ranging from 0 - 20.

R317-10-7. Qualifications for Operator Grades.

A. General

1. "Qualification Points" means total of years of education and experience required. All substitutions are year for year equivalents. A college "year" is considered 45 quarter hours or 30 semester hours of credit.

2. College-level educations must be in a job-related field to be credited. However, partial credit may be given for non-job related education at the discretion of the Council.

3. Experience may be substituted for a high school education or a graduate equivalence degree in Grades I and II only.

4. Education may be substituted for experience, as specified below.

B. Grade I - 13 points required

1. Twelve years education (one point per year).

2. One year operating experience (one point per year).

3. Experience may be substituted for all or any part of the education requirements, on a one-to-one basis.

4. Education may not be substituted for experience.

C. Grade II - 14 points required

1. Twelve years education (one point per year)

2. Two years operating experience (one point per year)

3. Up to one year of additional education may be substituted for an equivalent amount of operating experience.

4. Experience may be substituted for all or any part of the education requirement, on a one-to-one basis.

D. Grade III - 16 points required

1. Twelve years education (one point per year)

2. Four years operating experience (one point per year)

3. Up to 2 years of additional education may be substituted for an equivalent amount of operating experience. Relevant and specialized operator training may be substituted for education requirement, where 25 CEUs is equivalent to 1 year of education.

4. At least one-half of the operating experience must have been in DRC of a Class II facility or higher.

E. Grade IV - 18 points required

1. Twelve years education (one point per year)

2. Six years operating experience (one point per year)

3. Up to 2 years of additional education may be substituted for an equivalent amount of operating experience. Relevant and specialized training may be substituted for education where 25 CEUs equal 1 year of education.

4. At least two years of the operating experience must have been in DRC of a Class III facility or higher.

R317-10-8. Council.

A. Members of the Council shall be appointed by the Board from recommendations made by interested organizations including the Department of Environmental Quality, Utah League of Cities and Towns, Water Environment Association of Utah, and the Civil/Environmental Engineering Departments of Utah's universities. The Council shall serve at the discretion of the Board to oversee the certification program.

B. The Council shall consist of eight members as follows:

1. Two members who are currently employed operators holding valid certificates. One of these members shall be a wastewater treatment plant or lagoon operator and one shall be a wastewater collection system operator. These members shall be appointed considering the recommendations made by the Professional Wastewater Operators Division of the Water Environment Association of Utah and other interested parties.

2. One member with three years' management experience in wastewater treatment and collection, who shall represent municipal wastewater management. This member shall be appointed considering the recommendations made by the Utah League of Cities and Towns and other interested parties.

3. One member who is a civil or environmental engineering faculty member of a university in Utah.

4. One non-voting member who is a Senior Environmental Engineer in the Division of Water Quality or other duly designated person who shall represent the Board.

5. Two members, one from the public sector and one from the private sector. These members shall be appointed considering the recommendations of the Water Environment Association of Utah and other interested parties.

6. One member representing vocational training. This members shall be appointed considering the recommendations made by Utah Valley State College and other interested parties.

C. Voting Council members shall serve as follows:

1. Except as provided in C.4 below, terms of office shall be for three years with two members retiring each year (except for the third year when three shall retire).

2. Appointments to succeed a Council member who is unable to serve his full term shall be for the remainder of the unexpired term.

3. Council members may be reappointed, but they do not automatically succeed themselves.

4. When the Council is initially organized, two members shall be appointed for initial terms of one year, two members shall be appointed for initial terms of two years, and three members shall be appointed for full three year terms.

D. Each year the Council shall elect from its membership a Chairman and Vice Chairman.

E. The duties of the Council shall include:

1. Preparing and conducting examinations for the various grades of operators, and issuing and distributing the certificates.

2. Regularly reviewing the certification examinations to ensure compatibility between the examinations and operator responsibilities.

3. Ensuring that the certification examinations and training curricula are compatible.

4. Distributing examination applications and notices.

5. Receiving all applications for examinations and investigating, verifying and evaluating the record of each applicant as required to establish his qualifications for certification under this rule.

6. Maintaining records of operator qualifications and certification.

7. Preparing an annual report for distribution to the Board and other interested parties.

F. A majority of voting members shall constitute a quorum for the purpose of transacting official Council business.

R317-10-9. Application for Examination.

Prior to taking an examination, an applicant must file a formal application of intention with the Council, accompanied by evidence of qualifications for certification in accordance with the provisions of this rule on application forms available from the Council.

R317-10-10. Examination.

A. The time and place of examinations to qualify for a certificate shall be determined by the Council. All examinations shall be graded and the applicant notified of the results. Examination fees shall be charged to cover the costs of testing.

B. Normally, all examinations for certification shall be written. However, the Council reserves the right to conduct oral examinations when it is determined that extraordinary situations exist. Such examination shall be conducted by at least two Council members in a manner that will ensure the integrity of the certification program.

C. In the event an applicant fails an exam, the applicant may request to review the exam within 30 days following receipt of the exam score. The Council shall not review individual examination questions for the purpose of changing examinations scores. However, questions may be edited for future examinations and if an error is found in the grading of the exam, credit may be given. The applicant may file for re-examination at the next scheduled exam.

R317-10-11. Certificates.

A. All certificates shall indicate one of the following grades for which they are issued.

1. Wastewater Works Operator - Grades I through IV.

2. Wastewater Works Operator - Restricted Grades I through IV.

3. Wastewater Collection System Operator - Grades I through IV.

4. Wastewater Collection System Operator - Restricted Grade I through IV.

5. Small Lagoon System Operator - Grade I Wastewater Works/Collection System Combined.

6. Small Lagoon System Operator - Restricted Grade I Wastewater Works/Collection System Combined.

B. An applicant shall have the opportunity to take any grade of examination higher than the classification of the system which he or she operates. A restricted certificate shall be issued if the applicant passes the exam but lacks the experience or education required for a particular grade.

An unrestricted certificate shall be issued if the applicant passes the exam and the experience and education requirements appropriate to the particular grade are met. Restricted certificates shall become unrestricted when the appropriate experience and education requirements are met and a change in status fee is paid. A restricted certificate does not qualify a person as a certified operator at the grade level that the restricted certificate is issued, until the limiting conditions are met, except as provided in R317-10-5. Upon application, a restricted certificate may be renewed subject to the conditions in C below. Replacement certificates may be obtained by payment of a duplicate certificate fee.

C. Certificates shall continue in effect for a period of up to three years unless revoked prior to that time. The certificate must be renewed each three years by payment of a renewal fee and submittal of evidence of required CEUs. The certificates expire on December 31 of the last year of the certificate. Operators considering in DRC must renew by the expiration date in order for the wastewater works to remain in compliance with this rule. Failure to remain active in the wastewater field for at least 20% of the time during the three-year life of the certificate shall automatically be cause for denial of renewal. A certificate may not be renewed if the applicant is not employed in the State of Utah at the time of application. Request for renewal shall be made on forms supplied by the Council. It shall be the responsibility of the operator to make application for certificate renewal.

D. An expired certificate may be reinstated within three months after expiration by payment of a reinstatement fee. After three months, an expired certificate cannot be reinstated, and the operator must retest to become certified:

E. The Council may, after appropriate review, waive examination of applicants holding a valid certificate or license issued in compliance with other certification plans having equivalent standards, and issue a comparable Utah certificate upon payment of a reciprocity fee.

If the applicant is working in another state at the time of application, a letter of intent to issue a certificate by reciprocity shall be provided. When the applicant provides proof of employment in the wastewater field in Utah, a certificate shall be issued.

F. At the time these rules become effective, all certificates issued under the Utah Voluntary Certification plan shall be recognized by the Council and the Board as valid through their expiration dates, at which time application may be made for renewal.

G. A grandfather certificate shall be issued, upon application and payment of an administrative fee, to qualified operators who must be certified (chief operators, supervisors, or anyone considered in direct responsible charge). The certificate shall be valid only for the wastewater works at which the operator is employed as that facility existed on March 16, 1991. The certificate may not be transferred to another facility or person. If the facility undergoes an addition of a new process, even if the facility classification does not change, or the collection system has a change in rating, the respective operator must obtain a restricted or unrestricted certificate within one year as specified in this rule. Grandfather certificates shall be issued for a period of up to three years and must be renewed to remain in effect. Renewal shall include the payment of a

renewal fee and submittal of evidence of required CEUs. The renewal fee shall be the same as that charged for renewal of other certificates. The grandfather certificate shall be issued if the currently employed operator:

1. Was a chief operator or person in direct responsible charge of the wastewater works on March 16, 1991; and

2. Had been employed at least ten years in the operation of the wastewater works prior to March 16, 1991; and

3. Demonstrates to the Council his capability to operate the wastewater works at which he is employed by providing employment history and references.

R317-10-12. CEUs and Approved Training.

A. CEUs shall be required for renewal of certificates according to the following schedule:

TABLE 3
REQUIRED CEUs FOR CERTIFICATION RENEWAL

OPERATOR GRADE	CEUs REQUIRED IN A 3-YEAR PERIOD
Grade I	2
Grade II	2
Grade III	3
Grade IV	3

B. All CEUs for certificate renewal shall be subject to review for approval to ensure that the training is applicable to wastewater works operation and meets CEU criteria. Identification of approved training, appropriate CEU or credit assignment and verification of successful completion is the responsibility of the Council. Training records shall be maintained by the Council.

C. All in-house or in-plant training which is intended to meet any part of the CEU requirements must be approved by the Council in writing. In-house or in-plant training must meet the following general criteria to be approved:

1. Instruction must be under the supervision of an instructor approved by the Council.

2. An outline must be submitted of the subjects to be covered and the time to be allotted to each subject.

3. A list of the teacher's objectives must be submitted which documents the essential points of the instruction ("need-to-know" information) and the methods used to illustrate these principles.

4. One-half of required CEU credits over a three year period following issuance of a certificate shall be given for registration and attendance at the annual technical program meetings of the Water Environment Association of Utah, the Water Environment Federation or Rural Water Association of Utah, or specialty conferences of these organizations.

R317-10-13. Appeals of Decisions of the Council.

Any person may request a hearing before the Council of an action or decision by the Council affecting that person. The person must file the request within 90 days of the Council's decision. The hearing will be at a time and location set by the Council. If the affected party does not agree with the decision of the Council after the hearing, an appeal may be made to the Executive Secretary of the Board for a hearing before the Board. Notice of the appeal must be filed with the Executive Secretary of the Board within 30 days of the final action of the Council. All appeals should be submitted to: Wastewater Operator Certification Council, Division of Water Quality, Department of Environmental Quality, State of Utah, Salt Lake City, Utah 84114-4870.

R317-10-14. Certificate Suspension and Revocation Procedures.

A. Prior to the Council's recommendation to the Executive Secretary of the suspension or revocation of a certificate, the individual shall be informed in writing of the reasons the Council is considering such action and allowing the individual an opportunity for a hearing before the Council.

B. Grounds for suspending or revoking an operator's certificate shall be any of the following:

1. Demonstrated disregard for the public health and safety;

2. Misrepresentation or falsification of figures and/or reports submitted to the State;

3. Cheating on a certification exam;

4. Falsely obtaining or altering a certificate;

5. Mental or physical incapacity of the operator to perform operating duties; or

6. Gross negligence, incompetence or misconduct in the performance of duties as an operator.

C. Suspension or revocation may result where it may be shown that circumstances and events relative to the operation of the wastewater works were under the operator's jurisdiction and control. Circumstances beyond the control of an operator shall not be grounds for suspension or revocation action.

D. Following an appropriate hearing on these matters, the Council may recommend that the Executive Secretary take formal action.

E. Any suspension or revocation decision by the Executive Secretary may be appealed to the Board. Written request for a hearing before the Board must be filed with the Executive Secretary within 30 days of the decision.

R317-10-15. Noncompliance.

A. Noncompliance with these Certification rules is a violation of Section 19-5-115 Utah Code Annotated.

B. Cases of noncompliance shall be referred to the Board for appropriate enforcement action.

KEY: water pollution, operator certification*, wastewater treatment
August 30, 1996 19-5
Notice of Continuation December 12, 1997

R317. Environmental Quality, Water Quality.
R317-100. Utah State Project Priority System and List for the Utah Wastewater Project Assistance Program.
R317-100-1. Incorporation by Reference.

The Fiscal Year 1998 Utah State Project Priority List, dated April 5, 1997 adopted by the Utah Water Quality Board pursuant to Section 19-5-104 and pursuant to 40 CFR 35.915, is hereby incorporated by reference and made a part of these regulations. This rule is necessary to meet requirements of

Federal Water Quality Act. Copies of the Fiscal Year 1996 1998 Utah State Project Priority List are available at the Utah Department of Environmental Quality, Division of Water Quality.

R317-100-2. General.

A. The Project Priority System is used to rank municipal water pollution control projects on the Project Priority List to allocate wastewater revolving loan funds which may be available through the state and federal governments. The general criteria used in developing the State Priority System are defined in the Federal Water Pollution Control Act Amendments of 1981 and EPA regulations 40 CFR 35.2015. Criteria which may not be considered in rating projects include a project's location within the state, financial hardship, future population growth, and development needs not related to pollution abatement.

B. The objective in preparing and maintaining the list is to identify, by priority, municipalities in the State with wastewater treatment needs. The priority system is thereby intended to identify those municipalities which currently have the most severe wastewater treatment problems and to provide funds for the most beneficial program of public health protection and water quality improvement.

R317-100-3. Project Priority Ranking System.

A. PRIORITY POINT TOTAL

1. A priority number total for a project will be determined by adding the priority points from each of the four priority categories. Total Priority Points = Project Need for Reduction of Water Pollution + Potential for Improvement Factor + Existing Population Affected + Special Consideration. If two or more projects receive an equal number of priority points, such ties shall be broken using the following criteria:

a. The projects shall be ranked in order of the highest "Need for Reduction of Water Pollution."

b. If the tie cannot be broken on the basis of need, the projects shall be ranked in order of the "Potential for Improvement Factor."

c. If the tie cannot be broken on the basis of the above, the project serving the greatest population will be given priority.

B. PROJECT NEED FOR REDUCTION OF WATER POLLUTION

All projects receive the highest applicable point level only.

1. A documented existing substantial health hazard will be eliminated by the project. This may include: (1) discharge of inadequately treated wastewater to an area of immediate public contact where inadequate operation and maintenance is not the primary cause of the condition; (2) an area where a substantial number of failing subsurface disposal systems are causing surfacing sewage in areas of human habitation. The elimination of existing substantial health hazards is of highest priority. The determination of the existence of substantial health hazards shall be based upon the investigation, report, and certification of the local health department and the State Division of Water Quality. Such reports and certifications will be forwarded to EPA with the Priority List. The health hazard designation will normally apply to unsewered communities experiencing widespread septic tank failures and surfacing sewage: 70 points.

2. A raw sewage discharge will be eliminated or prevented: 60 points.

3. The surface water quality standards identified in R317-2 are impaired by an existing discharge. For points to be allotted under this criterion the affected stream segment must be "water quality limited" according to a wasteload analysis and water quality standards. Water quality standards have been established for the waters of Utah according to designated beneficial use classifications. A stream segment is considered to be "water quality limited" if a higher level of treatment than that which is provided by state effluent limitations is required to meet water quality standards. A stream segment is "effluent limited" if water quality standards are met by state imposed effluent limitations: 50 points.

4. The ground water quality standards identified in R317-6 are impaired by an existing discharge. For points to be allotted under this criterion the affected ground water must be impaired according to the numerical criteria outlined in the ground water protection levels established for Class I and II aquifers: 50 points.

5. Construction is needed to provide secondary treatment, or to meet the requirements of a Utah Pollution Discharge Elimination System (UPDES) Permit or Ground Water Discharge Permit, or the Federal Sludge Disposal Requirements: 50 points.

6. Documented water quality degradation is occurring, attributable to failing individual subsurface disposal systems where inadequate operation and maintenance is not the primary cause of the condition: 45 points.

7. Areas not qualifying as an existing substantial health hazard, but where it is evident that inadequate on-site conditions have resulted in the chronic failure of a significant number of individual subsurface disposal systems, causing an ongoing threat to public health or the environment. Points may be awarded in this category only when the Division of Water Quality determines that existing on-site limitations cannot be overcome through the use of approved subsurface disposal practices, or that the cost of upgrading or replacing failed systems to meet the minimum requirements of the local health department are determined to be excessive: 45 points.

8. Treatment plant loading has reached or exceeded 95 percent of design requirements needed to meet conditions of an UPDES Permit or needed to restore designated water use, or design requirements are projected to be exceeded within 5 years by the Division of Water Quality. Points will not be allocated under this criterion where excessive infiltration or inflow is the primary cause for the loading to the system to be at 95 percent or greater of design requirements: 40 points.

9. Existing facilities do not meet the design requirements in R317-3. Points may be allocated under this category only if the design requirements that are not being met are determined to be fundamental to the ability of the facility to meet water quality standards: 40 points.

10. Interceptor sewers, collection systems, pump stations and treatment, where applicable, are needed to solve existing pollution, ground water, or public health concerns: 35 points.

a. Points may be awarded under this category only if they will primarily serve established residential areas and only if they are needed to solve existing pollution or public health problems.

b. Points shall not be awarded under this category where an interceptor is proposed for newly developing recreational communities, resorts, or unincorporated subdivisions.

c. Points may be awarded under this category when the majority of existing septic systems are located in defined well head protection zones or principal ground water recharge areas to Class I and II aquifers.

11. Interceptor sewers, collection systems, pump stations and treatment, where applicable, are needed to accomplish regionalization or eliminate existing treatment facilities. Points shall not be awarded under this category where an interceptor is proposed for newly developing recreational communities, resorts, or unincorporated subdivisions: 25 points.

12. Communities having future needs for wastewater facilities construction at existing wastewater systems, not included above, which are consistent with the goals of the Federal Water Pollution Control Act: 10 points.

13. Communities having future needs for new treatment plants and interceptors, not included above, which are consistent with the goals of the Federal Water Pollution Control Act: 5 points.

C. POTENTIAL FOR IMPROVEMENT FACTOR (PIF)

The PIF priority point sub-total is obtained by adding the points obtained in each of the four subcategories. Total PIF points = Classified Water Use + Discharge Standard Factor + Restoration from Water Quality Standard Violation + Estimated Improvement.

1. Classified Water Use. Priority points under this subcategory are allotted in accordance with segment designations listed in R317-2-13, Classifications of Waters of the State. Points are cumulative for segments classified for more than one beneficial use.

a. Protected as a raw water source of culinary water supply; R317-2-13 Use Classes: 1A, 1B, or 1C: 4 points.

b. Protected for primary contact recreation (swimming); R317-2-13: 2A: 4 points.

c. Protected for secondary contact recreation (water skiing, boating and similar uses); R317-2-13: 2B: 3 points.

d. Protected for cold water species of game fish and other cold water aquatic life, including the necessary aquatic organisms in their food chain; R317-2-13: 3A: 3 points.

e. Protected for warm water species of game fish and other warm water aquatic life, including the necessary aquatic organisms in the food chain; R317-2-13: 3B: 3 points.

f. Protected for non-game fish and other aquatic life, including the necessary aquatic organisms in their food chain; R317-2-13: 3C: 2 points.

g. Protected for waterfowl, shore birds and other water-oriented wildlife not included above, including the necessary aquatic organisms in their food chain; R317-2-13: 3D: 2 points.

h. Protected for agricultural, industrial, and "special" uses; R317-2-13: 4, 5, and 6: 1 point.

2. Discharge Standard Factor. Priority points are allotted as follows:

a. Project discharge standards are water quality based: 5 points.

b. Project must meet secondary effluent treatment standards: 2 points.

c. Project does not discharge to surface waters: 0 points.

3. Restoration from Water Quality Standard Violation.

a. Project WILL RESTORE Designated Water Use: 5 points.

b. Project WILL NOT RESTORE Designated Water Use: 0 points.

c. Points under this subcategory are assigned on the basis of whether appropriate water quality standard(s) can be restored if the respective project is constructed and any other water quality management controls are maintained at present levels. For a project to receive points under this subcategory, data from a State-approved waste load analysis must generally show that the designated water use is substantially impaired by the wastewater discharge and that the proposed project will likely restore the numerical water quality standards and designated use(s) identified in R317-2-12 and R317-2-14 for the waterbody.

d. Points may not be assigned under this subcategory if nonpoint source pollution levels negate water quality improvement from the proposed construction, if numerical standards or actual levels of pollutants being discharged are questionable, if serious consideration is being given to the redesignation of the stream segment to a lower classification, or if numerical standards for specific pollutants are inappropriately low for the classified water use.

4. Estimated Improvement in Stream Quality or Estimated Improvement in Environmental Quality including Presently Unsewered Communities and Sewered Communities with Raw Sewage Discharges. Points in this category shall be allocated based upon the judgment of the Division of Water Quality Staff and on the nature of the receiving water and surrounding watershed. Consideration shall be given to projects which discharge into Utah priority stream segments as identified in the biennial water quality report (305(b)). The criteria used to develop the Stream Segment Priority List may be used to evaluate projects on other streams not on the Stream Segment Priority List. These criteria include the existing use impairment, the overall index from a use impairment analysis, the potential for use impairment, the downstream use affected, the population affected, the amount of local interest and involvement toward improving the stream quality, the presence of endangered species, and the beneficial use classification. Activities within the watershed that are aimed at reducing point and nonpoint sources of pollution may also be considered in the allocation of points. In addition, the effect of a discharge or proposed change in a discharge on the chemical and biological quality of the receiving stream may be considered in the determination of points. Only those projects which will significantly improve water quality or environmental quality and will restore or protect the designated uses or eliminate public health hazards shall be given the maximum points allowable. Fewer points can be given in instances where some significant improvement will be achieved if a project is constructed.

a. The project is essential immediately, and must be constructed to protect public health or attain a high, measurable improvement in water quality: 20 points.

b. The project will likely result in a substantial level of improvement in water quality or public health protection: 10 points.

c. Some level of water quality improvement or public health protection would likely be provided by the construction of the project, but the effect has not yet been well established. Also, present facilities lack unit processes needed to meet required discharge standards: 5 points.

d. No significant improvement of water quality or public health protection would likely be achieved, at present, by a project: 0 points.

D. EXISTING POPULATION AFFECTED

For sewered communities, priority points are based on the population served by a treatment facility. For unsewered areas, points are based on the population of the affected community.

1. Greater than 80,000: 10 points.
2. 40,000 - 80,000: 9 points.
3. 20,000 - 40,000: 8 points.
4. 10,000 - 20,000: 7 points.
5. 5,000 - 10,000: 6 points.
6. 4,000 - 5,000: 5 points.
7. 3,000 - 4,000: 4 points.
8. 2,000 - 3,000: 3 points.
9. 1,000 - 2,000: 2 points.
10. Less than 1,000: 1 point.

E. SPECIAL CONSIDERATION

1. The proposed project is an interceptor sewer which is part of a larger regional plan and is necessary to maintain the financial, environmental or engineering integrity of that regionalization plan: 20 points, or

2. The project is needed to preserve high quality waters such as prime cold water fishery and anti-degradation segments: 20 points.

3. The proposed project will change the facility's sludge disposal practice from a non-beneficial use to a beneficial use method: 20 points.

4. The users of the proposed project are subject to a documented water conservation plan: 20 points.

5. The sponsor of the proposed project has completed and submitted the most recent Municipal Wastewater Planning Program (MWPP) questionnaire: 20 points.

KEY: grants, state assisted loans, wastewater
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40 CFR 35.915 and 40 CFR 35.2015

R317. Environmental Quality, Water Quality.
R317-501. Individual Wastewater Disposal Systems.
R317-501-1. 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 field" 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.

1.3 "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.

1.4 "Alternate individual wastewater disposal system" means a system for disposing 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 consisting of other than an absorption field, seepage trench, seepage pit, or absorption bed; 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 alternate type of individual wastewater disposal 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 1 additional bedroom.

1.7 "Building sewer" means the pipe which carries wastewater from the building drain to a public sewer, a wastewater disposal system or other point of disposal. It is synonymous with "house sewer".

1.8 "Chamber System" 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 dwelling unit in a multi-unit project together with an undivided interest in common in the common areas and facilities of the property.

1.10 "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 individual wastewater disposal system.

1.11 "Division" means the Utah Division of Water Quality.

1.12 "Disposal area" means the entire area used for the subsurface dispersion of septic tank effluent by an absorption system.

1.13 "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.

1.14 "Distribution pipe" means approved perforated pipe used in the dispersion of septic tank effluent into an absorption system.

1.15 "Domestic wastewater" means a combination of the liquid or water-carried wastes from residences, business buildings, institutions, and other establishments with installed plumbing facilities, together with those from industrial establishments, and with such ground water, surface water, and storm water as may be present. It is synonymous with the term "sewage".

1.16 "Drainage system" means all the piping within public

or private premises, which conveys sewage or other liquid wastes to a legal point of disposal, but does not include the mains of a public sewer system or a public sewage treatment or disposal plant.

1.17 "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.

1.18 "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.

1.19 "Earth fill" means a disturbed suitable soil which is imported and placed over the original soil. It is characterized by having no distinct horizons or color patterns, as found in naturally developed undisturbed soils.

1.20 "Effluent lift pump" means a pump used to lift septic tank effluent to a disposal area at a higher elevation than the septic tank.

1.21 "Ejector pump" means a device to elevate or pump untreated sewage to a septic tank, public sewer, or other means of disposal.

1.22 "Experimental individual wastewater disposal system" means an alternate individual wastewater disposal system which is still in experimental use and requires further testing in order to provide sufficient information to determine its acceptance.

1.23 "Final local health department approval" means, for the purposes of the grandfather provisions in R317-502-16.1 (Table 1, footnote a) and R317-503-2.1, 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.

1.24 "Ground water" means that portion of subsurface water that is in the zone of saturation, including underground streams.

1.25 "Ground water table" means the surface of a body of unconfined ground water in which the pressure is equal to that of the atmosphere.

1.26 "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 held up 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.

1.27 "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 wastewater disposal system at that site.

1.28 "Regulatory Authority" means either the Utah Division of Water Quality or the local health department having jurisdiction.

1.29 "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.

1.30 "Individual wastewater disposal system" means for the purposes of Section 19-5-102(7), a system for underground 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 and twin homes. It usually consists of a building sewer, a septic tank, and an absorption system.

1.31 "Invert" is the lowest portion of the internal cross section of a pipe or fitting.

1.32 "Local health department" means a city-county or multi-county local health department established under Title 26A.

1.33 "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.

1.34 "Malfunctioning system" means an individual wastewater disposal 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.

1.35 "Mound System" means an alternate individual wastewater disposal 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.

1.36 "Nonpublic water source" means a culinary water source that is not defined as a public water source.

1.37 "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.

1.38 "Percolation test" means the method used to measure the percolation rate of water into soil as described in these rules.

1.39 "Permeability" means the rate at which a soil transmits water when saturated.

1.40 "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).

1.41 "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).

1.42 "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 individual wastewater disposal system constitutes a public health hazard.

1.43 "Public water source" means a culinary water source, either publicly or privately owned, providing water for human consumption and other domestic uses which has at least 15 service connections, or regularly serves an average of at least 25 individuals daily for at least 60 days out of the year.

1.44 "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.

1.45 "Restrictive layer" means a layer in the soil that because of its structure or low porosity 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.

1.46 "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.

1.47 "Seepage pit" means an absorption system consisting of a covered pit into which septic tank effluent is discharged.

1.48 "Seepage trench" means an absorption system consisting of deep trenches filled with clean, coarse filter material, with a minimum sidewall absorption depth of 2 feet of suitable soil formation below the distribution pipe, into which septic tank effluent is discharged for seepage into the soil.

1.49 "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.

1.50 "Septic tank effluent" means partially treated sewage which is discharged from a septic tank.

1.51 "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.

1.52 "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.

1.53 "Should" means recommended or preferred and is intended to mean a desirable standard.

1.54 "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.

1.55 "Sludge" means the accumulation of solids which have settled in a septic tank or a sewage holding tank.

1.56 "Soil exploration pit" means an open pit dug to permit examination of the soil to evaluate its suitability for absorption systems.

1.57 "Twin home" means two attached dwelling units with one common wall.

1.58 "Uniform Plumbing Code" means the Uniform Plumbing Code adopted by the International Association of Plumbing and Mechanical Officials and includes Utah amendments to the code adopted by the Utah Division of Occupational and Professional Licensing.

1.59 "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).

1.60 "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.

1.61 "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).

KEY: waste water, septic systems, alternate systems
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R317. Environmental Quality, Water Quality.
R317-502. Individual Disposal Wastewater Systems--General Requirements.
R317-502-1. Scope.

R317-501 through R317-513 shall apply to individual wastewater disposal systems.

R317-502-2. Failure to Comply With Rules.

Any person failing to comply with R317-500 through R317-513 will be subject to action as specified in Sections 19-5-115 and 26A-1-123.

R317-502-3. Individual Wastewater Disposal 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) as required by the Uniform Plumbing Code 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:

3.1 To an individual wastewater disposal system found to be adequate and constructed in accordance with requirements stated herein.

3.2 To any other type of wastewater disposal system acceptable under R317-1, R317-3, R317-5, or R317-560.

R317-502-4. Units Required in Individual Wastewater Disposal System.

The individual wastewater disposal system shall consist of the following components:

4.1 A building sewer.

4.2 A septic tank.

4.3 An absorption system. This may be an absorption field, a seepage trench, a seepage pit or pits, an absorption bed, or other alternate system as specified in R317-502-20, depending on location, topography, soil conditions and ground water table.

R317-502-5. Multiple Dwelling Units.

Multiple dwelling units under individual ownership, except condominiums and twin homes, shall not be served by a single individual wastewater disposal 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.

R317-502-6. Construction Materials.

All materials used in construction of the system shall be durable, sound, and not unduly subject to corrosion. Pipe, pipe fittings and similar materials shall comply with the requirements of the Uniform Plumbing Code.

R317-502-7. Flows Prohibited From Entering Individual Wastewater Disposal Systems.

No ground water drainage, drainage from roofs, roads, yards, or other similar sources shall discharge into any portion of an individual wastewater disposal system, but shall be disposed of so they will in no way affect the system. Wastes which are detrimental to the proper functioning of an individual wastewater disposal system shall not be disposed of in such systems.

R317-502-8. No Discharge to Surface Waters or Ground Surface.

Effluent from any individual wastewater disposal 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.

R317-502-9. Submission, Review, and Approval of Plans.

9.1 Plans and specifications for the construction, alteration, extension, or change of use of individual wastewater disposal systems shall be submitted to and approved by the local health department having jurisdiction before construction of either the individual wastewater disposal system or building to be served by the disposal system may begin. Details for said site, plans, and specifications are listed in R317-508.

9.2 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.

R317-502-10. Appeals.

The appeals process for this rule is outlined in R317-1-8.

R317-502-11. Final On-Site Inspection.

After an individual wastewater disposal 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 seepage trenches and seepage pits, the regulatory authority should make at least 2 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. The regulatory authority may require that the septic tank 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.

R317-502-12. Repair of a Failing or Unapproved System.

Whenever an individual wastewater disposal 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.

R317-502-13. Procedure for Disposal System Abandonment.

13.1 When a dwelling served by an individual wastewater disposal 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.

13.2 Whenever the use of an individual wastewater disposal system has been abandoned or discontinued, the owner of the real property on which such disposal system is located should render it safe by having the septic tank wastes pumped out or otherwise disposed of in an acceptable manner, and the septic tank filled completely with earth, sand, or gravel within a reasonable time period. The septic tank may also be removed, within a reasonable time period, at the owners discretion. When an abandoned individual wastewater disposal system presents a public health hazard or danger, the regulatory authority can require the system to be rendered safe within a reasonable time period. The contents of a septic tank or other treatment device shall be disposed of only in a manner approved by the regulatory authority.

R317-502-14. Site Location and Installation.

14.1 Individual wastewater disposal 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 individual wastewater disposal 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 disposal system, including setbacks (see Table 2) which extend beyond the property line.

14.2 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.

R317-502-15. 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 absorption field trenches or seepage trenches may be regarded as replacement area.

R317-502-16. Lot Size Requirements.

16.1 One of the following two methods shall be used for determining minimum lot size for a single-family dwelling when an individual wastewater disposal 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 disposal 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 individual wastewater disposal 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	--

TABLE

SOIL TYPE	DRAINAGE	PERCOLATION RATE(d)(e)	APPROXIMATE SOIL CLASSIFICATION SYMBOL (Unified Soil Classification System)(e)(f)
1	Good	1-15	GW, GP, SW(g), SP(g)
2	Fair	16-30	SW, SP, SM, GM
3	Poor	30-45	SM, GM, GC, SC, ML
4	Marginal	46-60	GC, SC, ML, MH(g), CL(g)
5	Unacceptable	(h)	Bedrock, fractured bedrock, hardpan, CH, OL, OH, PT (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 the effective date of this regulation. Unrecorded lots which are part of subdivisions that have received final local health department approval prior to the effective date of this regulation 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 seepage trenches or seepage pits will be used, the percolation test may be estimated by a qualified person in accordance with R317-507-4.1.

(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 8 for a more detailed description of the Unified 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 1 minute per inch, slower than 60 minutes per inch, or unsuitable soil formations.

16.2 Determination of minimum lot size by Methods 1 and 2 would not preempt local governments from establishing larger minimum lot sizes.

16.3 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 the Uniform Plumbing Code and 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.

R317-502-17. Installation in Sloping Ground.

17.1 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 maximum effluent level to the ground surface. Where the addition of fluids is judged to create an unstable slope, absorption systems will be prohibited.

17.2 Absorption systems shall be so located and constructed that there is a minimum of 50 feet from downhill slopes that exceed 35 percent.

17.3 Absorption systems constructed in earth fill shall be subject to the site slope limits specified in R317-507-7. Alternate systems shall be subject to the site slope limits specified in R317-507-8 for "at-grade" systems and in R317-507-9 for mound systems.

R317-502-18. Ejector Pumps, Effluent Lift Pumps, and Pump Wells.

18.1 Ejector pumps discharging into septic tanks shall comply with the Uniform Plumbing Code.

18.2 When septic tank effluent lift pumps and pump wells are part of an individual wastewater disposal system, they shall comply with the following:

A. 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.

B. 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.

C. 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 6 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.

D. 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.

E. Electrical systems and components (i.e. motors, lights, cables, conduits, switchboxes, 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.

R317-502-19. Sewage Holding Tanks.

19.1 Sewage holding tanks are permitted only under the following conditions:

A. Where an absorption system for an existing dwelling has failed and installation of a replacement absorption system is not practicable.

B. As a temporary (not to exceed 1 year) disposal system for a new dwelling until a connection is made to an approved sewage collection system.

C. 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.

D. 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.

19.2 Except on those lots recorded and approved for sewage holding tanks prior to the effective date of this regulation, 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.

19.3 The design, installation, and maintenance of all sewage holding tanks, except those for recreational and scavenger vehicles, must comply with R317-509.

R317-502-20. Experimental and Alternate Disposal Methods.

20.1 Where unusual conditions exist, experimental methods of wastewater disposal may be employed provided they are acceptable to the Division and to the local health department having jurisdiction.

20.2 When considering proposals for experimental individual wastewater disposal systems, the Division shall not be restricted by this rule provided that:

A. 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 disposal system will be installed in event of failure of the experiment.

B. The proposal for an experimental individual wastewater disposal system must be in the name of and bear the signature of the person who will own the system.

C. 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.

20.3 When sufficient, successful experience is established with experimental individual wastewater disposal systems, the Division may designate them as approved alternate individual wastewater disposal systems. Following this approval of alternate individual wastewater disposal systems, the Division will adopt rules governing their use.

20.4 The following alternate wastewater disposal systems may be considered for use upon the executive secretary's approval of a written request from the local health department.

TABLE

System	Rule Reference
Earth fill Systems	R317-507-7
"At-Grade" Systems	R317-507-8
Mound Systems	R317-507-9

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 LHD 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 oversighted, 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 relativley 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 commmitment to exercise this authority.

20.5 All alternate and experimental systems shall be designed, installed and operated under the following conditions:

A. The ground water requirements shall be determined as shown in R317-503-2.

B. The local health department must advise the owner of the system of the alternate 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.

C. The local health department and the homeowner shall be provided with sufficient design, installation and operating information to produce a successful, properly operating installation.

D. 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.

E. The local health department may impose more stringent design, installation, operating and monitoring conditions than those required by the Division.

F. 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.

20.6 When an alternate or experimental waste water disposal system exists on a property, notification of the existance of that system shall be recorded on the deed of ownership for that property.

R317-502-21. Subdivision Feasibility Review.

A feasibility review of housing subdivisions or other similar developments proposing the use of individual wastewater disposal systems will be made by the Division upon request of the local health department if appropriate information regarding proposed water supply and wastewater disposal facilities is submitted. Information necessary for such a review is specified in R317-510.

R317-502-22. Isolation of Individual Wastewater Disposal Systems.

Minimum distances between components of an individual 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		
"Deep" Well (c)	100	100
"Shallow" Well (c)	(d)	(d)
"Spring	(d)	(d)
Individual or Nonpublic Water Supply Sources		
"Deep" Well (c)	25	50
"Shallow" Well (c)	25	50
"Spring	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 upslope	--	10
located downslope	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)	--	--
Seepage Trench (b)	--	5
Absorption Bed	--	5
Absorption Field	--	5

TABLE 2 (continued)

Minimum Horizontal Distance in Feet(a)
(Undisturbed Earth)

FROM	to Absorption Field	to Seepage Trench	to Absorption Bed
Public Water Supply Sources			
"Deep" Well (c)	100	100	100
"Shallow" Well (c)	(d)	(d)	(d)
"Spring (c)	(d)	(d)	(d)
Individual or Nonpublic Water Supply Sources			
"Deep" Well (c)	100	100	100
"Shallow" Well (c)	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 upslope	20	20	20
located downslope	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
Seepage Trench (b)	10	(i)	10
Absorption Bed	10	10	10
Absorption Field	(j)	10	10

FOOTNOTES

(a) All distances are from edge to edge. 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 seepage 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 R309-106-2. 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 from "shallow" wells and springs used as public water sources. Any proposal to locate closer than 1500 feet must be reviewed and approved on a case-by-case basis by the regulatory authority, taking into account geology, hydrology, topography, existing land use agreements, and potential for pollution of water source. Any person proposing to locate an individual wastewater disposal system closer than 1500 feet to a public "shallow" 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. R309-106 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 on a case-by-case basis by the regulatory authority.

(e) Although this distance shall be generally adhered to as the minimum required separation distance, exceptions may be approved on a case-by-case basis by the regulatory authority, taking into account geology, hydrology, topography, existing land use agreements, and potential for pollution of water source. Any person proposing to locate an absorption system closer than 200 feet to an individual or nonpublic "shallow" 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 individual wastewater disposal system to be closer than 100 feet from a "shallow" well or 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) See R317-504-1F and G. If the water supply line is for a public water supply, the separation distance must comply with the requirements of R309-112-2. No water service line shall pass over any portion of a wastewater absorption 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 absorption systems. However, it is desirable to cover the area over absorption systems with lawn grass or other shallow-rooted plants. Absorption systems should not be located under vegetable gardens.

(i) For seepage 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 R317-507-3, Table 7.

R317-502-23. 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 5, 8, and 11)
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
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 individual wastewater disposal system unless first approved by the regulatory authority. Grease traps are not recommended.

(c) Or, 250 g.p.d. per pump.

(d) Or, 20 x water area + deck area.

KEY: waste water
August 30, 1996 **19-5-104**
Notice of Continuation December 12, 1997

R317. Environmental Quality, Water Quality.
R317-503. Soil and Ground Water Requirements.
R317-503-1. Soil Requirements.

1.1 In areas where absorption systems are to be constructed, soil cover must be adequate to insure at least 4 feet 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.

1.2 A suitable soil for absorption systems shall meet the following criteria:

A. The distance between the maximum seasonal ground water table and the bottom of the absorption system excavation complies with the requirements of these rules.

B. Has the capacity to adequately disperse the designed effluent loading as determined by field percolation rates, or by other approved soil tests.

C. Does not exhibit inhibiting swelling or collapsing characteristics.

D. Does not visually exhibit a jointed or fractured pattern of an underlying bedrock.

E. Is not consolidated, cemented, indurated, or plugged by a buildup of secondary deposited calcium carbonate (caliche).

F. Acts as an effective effluent filter within its depth for the removal of pathogenic organisms.

G. Criteria for alternate systems, as specified in R317-507-7 for earth fill systems, R317-507-8 for "at-grade" systems, R317-507-9 for mound systems and R317-507-3 for chamber systems.

R317-503-2. Ground Water Requirements.

2.1 In areas where absorption systems are to be constructed, the elevation of the anticipated maximum ground water table shall be at least 2 feet below the bottom of the absorption system excavation and at least 4 feet 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 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.

2.2 The observed maximum ground water table shall be determined by one or more of the following methods:

A. Direct visual observation of the maximum ground water table in a soil exploration pit.

B. 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. In cases where the anticipated maximum ground water table might be expected to rise to closer than 34 inches from the original ground surface and an alternate or experimental wastewater disposal system would be considered, this method

of observed maximum ground water table determination shall be used in preference to R317-503-2.2,A. It shall not preclude use of data from R317-503-2.2,C in making that determination.

C. 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.

2.3 Previous ground water records and climatological or other information may be consulted for each site proposed for an individual wastewater disposal system and it 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 alternate or experimental wastewater disposal 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.

2.4 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.

R317-503-3. Soil Exploration Requirements.

3.1 Suitable soil exploration pits, of sufficient size to permit visual inspection, and to a minimum depth of 10 feet, or at least 4 feet below the bottom of proposed absorption 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 Unified Soil Classification System by qualified individuals.

3.2 Proper safety precautions shall be taken whenever soil exploration pits or other excavations are dug for individual wastewater disposal systems.

R317-503-4. Percolation Test Requirements.

At least 1 percolation test shall be performed on the site of each absorption system, except as specified in R317-507-4.1.B, 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 R317-511. Absorption systems are not permitted in areas where the soil percolation rate is slower than 60 minutes per inch or faster than 1 minute per inch.

R317-503-5. 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 generally unsuitable for absorption systems and should be avoided. Percolation test results in this soil 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. If no choice is available, systems may be constructed in such material provided it is found to be within the required range of permeability 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 absorption fields, seepage trenches, and seepage pits, and 30 minutes per inch for absorption beds).

R317-503-6. Prohibition of Individual Wastewater Disposal 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 individual wastewater disposal systems in the area of study will be prohibited.

KEY: waste water
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Notice of Continuation December 12, 1997

R317. Environmental Quality, Water Quality.
R317-504. Building Sewer.
R317-504-1. General Requirements.

Pipe, pipe fittings, and similar materials comprising building sewers shall comply with the requirements of the Uniform Plumbing Code as well as the following:

1.1 They shall be composed of asbestos cement, cast iron, concrete, vitrified clay, approved plastic, or other suitable material approved by the Division, and shall conform to the applicable standards listed in R317-512.

1.2 Where 2 different sizes or types of sewer pipes are connected, a proper type of fitting or conversion adapter shall be used which complies with the Uniform Plumbing Code.

1.3 They shall be of such diameter to serve the connected fixtures as required by the Uniform Plumbing Code, but in no case should they have an inside diameter of less than 4 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.

1.4 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 4 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 Administrative Authority, as defined by the Uniform Plumbing Code.

1.5 Cleanouts and manholes shall comply with the

Uniform Plumbing Code.

1.6 Building sewers shall be separated from water service pipes in separate trenches and by at least 10 feet horizontally except that they may be placed in the same trench when the following three conditions are met:

A. The bottom of the water service pipe, at all points, shall be at least 12 inches above the top of the building sewer.

B. The water service pipe shall be placed on a solid shelf excavated at one side of the common trench.

C. 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 known adverse conditions.

1.7 If the water service pipe must cross the building sewer, it shall be at least 12 inches above the latter within 10 feet of the crossing and the sewer shall be mechanical joint cast iron or equivalent for 10 feet on either side of the crossing. Joints in water service pipes should be located at least 10 feet from such crossings.

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R317. Environmental Quality, Water Quality.
R317-505. Septic Tanks.
R317-505-1. General Requirements.

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 below the liquid level, to withstand all expected physical forces, to provide settling of solids, accumulation of sludge and scum, and access for inspection and cleaning as specified in the following paragraphs:

R317-505-2. Overall Construction and Design Features.

2.1 Septic tanks may be constructed of the following:

A. Precast reinforced concrete

B. Prefabricated metal

C. Fiberglass

D. Polyethylene

E. Poured-in-place concrete

F. Concrete block, cinder block, or brick

G. Material approved by the Division

2.2 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, tank length should be at least 2 to 3 times the width.

R317-505-3. Plans for Tanks Required.

3.1 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. Each commercial manufacturer of septic tanks shall submit design plans for those tanks to the Division for review and approval, and shall certify in writing to the Division that the septic tanks to be distributed for use within 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.

Illustrations of typical absorption system components such as septic tanks, distribution boxes, and absorption fields are contained in an addendum to these rules, available through the Division of Water Quality

R317-505-4. 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 4.

TABLE 4
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 1 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 3 percent in the required volume may be allowed.

(d) Table 4 provides for the normal household appliances, including automatic sequence washers, mechanical garbage grinders, and dishwashers.

R317-505-5. Tank Capacity for Commercial, Institutional, and Recreational Facilities, and Multiple Dwellings.

5.1 The minimum liquid capacity of septic tanks serving commercial, institutional, and recreational facilities, and multiple dwellings shall be determined on the following basis:

A. For wastewater flows up to 500 gallons per day, the liquid capacity of the tank shall be at least 750 gallons.

B. For wastewater flows between 500 and 1500 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).

C. For wastewater flows between 1500 and 5000 gallons per day, the liquid capacity of the tank shall equal at least 1125 gallons plus 75% of the daily wastewater flow ($V = 1125 + 0.75Q$ where V = liquid volume of the tank in gallons, and Q = wastewater discharge in gallons per day).

5.2 In cases where dwellings or facilities are subject to high peak sewage flows, the liquid capacity of the individual wastewater disposal system shall be increased as required by the

regulatory authority.

R317-505-6. Precast Reinforced Concrete Septic Tanks.

6.1 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 4 inches. Such tanks shall have reinforcing of at least 6" x 6" 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 psi, 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 2 parts plaster sand to 1 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. Manufacturers of precast reinforced concrete tanks not presently meeting the design and reinforcing requirements of this section shall have until January 1, 1985 to comply.

6.2 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.

R317-505-7. Prefabricated Metal Septic Tanks.

7.1 Prefabricated metal septic tanks shall be made of commercial grade sheet steel or sheet iron of at least 14 manufacturer's gauge (nominal thickness 0.075 inch) or heavier, that is of a good welding quality, and shall have an internal and external bituminous-base coating which meets the standards and procedures listed in "Requirements for Bituminous Coatings for Metal Septic Tanks, Subject 70," by Underwriter's Laboratories, Inc., 207 East Ohio Street, Chicago, Illinois 60611.

7.2 Each steel septic tank shall be clearly, legibly, and permanently marked with the gauge of steel used in its construction, and certification of compliance with the bituminous coating standards of the Underwriter's Laboratories. Other required identity marks must comply with R317-505-12. 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.

R317-505-8. Fiberglass Septic Tanks.

8.1 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 R317-505-14C, 16C and 17, shall also be met. Other required identity marks must comply with R317-505-12.

8.2 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.

8.3 The tank shall be installed in accordance with the manufacturer's recommendations. If no such recommendations are provided, the following installation procedures shall apply:

A. During installation, careful handling of the tank is necessary to prevent damage. Tanks should not be installed under areas subject to vehicular traffic or heavy equipment.

B. There shall be a minimum of 12 inches of approved, compacted backfill material under the tank as a resting bed. The resting bed must be smooth and level.

C. The hole that the tank is to be installed in shall be large enough to allow a minimum of 12 inches from the ends and sides of the tank to the hole wall.

D. 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.

E. Backfilling shall be accomplished to the top of the tank in 12-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 tank top shall not exceed 2-1/2 feet.

R317-505-9. Polyethylene Septic Tanks.

9.1 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 M9W 1R3. Required identifying marks shall comply with R317-505-12.

9.2 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.

9.3 The tank shall be installed in accordance with the manufacturer's recommendations. If no such recommendations are provided, the installation procedures in R317-505-8.3A shall apply.

R317-505-10. Poured-In-Place Concrete Septic Tanks.

The top of poured-in-place septic tanks with a liquid capacity of 750 to 1250 gallons shall be a minimum of 4 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 1250 gallons up to the maximum design capacity shall be a minimum of 6 inches thick, and reinforced with 3/8-inch reinforcing rods 8 inches on centers both ways, or equivalent. The walls and floor shall be a minimum of 6 inches thick. The walls shall be reinforced with 3/8-inch reinforcing rods 8 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 6-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 psi, and shall be vibrated or well-rodded to minimize honeycombing and to insure watertightness. Curing of concrete shall comply with the requirements in R317-505-6.2.

R317-505-11. Concrete Block, Cinder Block, and Brick Tanks.

Concrete or cinder block tanks shall have a minimum wall thickness of 8 inches. Tanks made with bricks shall have two-course walls. The walls shall be keyed or doweled, and cemented to a monolithic concrete base that has a minimum thickness of 6 inches, and the wall-to-floor connection sealed with mortar. Floors shall be reinforced with 3/8-inch reinforcing rods 8 inches on centers both ways, or equivalent. Tight mortar joints shall be used and the block holes or cells shall be well-filled with mortar. Minimum wall reinforcement shall consist of No. 3 bars on 24-inch centers vertically. The interior of the tank shall be surfaced with two 1/4-inch coats of Portland cement-sand plaster or 1 coat of waterproof bituminous sealing compound. If any portion of the tank is installed below the ground water table level, the outside of the tank shall be surfaced in a similar manner. The top of the tank shall be constructed as specified for poured-in-place septic tanks in R317-505-10.

R317-505-12. 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 6 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.

R317-505-13. 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 R317-505-4 and 5.

R317-505-14. 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 the volume of any other compartment.

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 4 inches, the cross-sectional area is not less than that of a 6-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 3 compartments.

R317-505-15. 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:

15.1 No tank in the series shall be smaller than 750 gallons.

15.2 The capacity of the first tank shall be at least equal to the capacity of each succeeding tank.

15.3 The outlet of each successive tank shall be at least 2 inches lower than the outlet of the preceding tank.

15.4 The number of tanks in series shall not exceed 3.

R317-505-16. 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 submerged 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:

16.1 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 2 inches (and preferably 3 inches) above the invert of the outlet to allow for momentary rise in liquid level during discharge to the tank.

16.2 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 6 inches below the liquid level, but the penetration is not to be greater than that allowed for the outlet device.

16.3 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.

16.4 All baffles shall be constructed from sidewall to sidewall or shall be designed as a conduit.

16.5 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.

16.6 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 6 inches above the liquid level in order to provide scum storage, but no closer than 1-inch to the inside top of the tank.

16.7 Offset inlets may be approved by the regulatory authority where they are warranted by constraints on septic tank location.

16.8 Multiple outlets from septic tanks shall be prohibited.

R317-505-17. 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.

R317-505-18. 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.

R317-505-19. 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 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 6 inches in minimum horizontal dimension or by means of an easily removable lid section.

C. The top of the tank shall be at least 6 inches below finished grade.

D. If the top of the tank is located more than 18 inches below finished grade, all manholes required by R317-505-19A shall be extended to within at least 18 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 control the odorous gases of digestion.

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.

R317-505-20. 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 control the odorous gases of digestion.

R317-505-21. 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 6 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.

5.22 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.

R317-505-23. 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 R317-513.

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R317. Environmental Quality, Water Quality.
R317-506. Discharge to Absorption System.
R317-506-1. 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 absorption system components such as septic tanks, distribution boxes, and absorption fields are contained in an addendum to these rules, available through the Division of Water Quality.

R317-506-2. Tees and Wyes.

Tees and wyes shall be installed level to permit equal flow to the branches of the fitting.

R317-506-3. 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 1 or 2 distribution pipes leading to the absorption system. Drop boxes shall meet the following requirements:

3.1 The inlet pipe to the drop box shall be at least 1 inch higher than the outlet pipe leading to the next drop box.

3.2 The invert of the distribution pipes(s) shall be 4 to 6 inches below the outlet invert. If there is more than 1 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.

3.3 The inlet and outlet of the drop box shall be sealed watertight to the sidewalls of the drop box.

3.4 The drop box shall be provided with a means of access. The top of the drop box shall be covered with a concrete or metal lid 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 6 inches below finished grade.

3.5 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.

3.6 Unused "knock-out" holes in drop boxes shall be completely filled with concrete or mortar.

R317-506-4. 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 absorption system components such as septic tanks, distribution boxes, and absorption fields are contained in an addendum to these rules, available through the Division of Water Quality.

R317-506-5. 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.

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R317. Environmental Quality, Water Quality.
R317-507. Absorption Systems.
R317-507-1. General Requirements.

1.1 Distribution pipe for gravity-flow absorption systems shall be 4 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 R317-512).

1.2 Distribution pipe for gravity-flow absorption systems shall be in straight lengths and penetrated by at least 2 rows of round holes, each 1/4 to 1/2-inch in diameter, and located at approximately 6-inch intervals. When installed on a level or nearly level grade, the perforations should be located at about the 5 o'clock and 7 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. Where perforated pipe is laid on grades between 2 and 4 inches per 100 feet, 1 of the rows of perforations should be in the 6 o'clock position on the pipe to permit complete drainage.

1.3 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.

1.4 In gravity-flow absorption systems with multiple distribution lines, drop boxes or distribution boxes should be used whenever the sewer line from the septic tank is in direct line with any one of the distribution lines.

1.5 Any section of distribution pipe laid as a solid line (with tight joints, other than fittings, and no perforations) shall not be considered in determining the required absorption area.

1.6 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 1-inch, and loose material removed before the filter material is placed in the absorption system excavation.

1.7 The distribution pipe shall be bedded true to line and grade, uniformly and continuously supported on firm, stable material.

1.8 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 2-inch layer of compacted straw, or similar material before being covered with earth backfill to prevent infiltration of backfill into the filter material.

1.9 Absorption systems shall be backfilled with earth that is free from stones 10 inches or more in diameter. The first 4 to 6 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.

1.10 Heavy equipment shall not be driven in or over absorption systems during construction or backfilling.

1.11 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 seepage 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 3 feet below the final ground surface.

1.12 A reduction in the required absorption area may be allowed by the regulatory authority if the building or facility to be served utilizes low volume fixtures approved by the Division, and a full-sized initial and replacement absorption system area is available.

1.13 That portion of absorption systems below the top of distribution pipes shall be in natural earth or in earth fill which will meet the requirements of R317-507-2.

1.14 Illustrations of typical absorption system components such as septic tanks, distribution boxes, and absorption fields are contained in an addendum to these rules, available through the Division of Water Quality

R317-507-2.

Conventional absorption systems are specified in R317-503 through 506. Alternate types of absorption systems are specified in R317-503, and R317-507-7 through 9.

R317-507-3. Absorption Fields.

Absorption fields consisting of a series of trenches designed to distribute septic tank effluent into perforated pipe and "gravel" fill, or a graveless chamber system, from which it percolates through the trench walls and bottoms into the surrounding subsurface soil, shall conform to the following requirements:

3.1 The effective absorption area of absorption fields shall be considered as the total bottom area of the absorption trench system in square feet.

3.2 The minimum required effective absorption area for absorption fields shall be determined from Table 5 by using the results of percolation tests conducted in accordance with R317-503-4. The minimum required effective absorptive area of absorption fields which utilize graveless chamber systems shall be in accordance with R317-507-3.11.

3.3 Isolation of absorption fields shall be not less than the minimum distances specified in Table 2.

3.4 Design and construction of absorption fields shall be as specified in Tables 6 and 7.

TABLE 5
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. Ft. 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 5 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 g.p.d. (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 sq. ft. of trench bottom or 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) Soil absorption systems are not permitted in areas where the soil percolation rate is slower than 1 inch in 60 minutes or faster than 1 inch in 1 minute, rounded to the nearest whole number.

TABLE 6
Absorption Field 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 of trenches (from ground surface)	inches	12	(e)
Distance between trenches		(see R317-507-3, Table 7)	
Bottom of trench 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
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 6 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 7
Width and Minimum Spacing Requirements
for Absorption Field 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

3.5 The stone or "gravel" fill used in absorption field 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. It shall extend the full width of the trench, shall be not less than 6 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.

3.6 The distribution pipe shall be centered in the absorption trench and placed the entire length of the trench.

3.7 In locations where the slope of the ground over the absorption field area is relatively flat, the trenches should be interconnected to produce a closed-loop or continuous system and the distribution pipes should be level.

3.8 In locations where the ground over the absorption field area slopes greater than 6 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.

3.9 Serial trenches shall be connected with a drop box (R317-506-3) or watertight overflow line (R317-507-3.10) 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.

3.10 The overflow line between serial trenches shall be a 4-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.

3.11 Chamber Systems

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 fields if the installation is in conformance with manufacturer recommendations, as modified by these rules. No cracked, weakened or otherwise damaged chamber units shall be used in any installation.

A. Type A Chamber Media:

1) Type A Chamber Media shall be of an approved design with a minimum actual open bottom width of 30 inches (76 cm) and a minimum louvered sidewall opening height of 6 inches (15 cm).

2) Type A chamber media may be substituted for gravel and perforated distribution pipe media in absorption fields and "at-grade" systems installed in the same plan configuration as an equivalent absorption field.

3) In absorption fields, Type A chamber media shall be installed in excavated trenches with a minimum width of 36 inches (91 cm).

4) Type A chamber media shall be installed utilizing the same bottom area as required for gravel fill and perforated distribution pipe media, assuming that the chambers are nominally rated with a 36 inch (91 cm) wide bottom opening.

B. Type B Chamber Media:

1) Type B Chamber Media is an alternate type disposal system and shall be of an approved design with a minimum actual open bottom width of 18 inches (46 cm) and a minimum louvered sidewall opening height of 9-3/8 inches (24 cm). Use of the Type B chamber media shall conform with the requirements for alternate disposal methods shown in R317-502-20.

2) Type B chamber media may only be substituted for gravel and perforated pipe media filled absorption fields installed as an alternate to the conventional 36-inch wide trench configuration and not in conjunction with any other alternate system configuration.

3) Type B chamber media shall be installed in trenches with a minimum excavation width of 24 inches (61 cm).

4) The bottom of the Type B chamber media and trench excavation shall be a minimum of 9-3/8 inches below the bottom of the effluent inlet pipe to the trench.

3) 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.

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. The American Association of State Highway Transportation Officials (AASHTO), H-10-44, "Standard Specifications for Highway Bridges, Fifteenth Ed., 1992" highway structural rating is hereby adopted and incorporated by reference. A copy is available for public review from the Division of Water Quality.

R317-507-4. Seepage Trenches.

4.1 Seepage trenches may be constructed in lieu of other approved absorption systems or as a supplement to an absorption field where soil conditions and the required separation from the maximum ground water table comply with R317-503. 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:

A. The effective absorption areas shall be considered as the outside surface of the seepage 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 seepage trench shall have a minimum sidewall absorption depth of 2 feet of suitable soil formation.

B. The minimum required sidewall absorption area shall be determined by either of the following 2 methods:

1. For the purpose of estimating the percolation test rate of each seepage trench system,a signed "Seepage Trench Certificate" or equivalent shall be submitted as evidence that a proper percolation test has been performed under the supervision of a liscensed environmental health scientist, registered engineer, or other qualified person certified by the regulatory authority. The seepage trench certificate or equivalent must contain the following:

a. the name and address of the individual constructing the seepage trench;

b. the location of the property;

c. the dimensions or diameter of the trench;

d. total effective absorption depth;

e. a description of the texture, character, and thickness of each stratum of soil encountered in seepage trench construction;

f. a signed statement certifying that the seepage trench has been constructed in accordance with the requirements of this rule. The required absorption area shall then be determined in accordance with Table 8.

2. Percolation tests conducted in accordance with R317-503-4 shall be made in each vertical stratum penetrated by the seepage trench below the inlet pipe, and test results within the acceptable range specified in R317-503-4 shall be used in calculating the required sidewall absorption area in accordance with Table 5.

TABLE 8
Seepage Trench
Minimum Absorption Area Requirements and
Allowable Rate of Application of Wastewater (a)
(Based on Soil Descriptions According to the
Unified Soil Classification System)

	Symbol and Character of Soil by Unified 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)
GW	Well graded gravels, gravel-sand mixtures, little or no fines.	150 (h)(i)	1.55 (h)(i)
GP	Poorly graded gravels or gravel-sand mixtures, little or no fines.	150 (h)(i)	1.55 (h)(i)
SW	Well graded sands, gravelly sand, little or no fines.	195	1.20
SP	Poorly graded sands or gravelly sands, little or no fines.	195	1.20
SM	Silty sand, sand-silt mixtures.	295	0.8
GM	Silty gravels, poorly graded gravel-sand-silt mixtures.	235	1.0
GC	Clayey gravels, gravel-sand-clay mixtures.	520 (i)	0.45 (i)
SC	Clayey sands, sand-clay mixtures.	520 (i)	0.45 (i)
ML	Inorganic silts and very fine sands, rock flour, silty or clayey fine sands or clayey silts with slight plasticity.	520 (i)	0.45 (i)
MH	Inorganic silts, micaceous or diatomaceous fine sandy or silty soils, elastic silts.	520 (h)(i)	0.45 (h)(i)
CL	Inorganic clays of low to medium plasticity, gravelly clays, sandy clays, silty clays, lean clays.	520 (h)(i)	0.45 (h)(i)
CH	Inorganic clays of high plasticity, fat clays.	(g)	(g)
OL	Organic silts and organic silty clays of low plasticity.	(g)	(g)
OH	Organic clays of medium to high plasticity, organic silts.	(g)	(g)
PT	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 8 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 2 bedrooms.

(e) Minimum absorption area is equal to the actual or estimated wastewater flow in g.p.d. (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 R317-503-4 and R317-507-4.1.B.2. 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, SC, GC, and ML, MH and CL soils, may prove unsatisfactory for absorption systems, depending upon the percentage and type of fines present.

C. Isolation of seepage trenches shall be not less than the minimum distances specified in Table 2.

D. Design and construction of seepage trenches shall be as specified in Table 9.

E. The bottom of the seepage trench shall terminate at least 2 feet above the maximum ground water table in the disposal area. Suitable soil conditions must be verified to a depth of 4 feet below the bottom of the proposed seepage trench.

F. All seepage trenches shall be filled with coarse stone that ranges from 3/4 to 12 inches in diameter and is free from fines, sand, clay, or organic material.

G. The distribution pipe shall be centered in the seepage 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 crushed rock or gravel shall completely fill the trench to a minimum depth of 2 inches over the distribution pipe and shall be properly covered in accordance with R317-507-1.8 to prevent infiltration of backfill. A minimum of 6 inches of backfill shall cover the crushed rock or gravel over the distribution pipe.

TABLE 9
Seepage Trench Construction Details (a)

ITEM	UNIT	MINIMUM	MAXIMUM
SEEPAGE 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	feet	2	--
BOTTOM OF TRENCH TO UNSUITABLE SOIL OR BEDROCK FORMATIONS	feet	4	--
DISTANCE BETWEEN SEEPAGE 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 seepage 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 seepage 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 6 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.

H. If multiple seepage 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.

I. In locations where the ground over the seepage 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 seepage trenches should be used, with each trench installed at a different elevation. The bottom of each trench should be level throughout its length. The design of serial seepage trenches shall be as specified in R317-507-3.H, I and J.

J. Illustrations of typical absorption system components such as septic tanks, distribution boxes, and absorption fields are contained in an addendum to these rules, available through the Division of Water Quality.

R317-507-5. Seepage Pits.

Seepage pits shall be considered as modified seepage trenches and may be constructed in lieu of other approved absorption systems or as a supplement to an absorption field where soil conditions and the required separation from the maximum ground water table comply with R317-503. This absorption system consists of 1 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 seepage trenches, except for the following:

A. The effective absorption area for seepage pits shall be determined as for seepage trenches in R317-507-4.1.A, except that each seepage pit shall have a minimum effective sidewall absorption depth of 4 feet of suitable soil formation.

B. The minimum required sidewall absorption area shall be determined as for seepage trenches in R317-507-4.1.B.

C. Design and construction of seepage pits shall be as specified in Table 10.

TABLE 10

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 12 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 6 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 3 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 4 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 6 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. Clean coarse gravel or rock at least 6 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 R317-505-19.D and E. The top of the pit shall be covered with a minimum of 6 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 R317-507-4.G.

R317-507-6. 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 fields, except for the following:

6.1 The effective absorption area of absorption beds shall be considered as the total bottom area of the excavation.

6.2 The minimum required absorption area for absorption beds shall be determined from Table 11 by using the results of percolation tests conducted in accordance with R317-503-4.

TABLE 11
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 Sq. Ft. 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 2 bedrooms.

(e) Minimum absorption area is equal to the actual or estimated wastewater flow in g.p.d. (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 sq. ft. of absorption bed bottom 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) Absorption beds are not permitted in areas where the soil percolation rate is slower than 1 inch in 30 minutes or faster than 1 inch in 1 minute, rounded to the nearest whole number.

6.3 Isolation of absorption beds shall be not less than the minimum distances specified in Table 2.

6.4 Design and construction of absorption beds shall be as specified in Table 12.

TABLE 12
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
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 8 inches.

(g) Whenever any distribution pipes will be covered with between 6 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.

6.5 Absorption beds should be installed where the slope of the ground surface is relatively level, sloping no more than about 6 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.

R317-507-7. Installation in Earth Fill.

7.1 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 alternate disposal method. Conditions for use of alternate disposal methods are shown in R317-502-20.

7.2 Absorption field and absorption bed type absorption systems may be placed in earth fill. Absorption field systems placed in earth fill can only be installed over natural soils with a percolation rate range between 5 and 60 minutes per inch; and absorption bed systems over soils with a percolation rate range of 5 to 30 minutes per inch.

7.3 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 acceptablility conditions.

7.4 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 fill is 4%.

7.5 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 min/inch. The fill area shall be sized to accommodate a drainfield for a home with a minimum of three bedrooms, and shall include all required clearances within, and outside of the fill and drainfield area.

7.6 The area of original fill placement shall include that area required for a 100% replacement of the drainfield, with all required clearances. The area between trenches shall not be

used for replacement area.

7.7 The fill depth below the bottom of the absorption field shall not exceed six (6) feet.

7.8 The minimum separation between the natural ground surface and the anticipated maximum ground water table or saturated soil shall be twelve (12) inches.

7.9 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.

7.10 All onsite wastewater and disposal systems placed in earth fill shall conform to all other applicable requirements of R317-501 through 513, "Individual Wastewater Disposal Systems".

7.11 The onsite treatment and disposal systems and local areas surrounding them shall be graded to drain surface water away from the absorption fields.

7.12 After the fill has settled for a minimum of one year, a minimum of two (2) percolation tests/soil exploration pits shall be conducted in the fill. One shall be conducted in the proposed drainfield area and one in the proposed replacement drainfield area of the fill. The suitably stabilized fill shall have an in-place percolation rate of between 15 and 45 minutes per inch.

7.13 The maximum exposed side slope for fill surfaces shall be 4 horizontal to 1 vertical. When fill is placed where finished contours are above the natural ground surface, it shall extend from the center of the disposal system at the same general top elevation for a minimum of ten feet in all directions beyond the limits of the disposal field 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.

R317-507-8. "At-Grade" Systems.

8.1 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 alternate disposal method. Conditions for use of alternate disposal methods are shown in R317-502-20.

8.2 Absorption field and absorption bed type absorption systems may be placed in the "at-grade" position. Absorption field systems placed "at-grade" can only be installed over natural soils with a percolation rate range between 4 and 60 minutes per inch; and absroption bed systems over soils with a percolation rate range of 4 to 30 minutes per inch.

8.3 The minimum distance from the top of finished grade to the high seasonal ground water table or perched ground water table shall be 4 feet.

8.4 When fill is placed where finished contours are above the natural ground surface, it shall extend from the center of the disposal system at the same general top elevation for a minimum of ten feet in all directions beyond the limits of the disposal field perimeter below, before the beginning of the side slope.

8.5 The maximum side slope for above ground fill shall be 4 (horizontal) : 1 (Vertical).

8.6 Maximum acceptable slope of original site surface for placement of an "at-grade" system is 4%.

8.7 The site shall be cleared of vegetation and scarified to an approximate depth of 6 inches. Any furrows resulting from the scarification shall be perpendicular to any slope on the site.

R317-507-9. Mound Systems.

9.1 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 alternate disposal method. Conditions for use of alternate disposal methods are shown in R317-502-20.

9.2 The minimum separation between the natural ground surface and the anticipated maximum ground water table or saturated soil shall be twelve (12) inches.

9.3 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.

9.4 Mound systems shall not be located on sites where the original prevailing surface grade exceeds 4 percent.

9.5 All mound type onsite systems shall utilize pressurized systems for distribution of effluent in the absorption system.

9.6 The local health department in whose jurisdiction the mounds with pressurized systems are to be used, shall have an approved maintenance program in place.

9.7 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.

9.8 The effluent loading rate at the sand fill to native soil interface shall as specified in Table 13:

TABLE 13

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

9.9 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.

9.10 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.

KEY: waste water
August 30, 1996 **19-5-104**
Notice of Continuation December 12, 1997

R317. Environmental Quality, Water Quality.
R317-508. Plan Information for Individual Wastewater Disposal Systems.
R317-508-1. Required Information.

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. Plans for the construction and alteration of individual wastewater disposal systems must be submitted for review to the regulatory authority having jurisdiction, and compliance with these rules must be determined by an on-site inspection after construction but before backfilling. Individual wastewater disposal systems must be constructed and installed in accordance with these rules.

R317-508-2. Approval.

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:

2.1 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 2 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 parking areas.

G. Location and explanation of type of dwelling to be served by individual wastewater disposal 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 individual wastewater absorption 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 individual wastewater disposal systems, and of all existing or proposed public water supply sources within 1500 feet of individual wastewater disposal 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 septic tank and absorption system.

2.2 Statement of soil conditions obtained from soil exploration pit(s) dug (preferably by backhoe) to a depth of 10 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 6 feet, soil exploration pits must extend to a depth of at least 4 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 Unified Soil Classification System.

2.3 Statement with supporting evidence indicating (A) present and (B) maximum anticipated ground water table and (C) flooding potential for absorption system site.

2.4 The results of at least 1 stabilized percolation test in the area of the proposed absorption system, conducted according to R317-503-4. Percolation tests should be conducted at a depth of 6 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 seepage trench or seepage pit is proposed, a completed "Seepage Trench Construction Certificate" may be submitted if percolation tests are not required.

2.5 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.

2.6 Manufacturer, material, diameter, and minimum slope of building sewer.

2.7 Septic tank capacity, design (cross sections, etc.), materials, and dimensions. If tank is commercially manufactured, state name and address of manufacturer.

2.8 Details of drop boxes or distribution boxes (if provided).

2.9 Absorption system details which include the following:

A. Manufacturer, 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 4 inches/100 ft., 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:

1. Depth and width of absorption system excavation.

2. Depth of distribution pipe.

3. Depth of filter material.

4. Barrier (i.e., synthetic filter fabric, straw, etc.) used to separate filter material from backfill.

5. Depth of backfill.

2.10 Manufacturer, type, and capacity of sewage pump, pump well, discharge line, siphons, siphon chambers, etc., if required as part of the disposal system.

2.11 Statement indicating (A) source of water supply for dwelling (whether a well, spring, or public system) and (B) location and (C) distance from individual wastewater disposal system. If plan approval of a nonpublic water supply system is desired, information regarding that system must be submitted separately.

2.12 Complete address of dwelling to be served by this individual wastewater disposal system. Also the name, current address, and telephone number of:

A. The person who will own the proposed individual wastewater disposal system.

B. The person who will construct and install the disposal system.

2.13 If mortgage loan for dwelling is insured or guaranteed by a Federal agency, the name and local address of that agency.

2.14 All applicants requesting plan approval for an individual wastewater disposal system must submit a sufficient number of copies of the above required information to enable the regulatory authority to retain 1 copy as a permanent record.

2.15 Applications will be rejected if proper information is not submitted.

KEY: waste water
1993 **19-5-104**
Notice of Continuation December 12, 1997

R317. Environmental Quality, Water Quality.
R317-509. Design, Installation, and Maintenance of Sewage Holding Tanks.
R317-509-1. General Requirements.

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. 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 scavenger service 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. If authorization is necessary for disposal of sewage at certain facilities, evidence of such authorization must be submitted for review.

R317-509-2. Basic Plan Information Required.

Plan information for each sewage holding tank, except those in recreational and scavenger vehicles, shall comply with the following criteria:

2.1 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.

2.2 A plot or site plan showing:

A. direction of north,

B. number of bedrooms,

C. location and liquid capacity of sewage holding tank,

D. source and location of domestic water supply,

E. location of water service line and building sewer, and

F. location of streams, ditches, watercourses, ponds, etc., near property.

2.3 Plan detail of sewage holding tank and high water warning device.

2.4 Relative elevations of:

A. building drain,

B. building sewer,

C. invert of inlet for tank,

D. lowest plumbing fixture or drain in building served, and

E. the maximum liquid level of the tank.

2.4 Statement indicating the present and maximum anticipated ground water table.

2.5 Scavenger service arrangements for sewage holding tank.

R317-509-3. Construction.

3.1 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 approval requirements specified for septic tanks.

3.2 Construction of the tank shall be such as to assure its being watertight 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 6 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.

3.3 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 control the odorous gases of digestion.

3.4 Unless otherwise approved by the regulatory authority, sewage holding tanks shall be installed with the maximum liquid level elevation at least 1 foot above the overflow rim of the lowest plumbing fixture or drain in the dwelling served, with no outlet placed below that elevation.

3.5 No overflow, vent, or other opening shall be provided

in the tank other than those described above.

3.6 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.

3.7 The regulatory authority may require that sewage holding tanks be filled with water and allowed to stand overnight to check for leaks.

3.8 The slope of the building sewer shall comply with R317-504-1.D.

R317-509-4. Capacity.

Each tank shall be large enough to hold a minimum of 7 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 pumpings. The length of time between pumpings may be increased by careful water management, low volume plumbing fixtures, etc.

R317-509-5. Location.

Sewage holding tanks must be located:

5.1 In an area readily accessible to the pump truck in any type of weather that is likely to occur during the period of use.

5.2 In accordance with the requirements for septic tanks as specified in Table 2.

5.3 Where it will not create a nuisance in the event of accidental spillage during pumping.

5.4 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.

R317-509-6. Operation and Maintenance.

6.1 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.

6.2 Sewage holding tanks for seasonal dwellings should be pumped out before each winter season to prevent freezing and possible rupture of the tank.

6.3 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.

6.4 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.

6.5 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.

KEY: waste water
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Notice of Continuation December 12, 1997

R317. Environmental Quality, Water Quality.
R317-510. Review Criteria for Establishing the Feasibility of Proposed Housing Subdivisions and Other Similar Developments.
R317-510-1. Scope.

A plat of the subdivision shall be submitted to the Division for review and shall be drawn to such scale as needed to show essential features. Ground surface contours must be included, preferably at 2-foot intervals unless smaller intervals are necessary to describe existing surface conditions. Intervals larger than 2 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 plat 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 plat for ease in locating the subdivision area. A narrative feasibility report addressing the short-range and long-range water supply and wastewater disposal facilities proposed to serve the development must be submitted for review.

R317-510-2. The Feasibility Report Shall Include the Following Information.

2.1 Name and location of proposed plat.

2.2 Name and address of the developer of the proposed project and the engineer or individual who submitted the feasibility report.

2.3 Statement of intended use of proposed plat, such as residential-single family, multiple dwellings, commercial, industrial, or agricultural.

2.4 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 individual wastewater disposal system and shall comply with R317-502-16. Replacement area for absorption systems on each lot shall conform with the requirements of R317-502-15. Plats 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.

2.5 Ground surface slope of areas proposed for individual wastewater disposal systems shall conform with the requirements of R317-502-17.

2.6 The location, type, and depth of all existing and proposed nonpublic water supply sources within 200 feet of individual wastewater disposal systems, and of all existing or proposed public water supply sources within 1500 feet of individual wastewater disposal systems.

2.7 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 platted, and cutting or filling of lots that will affect building sites. Areas proposed for individual wastewater disposal systems shall be isolated from pertinent ground features as specified in Table 2.

2.8 Surface drainage systems shall be included on the plat, 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 individual wastewater disposal systems on the property. Details shall also be provided for the final disposal of surface runoff from the property.

2.9 If any part of a subdivision lies within or abuts a floodplain area, the floodplain shall be shown within a contour line and shall be clearly labeled on the plat with the words "floodplain area".

2.10 All soil exploration pits and percolation test holes shall be located on the subdivision plat and identified by a key number or letter designation. All soil tests shall be conducted at the owner's expense.

2.11 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 throughout the project area.

A. A sufficient number of soil exploration pits shall be dug (preferably with a backhoe) on the property to provide an accurate description of subsurface soil conditions. Soil description should conform with the Unified Soil Classification System. Soil exploration pits shall be of sufficient size to permit visual inspection, and to a minimum depth of 10 feet, and at least 4 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 seepage trenches, are proposed.

B. 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.

C. Soil exploration pits shall be made at the approximate rate of 1 test per 3 acres or 1 test per 2 lots if lots are larger than 3 acres. If soil conditions and surface topography indicate, a greater or lesser number of soil exploration pits 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 must be conducted as closely as possible to the sites on the lots or parcels proposed for absorption systems, and shall be distributed as uniformly as possible over the property such that no significant areas remain untested. The regulatory authority shall have the option of inspecting the open soil exploration pits. Complete results shall be submitted for review, including all unacceptable test results. Absorption systems are not permitted in areas where the requirements of R317-503 cannot be met. Where soil and other site conditions are clearly unsuitable, there is no need for conducting soil exploration pits.

2.12 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 2 feet from the bottom of the proposed absorption systems, or to less than 4 feet from finished grade, individual wastewater absorption systems will not be approved. Ground water table determinations must be made in accordance with R317-203-2.

2.13 An adequate number of percolation tests shall be conducted on the development property to determine the permeability of the soils for absorption systems. All percolation tests shall be conducted in accordance with the procedures specified in R317-503-4. Such tests shall be made at the approximate rate of 1 test per 3 acres or 1 test per 2 lots if lots are larger than 3 acres. If soil conditions and surface topography indicate, a greater or lesser number of percolation tests may be required by the regulatory authority. Percolation tests must be performed as closely as possible to the sites on the lots or parcels proposed for absorption systems, and shall be distributed as uniformly as possible over the property such that no significant areas remain untested. Where questionable soil conditions exist, the regulatory authority shall have the option of 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 soil percolation rate is slower than 60 minutes per inch or faster than 1 minute per inch. Where soil and other site conditions are clearly unsuitable, there is no need for conducting percolation tests.

2.14 If ground surface slopes exceed about 4 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 individual wastewater disposal systems, a detailed disposal 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:

A. All critical dimensions and distances for the selected lot(s), including the distance of the individual wastewater disposal system from lakes, ponds, watercourses, etc.

B. Location of dwelling, with distances from street and property lines.

C. Location of water lines, water supply, individual wastewater disposal system, property lines, and lot easements.

D. Capacity of septic tank and dimensions and cross-section of absorption system.

E. Results and locations of individual soil exploration pits and percolation tests conducted on the selected lot(s).

F. If nonpublic wells or springs are to be provided, the plat shall show a typical lot layout indicating the relative location of the building, well or spring, and individual wastewater absorption system.

2.15 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 as may be necessary to determine that adequate protection against contamination of any existing or proposed water supply source will be provided, and that no pollution of the waters of the state will occur.

2.16 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 individual wastewater disposal systems on all of the proposed lots, but shall mean that such disposal systems may be installed on the majority of the proposed lots in accordance with minimum State requirements and any conditions that may be imposed.

KEY: waste water
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R317. Environmental Quality, Water Quality.
R317-511. Percolation Test Requirements.
R317-511-1. General Requirements.

1.1 A percolation test measures the rate which subsurface soil absorbs water for the purpose of identifying porous soil strata and site suitability for absorption systems, and is also a basis for estimating the design criteria of such systems to insure a reasonably long life span.

1.2 While percolation tests constitute a valuable guide for successful operation of individual wastewater disposal systems, considerable judgement must be used in applying the results. Percolation test results shall not be presumptive, prima facie, or conclusive evidence as to the suitability for absorption systems. Such percolation tests may be considered and analyzed as one of many criteria in determining soil suitability for absorption systems. There is no need for conducting percolation tests when the soil or other site conditions are clearly unsuitable.

1.3 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 individual wastewater absorption 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.

1.4 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:

A. a signed statement certifying that the tests were conducted in accordance with this rule;

B. The name of the individual conducting the tests;

C. The location of the property

D. the depth and rate of each test in minutes per inch;

C. the date of the tests;

D. the logs of the soil exploration pits, including a statement of soil explorations to a depth of 10 feet. In the event that absorption systems will be deeper than six feet, soil explorations must extend to a depth of at least four below the bottom of the proposed absorption field, seepage trench, seepage pit or absorption bed;

E. a statement of the present and anticipated maximum ground water table;

F. all other factors affecting percolation test results.

1.5 Percolation tests shall be conducted at the owner's expense by or under the supervision of a liscensed environmental health scientist, registered engineer, or other qualified person certified by the regulatory authority in accordance with the following:

A. 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.

B. 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.

C. 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 seepage trenches and seepage pits shall comply with R317-507-4.1.B.2.

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.

D. 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 6 inches above the strata to be tested.

E. 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 4 to 18 inches (preferably 8 to 12 inches). The vertical sides shall be at least 12 inches deep, terminating in the soil at an elevation 6 inches below the bottom of the proposed absorption system. In testing individual soil strata for seepage trenches and seepage pits (R317-507-4.B.2), the percolation test hole shall be located entirely within the strata to be tested, if possible.

F. 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. Nails driven into a board will provide a good instrument to scarify the sides of the hole. Remove all loose soil from the bottom of the hole. Add 2 to 3 inches of clean coarse sand or

pea-sized 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.

G. 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.

H. 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.

I. 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.

J. Test Procedure for Sandy or Granular Soils

For tests in sandy or granular soils containing little or no clay (i.e., GW, GP, SW, SP, SM or GM classified according to the Unified Soils Classification System), the hole shall be carefully filled with clear water to a minimum depth of 12 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 12 inches above the gravel seeps away in 10 minutes or less, the test may proceed immediately as follows:

1. Water shall be added to a point not more than 6 inches above the gravel.

2. Thereupon, from the fixed reference point, water levels shall be measured at 10 minute intervals for a period of 1 hour.

3. If 6 inches of water seeps away in less than 10 minutes a shorter time interval between measurements shall be used, but in no case shall the water depth exceed 6 inches.

4. The final water level drop shall be used to calculate the percolation rate.

K. Test Procedure for Other Soils Not Meeting the Above Requirements

The hole shall be carefully filled with clear water and a minimum depth of 12 inches shall be maintained above the gravel for at least a 4 hour period by refilling whenever necessary. Water remaining in the hole after 4 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:

1. Any soil which has sloughed into the hole shall be removed and water shall be adjusted to 6 inches over the gravel.

2. Thereupon, from the fixed reference point, the water level shall be measured and recorded at approximately 30 minute intervals for a period of 4 hours unless 2 successive water level drops do not vary more than 1/16 of an inch and indicate that an approximate stabilized rate has been obtained.

3. The hole shall be filled with clear water to a point not more than 6 inches above the gravel whenever it becomes nearly empty.

4. 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.

5. When the first 6 inches of water seeps away in less than 30 minutes, the time interval between measurements shall be 10 minutes, and the test run for 1 hour.

6. The water depth shall not exceed 6 inches at any time during the measurement period.

7. The drop that occurs during the final measurement period shall be used in calculating the percolation rate.

L. 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.

M. Using Percolation Rate to Determine Absorption Area

The minimum or slowest percolation rate shall be used in calculating the required absorption area.

KEY: waste water
July 12, 1996 **19-5-104**
Notice of Continuation December 12, 1997

R317. Environmental Quality, Water Quality.
R317-512. Approved Building Sewer Pipe and Distribution Pipe for Individual Wastewater Disposal Systems.
R317-512-1. Scope.

1.1 The following is a list of solid-wall pipe that has been approved for building sewers.

1.2 The pipe is listed by material and applicable standard. The Division may recognize other applicable standards.

TABLE

MATERIALS	MINIMUM STANDARDS
A. Acrylonitrile-Butadiene Styrene (ABS) Schedule 40	(d) ASTM D-2680 ASTM D-2751 (e) (pressure)
B. Asbestos Cement Type II Sewer Pipe (e)	ASTM C-428 (f) ANSI C-296 (pressure) ANSI C-644
C. Homogenous Bituminized Fiber Drain and Sewer Pipe (e)	ASTM D-1861
D. Cast Iron Soil Pipe	ASTM A-74
E. Clay Pipe, Extra Strength	ASTM C-700
F. Concrete Sewer Pipe	ASTM C-412 ASTM C-14
G. Polyvinyl Chloride (PVC) PVC-DWV Schedule 40	ASTM D-2665
PVC - Sewer	ASTM D-3033 ASTM D-3034 (pressure) ASTM F-789
H. Copper Drain Tube (DWV)	ANSI B-306
I. Brass	ASTM B-135
J. Lead	--

R317-512-2. Scope.

The following is a list of perforated or solid-wall pipe, approved as distribution pipe in absorption systems. Solid-wall pipe must be perforated in accordance with R317-507-1, 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

MATERIALS	MINIMUM STANDARDS
A. Acrylonitrile-Butadiene Styrene (ABS)	ASTM D-2661
Schedule 40	ASTM D-2751
B. Clay Pipe, Standard Class Standard and Extra Strength Perforated	ASTM C-211
C. Concrete Pipe, Type 1 or Type 2 Perforated Concrete, Class C-14	ASTM C-44
D. Polyethylene, Smooth Wall (PE)	ASTM D-1248 ASTM D-3350
E. Polyvinyl Chloride (PVC)	(g) ASTM D-2729
Schedule 40	ASTM D-2665 (pressure) ASTM D-3033 ASTM D-3034 (pressure)
F. Styrene Rubber Plastic	ASTM D-2852 ASTM D-3298

FOOTNOTES

(a) Each length of building sewer and absorption system pipe shall be stamped or marked as required by the Uniform 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 Uniform 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) American National Standards Institute, 1430 Broadway, New York, New York 10018.

(f) 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.

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R317. Environmental Quality, Water Quality.
R317-513. Recommendations for the Maintenance of Septic Tanks and Absorption Systems.
R317-513-1. Recommendations for the Maintenance of Septic Tanks and Absorption Systems.

1.1 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 fields are contained in an addendum to these rules, available through the Division of Water Quality

1.2 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 3 to 5 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:

1.3 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.

1.4 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.

1.5 The tank should be pumped out if either the bottom of the floating scum mat is within 3 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.

1.6 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.

1.7 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.

1.8 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.

1.9 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.

1.10 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.

1.11 A written record of all cleaning and maintenance to the septic tank and absorption system should be kept by the owner of that system.

1.12 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.

1.13 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.

1.14 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 disposal system.

1.15 Crushed, broken, or plugged distribution pipes should be replaced immediately.

R317-513-2. Supplemental Requirements for Maintenance and Monitoring of "At-Grade" and Earth Fill Alternate Systems.

2.1 These requirements are to be applied in addition to those specified in R317-513-1 where applicable.

2.2 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.

R317-513-3. Supplemental Requirements for Maintenance and Monitoring of Pressure Distribution Alternate Systems.

3.1 These requirements are to be applied in addition to those specified R317-513-1 and 2 where applicable.

3.2 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.

3.3 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.

3.4 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.

KEY: waste water
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R317. Environmental Quality, Water Quality.
R317-550. Rules for Waste Disposal By Liquid Scavenger Operations.
R317-550-1. Definition.

The following definitions shall apply in the interpretation and enforcement of this rule. The word "shall" as used herein indicates a mandatory requirement. The term "should" is intended to mean a recommended or desirable standard.

1.1 Chemical Toilet - means a nonflush device wherein the waste is deposited directly into a receptacle containing a solution of water and chemical. It may be housed in a permanent or portable structure.

1.2 Collection Vehicle - means any vehicle, tank, trailer, or combination thereof, which provides commercial collection, transportation, storage, or disposal of any waste as defined in Section 1.14.

1.3 Division - means the Utah Division of Water Quality.

1.4 Health Officer - means the Director of a local health department or his authorized representative.

1.5 Liquid Scavenger Operation - means any business activity or solicitation by which 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.

1.6 Local Health Department - means a city-county or multi-county local health department established under Title 26A.

1.7 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).

1.8 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 wastes which are likely to cause human illness, disorders, or disability. These include, but are not limited to, pathogenic viruses and bacteria, parasites, and toxic chemicals.

1.9 Scavenger Operator - means any person who conducts the business of a liquid scavenger operation.

1.10 Septic Tanks - 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 soil outside of the tank through an underground absorption system.

1.11 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 by scavenger operation.

1.12 Tank - means any container that when placed on a vehicle is used to transport wastes removed from a septic tank, sewage holding tank, chemical toilet. or vault privy.

1.13 Vault Privy - means any facility wherein the waste in deposited without flushing, into a permanently-installed, watertight, vault or receptacle, which is usually installed below ground.

1.14 Wastes - means, for the purpose of this rule, domestic wastewater or sewage which is normally deposited in or retained for disposal in septic tanks, sewage holding tank, chemical toilets, or vault toilets.

R317-550-2. Scope of Rule.

2.1. The collection, storage, transportation, and disposal of all wastes by liquid scavenger operators shall be accomplished in a sanitary manner which does not create a public health hazard or nuisance, or adversely affect the quality of the waters of the State.

2.2 It shall be unlawful for any person to engage in or conduct a liquid scavenger operation unless the person notifies the local health department in which the liquid scavenger operation is conducted prior to commencement of a liquid scavenger operation and thereafter on an annual basis.

2.3 Nothing in this rule shall be constructed to require a private property owner to notify the local health department prior to his removing wastes from his own septic tank, sewage holding tank, chemical toilet, or vault privy. However, all such wastes must be collected and transported in such a manner that they will not create a nuisance or public health hazard, or will adversely affect the quality of the waters of the State, and must be disposed of in accordance with the provisions of this rule.

R317-550-3. Procedures for Notification of Local Health Departments.

3.1 Prior to initiating operation of liquid scavenger services, the operator shall notify the local health department by filing a notification form. The notification form shall be provided by the local health department and shall include, but not limited to, the following:

A. Name, address, and telephone number of applicant. If a partnership, the names and addresses of the partners, and if a corporation, the name and address of the corporation.

B. Name and address of the place(s) of business if different from above.

C. Applicant shall state the number of collection vehicles to be used, description of vehicles (make, model, year, and license number), tank capacity, and any other related information required by the health officer.

D. A list of all sites shall be provided which are to used for disposal of wastes resulting from the liquid scavenger operation. Applicants may be required by the local health department to provide proof of permission to dispose of wastes at such sites.

E. Standard notification forms are available through the Division of Water Quality.

3.2 It is recommended that all applications for liquid scavenger operations be accompanied by a surety bond issued by a corporate surety company authorized to conduct business in the State of Utah, and covering the period for which the permit is issued. The bond amount should be $5000 for all scavenger operations conducting business within the State of Utah. The health officer should be the bond obligee, and the bond should be for the benefit and purpose to protect all persons damaged by faulty workmanship resulting from scavenger operation, and to guarantee payment of monies owing incident to these regulations. Such bonds should be conditioned upon their performance of the services in a workmanlike and hygienic manner.

3.3 Liquid scavenger operators shall notify the local health department in writing on an annual basis before March 1st of each year of their intent to continue operation.

R317-550-4. Inspection of Scavenger Operations.

4.1 Upon receipt of a notification to conduct a liquid scavenger operation, the health officer may inspect all equipment and, if necessary, disposal sites to be used in connection with the liquid scavenger operation. Routine inspections may be made at any reasonable time by the health officer in order to insure compliance with these regulations

R317-550-5. Collection Vehicle Requirements.

5.1 Collection vehicle identification requirements shall be determined by the local health department having jurisdiction.

5.2 Each collection vehicle shall conform to the following minimum specification:

A. Tanks shall be of watertight construction, fully enclosed, strong enough for all conditions of operation, and shall be provided with suitable covers to prevent spillage during transit. The capacity of the tank on U.S. gallons shall be determined accurately by calculation, metering, or as specified by the manufacturer, and shall be plainly, legibly, and permanently marked or stamped on the exterior of the tank.

B. The collection vehicle shall be equipped with either a positive displacement pump or other type of pump which will not allow any spillage and which will be self-priming.

C. The discharge connection of the tank shall be provided with a valve and with a threaded screw cap or other acceptable sealing device. When not in use, the valve shall be closed and the threaded screws cap or sealing device shall be in place to prevent accidental leakage or discharge.

5.3 When in use, pumping equipment shall be so operated that a public health hazard or nuisance will not be created. Each collection vehicle should at all times be supplied with a pressurized wash water tank, disinfectant, and implements needed for cleanup purposes in the event of accidental spillage of waste on the ground. The operator shall ensure that such spills are cleaned and disinfected in such a manner to render them harmless to human and animals.

5.4 Sewage hoses on collection vehicles shall be thoroughly drained, capped, and stored in such a manner that they will not create a public health hazard or nuisance.

5.5 Tanks used for collection, transportation, and storage of wastes shall be so constructed that the exterior can be easily cleaned.

5.6 All collection vehicles, when parked and not in use, shall be protected and maintained in such a manner that they

will not promote an odor nuisance, the breeding of insects, the attraction of rodents, or create any other public health hazard or nuisance.

R317-550-6. Conduct of Scavenger Operations, Including Submission of Reports.

6.1 All services rendered by the scavenger operation shall be conducted in a workmanlike manner and the property where the services are rendered shall be left in a sanitary condition. After the services are rendered, the scavenger operator shall furnish the customer with a written receipt which carries the business name and address of the liquid scavenger operation.

6.2 Recommendations for the pumping and maintenance of septic tanks and sewage holding tanks may be found in the Regulations For Individual Wastewater Disposal Systems promulgated by the Division. All three wastewater components, scum, sludge, and liquid waste should be removed from these tanks to provide long-term benefit.

6.3 The liquid scavenger operation shall submit summary data forms of their business activity to the local health department having jurisdiction as often required by that agency. Summary data from information shall include, but not limited to:

A. Source of all waste pumped on each occurrence, including name and address of source. If necessary, this information may be provided in code and made available for inspection at the business address of the liquid scavenger operation.

B. Specific type of waste disposal; system services on each occurrence.

C. Quantity of wastes pumped on each occurrence.

D. Name and location of authorized disposal site where pumpings were deposited for disposal.

R317-550-7. Disposal of Wastes at Approved Locations.

7.1 All wastes collected shall be disposed of in accordance with the regulations of the Division and the local health department having jurisdiction. Disposal shall be accomplished by one of the following methods:

A. Into a public sewer system at the place and point in the system designated and approved by the appropriate authority.

B. Into a sanitary landfill which has been approved by the Division, with concurrence by the local health department, for disposal of such wastes.

7.2 No waste shall be deposited into a sewage collection system, a sewage treatment plant, or waste stabilization pond (lagoon), which will have a detrimental effect on their overall operation.

7.3 Under no circumstances shall dumping of wastes be permitted into any public or private lake, pond, stream, river, watercourse, or any other body of water, or onto any public or private land which has not been designated as an approved disposal site.

7.4 It shall be unlawful for any liquid waste scavenger to transport, treat, store, or dispose of hazardous wastes as defined by 19-6-102(7) without complying with all provisions of R315-1 through R315-301.

R317-550-8. Failure to Comply With Rules.

Any person failing to comply with these rules shall be subject to action as specified in Section 19-5-115.

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1993 19-5-104
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R317. Environmental Quality, Water Quality.
R317-560. Rules for the Design, Construction, and Maintenance of Vault Privies and Earthen Pit Privies.
R317-560-1. Definitions.

The following definitions shall apply in the interpretation and enforcement of these rules. The word "shall" as used herein means a mandatory requirement. The term "should" is intended to mean a recommended or desirable standard.

1.1 "Division" - means the Utah Division of Water Quality

1.2 "Earthen Pit Privy" - means a toilet facility consisting of a pit in the earth covered with a privy building affording privacy and shelter and containing 1 or more stools with an opening into the pit.

1.3 "Health Officer" - means the Director of a local health department or his authorized representative.

1.4 "Local Health Department" - means a city-county or multi-county local health department established under Title 26A.

1.5 "Vault Privy" - means a toilet facility wherein the waste is deposited without flushing into a permanently-installed, watertight vault or receptacle. Vault wastes must be periodically removed and disposed of in accordance with these rules.

R317-560-2. General Requirements.

2.1 Vault privies and earthen pit privies are permitted as a substitute for water closets, for temporary or limited use in remote locations where provisions for water supply or wastewater disposal pose a significant problem. The intended primary use of vault and pit privies in this rule is for facilities such as labor camps, semi-developed and semi-primitive recreational camps, temporary mass gatherings, and other approved uses. Potable water under pressure may or may not be available.

2.2 Requests for the use of vault privies or earthen pit privies shall be evaluated on a case-by-case basis by the local health department having jurisdiction and must receive the written approval of the local health officer or his designated representative prior to the installation of such devices.

2.3 Vault privies and earthen pit privies shall be located and constructed in such a manner to prevent the entrance of precipitation or surface water into the vault or pit, either as runoff or as flood water.

2.4 All vault privies shall comply with the following:

A. They shall be located a minimum of:

(1) 10 feet from property lines and water distribution pipes.

(2) 15 feet and not more than 500 feet from any living or camping spaces served.

(3) 50 feet from any nonpublic culinary water source and

from any lake, stream, river, or watercourse, measured from the high water line.

B. They shall be located at least 100 feet from "deep" public water supply wells. It is recommended that vault privies be located at least 1500 feet from "shallow" wells and springs used as public water sources. Any proposal to locate closer than 1500 feet must be reviewed and approved on a case-by-case basis by the health authority, taking into account geology, hydrology, topography, existing land use agreements, and potential for pollution of water source. Any person proposing to locate a vault privy closer than 1500 feet to a public "shallow" well or spring must submit a report to the health authority which considers the above items. The minimum required isolation distance where optimum conditions exist and with the approval of the health authority may be 100 feet. R309-106 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 requirement may not have acquired one. Such circumstances must be reviewed on a case-by-case basis by the health authority. "Deep" wells and "shallow" public water supply sources are as defined in R309-106.

C. The maximum high water table shall be at least 2' below the maximum depth of the vault.

2.5 All earthen pit privies shall comply with the following:

A. They shall be located a minimum of:

(1) 25 feet from property lines and water distribution pipes.

(2) 25 feet and not more than 500 feet from any living or camping spaces served.

(3) 100 feet from any lake, stream, river, or watercourse, measured from the high water line.

B. They shall be located at least 100 feet from "deep" wells that are nonpublic water supply sources. They shall be located at least 200 feet from "shallow" wells and springs that are nonpublic water supply sources. Although this latter separation distance shall be generally adhered to as the minimum required separation distance for "shallow" nonpublic water supply sources, exceptions may be approved on a case-by-case basis by the health authority, taking into account geology, hydrology, topography, existing land use agreements, and potential for pollution of water source. Any person proposing to locate an earthen pit privy closer than 200 feet to an individual or nonpublic "shallow" well or spring must submit a report to the health authority which considers the above items. In no case shall the health authority grant approval for an earthen pit privy to be closer than 100 feet from a "shallow" well or spring. "Deep" wells and "shallow" nonpublic water supply sources shall be defined as for public water sources in R309-106.

C. They shall be isolated from public water supply sources as specified for vault privies in R317-560-2.4.B.

D. The maximum high water table shall be at least 4' below the maximum depth of the pit.

R317-560-3. Design and Construction Requirements.

3.1 All vault privies shall have vaults or receptacles which are watertight and shall be constructed of reinforced concrete, metal or other material of equal durability which has been approved by the local health department. Inside and outside surfaces of metal vaults shall be thoroughly coated with a good quality asphalt-base material.

3.2 For all earthen pit privies, pit cribbing shall be installed in the pit to prevent caving of soil into the pit and to insure a firm foundation for the building. The pit cribbing shall fit firmly, be in uniform contact with the earth walls on all sides, and shall descend to the full depth of the pit and rise flush with the ground surface.

3.3 All vault privies and earthen pit privies shall comply with the following:

A. A sill or foundation constructed of concrete or treated lumber shall be placed on the ground surface around the vault or pit so as to underlie the floor area of the privy building.

B. A floor and riser of impervious material shall be placed over the sill and vault or pit in such a manner to prevent access of rodents and insects into the vault or pit.

C. The privy building shall be firmly anchored, rigidly constructed, free from hostile surface features such as sharp edges and exposed nail points, and shall afford complete privacy and protection from the elements. The building shall be of fly-tight construction. The door(s) shall be self-closing and provided with an inside latch. Interior floors, walls, ceilings, partitions, and doors shall be finished with readily cleanable materials resistant to wastes and cleaners.

D. The building shall be ventilated by leaving approximately 4-inch openings at (1) the top of two opposite walls just beneath the roof, and (2) at the bottom of two opposite walls just above the floor, all of which are screened with 16-mesh screen or smaller of durable material. Hardware mesh with 1/4" openings may be placed on the inside and outside of the screened openings to protect the smaller mesh screen. Direct line of sight into the building through the bottom ventilation openings shall be effectively obstructed with a louver or other suitable means.

E. Each vault or pit shall be vented to atmosphere with a minimum of 100 square inches of vent area for each seat connected to the vault. (One hundred square inches is equivalent to two 8-inch pipes, or one 12-inch pipe.) Roof vents must extend at least 12 inches above the highest point of the roof and shall be provided with a rain cap and screened with 16-mesh screen or smaller of durable material. Venting to an attic vent may be provided for by utilizing the space between an inside and outside wall if that space provides sufficient area.

F. The seat should be so spaced as to provide a minimum clear space of 24 inches between each seat opening in multiple unit installations, and should provide 12 inches clear space from the seat opening to the sidewall in single and multiple units. In multiple unit installations, partitions should be provided between risers to afford user privacy.

G. The seat riser should have an inside clearance of not less than 21 inches from the front wall and not less than 24 inches from the rear wall of the privy building.

H. The seat top should be not less than 12 inches nor more than 16 inches above the floor.

I. The seat opening shall be covered with an attached, movable toilet seat and lid of easily cleanable, impervious material that can be raised to allow sanitary use as a urinal and can be closed when not in use. Privy buildings for public use shall be provided with open-front seats.

J. Commercially preconstructed vault privy buildings not incorporating all of the requirements of these rules may be evaluated for approval on a case-by-case basis by local health departments.

R317-560-4. Maintenance Requirements.

4.1 Odor-control chemicals or disinfectants may be added to the vault or pit at frequent intervals to prevent bacterial decomposition and resulting odors. Extreme caution should be exercised to insure that these chemicals are not spilled on or allowed to remain on the seat. Garbage, ashes, oil, hazardous or toxic wastes, or other wastes not normally deposited in vault privies or earthen pit privies shall not be disposed of therein.

4.2 All vault privies and earthen pit privies shall be maintained in a satisfactory manner to prevent the occurrence of a public health nuisance or hazard or to preclude any adverse affect upon the quality of any waters of the State.

4.3 Toilet paper with a holder should be provided for every seat. An adequate supply of toilet paper should be maintained at all times.

4.4 All vault privies shall comply with the following:

A. The vault or receptacle is not permitted to be filled to a point higher than 12 inches below the floor surface of the privy building.

B. Vault wastes shall be periodically emptied at sufficiently frequent intervals to prevent creation of an insanitary condition, and shall be transported in an acceptable manner to a disposal site approved by the Division. Where disposal in a public sewer system is not possible, vault wastes must be deposited in approved sanitary landfills.

4.5 All earthen pit privies shall comply with the following:

A. When the pit becomes filled to within 18 inches of the ground surface, a new pit shall be excavated and the old one shall be backfilled with approximately 2 feet of compacted earth and mounded slightly to allow for settlement and to prevent depressions for surface ponding of water.

TABLE

Type of Camp	Source	Storage
Modern camps with full facilities	60 gal/day/person	30 gal/person
Semi-developed camps, and day-use areas with limited facilities	Minimum 5 gal/ day/person	Minimum 2.5 gal/person
(With flush type toilets)	20 gal/day/person	10 gal/person

KEY: waste water, waste disposal, sewerage, toilets
1993 19-5-104
Notice of Continuation December 12, 1997

R333. Financial Institutions, Banks.
R333-5. Discount Securities Brokerage Service by Banks.
R333-5-1. Authority, Scope, and Purpose.

(1) This rule is issued pursuant to Subsection 7-1-301(3)(a) and Section 7-3-3.2.

(2) This rule governs the type of securities brokerage service state chartered banks may offer.

(3) The purpose of this rule is to limit securities activities to "discount brokerage" services and to give state chartered banks competitive equality with national banks which have their principal office in this state by granting the same rights and privileges to state chartered banks as are enjoyed by Utah's national banks.

R333-5-2. Definitions.

"Discount brokerage" means the practice of executing securities transactions solely at the direction of a bank customer but not providing that customer with any investment advice.

R333-5-3. Discount Brokerage Services.

A state chartered bank may enter into a contractual arrangement with unrelated discount brokers where the broker executes securities transactions for bank customers and the bank shares the commissions generated by the transaction. This service is restricted as outlined below:

(1) The bank clearly acts solely at the customer's direction;

(2) The transactions are for the account of the customer and not the account of the bank;

(3) The transactions are without recourse;

(4) The bank makes no warranty as to the performance or quality of any security;

(5) The bank does not advise customers to make any particular investment;

(6) The bank's promotional material clearly explains the bank's limited role in the service; and

(7) The bank's promotional material clearly explains that the transactions are not federally insured.

KEY: banks and banking, securities
December 2, 1997 **7-1-301(3)**
Notice of Continuation September 25, 1997 **7-3-3.2**

R337. Financial Institutions, Credit Unions.
R337-7. Discount Securities Brokerage Service by State-Chartered Credit Unions.
R337-7-1. Authority, Scope, and Purpose.

(1) This rule is issued pursuant to Subsection 7-1-301(3).

(2) This rule governs the type of securities brokerage service state chartered credit unions may offer.

(3) The purpose of this rule is to allow securities activities limited to "discount brokerage" services by state chartered credit unions, similar to the discount brokerage services allowed state chartered banks and industrial loan corporations.

R337-7-2. Definitions.

(1) "Discount brokerage" means the practice of executing securities transactions solely at the direction of a credit union member but not providing that member with any investment advice.

R337-7-3. Discount Brokerage Services.

A credit union may enter into a contractual arrangement with unrelated discount brokers where the broker executes securities transactions for credit union members and the credit union shares the commissions generated by the transaction. This service is restricted as outlined below:

(1) The credit union clearly acts solely at the member's direction;

(2) The transactions are for the account of the member and not the account of the credit union;

(3) The transactions are without recourse;

(4) The credit union makes no warranty as to the performance or quality of any security;

(5) The credit union does not advise members to make any particular investment;

(6) The credit union's promotional material clearly explains the credit union's limited role in the service; and

(7) The credit union's promotional material clearly explains that the transactions are not federally insured.

KEY: credit unions
December 2, 1997 **7-1-301(3)**
Notice of Continuation October 6, 1997

R339. Financial Institutions, Industrial Loan Corporations.
R339-11. Discount Securities Brokerage Service by Industrial Loan Corporations.
R339-11-1. Authority, Scope, and Purpose.

(1) This rule is issued pursuant to Subsection 7-1-301(3).

(2) This rule governs the type of securities brokerage service industrial loan corporations may offer.

(3) The purpose of this rule is to allow securities activities limited to "discount brokerage" services by industrial loan corporations, similar to the discount brokerage services allowed state chartered banks.

R339-11-2. Definitions.

"Discount brokerage" is the practice of executing securities transactions solely at the direction of an industrial loan customer but not providing that customer with any investment advice.

R339-11-3. Discount Brokerage Services.

An industrial loan corporation may enter into a contractual arrangement with unrelated discount brokers where the broker executes securities transactions for industrial loan corporation customers and the industrial loan corporation shares the commissions generated by the transaction. This service is restricted as outlined below:

(1) The industrial loan corporation clearly acts solely at the customer's direction;

(2) The transactions are for the account of the customer and not the account of the industrial loan corporation;

(3) The transactions are without recourse;

(4) The industrial loan corporation makes no warranty as to the performance or quality of any security;

(5) The industrial loan corporation does not advise customers to make any particular investment;

(6) The industrial loan corporation's promotional material clearly explains the industrial loan corporation's limited role in the service; and

(7) The industrial loan corporation's promotional material clearly explains that the transactions are not federally insured.

KEY: financial institutions
December 2, 1997 **7-1-301(3)**
Notice of Continuation October 6, 1997

R380. Health, Administration.

R380-50. Local Health Department Funding Allocation Formula.

R380-50-1. Authority and Purpose.

(1) This rule is being promulgated under the authority of Section 26A-1-116, which directs the Utah Department of Health to establish by rule a formula for allocating funds by contract to local health departments.

(2) This rule specifies the formula for allocating state-appropriated funds to local health departments by contract.

R380-50-2. Definitions.

(1) "Contract" means the Public Health Services Contract between the Utah Department of Health and the local health departments through which state block grant funds are distributed.

(2) "District Incentive" means funds allocated to local health departments to encourage them to form and maintain multi-county health departments.

(3) "Funds" means the State General Funds allocated by the Legislature to the Utah Department of Health for distribution to local health departments by contract.

(4) "Local Health Department" means a local health department established under Section 26A-1-102(5).

(5) "Total Poverty Population" means the population in a county that is living below the poverty level established by the United States Government Census Bureau reported by Utah Job Service.

(6) "Total State Population" means the population figures by county as provided by the State Office of Planning and Budget.

R380-50-3. Allocation Procedures.

(1) By a three-fourths vote of its members, the Utah Association of Local Health Officers may, in cooperation with and subject to the approval of the Department of Health, allocate a portion of the funds as necessary to support basic public health programs within every local health department that benefit and are available to all residents of the state. In allocating this portion, no local health department may receive less than it received in the prior year, except for years in which the state funding is decreased.

(2) The Utah Department of Health finds that population is not the sole relevant factor in determining need and adopts the following formula pursuant to Section 26A-1-116 for allocating to local health departments the funds that remain after the allocation in Subsection R380-50-3(1):

(a) District Incentive Factor: local health departments consisting of at least two counties shall receive 25.29% in accordance with the number of counties within the geographical boundaries of the local health department as follows:

(i) Local health departments with two counties shall receive 10.34% of this amount.

(ii) Local health departments with three counties shall receive 13.79% of this amount.

(iii) Local health departments with four counties shall receive 17.24% of this amount.

(iv) Local health departments with five counties shall receive 20.69% of this amount.

(v) Local health departments with six counties shall receive 24.14% of this amount.

(b) Population Factor: local health departments shall receive 28.04% according to the percentage of the total state population living within the geographical boundaries of the local health department.

(c) Poverty Population Factor: local health departments shall receive 23.34% according to the percentage of the total poverty population of the state living within the geographical boundaries of each local health department.

d. Square Mile Factor: local health departments shall receive 23.33% according to the percentage of the total square miles in the state lying within the geographical jurisdiction of each local health department.

KEY: health, local government, funding formula*
1993 26A-1-116
Notice of Continuation December 23, 1997

R410. Health, Health Care Financing.
R410-14. Division of Health Care Financing Administrative Hearing Procedures for Medicaid/UMAP Applicants, Recipients and Providers, and Non-Medicaid/UMAP Nursing Home Residents as per "OBRA" Preadmission Screening and Annual Resident Review (PASARR) Determinations/Resident Rights Requirements.
R410-14-1. Policy Statement.

(1) It is the policy of the Division of Health Care Financing to resolve disputes at the lowest level. The following rules are not meant to foreclose the Division's preference for informal resolutions through open discussion and negotiation between the Division, and applicants, recipients and providers, and all other statutorily/regulatorily interested parties.

R410-14-2. Administrative Hearing Procedures Provide.

(1) HEARING PROVISION.

(a) Hearing Responsibility.

(i) Classification of Hearing.

(A) Formal Hearings. In accordance with Section 1902(a)(3) of the Social Security Act, 42 Code of Federal Regulations (CFR) Part 431, Subpart E, Sections 26-1-4.1 and 26-23-2, and 63-46b-1, et seq., all Title XIX (Medicaid)/Utah Medical Assistance Program (UMAP) recipients or providers (and applicants under certain circumstances) aggrieved by any action or inaction of the Department of Health (DOH), Division of Health Care Financing (DHCF), will be given an opportunity for a hearing upon written request. All hearings before the Division of Health Care Financing except as otherwise set forth shall be conducted as a formal hearing.

(B) PASARR Hearings. As provided by Section 4211 of the Omnibus Budget Reconciliation Act of 1987 (OBRA), which amended Title XIX of the Social Security Act by adding Section 1919 to the "Act," all residents and potential residents of a nursing facility (whether Medicaid eligible or otherwise) who disagree with the pre-admission screening and appropriateness of placement decision made by the Division of Health Care Financing, shall be given an opportunity for a hearing upon written request. All such PASARR hearings as set forth above shall be conducted as a formal hearing.

(C) Nurse Aide Registry Hearings. As provided by Section 4211 of the Omnibus Budget Reconciliation Act of 1987 (OBRA), which amended Title XIX of the Social Security Act by adding Section 1919 to the "Act," all nurse aides employed by a certified nursing facility who have successfully completed and passed the nurse aide training and competency evaluation program, or both, shall be identified on a nurse aide registry. In addition, such nurse aides shall be subject to investigation upon allegations of resident abuse, neglect, or misappropriation of resident property. The Division of Health Care Financing or its designated agents shall be responsible for investigating such complaints. Before a substantiated claim can be entered into the registry, the nurse aide, upon written request, shall be entitled to a hearing to be conducted by the Division of Health Care Financing or its designated agents. All such nurse aide registry hearings as set forth above shall be conducted as a formal hearing.

(D) Skilled Nursing Facility (SNF), Intermediate Care Facility (ICF) or Intermediate Care Facility/Mentally Retarded (ICF/MR) Hearings. As provided by 42 CFR 431, Subpart D the Division of Health Care Financing must, for any SNF, ICF and ICF/MR, provide for appeals procedures that, as a minimum, satisfy the requirements of 42 CFR 431.153 through 431.155. Such hearings shall be conducted as a formal hearing in accordance with R410-14-2(1)(a)(i)(A).

(E) Informal Hearings. "Residents' Rights Hearings." As provided by Section 4211 of the Omnibus Budget Reconciliation Act of 1987 (OBRA), which amended Title XIX of the Social Security Act by adding Section 1919 to said "Act," all residents of a nursing facility (whether Medicaid eligible or otherwise) have been granted certain specific "residents' rights" and may be aggrieved by action or inaction of a nursing facility in the meeting of those rights. Responsibility for enforcing nursing home compliance with the residents' rights requirement rests with the Division of Health Care Financing. All "resident rights" hearings shall be conducted as an informal hearing.

(ii) A hearing is not required and will not be granted to an applicant, recipient or provider if the sole issue is a federal or state law or policy requiring an automatic change in covered services adversely affecting some or all applicants, recipients or providers (42 CFR 431.220).

(b) Applicability.

(i) EXCEPT AS SPECIFIED HEREIN, THESE PROVISIONS ONLY APPLY TO TITLE XIX MEDICAID/UMAP RECIPIENTS OR PROVIDERS. These rules do not apply to initial applications for medical assistance. A Medicaid/UMAP applicant who has been denied eligibility for medical assistance through the local Office of Community Operations (OCO), Assistance Payments Administration (APA), Department of Social Services (DSS), must submit a written request for an eligibility determination hearing to: The Department of Social Services, Office of Administrative Hearings, P. O. Box 45500, Salt Lake City, Utah 84145-0500 or the applicant may deliver the written request in person to the local OCO.

(c) Eligibility Hearing for both Non-Medical Assistance AND Medical Assistance.

(i) If eligibility for a non-medical assistance program in addition to Medicaid/UMAP is at issue, the Medicaid/UMAP eligibility determination hearing shall be conducted by the Department of Social Services through the Office of Administrative Hearings. Requests for such hearings shall be sent to the address in R410-14-2(1)(b)(i). All such hearings shall be conducted according to DSS hearing rules. DSS shall propose a recommended decision concerning the medical assistance issue only and shall submit it to the Executive Director of DOH or his designated representative for agency review. Thereafter the recommended decision shall be handled in accordance with Sections 63-46b-12 and 63-46b-15.

(d) Eligibility Hearing For Medical Assistance Only.

(i) All requests for hearings to consider eligibility as to medical assistance only, shall be forwarded by DSS to DHCF. A formal hearing in accordance with the hearing procedures herein shall be conducted by DHCF.

(e) Definitions.

(i) The definitions of the Utah Administrative Procedure Act (UAPA), Section 63-46b-1, et seq., as set forth in Section 63-46b-2 apply to this rule.

(ii) "Action" means a denial of Medicaid/UMAP eligibility as regards an applicant; denial, termination, suspension, or reduction of Medicaid/UMAP covered services in the case of recipients; or, a reduction or denial of reimbursement for such services, findings of licensing survey deficiencies requiring a Plan of Correction, failure of DHCF to accept a Plan of Correction required by licensing, or other sanctions as set forth in "DHCF ADMINISTRATIVE SANCTIONS PROCEDURES AND GUIDELINES", R414-22, in the case of providers.

(iii) "Aggrieved Person" means any applicant, recipient or provider aggrieved by any action or inaction of DHCF.

(iv) "Date of Action" means the date on which a denial of eligibility for, termination, suspension or reduction of Medicaid/UMAP covered services becomes effective, in the case of applicants or recipients; or, in the case of providers the date on which:

(A) A reduction or denial or reimbursement or sanction becomes effective;

(B) Notice is given of licensing survey deficiencies; or

(C) Notice is given that DHCF will not accept a plan of correction of survey deficiencies required by licensing.

(v) "Division Director" means the Director of the Division of Health Care Financing of the Utah Department of Health or his designated and authorized representative.

(vi) "Executive Director" means the Executive Director of the Utah Department of Health or his designated and authorized representative.

(vii) "Formal Hearing" means a hearing before a hearing officer, conducted in accordance with Title 63, Chapter 46b.

(viii) "Informal Hearing" means a hearing before a hearing officer, conducted in accordance with Sections 63-46b-5, and Section 63-46b-11 through 63-46b-15. Except as by implication and context, no further specific procedural or appellate references regarding an "Informal Hearing" shall be had in this present rule, as Sections 63-46b-5, and Section 63-46b-11 through 63-46b-15 are to be controlling, except specifically R410-14-2(1)(e)(xi), below, as to the definition of "Request for an Informal Hearing".

(ix) "Notice" means a written statement of the action DHCF intends to take, the reasons for the intended action, the specific regulations that support (or the change in federal or state law that requires) the action, the right to a hearing when applicable, the procedure to obtain a hearing, and an explanation of the circumstances under which Medicaid/UMAP benefits or reimbursement will be continued if a hearing is requested.

(x) "Request for a Formal Hearing" means a clear expression in writing which meets the criteria of a "Request for Agency Action" as set forth by Section 63-46b-3 by an aggrieved person or authorized representative.

(xi) "Request for an Informal Hearing" means a clear expression in writing which meets the criteria of a "Request for Agency Action" as set forth by Section 63-46b-3 by an aggrieved person or authorized representative.

(f) Notice.

(i) When Notice Required.

(A) Each individual who is affected by an adverse action taken by DHCF will be given advance notice of such action in accordance with R410-14-2(1)(f)(iii).

(ii) A notice under this section must contain:

(A) a statement of the action DHCF intends to take;

(B) the date the intended action takes effect;

(C) the reasons for the intended action;

(D) the specific regulations that support, or the change in federal or state law or policy, that requires the action;

(E) the aggrieved person's right to request a formal hearing before DHCF, when applicable, and the method by which such hearing may be obtained from DHCF;

(F) a statement that the aggrieved person may represent himself or use legal counsel, relative, friend or other spokesman at the formal hearing; and,

(G) an explanation of the circumstances under which Medicaid/UMAP coverage or reimbursement will be continued if a formal hearing is timely requested.

(iii) DHCF will mail an advance notice at least ten calendar days before the date of the intended action EXCEPT as noted below:

(A) DHCF may mail a notice not later than the date of action if:

DHCF has factual information confirming the death of a recipient/provider;

DHCF receives a clear written statement signed by a recipient/provider that:

he no longer wishes services or reimbursement, or

gives information that requires termination or reduction of services or reimbursement and indicates that he understands that this must be the result of supplying that information;

the recipient has been admitted to an institution where he is ineligible under the State Plan for further services;

the recipient/provider's whereabouts are unknown and the Post Office returns DHCF mail directed to him indicating no forwarding address;

DHCF establishes the fact that the recipient has been accepted for Medicaid/UMAP services by another local jurisdiction, State, Territory or Commonwealth;

a change in the level of medical care is prescribed by the recipient's physician; or

a termination, suspension or reduction of Medicaid/UMAP covered services or reimbursement is necessitated by an imminent peril to the public health, safety, or welfare.

(B) DHCF may shorten the period of advance mailed notice to five days before the date of action if:

DHCF has facts indicating that action should be taken because of probable fraud by the applicant/recipient/provider; and

the facts have been verified, by affidavit, if possible.

(g) Request for Formal Hearing and Agency Response.

(i) Formal hearings are held for "medical assistance only" issues. If an aggrieved person's request for an eligibility hearing concerns both non-medical assistance and medical assistance, he should refer to R410-14-2(1)(c)(i), above. An aggrieved person may request a formal hearing within the following deadlines, depending upon the type of request:

(A) An aggrieved UMAP or Medicaid provider may request a formal hearing within 30 calendar days from the date written notice is issued or mailed, whichever is later, by DHCF of an action or inaction.

(B) An aggrieved Medicaid applicant or recipient may request a formal hearing regarding eligibility for "medical

assistance only" within 90 calendar days from the date written notice is issued or mailed, whichever is later, by DHCF of an action or intended action.

(C) An aggrieved UMAP applicant or recipient may request a formal hearing regarding eligibility within 90 calendar days from the date written notice is issued or mailed, whichever is later, by DHCF of an action or intended action.

(D) An aggrieved UMAP or Medicaid applicant or recipient may request a formal hearing regarding scope of service within 30 calendar days from the date written notice is issued or mailed, whichever is later, by DHCF of an action or intended action.

(ii) Failure to submit a timely request for a formal hearing will constitute a waiver of a person's formal hearing or pre-hearing rights. A request for a hearing shall be in writing, shall be dated, and shall explain the reasons for which the hearing is requested. An aggrieved person may use the hearing request form which is attached to all negative eligibility action notices, or the form which is provided in Attachment "A," which is entitled "Requests for Hearing/Agency Action." DHCF will provide copies of the form in Attachment A to all interested persons.

(iii) The address for submitting a "Request for Hearing/Agency Action" for: (a) Medicaid or UMAP providers; and (b) Medicaid or UMAP scope of service hearings is as follows:

Division of Health Care Financing
Attention: Formal Hearings
P.O. Box 16580
Salt Lake City, Utah 84116-0580

(iv) The address for submitting a "Request for Hearing/Agency Action for Medicaid and UMAP applicants regarding eligibility issues is:

The Department of Social Services
Office of Administrative Hearings
P.O. Box 45500
Salt Lake City, Utah 84145-0500

(v) Requests for formal hearing will be docketed and scheduled within 30 calendar days. DHCF as respondent shall schedule a hearing or begin negotiations in the matter in writing within 30 days of the date of issuance of the request for formal hearing or agency action.

(h) DOH or DHCF may deny or dismiss a request for a formal hearing if:

(i) The aggrieved person withdraws the request in writing;

(ii) The aggrieved person fails to appear at a scheduled hearing without good cause; or

(iii) The provider fails to allow DHCF access to its records pursuant to R410-14-3.

(iv) Reinstatement/Continuation of Services.

(A) DHCF may reinstate services for recipients or suspend any adverse action for providers as defined in R410-14-2(1)(e)(ii) if an aggrieved person requests a formal hearing not more than ten calendar days after the date of action.

(B) DHCF must reinstate or continue services for recipients or suspend adverse actions for providers until a decision is rendered after a formal hearing if:

adverse action is taken without giving the ten day advanced mailed notice to a recipient/provider in all circumstances where such advance notice is required;

in those circumstances where advance notice is not required, as set forth in R410-14-2(1)(f)(iii)(A), the aggrieved person requests a formal hearing within ten calendar days following the date the adverse action notice is mailed; or

DHCF determines that the action resulted from other than the application of federal or state law or policy.

(C) DHCF may proceed with its intended action if: the aggrieved person withdraws his request for either a formal hearing in writing; or, the aggrieved person prolongs the hearing process without good cause; or, a recipient's whereabouts are unknown, as indicated by the return of agency mail directed to him which is not forwardable.

(j) Formal Hearing

(i) A request for a formal hearing must be made to the Division of Health Care Financing, 288 North 1460 West, P. O. Box 16580, Salt Lake City, Utah 84116-0580, Attention: "Formal Hearings."

(ii) Notice of Formal Hearing.

(A) DHCF shall notify the aggrieved person or his attorney, in writing, of the date, time and place of the hearing. Notice shall be mailed not less than ten calendar days before the scheduled date of the formal hearing.

(iii) Form of Papers. All papers to be filed in a formal hearing shall:

(A) Be typewritten or legibly hand-written;

(B) Bear a caption clearly showing the title of the hearing;

(C) Bear the docket number, if any;

(D) Be dated and signed by the party or his authorized representative and shall contain his address and telephone number; and

(E) Consist of an original and two copies filed with DHCF.

(iv) Hearings may be delayed until the requirements of this section are met.

(v) Service.

(A) The party filing papers and documents shall serve them upon all parties to the formal hearing. Proof of service shall be filed with DHCF.

(B) Service shall be personally delivered or by mail, properly addressed with postage prepaid, one copy to each party entitled thereto. When a party is represented by an attorney, service upon the attorney shall be determined as sufficient service upon the party or parties.

(C) Proof of service shall be by certificate, affidavit or acknowledgment.

(D) Wherever notice by DHCF is required, notification shall be effective upon the date of first class mailing to a party's residence or business address.

(E) In addition to the methods set forth in these rules, a party may be served in any manner permitted by law.

(vi) As permitted by Section 63-46b-10, intervention will be permitted provided the following requirements are met:

(A) Persons desiring to intervene in a formal hearing must petition for leave to intervene at least seven days before the scheduled hearing, unless otherwise permitted by the hearing officer.

(B) The petition must contain a clear and concise statement of the direct and substantial interest of the person

seeking leave to intervene in the hearing.

(C) Persons seeking affirmative relief shall state the basis of such relief.

(D) Other parties to the hearing must have an opportunity to support or oppose intervention.

(E) The hearing officer may grant leave to intervene subject to such reasonable conditions as he may prescribe. An intervenor may be dismissed from the hearing if it appears that he has no direct or substantial interest in the hearing.

(vii) Conduct of Hearing.

(A) Formal hearings shall be conducted by an impartial hearing officer who is appointed by DOH. The hearing officer shall be empowered with such authority as granted by Section 63-46b-1, et seq., except as may be limited by these rules. No hearing officer shall have been directly involved in the initial determination of the action in question.

(B) All formal hearings shall be conducted only after adequate written notice of the hearing has been served on all parties setting forth the time, date and place of the hearing.

(C) Testimony shall be taken under oath or affirmation administered by the hearing officer.

(D) Each party shall have the right to: call and examine parties and witnesses; introduce exhibits; question opposing witnesses and parties on any matter relevant to the issue even though the matter was not covered in the direct examination; impeach any witness regardless of which party first called him to testify; and rebut the evidence against him.

(E) The rules of evidence as applied in civil actions in the courts of this state shall be generally followed in the hearings. Any relevant evidence may be admitted. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but shall not be sufficient by itself to support a finding unless it would be admissible over objection in civil actions. The hearing officer shall give effect to the rules of privilege recognized by law. Irrelevant, immaterial and unduly repetitious evidence shall be excluded.

(F) The hearing officer may order the taking of interrogatories and depositions and assess the expense to the requesting party if the hearing officer determined such to be proper.

(G) The hearing officer may question any party or witness and may admit any evidence he believes is relevant or material.

(H) The hearing officer shall control the taking of evidence in a manner best determined to be best suited to ascertain the facts and safeguard the rights of the parties. The hearing officer shall explain the issues and the order in which evidence will be received.

(I) A party has the burden of proving by a preponderance of the evidence whatever facts it must establish to sustain its position. A provider always has the burden of proof to show that services were, in fact, rendered as billed.

(J) The burden of proof as to a particular fact is on the party against whom a finding on that fact would be required in the absence of further evidence.

(viii) Ex Parte Communications

(A) Except as otherwise provided below, ex parte communications are prohibited.

(B) The hearing officer shall decline to listen to or accept any communication offered in violation of this rule and shall explain to the offeror that any communication received off the record and in violation of this rule must be made a part of the record and furnished to all parties.

(C) This rule shall NOT apply to: the disposition of ex parte matters authorized by law; or communications concerning status of the hearing and uncontested procedural matters.

(ix) Continuances or Further Hearings

(A) The hearing officer may continue a formal hearing to another time or place, or order a further hearing on his own motion or upon the showing of good cause, at the request of any party.

(B) Where the hearing officer determines that additional evidence is necessary for the proper determination of the case, he may at his discretion: continue the hearing to a later date and order the party to produce additional evidence; or close the hearing and hold the record open in order to permit the introduction of additional documentary evidence. Any evidence so submitted shall be made available to both parties and each party shall have the opportunity for rebuttal.

(C) Written notice of the time and place of a continued or further hearing shall be given in accordance with R410-14-2(1)(j)(ii)(A), except that when a continuance is ordered during a hearing and adequate oral notice is given.

(x) Record

A complete record of all formal hearings shall be made. The testimony shall be electronically recorded or memorialized by court reporter. The recording or memorialization shall be transcribed if requested by a party to the hearing. The requesting party shall pay the costs of transcription and for copying costs. At the conclusion of the formal hearing, the complete record of the hearing will be maintained in a secured area and shall be considered the sole property of DHCF. DHCF or its designated agent will retain electronic recordings/memorialization of formal hearings for a period of one year. Written records and documents will be retained for a period not to exceed three years.

(xi) Proposed Decision and Final Agency Review

(A) At the conclusion of the formal hearing, the hearing officer shall take the matter under advisement and shall submit to the Executive Director of DOH a proposed decision, based on the evidence and testimony introduced at the hearing.

(B) The proposed decision shall be in writing and shall contain findings of fact and conclusions of law.

(C) The Executive Director of DOH may: adopt the proposed decision, or any portion of the decision; reject the proposed decision, or any portion thereof, and make his own independent determination based upon the record; or remand the matter to the hearing officer to take additional evidence; and the hearing officer thereafter shall submit to the Executive Director of DOH a new proposed decision.

(D) Review by the Executive Director constitutes agency review and final administration action, and is subject to judicial review in accordance with the procedures set forth in R410-14-2(1)(j)(xiii).

(E) The aggrieved person or his representative shall be notified of the final administrative action and the aggrieved person's right to judicial review of the action.

(F) When the final administrative action is favorable to the aggrieved person, DHCF shall promptly take corrective action.

(G) Subject to provisions for safeguarding confidential information, all hearing decisions shall be kept on file for public inspection.

(xii) Agency Review.

(A) Reconsideration. Section 63-46b-13 applies.

(xiii) Judicial Review

(A) Judicial review of a final agency action may be secured by the aggrieved party by filing a petition in the Utah Court of Appeals within 30 days after issuance of the Executive Director's final administrative action. The petition shall be served upon the Executive Director and shall state the grounds upon which review is sought. The Executive Director shall file with his Answer certified documents, papers, transcripts of all testimony taken in the matter, recommended findings of fact and conclusions of law of the hearing officer and the final administrative action of the Executive Director.

(B) Judicial review of final administrative action is governed by Section 63-46b-16 and Section 63-46b-1, and Section 78-2a-3.

R410-14-3. Discovery.

(1) DISCOVERY PROVISIONS

(a) The Utah Rules of Civil Procedure are inapplicable to these proceedings and no formal discovery except as set forth hereinafter shall be permitted.

(b) Unless otherwise limited by order of the hearing officer, the scope of discovery in formal adjudicative proceedings shall be as follows:

(i) Review of Applicant/Recipient and Provider Records

(A) DHCF shall be permitted to review all records which are pertinent to the hearing which are in the custody or control of the applicant or recipient and their health care providers. DHCF shall give at least three days' written notice to the custodian of such document(s).

(B) DHCF shall be allowed to inspect a provider's records which are pertinent to the hearing. Inspection shall be made at the provider's business office during regular working hours and after at least three days written notice.

(ii) Review of DHCF Records and Files

(A) Before the formal hearing and upon prior written request, the aggrieved person or his representative will be permitted to examine all documents and records to be used by the state at the formal hearing, not later than three days before the formal hearing. The aggrieved party may request the Medicaid Management Information System (MMIS) claim file. This will be available for review 15 calendar days after DHCF receives a written request for the information.

(B) At the formal hearing the aggrieved person or his representative will be given an opportunity to: examine the aggrieved person's case file and all documents and records to be used by DHCF at the hearing; bring witnesses to the hearing; and establish all pertinent facts and circumstances.

(iii) Pre-hearing Procedure

(A) The hearing officer may elect to hold a pre-hearing meeting for any of the following reasons: to formulate or simplify the issues; to obtain admissions of fact and documents which will avoid unnecessary proof; to arrange for the exchange of proposed exhibits or prepared expert testimony; to outline procedures to be followed, at the formal hearing; or to agree to such other matters as may expedite the orderly conduct of the hearing or the settlement thereof.

(B) Agreements reached during the conference shall be recorded or the parties may enter into a written stipulation or agree to a statement made on the record by the hearing officer.

(iv) Interrogatories, Depositions and Requests for Admissions

(A) The hearing officer may order the taking of interrogatories and depositions, and set appropriate time-frames, assess sanctions for non-compliance, and assess the expense to the requesting party if the hearing officer determines such to be proper.

(B) The hearing officer may permit the filing of Requests for Admission, set appropriate time-frames for responses, and assess sanctions for non-compliance.

(v) Medical Examination

(A) The hearing officer may order at DHCF expense a medical assessment in order to obtain information necessary for a fair decision. This information subject to confidentiality requirements shall be made a part of the formal hearing record.

(vi) Witnesses and Subpoenas

(A) A party shall arrange for the presence of his witnesses at the hearing.

(B) A subpoena to compel the attendance of a witness or the production of evidence may be issued by the hearing officer, upon written request by a party and a sufficient showing of need.

(C) A subpoena may also be issued by the hearing officer on his own motion.

(D) An application for subpoena duces tecum for the production by a witness of books, papers, correspondence, memoranda, or other records shall be made by affidavit to the hearing officer. The application must include: the name and address of the person or entity upon whom the subpoena is to be served; a description of the documents, papers, books, accounts, letters, photographs, objects, or tangible things not privileged, that which the applicant seeks; a showing of the materiality to the issue involved in the hearing; and a statement by the applicant that to the best of his knowledge the witness has such items in his possession or under his control.

(E) The applicant shall arrange to have all subpoenas served which the hearing officer issues to him. A copy of the affidavit presented to the hearing officer shall be served with the subpoena.

(F) Except for employees of DOH, witnesses subpoenaed for any hearing are entitled to appropriate fees and mileage. The witness shall file a written demand for the fees with the hearing officer not later than ten days after the date the witness appeared at the hearing.

(vii) Sanction by Hearing Officer

(A) The hearing officer may sanction or penalize any party that fails to obey an order entered by the hearing officer.

R410-14-4. Declaratory Orders.

(1) As required by Section 63-46b-21, this rule provides for procedures for requesting of DOH through DHCF for the issuance of a declaratory order determining the applicability of a statute, rule, or order to specified circumstances.

(a) DEFINITIONS

(i) "Agency" means the Division of Health Care Financing, Utah Department of Health.

(ii) "Applicability" means a determination of whether a statute, rule, or order should be applied, and if so, how the law as stated should be applied to specific facts and circumstances.

(iii) "Declaratory Ruling" means an administrative interpretation or explanation of rights, status, and or other legal relations under a specific statute, rule, or order.

(iv) "Order" means an agency action of particular applicability that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more specific persons, not a class of persons.

(b) PETITION PROCEDURE

(i) Any person or agency may petition for an Agency declaratory ruling.

(ii) The petition shall be addressed and delivered to the Director of DHCF.

(iii) The Agency shall stamp the petition with the date of receipt.

(c) PETITION CONTENTS

(i) The petition shall:

(A) Be clearly designated as a petition for Agency declaratory ruling;

(B) Identify the specific statute, rule, or order to be reviewed;

(C) Describe the situation or circumstances in which applicability is to be reviewed;

(D) Describe the reason or need for the applicability review;

(E) Include an address and a telephone number where the petitioner can be reached during regular work days and hours;

(F) Signed and dated by the petitioner; and

(G) Be in an order and form substantially like that of Attachment "B". Copies of approved forms to petition for declaratory orders are available from DHCF upon request.

(d) PETITION REVIEW AND DISPOSITION

(i) DHCF through the Executive Director of DOH or his designated and authorized representative within DHCF shall:

(A) Review and consider the petition; and

(B) As appropriate in his discretion issue a declaratory ruling setting forth: the applicability or non-applicability of the specific statute, rule, or order at issue; the reasons for the applicability or non-applicability of the specific statute, rule, or order; and any requirements imposed on the Agency, the petitioner, or any other person as a result of the ruling.

(ii) The Director of DHCF or his designated and authorized representative as authorized by the Executive Director may as appropriate:

(A) Interview the petitioner;

(B) Consult with counsel or the Attorney General; or

(C) Take any action the Agency, in its judgment, determines necessary to provide that the petition receives adequate review and due consideration.

(iii) If DHCF has not issued a declaratory order within 60 days after receipt of the request, the petition is denied.

(iv) DHCF shall retain the request for declaratory ruling in its records.

(v) DHCF will not issue a declaratory order if an adjudicative proceeding involving the same parties and issue is pending before the Agency or the courts.

KEY: medicaid

1993	**26-1-4.1**
Notice of Continuation December 2, 1997	**26-1-5**
	26-18-3
	26-18-10
	26-23-2

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-2A. Inpatient Hospital Services.

R414-2A-100. Authority and Purpose.

(1) This rule defines the scope of inpatient hospital benefits available for the care and treatment of Medicaid clients who meet the level of care criteria for admission to an acute-care general hospital for treatment of disorders other than mental disease.

(2) Inpatient hospital services are required under Section 1901 et seq. and Section 1905(a)(1) of the Social Security Act, and by 42 CFR 440.10 (October 1, 1991, edition).

(3) This rule is authorized by Sections 26-1-5, 26-1-15, and 26-18-6, and by Subsections 26-18-3(2) and 26-18-5(3) and (4).

R414-2A-300. Program Access Requirements.

(1) Each hospital providing inpatient services must have a utilization review plan, as described in 42 CFR 482.30 (October 1, 1991, edition), which is incorporated by reference.

(2) The attending physician or other practitioner of the healing arts must sign a physician attestation statement that meets the requirements of 42 CFR 412.46 (October 1, 1991, edition), which is incorporated by reference.

(3) The attending physician must certify and recertify the need for inpatient care as described in 42 CFR 441.152 and 456.60 (October 1, 1991, edition), which are incorporated by reference.

(4) All hospital admissions are subject to review by the department for appropriateness and medical necessity as detailed in R414-2A.

(5) For purposes of reimbursement, the day of admission is counted as a full day; the day of discharge is not counted.

(6) When a patient receives SNF-level, ICF-level, or other sub-acute care in an acute-care hospital or in a hospital with swing-bed approval, payment shall be made at the SNF or ICF rate.

(7) Inpatient hospital psychiatric services are covered Medicaid services for clients who live in the counties identified in Table 1 only when such services are coordinated through the contractor identified for the specified county:

TABLE 1

I.	Counties:	Salt Lake County Summit County
	Contractor:	Salt Lake Valley Mental Health, Salt Lake City, Utah
II.	Counties:	Carbon County Emery County Grand County
	Contractor:	Four Corners Community Mental Health Center, Price, Utah
III.	Counties:	Beaver County Garfield County Kane County Iron County Washington County
	Contractor:	Southwest Utah Mental Health Center, St. George, Utah

R414-2A-400. Services.

(1) Inpatient hospital services encompass all medically necessary and therapeutic Medicaid services and supplies that are ordered by a physician or other practitioner of the healing arts and are appropriate for the adequate diagnosis and treatment of a patient's illness. These services include nursing, therapy services, use of hospital facilities, the technical portion of clinical laboratory and radiology services, and medical social services. These services shall be furnished by the hospital.

(2) Drugs and biologicals, approved by the federal Food and Drug Administration and appropriate for inpatient care, are covered Medicaid services based on individual need and a physician's written order.

(3) Supplies, appliances, and equipment required for the care and treatment of a client during an inpatient stay are covered Medicaid services based on individual need and a physician's written order.

(4) Inpatient hospital intensive physical rehabilitation services are covered Medicaid services, as specified in R414-2B.

(5) Organ transplantation services are covered Medicaid services, as specified in R414-10A.

(6) Inpatient hospital psychiatric services are covered Medicaid services only when the severity of a patient's illness and the intensity of service required are such that these services cannot be provided in an alternative setting.

(7) Cosmetic, reconstructive, or plastic surgery is limited to:

(a) correction of a congenital anomaly;

(b) restoration of body form following an accidental injury; or

(c) revision of severe disfiguring and extensive scars resulting from neoplastic surgery.

(8) Inpatient hospital care for treatment of alcoholism or drug dependency is limited to medical treatment of symptoms associated with drug or alcohol detoxification.

(9) Abortion procedures are limited to those certified as medically necessary, approved by division consultants, and determined to meet the requirements of Section 26-18-4 and 42 CFR 441.203 (October 1, 1991, edition), which is incorporated by reference.

(10) Sterilization and hysterectomy procedures are limited to those that meet the requirements of 42 CFR 441, Subpart F (October 1, 1991, edition), which is incorporated by reference.

R414-2A-500. Limitations.

(1) Treatment of syndromes or disorders for which no specific therapies have been identified except for therapies that border on behavior modification or experimental or unproven practices, or for which medical necessity, appropriate utilization, and cost effectiveness cannot be assured, are not covered Medicaid services. The treatments are:

(a) treatment of sleep apnea, or sleep studies, or both;

(b) pain clinic services;

(c) treatment of eating disorders.

(2) Miscellaneous supplies, dressings, durable medical equipment, and drugs are not covered take-home supplies.

(3) Cosmetic, reconstructive, and plastic surgery procedures other than those specified in R414-2A-400(7), including all related services, supplies, and any institutional costs, are not covered Medicaid services.

(4) An inpatient admission for 24 hours or more solely for observation or diagnostic evaluation is not a covered Medicaid service.

(5) Nonphysician psychosocial counseling services are not covered Medicaid services.

(6) An off-unit pass is limited to an inpatient rehabilitation or psychiatric admission pursuant to a written order by the attending physician, planned by the physician or interdisciplinary team through established goals and objectives, and adequately documented and evaluated in the progress notes of the patient's chart as supporting the patient's plan of care.

(7) A therapeutic leave of absence is limited to inpatient rehabilitation admissions pursuant to a written order by the attending physician, planned by the physician or interdisciplinary team through established goals and objectives, and adequately documented and evaluated in the progress notes of the patient's chart as supporting the patient's plan of care.

R414-2A-600. Prior Authorization.

(3) All services related to organ transplantations require prior authorization.

(4) All inpatient psychiatric and rehabilitation services require prior authorization.

KEY: medicaid

1992	**26-1-5**
Notice of Continuation December 2, 1997	**26-1-15**
	26-18-3(2)
	26-18-5(3)
	26-18-5(4)
	26-18-6

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-2B. Inpatient Hospital Intensive Physical Rehabilitation Services.

R414-2B-100. Authority and Purpose.

(1) This rule defines the scope of inpatient hospital intensive physical rehabilitation services available to Medicaid clients who meet the level of care criteria for admission to a distinct part rehabilitation unit in an acute-care general hospital.

(2) Inpatient hospital services are required under Section 1901 et seq. and Section 1905(a)(1) of the Social Security Act, and by 42 CFR 440.10 (October 1, 1991, edition). The requirement that inpatient hospital physical rehabilitation services covered by Utah Medicaid be provided in a distinct part rehabilitation unit of an acute-care general hospital brings rehabilitation service under this authority.

(3) This rule is authorized by Sections 26-1-5, 26-1-15, and 26-18-6, and by Subsections 26-18-3(2) and 26-18-5(3) and (4).

R414-2B-200. Definitions.

(1) Terms used in this rule are defined in R414-1-1 and R414-2A-200.

(2) In addition:

(a) "individualized treatment plan" means a coordinated, multidisciplinary plan of care developed:

(i) by a rehabilitation treatment team consistent with 42 CFR 412.29(d) and 42 CFR 456.80 (October 1, 1991, edition), which are incorporated by reference; and

(ii) in consultation with the patient, spouse, parents, legal guardian, or others into whose care the patient may be released;

(b) "inpatient hospital intensive physical rehabilitation" means an intense program of physical rehabilitation provided:

(i) in a distinct part rehabilitation unit of an acute-care general hospital;

(ii) by a multidisciplinary, coordinated team; and

(iii) for the purpose of upgrading a patient's ability to function;

(c) "multidisciplinary treatment team" means a group of professionals responsible for and involved in a patient's care, consisting of:

(i) a physician, a rehabilitation nurse, and a therapist; and optionally

(ii) one or more additional physicians, physiatrists, rehabilitation nurses, social workers, psychologists, or therapists;

(d) "program manager" means an individual assigned to:

(i) assume responsibility for implementation of a patient's individualized treatment plan;

(ii) ensure that the patient is adequately oriented to the rehabilitation program;

(iii) ensure that the patient's treatment proceeds in an orderly, purposeful, and goal-directed manner;

(iv) ensure program response to the needs and preferences of the patient;

(v) promote participation of the patient on an ongoing basis in discussion of plans, goals, status, etc.;

(vi) consistently participate in multidisciplinary team conferences concerning the patient; and

(vii) ensure that the discharge plan and arrangements for appropriate follow-up and supportive services are properly made.

R414-2B-300. Program Access Requirements.

(1) Hospital admission requirements for inpatient intensive physical rehabilitation services are specified in R414-2A-300. In addition, patient hospital intensive physical rehabilitation is a covered Medicaid service only when:

(a) the admission is the initial admission for rehabilitation service, or the admission results from a deterioration as a result of a secondary illness and an inpatient intensive physical rehabilitation program is needed to restore the level of function as closely as possible to the pre-secondary illness level;

(b) the patient requires close medical supervision by a physician with specialized training or experience in rehabilitation;

(c) the patient requires 24-hour-a-day nursing care or supervision by a registered nurse with specialized training or experience in rehabilitation;

(d) the severity of the patient's illness and the intensity of service required are such that these services cannot be provided in an alternative setting;

(e) the patient meets the admission criteria accepted by division staff and physician consultants for one of the categories

of trauma or disease specified in R414-2B-300(2).

(f) a multidisciplinary team approach is required for delivery of an intensive physical rehabilitation program;

(g) the patient's cognitive and sensory capacity will allow active participation by the patient in an intensive physical rehabilitation program; and

(h) a program manager is assigned, an estimated length of stay is documented in the medical record within 5 days of the client's admission to the hospital, and appropriate discharge planning, including home care assessment, is initiated.

(2) Inpatient hospital intensive physical rehabilitation services may be provided to Medicaid clients only when one or more of the following diagnoses is present:

(a) Stroke: neurological deficit secondary to recent cerebrovascular disease (i. e., thrombosis, aneurysm, hemorrhagic or embolic) resulting in disability requiring initial intensive treatment. Rehabilitation therapy must begin within 60 days from the onset of the stroke.

(b) Spinal cord injury: trauma resulting in quadriplegia or paraplegia requiring initial intensive inpatient physical rehabilitation therapy.

(c) Head injury or brain injury, or both: head trauma with documented neurological deficits requiring initial intensive inpatient physical rehabilitation therapy.

(d) Brain or spine surgery requiring post-surgery intensive inpatient physical rehabilitation therapy.

(e) One of the following diseases of the central nervous system manifested by debilitation of the neurological system or neuromuscular system, or both, requiring intensive inpatient physical rehabilitation therapy:

(i) Parkinson's disease;

(ii) multiple sclerosis;

(iii) post meningoencephalitis;

(iv) amyotrophic lateral sclerosis;

(v) myelopathy (i. e., transverse myelitis, infarction).

(f) One of the following neuromuscular diseases:

(i) myopathy;

(ii) myositis.

(g) One of the following diseases of the peripheral nervous system:

(i) Guillain-Barre syndrome;

(ii) subacute peripheral neuropathy;

(iii) chronic peripheral neuropathy.

(h) Amputation with complicating medical condition: loss of one or more extremities resulting in disability requiring an initial intensive physical rehabilitation program. Amputation alone does not qualify the patient for intensive physical rehabilitation. The complicating medical condition must be a separate disease process that requires the close attention and medical supervision of a physician.

(i) Fracture of the femur with a complicating medical condition. The fracture must be complex or unusual requiring initial intensive physical rehabilitation. The fracture alone does not qualify the patient for intensive physical rehabilitation. The complicating medical condition must be a separate disease process that requires the close attention and medical supervision of a physician.

(j) Arthritis and rheumatic diseases: muscular deficit or skeletal deficit, or both, secondary to rheumatic disease, e.g., rheumatoid arthritis, polymyositis, systemic lupus, or other connective tissue disease resulting in disability requiring an intensive physical rehabilitation program.

(k) Major multiple trauma: multi-system injury, from varying etiology, resulting in limitation or disability requiring an initial intensive physical rehabilitation program.

(l) Burns: limitation of function in the extremities as a result of burns involving at least 15% of the body.

(3) Coverage of inpatient hospital intensive physical rehabilitation service is limited to those cases for which an individualized treatment plan is developed by the physician and staff of the rehabilitation unit. The plan of care shall include all of the following:

(a) problems identified, specific patient care needs, and treatment or services to be provided;

(b) realistic, measurable, and time-specific long-term and short-term goals, based on the patient's needs and preferences;

(c) specific time intervals at which treatment or goals shall be reviewed;

(d) identification of time frames anticipated for accomplishment of the patient's specific treatment goals;

(e) measures to be used to assess the outcome of treatment or services;

(f) name and title of the treatment team member identified as the program manager for the individual patient; and

(g) written identification, including name and title, of the team members or other individuals responsible for implementing, documenting, and monitoring progress for each element of the individualized treatment plan.

(4) Inpatient hospital intensive physical rehabilitation services for a patient who has suffered a stroke or other cerebral vascular accident may be provided only for those patients where admission and therapy is initiated within the first 60 days after onset of the incident.

(5) Inpatient hospital intensive physical rehabilitation services shall be supported in the patient's medical record showing evidence that team conferences are held every two weeks. The team conferences shall:

(a) address the patient's progress or the problems impeding progress;

(b) consider possible resolutions to such problems; and

(c) reassess the validity of the rehabilitation goals initially established.

(6) Inpatient intensive physical rehabilitation services shall be limited in amount, duration, and scope to that which is medically necessary and reasonable to accomplish the purpose and objectives of rehabilitation.

R414-2B-500. Miscellaneous Restrictions.

(1) An off-unit pass must be:

(a) ordered by the attending physician;

(b) adequately documented and evaluated in the progress notes of the patient's chart as supporting the patient's individualized treatment plan; and

(c) for the purpose of testing the patient's readiness for discharge and ability to function outside the institutional setting.

(2) A therapeutic leave of absence must be:

(a) ordered by the attending physician;

(b) planned by the physician or interdisciplinary team

pursuant to established goals and objectives working toward discharge; and

(c) adequately documented and evaluated in the progress notes of the patient's chart as supporting the patient's individualized treatment plan.

R414-2B-600. Prior Authorization.

(1) All inpatient hospital intensive physical rehabilitation services require prior authorization, as follows:

(a) The provider must make an initial telephone request for prior authorization of service to the Bureau of Managed Health Care, Utilization Management Unit, no later than the fifth working day following admission of the patient into an inpatient hospital intensive physical rehabilitation program.

(b) The provider must submit written documentation from the patient's medical record to justify and support initial information provided at the time of the initial telephone contact. The provider shall submit written documentation postmarked no later than the tenth working day following admission of the patient into an inpatient hospital intensive physical rehabilitation program. The documentation must indicate all of the following:

(i) the diagnosis and rehabilitation needs meet the established admission criteria specified in R414-2A-300 and R414-2B-300.

(ii) clear and convincing evidence that the patient's rehabilitation needs cannot be met in a less restrictive setting;

(iii) a reasonable expectation of improvement in the patient's ability to perform activities of daily living that will be of significant practical value when measured against the documented condition at the time of the initial evaluation;

(iv) the plan of care is directed toward restoring function rather than toward maintenance of function; and

(v) the patient requires a coordinated program of care and will receive physical, occupational, or speech therapy services, or all three, for at least three hours per day, no fewer than 5.5 days per week (total of 16.5 hours per week minimum), in addition to any other rehabilitative modalities determined to be necessary.

KEY: medicaid
1992 26-1-5
Notice of Continuation December 5, 1997 26-18-3(2)

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-3A. Outpatient Hospital Services.
R414-3A-100. Authority and Purpose.

(1) This rule defines the scope of outpatient hospital services available to Medicaid clients.

(2) Outpatient hospital services are required under Section 1901 et seq. and Section 1905(a)(2) of the Social Security Act, and by 42 CFR 440.20 (October 1, 1991, edition).

(3) This rule is authorized by Sections 26-1-5, 26-1-15, and 26-18-6, and by Subsections 26-18-3(2) and 26-18-5(3) and (4).

R414-3A-200. Definitions.

(1) Terms used in this rule are defined in R414-1-1.

(2) In addition:

(a) "CHEC" stands for Childhood Health Evaluation and Care, which is the Utah-specific term for the federally mandated program of early and periodic screening, diagnosis, and treatment for children under the age of 21;

(b) "covered Medicaid service" means a service available to the eligible Medicaid client within the constraints of Medicaid policy and criteria for approval of the service;

(c) "Emergency Services Only Program" refers to a health program designed to cover a specific range of emergency services;

(d) "EPSDT" stands for Early and Periodic Screening, Diagnosis, and Treatment, which is a federal program applicable to children under age 21;

(e) "other practitioner of the healing arts" means a doctor of osteopathy, doctor of dental surgery or dental medicine, or doctor of podiatric medicine;

(f) "outpatient" means an individual who is receiving professional services at a hospital, or distinct part of a hospital, that is not providing professional services and room and board on a continuous 24-hour-a-day basis;

(g) "outpatient hospital" or "hospital" means a facility that:

(i) is in, or physically connected to, a hospital licensed by the department as a general hospital, as defined by Section 26-21-2(8), and meets the standards set forth in R432-100 and 42 CFR Part 482 (October 1, 1991, edition);

(ii) meets the requirements for participation in the Medicare program; and

(iii) has a current provider agreement with the department;

(h) "personal supervision" means critical observation and guidance by a physician of a nonphysician's activities within the nonphysician's licensed scope of service;

(i) "prior authorization" means the degree of Medicaid agency approval for payment of services that a provider is required to obtain before providing services;

(j) "take-home supplies" means any medical supplies or equipment to be utilized by the patient at home for follow-up care.

R414-3A-300. Program Access Requirements.

(1) Outpatient hospital services may be provided only to a client who is under the care of a physician or other practitioner of the healing arts.

(2) Outpatient hospital services and supplies must be furnished:

(a) in a hospital;

(b) by hospital personnel;

(c) under hospital medical staff supervision; and

(d) according to the written orders of a physician or other practitioner of the healing arts.

(3) All outpatient hospital services are subject to review by the department.

(4) Outpatient hospital psychiatric services are covered Medicaid services for clients who live in the counties identified in Table 1 only when such services are coordinated through the contractor identified for the specified county:

TABLE 1

I.	Counties:	Salt Lake County Summit County
	Contractor:	Salt Lake Valley Mental Health, Salt Lake City, Utah
II.	Counties:	Carbon County Emery County Grand County
	Contractor:	Four Corners Community Mental Health Center, Price, Utah
III.	Counties:	Beaver County Garfield County Kane County Iron County Washington County
	Contractor:	Southwest Utah Mental Health Center, St. George, Utah

R414-3A-400. Services.

(1) Outpatient hospital services encompass medically necessary diagnostic and therapeutic services or supplies that are ordered by a physician or other practitioner of the healing arts and appropriate for the adequate diagnosis or treatment of a client's illness.

(2) Outpatient hospital services include:

(a) the service of nurses or other personnel necessary to complete the service and provide patient care during the provision of service;

(b) the use of hospital facilities, equipment, and supplies; and

(c) the technical portion of clinical laboratory and radiology services.

(3) Services associated with pregnancy, labor, and delivery are covered Medicaid services.

(4) Cosmetic, reconstructive, or plastic surgery is limited to:

(a) correction of a congenital anomaly;

(b) restoration of body form following an accidental injury; or

(c) revision of severe disfiguring and extensive scars resulting from neoplastic surgery.

(5) Abortion procedures are limited to those certified as medically necessary, approved by division consultants, and determined to meet the requirements of Section 26-18-4 and 42 CFR 441.203 (October 1, 1991, edition), which is incorporated by reference.

(6) Sterilization procedures are limited to those that meet the requirements of 42 CFR 441, Subpart F (October 1, 1991, edition), which is incorporated by reference.

(7) Outpatient hospital psychiatric services are limited to services provided in an outpatient unit of a hospital that is licensed or approved for psychiatric care.

(8) Nonphysician psychosocial counseling services shall be provided only by a licensed psychologist; and are limited to psychosocial evaluations for:

(a) mentally retarded persons;

(b) cases identified through a CHEC/EPSDT screening; or

(c) victims of sexual abuse.

(9) Occupational therapy is limited to cases identified and approved through a CHEC/EPSDT screening.

R414-3A-500. Limitations.

(1) Outpatient hospital services are limited to services accepted by the department as medically necessary and appropriate services and may exclude some unique services established by hospitals as outpatient services as set forth on the department prior approval list.

(2) Treatment of syndromes or disorders for which no specific therapies have been identified except for therapies that border on behavior modification or experimental or unproven practices, or for which medical necessity, appropriate utilization, and cost effectiveness cannot be assured, are not dovered Medicaid services. The treatments are:

(a) treatment of sleep apnea, or sleep studies, or both;

(b) pain clinic services;

(c) treatment of eating disorders.

(3) Miscellaneous supplies, dressings, and durable medical equipment are not covered take-home supplies.

(4) Outpatient prescriptions are not a covered Medicaid benefit for a patient with the designation "Emergency Services Only Program" printed on his Medical Identification Card.

(5) Cosmetic, reconstructive, and plastic surgery procedures other than those specified in R414-3A-400(4) are excluded from coverage, including all related services, supplies, and any institutional costs.

R414-3A-600. Prior Authorization.

(1) Selected medical and surgical procedures, documented in the Division of Health Care Financing Medical and Surgical Procedures Prior Authorization List, April 1, 1992, which is incorporated by reference and maintained in the Outpatient Hospital Provider Manual, require prior authorization. Some procedures on this list are also limited to place of service. This list defines the prior authorization requirements for specific procedures referenced in Subsections R414-3A-600(2), (3), and (4), and is updated yearly in accordance with the federally mandated Health Common Procedure Coding System (HCPCS) update and in accordance with R414-26. Other related documentation determined by the department to be necessary to determining the appropriateness and medical necessity of proposed services may be requested.

(2) Sterilization procedures require prior authorization and consent.

(3) Abortion procedures require prior authorization and consent.

(4) Outpatient hospital psychiatric services require prior authorization after the first 12 sessions per calendar year.

KEY: medicaid

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	26-18-3(2)
	26-18-5(3)
	26-18-5(4)
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R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-29. Client Review/Education and Restriction Policy.

R414-29-1. Introduction and Authority.

(1) The Client Restriction Program promotes the appropriate use of quality medical services by identifying and correcting overutilization of services.

(2) This rule is required by 42 CFR 431.54(e) and 456.3, 1994 ed.

R414-29-2. Definitions.

In addition to the definitions in R414-1-1, the following definitions apply to this rule:

(1) "Overutilize" means use of medical services at a frequency or amount that is above what is medically necessary.

(2) "Restriction Case Manager" means a Medical Doctor or Doctor of Osteopathy who agrees to become the primary medical care provider for all of a restricted client's non-emergency medical needs.

(3) "Restriction Pharmacy" means the only pharmacy that can receive Medicaid reimbursement for dispensing non-emergency pharmacy items to a restricted client.

R414-29-3. Notifying Clients of Overutilization of Services.

(1) The Department may require a client to participate in the Restriction Program based on the client's overutilization of services. The Department shall notify the client in writing of its determination. This notice shall:

(a) state the factors, or combination of factors, justifying Restriction Program participation;

(b) cite the regulation authorizing Restriction Program participation;

(c) invite the client to provide additional information justifying the use of services, within ten calendar days after the date the notice is issued;

(d) notify the client that, if he fails to submit additional written justification within ten calendar days after the date the notice is issued, the Department shall require his participation in the Restriction Program.

(e) invite the client to select a Restriction Case Manager and a Restriction Pharmacy;

(f) inform the client that if he fails to contact the Department with a choice within ten calendar days after the date the notice is issued, the Department shall assign a Restriction Case Manager and a Restriction Pharmacy without further notice.

(2) If the client submits additional information within ten calendar days after the notice is issued, the Department shall evaluate this information along with the original data, and notify the client in writing of the Department's determination.

(3) If the client disagrees with the determination, he may request a hearing. The Department shall provide the client with instructions on how to request a hearing, including a hearing request form.

R414-29-4. Restriction Case Manager.

The client may select a physician as a Restriction Case Manager if the physician agrees to serve in that capacity and if the Department accepts the physician as a Restriction Case Manager. The Restriction Case Manager must develop a written treatment plan the client understands and accepts.

R414-29-5. Restriction Pharmacy.

The client may select a pharmacy as a Restriction Pharmacy if the pharmacy agrees to serve in that capacity and if the Department accepts the pharmacy as a Restriction Pharmacy.

R414-29-6. Changes in Restriction Case Manager or Restriction Pharmacy.

(1) If the client requests a change in the Restriction Case Manager or the Restriction Pharmacy, the request must be in writing and must verify that the new Restriction Case Manager or Restriction Pharmacy agrees to be the client's Restriction Case Manager or Restriction Pharmacy.

(2) The Department must approve all changes in the Restriction Case Manager or the Restriction Pharmacy before the client may use a different Restriction Case Manager or Restriction Pharmacy. Circumstances under which the Department may approve such a change are:

(a) client, Restriction Case Manager, or Restriction Pharmacy moves location;

(b) Restriction Case Manager or Restriction Pharmacy discontinues or limits practice;

(c) Restriction Case Manager, or Restriction Pharmacy requests a change;

(d) Department Staff Physician recommends a change, when his periodic assessment of the use of services reveals indications of possible overutilization by the restricted client, the Restriction Case Manager, or both.

(3) The Department may mandate a change in the Restriction Case Manager or Restriction Pharmacy whenever it determines that the client:

(a) continues to overutilize services despite being under restriction; or

(b) is not receiving appropriate care while being managed by the Restriction provider.

R414-29-7. Length of Restriction.

(1) All clients shall continue participation in the Restriction Program until they have demonstrated they are not overutilizing services. If a client loses Medicaid eligibility, and subsequently re-establishes Medicaid eligibility, the Department shall automatically require the client's participation in the Restriction Program.

(2) The Department shall assess the client's use of services annually, based on the client's compliance with the Restriction Case Manager's written treatment plan and recommendations, and shall also use information such as:

(a) medical care obtained from multiple practitioners;

(b) prescriptions obtained from multiple practitioners;

(c) emergency rooms used for non-emergency services as defined in the Utah Medicaid Table of Authorized Emergency Diagnosis;

(d) use of multiple emergency rooms;

(e) concurrent use of medications in the same therapeutic class, when prescribed by different practitioners;

(f) indications of forged or altered prescriptions;

(g) use of medical services inconsistent with diagnosis;

(h) other patterns indicating overutilization.

KEY: medicaid

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Notice of Continuation December 2, 1997

R426. Health, Health Systems Improvement, Emergency Medical Services.

R426-1. Ambulance Rules.

R426-1-1. Authority and Purpose.

(1) This rule is established under Title 26, Chapter 8.

(2) The purpose of this rule is to provide for the establishment of uniform minimum standards to be met by those providing ambulance services in the state of Utah and for the control, inspection, and regulation of all persons performing these services and their ambulance equipment, so as to promote the health and safety of the people of this state.

R426-1-2. Definitions.

As used in rule R426-1:

(1) Advanced life Support Personnel means Emergency Medical Technicians or other persons certified by the Department, in accordance with R426-1, who provide advanced life support.

(2) Advanced Life Support means an advanced level of pre-hospital and inter-hospital emergency care that includes basic life support functions including cardiopulmonary resuscitation (CPR) plus some or all of the following techniques or procedures: cardiac monitoring, cardiac defibrillation, telemetered electrocardiography, administration of specific medications, drugs, and solutions, use of adjunctive medical devices, trauma care, and other techniques and procedures authorized by the committee.

(3) Agency means any department, division, board, council, committee, authority, or agency of the state of Utah, or any of its political subdivisions.

(4) Ambulance means any privately or publicly owned land vehicle designed, constructed, or modified and equipped and is intended to be used for and is maintained or operated for transportation upon the streets or highways, in this state of individuals who are sick, injured, wounded, or otherwise incapacitated or helpless.

(5) Ambulance Service means transportation and care of patients by ambulance.

(6) Basic Life Support means prehospital and interhospital emergency care which includes some or all of the techniques and procedures taught in a department approved Emergency Medical Technician-basic training course.

(7) Basic Life Support Personnel means Emergency Medical Technicians, emergency medical care first responders and other certified persons as specified by the committee who are engaged in the provision of basic life support.

(8) EMS Committee means the State Emergency Medical Services (EMS) Committee.

(9) Department means the Utah Department of Health.

(10) Director means the Director of the Department of Health.

(11) Emergency Medical Technician-Basic (EMT) means an individual who has completed a basic training program approved by the Department who is certified by the Department as qualified to render services enumerated in R426-1 in accordance with his level of training.

(12) Emergency Medical Technician-Intermediate (EMT-I) means an individual who has completed an advanced life support training program approved by the Department who is certified by the Department as qualified to render services enumerated in R426-1 in accordance with his level of training.

(13) Advanced Life Support Training Module means a skill enhancement training program developed by the Department and approved by the committee for use of EMTs and EMT-Is as specified under R426-1. Modules currently approved are:

(a) IV Infusion, with modular certification identified as IV, which includes pediatric vascular access.

(b) Defibrillation, including recognition of ventricular fibrillation and manual or automatic defibrillation with modular certification identified as D/(Manual or Automatic).

(14) EMT-Advanced means an EMT-I or an EMT with IV or D certification.

(15) EMT-Paramedic (EMT-P) means an Emergency Medical Technician (EMT) who has completed an advanced life support training program approved by the Department who is certified by the Department as qualified to render services enumerated in R426-3.

(16) License means the authorization issued by the Department to a person to provide ambulance service in the state.

(17) License Officer means the Director of the Department of Health or his designee.

(18) Medical Control means direction and advice provided by medical personnel at a designated medical facility to pre-hospital basic or advanced life support personnel by radio or telephonic communications.

(19) Net income means the sum of net service revenue, plus other operating revenue and subsidies of any type, less operating expenses, interest expense, and income tax expense.

(20) Total assets means one-half of the assets at the beginning of the ambulance service fiscal year, plus one-half of the assets at the end of the fiscal year.

(21) Net service revenue means gross charges less adjustments to recognize the difference, if any, between the established rate that was charged by the ambulance service, and the amounts paid, or to be paid, by third party payors such as Worker's Compensation, Medicare, Medicaid, Blue Cross or other insurance carriers, where the ambulance service accepts the amount of the payment by the third party as full payment.

(22) Patient means an individual who, as the result of illness or injury, needs immediate medical attention, whose physical or mental condition presents an imminent danger of loss of life or significant health impairment, or who may be otherwise incapacitated or helpless as a result of a physical or mental condition.

(23) Permit means the authorization issued by the Department in respect to an ambulance used or to be used to provide ambulance service in the state.

(24) Person means any individual, firm, partnership, association, corporation, company, group of individuals acting together for a common purpose, agency, or organization of any kind.

(25) Resource Hospital means a facility designated by the EMS Committee which assumes medical leadership and medical control for the provision of advanced life support services in a specified geographical area.

R426-1-3. Requisites for Providing Ambulance Service.

(1) An ambulance license and ambulance permit will be issued for a period of three years from the date of issue and will remain valid for the period unless revoked or suspended by the Department. Annual inspections will be conducted to assure compliance. The Department may adjust the three year licensure period to adjust to revised recertification schedules.

(2) License Process - An application for an original license, renewal license, expanded license, or change in ownership, shall be made to the license officer on forms provided by the Department and shall contain as a minimum the following:

(a) Financial statement of ambulance service operating revenues and expenses for the previous fiscal year. Services operating for a profit shall also provide a balance sheet and a description of any judgments, executions or liens against the assets of the applicant. The financial information provided shall clearly demonstrate that the applicant has adequate resources to provide the services proposed.

(b) Articles of Incorporation, or certificate of good standing or renewal license, if incorporated.

(c) The name and address of the owner of the ambulance service or proposed ambulance service.

(d) The name under which the applicant is doing business or proposes to do business.

(e) The training and experience of the applicant in the transportation and care of patients.

(f) A description and general location of each ambulance or boat to be used as an ambulance, including the make, model, year of manufacture, motor and chassis number, and the color scheme, insignia, name or monogram, or other distinguishing characteristics.

(g) The geographical area to be served, and the location of the place or places from which the ambulance service intends to operate. If the application is for an original or expanded license and proposes to serve a geographical area that is already served by existing licensees, then the Committee shall evaluate whether public need and necessity supports the proposed service, as opposed to continuation of the existing service. If the Committee finds that public need and necessity would be served by the change, then the Department shall modify all existing licenses that previously served the overlapping geographical area, to remove the overlapping authority from existing licenses, effective on the date that the new license is issued. If the Committee does not find that public need and necessity would be met, then the application shall be denied, and existing licenses shall continue without change.

(h) Name of the training officer who will assume responsibility for the ambulance personnel continuing education program.

(i) EMT-Advanced ambulance service licensure - Requirements noted as follows are in addition to regular ambulance service licensure:

(i) Provide the name of the physician medical director who shall develop and review treatment protocols, assess field performance and critique ambulance runs. This provision also applies to services using pneumatic trousers.

(ii) Receive Department approval for the use of EMT-I optional skills and drugs, esophageal obturator airway, intraosseous infusion.

(iii) Receive Department approval for the use of EMT-IV optional skill, intraosseous infusion.

(iv) Secure written support from all related agencies, including the proposed or designated resource hospital before submitting an application.

(v) Secure written support from the physician medical director and all hospital physicians who provide EMT medical control for the ambulance service area.

(vi) Agree to abide by resource hospital medical leadership and medical control.

(vii) Agree to cooperate with the resource hospital to assure provision of continuing medical education for EMT-advanced personnel in accordance with Department recertification standards.

(3) Inspection Process - Upon receipt of an application for ambulance service license, the state license officer shall comply with requirements in Title 26, Chapter 8. Upon approval by the Department of the application, but before issuing a license to the new ambulance service, the license officer shall cause to be inspected the ambulance, equipment and the personnel training qualifications designated in each application hereunder to determine compliance with R426-1.

(4) Change of Ownership or Management. - Upon change of ownership or management, an ambulance license and ambulance permit shall terminate and the new owner or operator shall be required to file within ten business days of acquisition an application for an ambulance license and ambulance permit in conformance with all requirements for an original.

(5) Ambulance Vehicle Requirements.

(a) An application for an original or renewal ambulance permit shall be made to the license officer, upon forms prescribed by him. No ambulance shall be used in providing ambulance service unless there is in effect, with respect to it, a currently valid permit. Each ambulance shall carry a decal showing the permit expiration date and permit number issued by the Department as evidence that the ambulance identified thereon has been inspected and determined to be in compliance with R426-1.

(b) Ambulances shall be maintained in good mechanical repair and sanitary condition on suitable premises, properly equipped, maintained and operated so as to contribute to the general well-being of patients.

(c) All carriers providing emergency ambulance service, shall notify the Department whenever the general location of an ambulance is changed.

(d) Ground ambulances shall use warning devices, such as lights and sirens, in accordance with Utah law.

(e) Ambulance Manufacturing Specifications - An ambulance permit for a new or replacement vehicle shall be issued only if the applicable ambulance complies with the following specifications:

(i) Van or Truck Chassis.

(A) New Vehicles - Federal GSA Specification No. KKK-A-1822-C, dated January 1, 1990. This document is published by the General Services Administration, Washington, D.C., and copies may be obtained from the Bureau of Emergency Medical Services.

(B) Used Vehicles manufactured prior to July 10, 1991 -

Federal Specification No. KKK-A-1822, as amended, in effect at the time of manufacture or purchased under Utah specifications in effect between January 1986, and July 10, 1991.

(ii) Special consideration will be given by the EMS Committee to communities with limited populations or unique problems for use of ambulance vehicles which do not meet the above specifications.

(f) Ambulance Driver Requirements - The driver of each ambulance, while transporting an emergency patient, shall comply with the following requirements:

(i) Destination Restriction - In the absence of physician direction, specific area protocols or other decisive factors to the contrary, a ground ambulance driver shall transport emergency patients to the nearest accessible medical facility equipped, staffed and prepared to receive emergency cases and administer emergency medical care appropriate to the needs of the patient.

(ii) Siren and Red Warning Light Restrictions - Ground ambulance drivers shall not display red warning light and use siren except when:

(A) Responding to an emergency call;

(B) Engaged in lifesaving services at the scene; or

(C) Transporting emergency patients who are classified as "emergent" by the ambulance attendant on the ambulance trip report form.

(g) Ambulance Accident Reports - All licensed providers shall send a copy of the official accident report to the Department whenever a permitted vehicle is involved in an accident while responding to or transporting a patient.

(6) Equipment and Supplies

(a) In accordance with the basic or advanced life support licensure level granted an ambulance service, minimum quantities of supplies and equipment shall be carried on each of the service's ambulance vehicles as described in "R426 Appendix". This list may be modified at the discretion of the Department as other needs or new methodology become known. All equipment shall be stored or secured in a manner as to prevent its movement during a crash.

(b) Equipment rated "not recommended" or "unacceptable" by the American College of Surgeons is not approved under R426-1. Current ratings will be provided by the Bureau of Emergency Medical Services on request.

(c) No advanced life support equipment, supplies or drugs may be carried on an ambulance where the use of that equipment by an EMT or EMT-Paramedic is not approved by R426-1. If a medical director wishes to have additional ALS equipment, supplies or drugs carried on an ambulance within his jurisdiction for physician or licensed nurse practitioner with Advanced Cardiac Life Support (ACLS) certification to use, a request for approval shall be submitted by the medical director to the EMS Committee at least 30 days prior to the Committee's regular scheduled quarterly meeting. If approved, the responsibility for use and maintenance of equipment falls solely on the requesting physician and the physician's associates.

(d) Special equipment considerations:

(e) Critical Care Transport - Ground ambulances used in conjunction with hospital critical care transport teams are exempt from the above requirements but shall carry equipment appropriate to the specific needs of the patient.

(7) Safety - Safety equipment shall be carried and maintained in working condition.

(a) Ambulances shall be equipped with approved safety belts for the driver and all passengers.

(b) Ground ambulances shall display a current safety inspection decal on the lower left hand corner of the left rear window.

(c) Water ambulances shall comply with all current state boating regulations.

(8) Communications

(a) All ambulances shall be equipped with a two-way radio capable of ambulance to hospital communication on 155.340 Mhz.

(b) All advanced life support services shall have communication capabilities approved by the Department which allow ready communication between EMTs in the field and a medical control registered nurse or physician representing the designated resource hospital.

(c) Utah EMS microwave system:

(i) A statewide microwave system is available, limited to the following EMS purposes:

(A) Medical assistance and notification;

(B) Back up advanced life support medical control;

(C) In-transit ground or air ambulance to hospital medical communications;

(D) Utah Department of Health disaster coordination; and

(E) Other uses approved by the Department.

(ii) Communication and control of microwave access shall be governed by Department operational protocols.

(iii) EMT medical assistance or ALS medical control may be provided only when communications with local medical authority or medical director are not available, or at his recommendation.

(iv) Back up medical assistance for ALS medical control is authorized through Department designated hospital emergency departments who routinely provide paramedic medical control. Participating hospitals shall be pre-assigned by the Department to collectively provide services 24 hours per day, seven days per week.

(v) Back up medical control to the requesting EMT shall be limited to services authorized in R426-1. Accordingly, back up medical control physician should request EMT certification level, name, EMT number and service represented.

(vi) Emergency Departments providing back up medical control shall record all advanced life support transmissions.

(9) Sanitation.

(a) The ambulance shall be maintained in a clean condition with interior being thoroughly cleaned after each use as appropriate.

(b) Linens shall be clean and changed after each use.

(c) Equipment:

(i) All equipment except disposable items, shall be so designed, constructed, and made of materials that under normal conditions and operations, it shall be durable and capable of withstanding repeated cleaning.

(ii) Equipment intended for one use only, shall not be reused.

(iii) Equipment shall be maintained in working condition and equipment checks documented according to local hospital

standards.

(iv) Equipment shall be cleaned after each use.

(v) Sanitizing or sterilization of equipment shall be accomplished prior to use on a subsequent run.

(vi) Equipment shall be stored in a protected manner and be readily accessible.

(10) Records -

(a) Incident Records - A record shall be made for each trip on forms or data format specified by the Department. Copies shall be transmitted in accordance with instructions provided by the Department. Storage of forms and use of information contained therein shall assure patient confidentiality. Copies of the above trip records shall be maintained and stored by each ambulance service for a minimum of ten years. The method of storage shall lend itself to ready retrieval of specified records.

(b) Personnel Records - A personnel file shall be maintained for ambulance personnel which shall include their qualifications and training.

(c) EMT-D Incident Cassette Tapes - Tapes accompanied by a written critique form shall be maintained for a minimum of ten years.

(d) Records required herein shall be available for inspection by representatives of the Department.

R426-1-4. Required Vehicle Insurance Coverages.

(1) Licensee shall provide the Department with a copy of his certificate of insurance, showing proof of his ability to respond to damages, due to operation of the vehicle, in the manner and minimum amounts specified below:

(a) Liability insurance in the amount of $100,000 for each individual claim and $300,000 for total claims for personal injury from any one occurrence.

(b) Liability insurance in the amount of $25,000 for property damage from any one occurrence.

(2) Insurance shall be obtained from an insurance company authorized to write liability coverage in the state of Utah or through a self-insurance program.

(3) Any coverage changes shall be reported by the licensee to the Department within 60 days of the date of change.

R426-1-5. Personnel.

(1) Staffing of ambulances - Ambulances, while providing ambulance services, shall have the following minimum complement of personnel who shall meet all requirements as outlined in R426-1.

(a) Ground ambulances

(i) Two attendants, each of whom is an Emergency Medical Technician, EMT-Paramedic, licensed medical doctor or registered nurse under Title 58, and

(ii) A driver, 18 years of age or older, who is the holder of a valid driver's license. If the driver is also an EMT, EMT-I, EMT-Paramedic, licensed medical doctor or registered nurse under Title 58, the driver shall qualify as one of the two attendants required.

(iii) Ambulance services authorized by the Department to provide advanced life support shall assure that at least one EMT-Advanced, EMT-Paramedic, nurse, or physician responds on each call.

(2) Applications - Ambulance attendant and attendant drivers. An application to function as an ambulance attendant or attendant driver shall contain the following:

(a) The applicant's full name and current address.

(b) The applicant's age, height, color of eyes and hair.

(c) The applicant's Emergency Medical Technician certification level and number.

(d) The applicant's previous experience as an ambulance attendant or driver.

(e) Whether the applicant's EMT certification or drivers license has been suspended or revoked in any jurisdiction and if so for what cause.

(f) Whether the applicant has ever been convicted of a felony, a misdemeanor or an act of moral turpitude, when, where, and for what cause.

(g) Other information as the Department shall deem necessary to determine the applicant's qualifications.

(3) Refusal, Suspension or Revocation of Certification: The Department may refuse to issue a certification or recertification, or suspend or revoke a certification for any of the following causes:

(a) Habitual or excessive use or addiction to narcotics or dangerous drugs, or conviction of any offense relating to the use, sale, possession, or transportation of narcotics or dangerous drugs.

(b) Habitual abuse of alcoholic beverages or being under the influence of alcoholic beverages while on call or on duty as an Emergency Medical Technician or while driving any emergency vehicle.

(c) Failure to comply with the emergency medical technician training certification or recertification requirements of R426-1.

(d) Fraud or deceit in applying for or obtaining a certification or fraud, deceit, incompetence, patient abuse, theft, or dishonesty in the performance of duties and practice as an emergency medical technician.

(e) Involvement in the unauthorized use or removal of narcotics, drugs, supplies or equipment from any emergency vehicle or health care facility.

(f) Performing procedures or skills beyond the level of certification or violation of laws pertaining to medical practice and drugs.

(g) Conviction of a felony or a crime involving moral turpitude, or the entering of a plea of guilty or the finding of guilt by a jury or court of commission of a felony or a crime involving moral turpitude.

(h) Mental incompetence as determined by a court of competent jurisdiction.

(i) Demonstrated inabilities and failure to perform adequate patient care.

(j) For good cause, including conduct which is unethical, immoral, or dishonorable.

(4) Initial Certification

(a) Emergency Medical Technician - Basic (EMT) - To be certified as an EMT, an individual shall:

(i) Submit a completed application form to the Department.

(ii) Be 18 years of age or older.

(iii) Complete a Department approved EMT course.

(iv) Display technical competence during field and clinical

training.

(v) Successfully complete the Department written and practical examinations.

(vi) Complete all requirements for certification within 90 days from course completion date. Persons with documented extenuating circumstances may be given special consideration on an individual basis.

(b) Emergency Medical Technician - Intermediate (EMT-I) - This certification status may be awarded only to EMTs currently affiliated with a licensed EMT-I ambulance service or a rescue service specifically authorized by the EMS Committee to provide EMT-I services. The service is responsible to insure the proficiency of its EMT-I personnel. It is their obligation to the patients they serve to make certain that any EMT-I who is away from patient care for a prolonged time, be reintroduced to patient care in a proper manner which is safe for the patient. To be certified as an EMT-I, an individual shall:

(i) Submit a completed application form to the Department.

(ii) Secure written approval from the resource hospital medical director and the director of the ambulance service with which the applicant is affiliated.

(iii) Have 12 months of field experience as a certified EMT. However, the 12 month period may be reduced to six months with special authorization from the Department based upon a written request from the resource hospital medical director.

(iv) Have passed the Utah EMT written and practical examination with minimum scores to be established by the Department and be currently certified as an EMT in Utah.

(v) Complete a Department approved EMT-I course.

(vi) Display technical competence during field and clinical training.

(vii) Successfully complete the Department written examination and clinical practical evaluation.

(viii) Complete all requirements for certification within 90 days from course completion date. Persons with documented extenuating circumstances may be given special consideration on an individual basis.

(c) Advanced Life Support Training Modules:

(i) IV Infusion (IV) - This certification status may be awarded only to EMTs currently affiliated with a licensed EMT or EMT-I ambulance service or a rescue service specifically authorized by the EMS Committee to provide IV services. The service is responsible to insure the proficiency of its IV certified EMTs. It is their obligation to the patients they serve to make certain that any IV certified EMT whose job takes him away from patient care for a prolonged time, be reintroduced to patient care in a proper manner which is safe for the patient. To be certified in IV, an EMT shall:

(A) Submit a completed application form to the Department.

(B) Secure written approval from the resource hospital medical director and the director of the ambulance or rescue service with which the applicant is affiliated.

(C) Have 12 months of field experience as a certified EMT. However, the 12 month period may be reduced to six months with special authorization from the Department based upon a written request from the resource hospital medical director.

(D) Have passed the Utah EMT written and practical examination with minimum scores to be established by the department and be currently certified as an EMT in Utah.

(E) Complete the Department approved IV training module which includes pediatric vascular access.

(F) Successfully complete the Department written examination and clinical practical evaluation.

(G) Complete all requirements for certification within 90 days from course completion date. Persons with documented extenuating circumstances may be given special consideration on an individual basis.

(ii) Defibrillator (D/Manual and Automatic) - This certification status may be awarded only to EMTs currently affiliated with a licensed EMT or EMT-I ambulance service or a rescue service specifically authorized by the EMS Committee to provide D/Manual services. To be certified in manual defibrillation an EMT shall:

(A) Submit a completed application form to the Department.

(B) Secure written approval from the resource hospital medical director and the director of the ambulance service with which the applicant is affiliated.

(C) Be currently working for a licensed EMT D/Manual or EMT-I D/Manual ambulance or approved rescue service.

(D) Shall be certified as an EMT, and have passed the Utah EMT written and practical examinations with minimum scores to be established by the Department, or be certified as an EMT-I.

(E) Complete the Department approved D/Manual or D/Automatic course.

(F) Successfully complete the department written and practical examination.

(5) Recertification - For persons certified or recertified prior to July 1, 1990, recertification is required two years from the date of their last certification. For persons certified or recertified after July 1, 1990, recertification is required every three years. This period may be modified by the Department to standardize EMT recertification cycles.

(a) Emergency Medical Technician - Basic (EMT) - To recertify an EMT shall:

(i) Submit a completed application form to the Department.

(ii) Submit to the Department a current cardiopulmonary resuscitation card or certificate meeting standards approved by the Department.

(iii) For persons certified or recertified prior to July 1, 1990, who were certified for a period of two years, submit to the Department evidence of having completed 48 hours of Department approved continuing medical education (CME) during the previous two year period.

(iv) For persons certified or recertified after July 1, 1990, for a three-year period, submit to the Department evidence of having completed 60 hours of Department approved CME during the previous three year period. Refer to R426 Appendix.

(v) Successfully complete the Department EMT written and practical examinations.

(vi) Certification as an EMT-P or an EMT-I will fulfill EMT recertification requirements. Recertification will be for a

concurrent time period.

(b) Emergency Medical Technician - Intermediate (EMT-I) - To recertify an EMT-I shall:

(i) Submit a completed recertification application form to the Department.

(ii) Be currently working for a licensed EMT-I ambulance service or approved rescue service.

(iii) For persons certified or recertified prior to July 1, 1990, who were certified for a period of two years, submit to the Department evidence of having completed 48 hours of CME during the previous two-year period, in accordance with standards established by the Department.

(iv) For persons certified or recertified after July 1, 1990, for a three-year period, submit to the Department evidence of having completed 60 hours of CME during the previous three-year period. Refer to R426 Appendix for CME requirements.

(v) Submit a current cardiopulmonary resuscitation card or certificate meeting standards approved by the Department.

(vi) Successfully complete the Department written and practical examination.

(vii) Submit a letter to the Bureau from the resource hospital medical director recommending the individual for recertification and verifying the individual's demonstrated proficiency in the following EMT-I skills: All pediatric vascular access requirements are effective July 1, 1992. Persons with documented extenuating circumstances may be given special consideration, not to exceed six months, on an individual basis.

(A) Initiating and terminating intravenous infusion, including pediatric vascular access.

(B) Insertion and removal of intraosseous needles;

(C) Insertion and removal of esophageal obturator airway;

(D) Administering medications via intramuscular, subcutaneous, and intravenous routes.

(c) Advanced Life Support Training Modules:

(i) IV Infusion (IV) - To recertify an EMT shall:

(A) Successfully complete EMT recertification.

(B) Be currently affiliated with a licensed EMT or EMT-I ambulance service or a rescue service specifically authorized by the EMS Committee to provide IV services.

(C) Commencing July 1, 1992, submit a letter to the Bureau from the resource hospital medical director recommending the individual for recertification and verifying the individual's demonstrated proficiency in EMT-IV skills.

(D) Submit verification of completion of a department approved pediatric vascular access skills station, effective July 1, 1992. Persons with documented extenuating circumstances may be given special consideration, not to exceed six months, on an individual basis.

(E) Successfully complete the Department written examination.

(ii) Defibrillator (D/Manual and Automatic) - To recertify an EMT or EMT-I shall:

(A) Successfully complete EMT or EMT-I recertification requirements.

(B) Be currently affiliated with a licensed EMT or EMT-I ambulance service or a rescue service specifically authorized by the EMS Committee to provide defibrillation services.

(C) Successfully complete the Department written and practical examination.

(6) Lapsed Certification

(a) Emergency Medical Technician - Basic (EMT) - Those individuals who permit their certification to lapse for a period of less than three years, and who wish to regain it shall:

(i) Submit a completed application to the Department.

(ii) For persons certified or recertified prior to July 1, 1990, who were certified for a period of two years, submit to the Department evidence of having completed 48 hours of Department approved CME within two years prior to application.

(iii) For persons certified or recertified after July 1, 1990, for a three-year period, submit to the Department evidence of having completed 60 hours of Department approved CME within three years prior to application. Refer to R426 Appendix for CME requirements.

(iv) Submit a current cardiopulmonary resuscitation card or certificate meeting standards approved by the Department.

(v) Successfully complete the Department's written and practical examination.

(b) Emergency Medical Technician - Intermediate (EMT-I) - Those individuals who permit their certification to lapse and wish to regain it shall:

(i) Submit a letter to the Department requesting consideration for re-entry into the certification program. This letter shall be accompanied by the following items:

(A) A completed recertification application.

(B) A letter of recommendation from the ambulance or rescue service with which they are affiliated.

(C) A letter of recommendation including results of a structured oral examination, from the resource hospital medical director verifying proficiency in EMT-I skills.

(D) Submit verification of completion of a Department approved pediatric vascular access skills station, effective July 1, 1992. Persons with documented extenuating circumstances may be given special consideration, not to exceed six months, on an individual basis.

(E) For persons certified or recertified prior to July 1, 1990, who were certified for a period of two years, submit to the Department evidence of having completed 24 hours of Department-approved CME for each year away from the program.

(F) For persons certified or recertified after July 1, 1990, for a three-year period, submit to the Department evidence of having completed twenty hours of Department-approved CME for each year away from the program.

(ii) Upon Department approval for re-entry, complete the written and practical recertification examination.

(c) Advanced Life Support Training Modules:

(i) IV Infusion (IV) - Those individuals who permit their certification to lapse and wish to regain it shall:

(A) Submit a completed recertification application to the Department.

(B) Be currently certified as a Utah EMT.

(C) Be currently affiliated with a licensed EMT or EMT-I ambulance service or a rescue service specifically authorized by the EMT Committee to provide IV services.

(D) Submit a letter of recommendation including results of a structured oral examination from the resource hospital medical director verifying proficiency in EMT-IV skills.

(E) Submit verification of completion of a department approved pediatric vascular access skills station, effective July 1, 1992. Persons with documented extenuating circumstances may be given special consideration, not to exceed six months, on an individual basis.

(F) Successfully complete the Department's written examination.

(ii) Defibrillator (D/Manual and Automatic):

(A) D/Manual - Those individuals who permit their certification to lapse and wish to regain it shall successfully complete D/manual initial certification requirements.

(B) D/Automatic - Those individuals who permit their certification to lapse and wish to regain it shall submit a letter to the Department requesting consideration for re-entry into the certification program. This letter shall be accompanied by the following items:

(I) A letter of recommendation from the ambulance or service agency.

(II) A letter of recommendation including results of a structured oral examination, from the medical director.

(III) Upon Department approval for re-entry, complete the written and practical recertification examinations.

(7) Reciprocal Certification

(a) Emergency Medical Technician - Basic (EMT) - Reciprocity for applicants certified outside of the State of Utah will be based on the following considerations:

(i) Applicants shall provide the Department with a current copy of their Emergency Medical Technician Certification.

(ii) Applicants shall provide verification to the Department that the certifying course meets the standards established by the Department.

(iii) Applicants shall successfully complete the Department's written and practical examinations unless the State in which the applicant is currently certified has a reciprocal agreement with the Department.

(iv) Applicants shall meet all Utah certification requirements.

(v) EMT's residing in other states will be considered for reciprocal certification only if they provide emergency medical services within Utah.

(b) Emergency Medical Technician - Advanced (EMT-I, IV and D) - Reciprocity for advanced level applicants certified outside of the state of Utah will be, at the discretion of the Department, based on the following considerations:

(i) Applicants shall provide the Department with a copy of their current Emergency Medical Technician Certification.

(ii) Applicants shall provide verification to the Department that the certifying course meets the standards established by the Department.

(iii) Applicants shall successfully complete the Department applicable Advanced Level certification written and practical examinations, unless the State in which the applicant is currently certified has a reciprocal agreement with the Department.

(iv) Applicants shall meet all Utah Advanced Level certification requirements.

(v) Applicants will be considered for reciprocal certification only if they will be affiliated with a licensed EMT-Advanced ambulance service or a rescue service approved by EMS Committee to provide EMT-Advanced services within Utah.

(8) Certification Eligible - This certification status may be awarded to:

(a) EMT-Advanced personnel who are not affiliated with a licensed EMT-Advanced agency.

(b) EMT-Advanced personnel who have terminated employment or affiliation with a licensed agency. It will be the responsibility of the EMT Advanced to immediately notify the Bureau upon termination of employment so that the certification status may be updated.

(c) Certification eligible EMT-Advanced personnel may remain certification eligible as long as they maintain their CME hours, CPR certification and testing requirements. Any certification eligible EMT-advanced who remains in this status for two years or longer, not delivering advanced EMT level patient care, who then requests full certification status due to employment by or affiliation with a licensed agency, will be required to successfully complete a skill examination consisting of requirements appropriate to the EMT-Advanced certification level.

(9) Suspension - Refer to R426-1-11, excepting defibrillation certification. Defibrillation certification may be suspended for a period of 30 days in accordance with R426-1-7(1)(k)(i).

(10) Initial Certification Examination Standards - Persons who fail any part of the written or practical certifying examination may retest based on the following guidelines:

(a) The applicant shall request re-examination.

(b) Re-examination shall be completed within 30 days after notification of failure of the initial examination.

(c) Only one re-examination will be permitted.

(d) Applicants failing the re-examination shall be required to take a complete EMT training course or module to be eligible for further examination.

(11) Recertification Examination Standards

(a) Emergency Medical Technician - Basic (EMT) - Persons who fail any part of the written or practical recertification examination may retest based on the following guidelines:

(i) The applicant shall request re-examination.

(ii) Re-examination shall be completed within 120 days after notification of failure of recertification examination.

(iii) Only one re-examination shall be permitted.

(iv) Applicants who fail the recertification re-examination shall be required to take a complete EMT training course.

(b) Emergency Medical Technician - Advanced (EMT-I, IV and D) - Persons who fail any part of the written or practical recertification examination may retest based on the following guidelines:

(i) The applicant shall request re-examination.

(ii) Re-examination shall be completed within 30 days after notification of failure of recertification examination.

(iii) Only one re-examination shall be permitted.

(iv) Applicants who fail the recertification re-examination shall be required to:

(A) Retake the complete EMT-I training course to be eligible for further examination; or

(B) Challenge the EMT written and practical examinations; or

(C) Forfeit all EMT certification.

(12) Instructor Standards

(a) Emergency Medical Technician-Basic (EMT) - Those who teach EMT training programs shall:

(i) Be certified as Emergency Medical Technician Instructors, instructor specialists by the Department, or be licensed physicians under Title 58;

(ii) Meet certification standards established by the Department.

(b) Emergency Medical Technician - Advanced (EMT-I, IV and D) - Those who teach EMT-Advanced training programs shall be licensed physicians or registered nurses under Title 58, or be approved by the Department.

(c) Emergency Medical Technician - Advanced (EMT-I, and IV) pediatric vascular access course - Those who teach pediatric vascular courses must be licensed physicians or registered nurses who have completed a department-approved pediatric advanced life support course or who have attended the department Emergency Medical Services for Children instructor course.

(13) Display of Certification Level - EMTs, when responding to a medical emergency shall display their department-approved certification identification on outer clothing to identify competency level at the scene. EMT's representing volunteer ambulance services shall comply with this requirement to the extent practicable. Any person displaying a Utah EMT certification identification, and who is not so certified, shall be guilty of a Class B misdemeanor, as provided in 26-8-7(1) and 26-8-15.

R426-1-6. Compartmentalized Pneumatic Trousers.

(1) Training Requirements - EMTs shall be trained in the use of Compartmentalized Pneumatic Trousers in the Department approved EMT training course.

(2) Operational Procedures.

(a) Compartmentalized pneumatic trousers shall be applied and removed only by personnel trained in their use.

(b) Prior to applying compartmentalized pneumatic trousers the Emergency Medical Technician shall communicate with a licensed physician or registered nurse, trained in their use, for application approval. If communication is not possible, the Emergency Medical Technician may proceed in accordance with standing orders described in R426-1-6-(3).

(3) Standing Orders

(a) Written Standing Orders shall be signed by a licensed physician trained in the use of compartmentalized pneumatic trousers.

(b) Standing orders shall be on file at the local ambulance or rescue service and include:

(i) Indications for use;

(ii) Contraindications for use;

(iii) Application; and

(iv) Removal.

R426-1-7. EMT-Advanced Standards.

(1) Resource Hospital - Advanced Life Support (ALS) system control shall be vested in a regional resource hospital designated by the EMS Committee. Resource hospital designation process - A hospital desiring to be designated as a regional resource hospital shall complete an application form provided by the Department which assures that the following rules will be met:

(a) The hospital will assume medical leadership for the provision of advanced life support services in a specified geographical area.

(b) The hospital will designate a physician as medical director who will assume overall medical direction of the regional advanced life support system.

(c) The hospital will designate an ALS medical control committee which will meet at least quarterly to review and evaluate EMT-Advanced emergency runs, continuing medical education needs and program administration problems. Committee members shall include resource hospital medical director, hospital nurse representative, hospital administration representative, ambulance and emergency services representatives. Minutes shall be kept and filed for Department review.

(d) The hospital will assume management responsibility for EMT-Advanced training programs and will conduct them only upon written authorization by the Department and in accordance with Departmental curriculum and guidelines.

(e) The hospital will assume responsibility for providing didactic and clinical CME for EMT-Advanced personnel within their region.

(f) The hospital will assure that medical control will be available to EMT-Advanced personnel 24 hours per day via department approved telecommunications. Control shall be as follows:

(i) EMT-IV and EMT-I (excluding drug orders), direct voice communications with a licensed physician or a registered nurse in voice contact with a licensed physician or by voice communication with responding paramedics as per local medical control protocol.

(ii) EMT-IV and EMT-I may initiate intraosseous infusion after direct voice communications with a licensed physician or with a registered nurse who is in voice contact with a licensed physician. Standing orders for use of intraosseous infusion are not sufficient.

(iii) Drug orders shall be given only by a registered nurse who is currently certified by the American Heart Association in Advanced Cardiac Life Support (ACLS), or by a physician.

(g) The medical director may provide to Advanced EMTs signed written standing or contingency orders for the use of IVs and esophageal obturators to deal with extraordinary circumstances or when medical control via telecommunications is not available, however, routine system operation shall be in accordance with R426-1-7(1)(f).

(h) The hospital will maintain tape recordings of all EMT-Advanced cardiac drug order transmissions.

(i) The hospital shall provide patient data identified by the department. This data shall be submitted at least quarterly to the department. Corporate submittal is preferred. The data must be submitted electronically in a format acceptable to the department.

(j) The minimum data set that hospitals are required to submit comes from the UB92 file format. The required data elements are:

Unique Patient Control Number

Record Type
Provider Identifier (hospital)
Patient Social Security Number
Patient Control Number
Type of Bill
Patient Name
Patient's Address (postal zip code)
Patient Date of Birth
Patient's Gender
Admission Date
Admission Hour
Discharge Hour
Patient's Medical Record Number
Revenue Code 1 ("450" in at least one of the Rev code fields)
Total Charges by Revenue Code 1 ("001" last total Charge Field, is sum)
Revenue Code 2 ("450" used for record selection)
Total Charges by Revenue Code 2 ("001" sum of all charges)
Primary Payer Identification
Estimated Amount Due
Secondary Payer Identification
Estimated Amount Due
Tertiary Payer Identification
Estimated Amount Due
Patient Estimated Amount Due
Principal Diagnosis Code
Secondary Diagnosis Code 1
Secondary Diagnosis Code 2
Secondary Diagnosis Code 3
Secondary Diagnosis Code 4
Secondary Diagnosis Code 5
Secondary Diagnosis Code 6
Secondary Diagnosis Code 7
Secondary Diagnosis Code 8
External Cause of Injury Code (E-Code)
Procedure Coding Method Used
Principal Procedure
Secondary Procedure 1
Secondary Procedure 2
Secondary Procedure 3
Secondary Procedure 4, and
Secondary Procedure 5

(k) Where medications are approved, the hospital will provide initial supplies and replenish supplies expended during patient treatment.

(l) Where EMT or EMT-I defibrillation services are approved, the Medical Director or service Medical Director approved by the Department shall:

(i) Conduct or have his designee conduct a periodic review and practical session for each D certified EMT or EMT-I for whom he provides medical control. This review shall be conducted monthly for D/Manual services and semi-annually for D/Automatic services. The review shall be in accordance with Department protocol. He shall suspend any D certified EMT or EMT-I from functioning for 30 days if the EMT-D fails to pass the required review. If the EMT fails three consecutive defibrillation practical reviews he shall be decertified by the Department. However, if because of illness or medical director-approved absence from service, the EMT is unable to be present for examination, he may be reinstated, after testing if no longer than six months have elapsed since his last successful examination.

(ii) Assure that cassette tape recordings are made on all Defibrillator runs in accordance with operational standards.

(iii) Review and critique 100% of all Defibrillator runs for each service.

(iv) Submit semi-annual reports regarding Defibrillator program activity to the Department on forms provided by the Department. The report may include as a minimum:

(A) Defibrillation run data;

(B) Verification of medical director review of each Defibrillation run;

(C) Verification of D certified EMT review and practice session;

(D) Notice of any change in individual D certified EMT status.

(2) Operational standards

(a) Persons certified as EMTs with IV certification or EMT-Is, while functioning under resource hospital medical control, may provide basic life support services plus the following advanced life support procedures:

(i) EMTs with IV certification - Administer intravenous and intraosseous solutions as listed in the "R426 Appendix", and draw blood specimens for analysis.

(ii) EMT-I - Administer IV infusion, airway intubation by esophageal obturator, and drugs limited to those described in the document "R426 Appendix." Cardiac drugs may be used only when:

(A) The patient is being monitored;

(B) An ECG strip has been successfully transmitted and received at the resource hospital or designated paramedic base station as provided in R426-1-3-9; and

(C) The EMT-I has received verbal direction from the resource hospital physician or other authorized medical personnel to administer the drug. Standing orders for the use of drugs are not allowed.

(b) Defibrillation - Persons certified as EMTs or EMT-Is with D certification or paramedic certification while functioning under these standards shall:

(i) Utilize equipment specified for EMT-D and record all runs where cardiopulmonary resuscitation is performed. The recording shall commence upon arrival of the EMT-D at the patient's side and shall not be terminated until care of the patient is directly assumed by the hospital medical director, his representative, or at the scene just prior to transport by a certified EMT- Paramedic functioning with a licensed paramedic service.

(ii) Determine the presence of ventricular fibrillation and defibrillate according to the established Department protocol.

(3) Equipment and supplies - See "R426 Appendix" for required list of equipment and supplies.

(4) EMT-Advanced/Physician Relationship - An Advanced EMT where possible shall be under medical control of a physician representing a designated resource hospital. When Advanced EMT's arrive at the scene of an injury or illness, they should secure radio or telephonic contact with their

resource hospital to establish medical control as quickly as possible. If radio or telephonic contact cannot be obtained, the Advanced EMT should so indicate on the EMS report form and should follow local written protocol. If there is a physician at the scene who wishes to assist or provide medical direction to the Advanced EMT, the Advanced EMT shall follow his instructions but only until communications are established with the physician at the resource hospital. Once communications are established with the resource hospital physician, the Advanced EMT shall take orders from him. If the physician at the scene wishes to continue directing Advanced EMT activities, the Advanced EMT shall place the at-scene physician in radio contact with the resource hospital physician. The resource hospital physician has the option of (1) allowing the physician at the scene to assume or continue medical control, (2) assuming Advanced EMT medical control, but allowing the physician at the scene to assist, or (3) assuming medical control with no participation by the on scene physician. In the event option 1 is followed, all orders given to Advanced EMT's by the at-scene physician shall be repeated over the radio or telephone by the resource hospital physician for evaluation and recording. If in the judgment of the resource hospital physician who is monitoring and evaluating the at-scene medical control, the care is inappropriate to the nature of the medical emergency, the resource hospital physician may reassume medical control of the at-scene Advanced EMT's.

(5) Paramedics on board non-paramedic ambulances - Certified EMT-Paramedics providing services for a licensed paramedic rescue service may, under medical control, continue those services during transport of the patient to a medical facility in a licensed EMT-Basic or EMT-Intermediate ambulance.

R426-1-8. Maximum Ambulance Transportation Rates and Charges.

(1) Ambulance services operating under R426-1 shall not charge more than the maximum rates described under R426-1-8(3) through (7). In addition, the net income of ambulance services, including subsidies of any type, shall not exceed the greater of the net income limit set by R426-1-8(a) or (b).

(a) The net income limit shall be the greater of eight percent of gross revenue or 14 percent return on average assets.

(b) Ambulance Services may change rates at their discretion after notifying the Department, provided that the rates do not exceed the maximums specified in R426-1-8.

(2) Initial Rates and Consumer Price Index Increases - The initial regulated rates established in R426-1-8(3) and R426-1-8(4) are effective June 3, 1996, and shall be adjusted annually on July 1 thereafter, upward or downward, based on the prior calendar year percentage change in the "Historical Consumer Price Index (CPI) for all Urban Consumers and Urban Wage Earners and Clerical Workers: U.S. City Average, Major Groups", CPI Detailed Report, "all items" average. The adjustment shall be made effective and published by order of the Department.

(3) Base Rates -

(a) Basic Life Support - $206.82 per transport.

(b) Advanced Life Support - Intermediate - $245.60 per transport.

(c) Advanced Life Support - Paramedic Ambulance Transfer Service inter-facility transports, and Paramedic Ambulance transports that provide basic life support - $310.23 per transport.

(d) Advanced Life Support - Paramedic ambulance transports that, under physician medical direction, provide basic or intermediate ambulance transports that have paramedics on-board to continue advanced life support initiated by a paramedic rescue service - Basic ambulance service - $372.28 per transport, Intermediate ambulance service - $411.06 per transport. Any ambulance service that interfaces with a paramedic rescue service must have an interlocal or equivalent agreement in place, dealing with reimbursing the paramedic agency for services provided up to the maximum of $129.26 per transport.

(4) Mileage Rate - $9.05 per mile or fraction thereof. In all cases mileage shall be computed from the point of pickup to the point of delivery.

(5) Surcharges -

(a) Emergency - A surcharge of $20.52 per transport may be assessed for emergency responses.

(b) Night - A surcharge of $20.52 per transport may be assessed for ambulance service between the hours of 8:00 p.m. and 8:00 a.m.

(c) Off-road - Where the ambulance is required to travel for ten miles or more on unpaved roads, a surcharge of $17.10 per transport may be assessed.

(6) Special Provisions -

(a) Multiple Patients - If more than one patient is transported from the same point of origin to the same point of delivery in the same ambulance, the charges to be assessed to each individual will be determined as follows:

(i) Each patient will be assessed the transportation rate.

(ii) The emergency surcharge, night surcharge and mileage rate will be computed as specified, the sum to be divided equally between the total number of patients.

(b) Round trip - A round trip may be billed as two one-way trips.

(c) Waiting time - An ambulance shall provide 15 minutes of time at no charge at both point of pickup and point of delivery, and may charge $11.40 per quarter hour or fraction thereof thereafter. On round trips, 30 minutes at no charge will be allowed from the time the ambulance reaches the point of delivery until starting the return trip. At the expiration of the 30 minutes, the ambulance service may charge $11.40 per quarter hour or fraction thereof thereafter.

(7) Non-transport rate - Where an ambulance is summoned to a medical emergency by a dispatch agency, but does not transport, a charge of $171 may be assessed.

(8) Charges for supplies - Supplies shall be priced fairly and competitively with similar products in the local area.

(9) Uncontrollable Cost Escalation -

(a) In the event of a temporary escalation of costs, an ambulance service may petition the EMS Committee for permission to make a temporary service-specific surcharge. The petition shall specify the amount of the proposed surcharge, the reason for the surcharge, and provide sufficient financial data to clearly demonstrate the need for the proposed surcharge. Since this is intended to only provide temporary relief, the petition

shall also include a recommended time limit.

(b) The petition shall be submitted to the Department, which shall within 30 days, notify the ambulance service of the date and time of the next EMS Committee meeting and the disposition of the petition. Prior to the EMS Committee meeting, the Department shall evaluate the petition for reasonableness and prepare a written response for consideration by the EMS Committee. The EMS Committee may reject, modify or adopt the proposed surcharge as a proposed rule and direct the Department to submit a notice of rule change to the Division of Administrative Rules in accordance with the Rulemaking Act. The public comment period shall include a public hearing.

(10) Ambulance Service reporting requirements - Within four months of the end of each licensed ambulance service's fiscal year, the service shall provide to the Department an operating report setting forth operating income and expenses for the previous fiscal year. The report shall set forth operating income and expenses and detail a chart of accounts, account descriptions and natural classifications; balance sheet, statement of income, statement of cash flow, statistical support data; volunteer services, subsidies and other disclosures including compensation to owners and other related party transactions. This report shall be made in accordance with the instructions, guidelines and review criteria in the EMS Committee's "Department of Health Uniform Ambulance Service Fiscal Reporting Guide" and shall be filed with the Department within four months after the ambulance service's fiscal year. The Department shall provide a summary report of ambulance operating reports received during the previous state fiscal year to the EMS Committee in the October quarterly meeting, beginning 1992.

(11) Fiscal audits -

(a) Upon receipt of ambulance service fiscal reports, the Department shall review them for compliance to standards established in the "Department of Health Uniform Ambulance Service Fiscal Reporting Guide." The Department, or its representative, may audit ambulance services to verify the information given in the report.

(b) Where the Department determines that the audited service is not in compliance with this rule, the Department shall proceed in accordance with Section 26-8-12.

(12) Rate process evaluation - At least every three years, beginning in 1994, the Department shall re-evaluate the results of this rate process and provide a report and recommendation to the EMS Committee for continuance or modification of the rate structure and rates process.

R426-1-9. Inspections.

(1) The Department shall make all investigations and inspections necessary for the enforcement of R426-1.

(2) Inspections, other than the initial inspection, shall be made on an annual basis or as may be required and may include all personnel, ambulances, facilities, communications equipment, methods, procedures, materials, and all other attributes or characteristics. Findings shall be recorded on an inspection report form provided for this purpose. The licensee or its representative shall sign the inspection form acknowledging the inspection, however, signature shall not necessarily indicate agreement with the findings thereof. A copy of the inspection report shall be furnished to the licensee.

(3) Based upon compliance of the ambulance service an ambulance service license and ambulance vehicle permit will be issued. In conjunction with ambulance vehicle permits, decals shall be issued for specific ambulances which shall not be transferrable to other ambulances.

R426-1-10. Exemptions from the Provisions of this Rule.

See Section 26-8-10.

R426-1-11. Denial, Suspension or Revocation of a License, Permit or Certificate.

See Section 26-8-12.

R426-1-12. Research or Study Projects.

(1) Persons proposing to undertake a research or study project which requires waiver of any rules herein, shall have a project director who is a physician licensed to practice medicine in the state of Utah, and shall submit a written proposal to the Bureau of Emergency Medical Services for presentation to the EMS Committee. The Committee may only waive rules if the waiver is not inconsistent with statutory requirements. The proposal shall include the following:

(a) A project description, including:

(i) Need for project;

(ii) Project goal;

(iii) Specific objectives;

(iv) Methodology for project implementation;

(v) Geographical area to be covered by the proposed project;

(vi) Specific regulation to be waived;

(vii) Proposed waiver language;

(viii) Evaluation methodology.

(b) A list of the pre-hospital providers and hospitals participating in the project.

(c) A signed statement of endorsement from participating hospital medical directors and administrators, the director of each participating paramedic/ambulance provider, other project participants, and other parties who may be significantly affected.

(d) A description of the skills to be utilized by the Paramedics/EMT's, if different from those specified in these regulations, and provision for training and supervising of personnel who are to utilize these skills, including the names of personnel.

(e) The name and signature of the project director attesting to his support and approval of the project proposal.

(2) Study project approval

(a) The EMS Committee may grant approval to any project found to comply with the conditions specified in this section. Interested and affected parties will be notified of any proposed project and be provided an opportunity to comment. Only one project on any given subject shall be conducted within the state at any given time.

(b) A representative of the State Epidemiological Office or another person with statistical expertise, approved by the Director of the Bureau of Emergency Medical Services, shall review project design and make recommendations regarding technical detail, elimination of bias, study monitoring,

hypothesis development in testing, and statistical validity.

(c) When considering any project, the EMS Committee may, at its discretion, require additional conditions to be met.

(d) Project approval shall be granted for a period of one year from the date of approval by the EMS Committee. Approval for continuation beyond this period by the EMS Committee shall be based on the achievement and satisfactory progress as evidenced in written progress reports to be submitted to the Bureau of Emergency Medical Services at least 90 days prior to the end of the approved year. The time periods for the project may not exceed three years.

(e) Approval of a project by the EMS Committee shall constitute approval of the personnel listed in the proposal to exercise the specified skills of the participants in the project. The Project Director shall submit the names of additional project personnel not initially approved, to the Bureau of Emergency Medical Services for consideration by the EMS Committee.

(f) The EMS Committee may rescind approval for the project at any time for just cause. Before any rescission is final, the agency involved in the study will be allowed a hearing by the EMS Committee to explain and express their views.

(3) Study recommendations - At least six months prior to the planned completion of the project, the medical director shall submit to the Bureau of Emergency Medical Services, a report with the preliminary findings of the project and any recommendations for changes in the project requirements.

R426-1-13. Training Equipment Rental Fees.

Department-owned training equipment is available upon request to assist training personnel in conducting initial training and continuing medical education programs. Rental fees are as follows:

TABLE

a.	Complete set per course (Minimum charge)	$300.00
	Additional charge per student over 20	12.50
b.	Training equipment cost per piece per day	
	Sphygmomanometer	4.00
	Stethoscopes (Regular)	2.50
	Dual Stethoscope (Trainers)	2.50
	Cervical Collars	
	Foam	1.50
	Philadelphia	1.50
	Cardio Pulsar	2.00
	Oxygen Powered Demand Valve	20.50
	Oxygen Powered Suction Unit	11.00
	Bag Mask Resuscitators	10.50
	Spray Bottles	.50
	Construction Knives	1.50
	Airway Kits	2.50
	Oxygen Flowmeter Kit	11.00
	Oxygen Cylinders	10.00
	Orthopedic Backboard (Scoop)	4.00
	Short Backboard (Metal)	4.00
	Short Backboard (Wood)	3.00
	Long Backboard (Wood)	3.50
	Folding Backboard (Metal)	3.50
	K.E.D. Splint	3.00
	Long Board Leg Splints	1.00
	Thomas Half Rings	3.00
	Femur Traction Splint with Ratchet	9.00
	Femur Traction Splint without Ratchet	7.50
	Army Stretchers	2.00
	Henrie Knee-Trac	.50
	All Level Ambulance Cot	12.50
	Backboard Straps and Neck roll	7.00
	Blankets	6.00
	Pillows and Pillow Cases	1.50
	MAST Trousers	7.50
	Skeleton	10.50
	Resusci Anne II 15-00-05	17.50
	Resusci Baby	6.00
	Recording Resusci Anne	24.00
	Obstetrical Mannequin	37.50
	35 MM Slide Projector Kit	24.50
	35 MM Slide Sets (Complete Set)	24.50
	35 MM Slide Trays	.50
	16 MM Motion Picture Projector	17.50
	16 MM Films	12.00
	Extrication Kits	30.00
	Air Chisel Rescue Tool Kit	30.00
	Compressed Air Cylinder	10.50
	K-Bar Rescue Tool	6.00
	Moulage Kit	20.50
	Durawax	1.00
	Intubation Mannequin (Adult and Infant)	8.00
	Laryngoscopes	5.00
	ET Tubes	4.00
	Esophageal Obturator Airway Kits	15.00
	Cardiac Monitor and Defibrillator	52.00
	Heart Simulator	22.50
	Portable Suction Unit	10.00
	Infusion Trainer	6.00
	Anatomical Model	24.50
	Video Tapes	4.50
	Bio-Com Rental	12.00
	Cardboard Splints	.50
	Phones, Sound Powered (two phones and wire) per set	1.50
	Flip Card File	3.00
	Mr. Hurt	30.00
	Safety Goggles	1.50
	O.B. Kit	8.50
	Life Pack 5	52.00

KEY: emergency medical services
June 13, 1997 **26-8**
Notice of Continuation December 9, 1997

R426. Health, Health Systems Improvement, Emergency Medical Services.
R426-2. Air Medical Service Rules.
R426-2-1. Authority and Purpose.

(1) This Rule is established under Chapter 8, Title 26.

(2) The purpose of this Rule is to set forth air ambulance policies and rules and standards adopted by the Utah Emergency Medical Services Committee which promote and protect the health and safety of the people of this state.

R426-2-2. Definitions.

As used in Rule R426-2:

(1) Advanced Life Support means an advanced level of pre-hospital and inter-hospital emergency care that includes basic life support functions plus some or all of the following techniques or procedures: cardiac monitoring, cardiac defibrillation, telemetered electrocardiography, administration of specific medications, drugs, and solutions, use of adjunctive medical devices, trauma care, and other techniques and

procedures authorized by the committee.

(2) Air medical personnel means the pilot and patient care personnel who are involved in an air medical transport.

(3) Air Medical Service means any publicly or privately owned organization that is licensed or applies for licensure under R426-2.

(4) Air Ambulance means any privately or publicly owned air vehicle specifically designed, constructed, or modified, which is intended to be used for and is maintained or equipped with the intent to be used for, maintained or operated for the transportation of individuals who are sick, injured, or otherwise incapacitated or helpless.

(5) Air Medical Service Medical Director means a physician knowledgeable of potential medical complications which may arise because of air medical transport, and is responsible for overseeing and assuring that the appropriate air ambulance, medical personnel, and equipment are provided for patients transported by the air ambulance service.

(6) Air Medical Transport Service means the transportation and care of patients by air ambulance.

(7) CAAMS is the acronym for the Commission on Accreditation of Air Medical Services, which is a non-profit organization dedicated to improving the quality of air medical services.

(8) Committee means the State Emergency Medical Services Committee.

(9) Department means the Utah Department of Health.

(10) Director means the Director of the Utah Department of Health.

(11) License means the authorization issued by the Department to a person to provide emergency medical services.

(12) License Officer means the Director of the Department or the Director's designee.

(13) Medical Control means direction and advice provided by medical personnel at a designated medical facility to pre-hospital advanced life support personnel by radio or telephonic communications, written protocol, or direct verbal order.

(14) Patient means an individual who, as the result of illness or injury, needs immediate medical attention, whose physical or mental condition presents an imminent danger of loss of life or significant health impairment, or who may be otherwise incapacitated or helpless as a result of a physical or mental condition.

(15) Permit means the authorization issued by the Department in respect to an air ambulance used or to be used to provide air medical transport services.

(16) Person means any individual, firm, partnership, association, corporation, company, group of individuals acting together for a common purpose, agency, or organization of any kind, public or private.

(17) Physician means a medical doctor licensed to practice medicine in Utah.

(18) PA means a licensed Physician's Assistant.

(19) Pilot means any individual licensed under Federal Aviation Regulations, Part 135.

(20) Quality Management means a total process of continually monitoring, assessing, and improving the quality of the service.

(21) Quality Management Director means the person who is the quality management team leader.

(22) Resource Hospital means a facility designated by the EMS Committee which assumes medical leadership and medical control for the provision of advanced life support services in a specified geographical area.

(23) RN means a registered nurse.

(24) RT means a registered respiratory therapist.

(25) Specialized Life Support Air Medical Service means a level of care which requires equipment or speciality patient care by one or more medical personnel in addition to the regularly scheduled air medical team.

R426-2-3. Requirements for Licensure.

(1) The Department may issue licenses and vehicle permits to air medical services conforming to R426-2 for Advanced Life Support Air Medical Service and for Specialized Life Support Air Medical Service. A Specialized Life Support Air Medical Service license must list, on the license, the specialities for which the Specialized Life Support Air Medical Service is licensed.

(2) A person may not furnish, operate, conduct, maintain, advertise, or provide air medical transport services to patients within the state or from within the state to out of state more than once in a twelve month period unless licensed by the Department.

(3) An air medical service shall comply with all state and federal requirements governing the specific vehicles utilized for air medical transport services.

(4) An air medical service must provide air medical services 24 hours a day, every day of the year as allowed by weather conditions except when the service is committed to another medical emergency or is unavailable due to maintenance requirements.

(5) To become licensed as an air medical service, an applicant must submit to the Department an application and appropriate fees for an original license which shall include the following:

(a) Certified Articles of Incorporation, if incorporated.

(b) The name, address, and business type of the owner of the air medical service or proposed air medical service.

(c) The name and address of the air ambulance operator(s) providing air ambulance(s) to the service.

(d) The name under which the applicant is doing business or proposes to do business.

(e) A statement summarizing the training and experience of the applicant in the air transportation and care of patients.

(f) A description and location of each dedicated and back-up air ambulance(s) procured for use in the air medical service, including the make, model, year of manufacture, FAA-N number, insignia, name or monogram, or other distinguishing characteristics.

(g) A copy of current Federal Aviation Administration(FAA) Air Carrier Operating Certificate authorizing FAR, Part 135, operations.

(h) A copy of the current certificate of insurance for the air ambulance.

(i) A copy of the current certificate of insurance demonstrating coverage for medical malpractice.

(j) The geographical service area, location and description

of the place or places from which the air ambulance will operate.

(k) Name of the training officer responsible for the air medical personnel continuing education.

(l) The name of the air medical service medical director.

(m) A proposed roster of medical personnel which includes level of certification or licensure.

(n) A statement detailing the level of care for which the air medical service wishes to be licensed, either advanced or specialized.

(6) Upon receipt of an appropriately completed application for an air medical service license and submission of license fees, the Department shall collect supporting documentation and review each application. The Air Ambulance Subcommittee shall review each application and make recommendations to the Department for licensure based upon type of service to be offered, equipment and trained personnel. Public need and necessity requirements of Subsection 26-8-7(2) are superseded by federal law. After review and recommendation by the Air Ambulance Subcommittee, and before issuing a license to a new air medical service, the Department shall directly inspect the vehicle(s), the air medical equipment, and required documentation.

(7) The Department shall issue an air medical service license and air ambulance permit for a period of three years from the date of issue and which shall remain valid for the period unless revoked or suspended by the Department. The department may conduct inspections to assure compliance.

(8) Upon change of ownership, an air medical service license and air ambulance permit terminates and the new owner or operator must file within ten business days of acquisition an application for renewal of the air medical service license and air ambulance permit.

(9) Air medical services must have an agreement to allow hospital emergency department physicians, nurses, and other personnel who participate in emergency medical services to fly on air ambulances.

(10) Air medical services must provide reports to the Department, for each mission made, on forms or a data format specified by the Department.

(11) Effective July 1, 1998, successful completion of the CAAMS certification process is required for licensure and relicensure by the Department as an air medical service.

(a) Air medical services licensed under R426-2 as of July 1, 1997 must achieve CAAMS certification as of July 1, 1998, and meet requirements of R426-2 for relicensure.

(b) Air medical services licensed under R426-2 after July 1, 1997 must submit an application for CAAMS certification within one year of receiving a license under this rule.

R426-2-4. Personnel Requirements.

(1) Emergency Medical Technicians and Paramedics, when responding to a medical emergency, shall display their certification patch or identification card on outer clothing to identify competency level at the scene.

(2) Air medical service providing basic life support must have at least one medical attendant who is an EMT-I, EMT-P, PA, RN, or MD.

(3) Air medical services providing advanced life support must have at least one medical attendant who is an EMT-P, PA, RN, or MD. This attendant shall be the primary medical attendant. The second medical attendant may be an EMT-P, PA, RT, RN, or MD.

(4) Air medical services providing specialized life support must have at least one medical attendant who is a RN or MD. This attendant shall be the primary medical attendant. The second medical attendant may be an EMT-P, PA, RT, RN, or MD.

(5) All Basic, Advanced, and Specialized Life Support Medical Attendants must:

(a) Have a current CPR card or certificate meeting standards approved by the Department.

(b) Have verification in the air medical service file of initial and annual training in altitude physiology, safety, stress management, infection control, hazardous materials, survival training, disaster training, triage, and Utah emergency medical system communications.

(c) Be knowledgeable in the application, operation, care, and removal of all medical equipment used in the care of the patient. The air medical personnel shall have a knowledge of potential in-flight complications, which may arise from the use of the medical equipment and it's in-flight capabilities and limitations.

(d) Have available during transport, a current copy of all written protocols authorized for use by the air medical service medical director. Patient care shall be governed by these authorized written protocols.

(6) Air medical services licensed for specialized life support shall meet the following requirements:

(a) Maintain clinical competency by keeping a current completion card in speciality education programs required by the air medical service job description(e.g., American Heart Association/American Academy of Pediatrics Neonatal Association or Pediatric Advanced Life Support pertinent to appropriate speciality).

(b) Attend continuing education for speciality care providers that is specific and appropriate to the mission statement and scope of care for air medical services.

(c) Annually demonstrate to the air medical service medical director a knowledge and competency of specialized care and treatment of patients.

(7) All air medical services shall have an air medical service medical director who is a physician licensed in the state in which the ground base is located for the air ambulance, knowledgeable and responsible for the air medical care of patients.

(8) The air medical service applicant shall provide in writing to the Department the name of the air medical service medical director. If the air medical service medical director is replaced or removed, the air medical service shall notify the Department within thirty days after the action.

(a) The air medical service medical director:

(i) Shall have initial and annual training in altitude physiology, air ambulance safety, stress management, infection control, hazardous materials, survival training, disaster training, triage, and Utah emergency medical system communications. The air medical service shall document this training and make it available for inspection by the Department.

(ii) Shall have a current completion card in Advanced

Cardiac Life Support according to the current standards of the American Heart Association.

(iii) Shall have a current completion card in Advanced Trauma Life Support according to the current standards of the American College of Surgeons.

(iv) Shall have a current speciality education completion card in Neonatal Resuscitation Program, Pediatric Advanced Life Support, and other similar courses or equivalent education in these areas.

(v) Shall have access to all specialty physicians as consultants.

(b) It is the responsibility of the air medical director to:

(i) Authorize written protocols for use by air medical attendants and review policies and procedures of the air medical service.

(ii) Develop and review treatment protocols, assess field performance, and critique at least 10% of the air medical service runs.

R426-2-5. Air Ambulance Vehicle Requirements.

(1) An air ambulance must have a permit from the Department to operate in Utah. Each air ambulance shall carry a decal showing the permit expiration date and permit number issued by the Department as evidence of compliance with R426-2. The permit holder shall meet all Federal Aviation Regulations specific to the operation of the air medical service.

(2) All air medical services shall notify the Department whenever the ground base location of a permitted vehicle is permanently changed.

(3) Air ambulances shall be maintained in good mechanical repair and sanitary condition on premises, properly equipped, maintained, and operated to provide quality service.

(4) Air ambulance requirements are as follows:

(a) The air ambulance must have sufficient space to accommodate at least one patient on a stretcher.

(b) The air ambulance must have sufficient space to accommodate at least two medical attendant seats.

(c) The patient stretcher shall be FAA-approved. It must be installed using the FAA 337 form or a "Supplemental Type Certificate." The stretcher shall be of sufficient length and width to support a patient in full supine position who is ranked as a 95th percentile American male that is 6 feet tall and weighing 212 pounds. The head of the stretcher shall be capable of being elevated at least 30 degrees.

(d) The air ambulance doors shall be large enough to allow a stretcher to be loaded without rotating it more than 30 degrees about the longitudinal roll axis, or 45 degrees about the lateral pitch axis.

(e) The stretcher shall be positioned so as to allow the medical attendants a clear view and access to any part of the patient's body that may require medical attention. Seat-belted medical attendants must have access to the patient's head and upper body.

(f) The patient, stretcher, attendants, seats, and equipment shall be so arranged as to not block the pilot, medical attendants, or patients from easily exiting the air ambulance.

(g) The air ambulance shall have FAA- approved two point safety belts and security restraints adequate to stabilize and secure any patient, patient stretcher, medical attendants, pilots, or other individuals.

(h) The air ambulance shall have a temperature and ventilation system for the patient treatment area.

(i) The patient area shall have overhead or dome lighting of at least 40-foot candle at the patient level, to allow adequate patient care. During night operations the pilot's cockpit shall be protected from light originating from the patient care area.

(j) The air ambulance shall have a self contained interior lighting system powered by a battery pack or portable light with a battery source.

(k) The pilots, flight controls, power levers, and radios shall be physically protected from any intended or accidental interference by patient, air medical personnel or equipment and supplies.

(l) The patient must be sufficiently isolated from the cockpit to minimize in-flight distractions and interference which would affect flight safety.

(m) The interior surfaces shall be of material easily cleaned , sanitized, and designed for patient safety. Protruding sharp edges and corners shall be padded.

(n) Patients whose medical problems may be adversely affected by changes in altitude may only be transported in a pressurized air ambulance.

(o) The air medical service shall provide all medical attendants with sound ear protectors sufficient to reduce excessive noise pollution arising from the air ambulance during flight.

(p) There shall be sufficient medical oxygen to assure adequate delivery of oxygen necessary to meet the patient medical needs and anticipated in-flight complications. The medical oxygen must:

(i) be installed according to FAA regulation;

(ii) have an oxygen flow rate determined by in-line pressure gauges mounted in the patient care area with each outlet clearly identified and within reach of a seat-belted medical attendant;

(iii) allow the oxygen flow to be stopped at or near the oxygen source from inside the air ambulance;

(iv) have gauges that easily identify the quantity of medical oxygen available;

(v) be capable of delivering fifteen liters/minute at fifty psi;

(vi) have a portable oxygen bottle available for use during patient transfer to and from the air ambulance;

(vii) have a fixed back-up source of medical oxygen in the event of an oxygen system failure;

(viii) the oxygen flow meters shall be recessed, padded, or by other means mounted to prevent injury to patients or medical attendants; and

(ix) "No smoking" signs shall be prominently displayed inside the air ambulance.

(q) The air ambulance electric power must be provided through a power source capable to operate the medical equipment and a back-up source of electric power capable of operating all electrically powered medical equipment for one hour.

(r) The air ambulance must have at least two positive locking devices for intravenous containers padded, recessed, or mounted to prevent injury to air ambulance occupants. The containers shall be within reach of a seat-belted medical

attendant.

(s) The air ambulance must be fitted with a metal hard lock container, fastened by hard point restraints to the air ambulance, or must have a locking cargo bay for all controlled substances left in an unattended

(t) An air ambulance shall have properly maintained survival gear appropriate to the service area and number of occupants.

(u) An air ambulance shall have an equipment configuration that is installed according to FAA criteria and in such a way that the air medical personnel can provide patient care.

(v) The air ambulance shall be configured in such a way that the air medical personnel have access to the patient in order to begin and maintain basic and advanced life support care.

(w) The air ambulance shall have space necessary to allow patient airway maintenance and to provide adequate ventilatory support from the secured, seat-belted position of the medical personnel.

R426-2-6. Equipment Standards.

(1) Air ambulances must maintain minimum quantities of supplies and equipment for each air medical transport as listed in the document R426 Appendix in accordance with the air medical service's licensure level. Due to weight and safety concerns on specialized air transports, the air medical service medical director shall insure that the appropriate equipment is carried according to the needs of the patient to be transported. All medications shall be stored according to manufacturer recommendations.

(2) All medical equipment except disposable items, shall be designed, constructed, and made of materials that under normal conditions and operations, are durable and capable of withstanding repeated cleaning.

(3) The equipment and medical supplies shall be maintained in working condition and within legal specifications.

(4) All non-disposable equipment shall be cleaned or sanitized after each air medical transport.

(5) Medical equipment shall be stored and readily accessible by air medical personnel.

(6) Before departing, the air medical personnel shall notify the pilot of any add-on equipment for weight and balance considerations.

(7) Physical or chemical restraints must be available and used for combative patients who could possibly hurt themselves or any other person in the air ambulance.

R426-2-7. Operational Standards.

(1) The pilot may refuse transport to any individual who the pilot considers to be a safety hazard to the air ambulance or any of its passengers.

(2) Records made for each trip on forms or data format specified by the Department, and a copy shall remain at the receiving facility for continuity of care.

(3) The air medical service must maintain a personnel file for personnel which shall include their qualifications and training.

(4) All air medical services must have an operational manual or policy and procedures manual available for all air medical personnel.

(5) All air medical service records shall be available for inspection by representatives of the Department.

(6)(a) All air ambulances shall be equipped to allow air medical service personnel to be able to:

(i) Communicate with hospital emergency medical departments, flight operations centers, air traffic control, emergency medical services, and law enforcement agencies.

(ii) Communicate with other air ambulances while in flight.

(b) The pilot must be able to override any radio or telephonic transmission in the event of an emergency.

8.1 The air ambulance shall be maintained in a clean condition with interior being thoroughly cleaned after each use as appropriate.

(7) The management of the air medical service shall be familiar with the federal regulations related to air medical services.

(8) Each air medical service must have a safety committee, with a designated safety officer. The committee shall meet at least quarterly to review safety issues and submit a written report to the air medical service management and maintain a copy on file at the air medical service office.

(9) All air medical service shall have a quality management team and a program implemented by this team to assess and improve the quality and appropriateness of patient care provided by the air medical service.

R426-2-8. Statutory penalties.

A person who violates this rule is subject to the provisions of Title 26, Chapter 23, which provides for a penalty of up to $5,000 per violation or a class B misdemeanor on the first offense and a class A misdemeanor on a subsequent offense.

KEY: emergency medical services
September 23, 1997 **26-8**
Notice of Continuation December 9, 1997

R426. Health, Health Systems Improvement, Emergency Medical Services.
R426-3. Utah Mobile Paramedic Rules.
R426-3-1. Authority and Purpose.

(1) This rule is established under Section 26-8-4.

(2) The purposes of rule R426-3 are to set forth the policies adopted by the Utah Emergency Medical Services (EMS) Committee for:

(a) Licensing of agencies providing paramedic services.

(b) Establishing guidelines for training of paramedic personnel.

(c) Certifying and recertifying of paramedic personnel.

(d) Establishing paramedic vehicle supply and equipment standards.

(e) Setting rates and charges for paramedic services.

(f) Other related rules pertaining to the administration of the Utah Mobile Paramedic system.

R426-3-2. Definitions.

(1) As used in rule R426-3:

(a) Agency means any department, division, board, council, committee, authority or agency of the State of Utah, or any of its political subdivisions.

(b) Associate Hospital means a hospital which provides 24-hour emergency care and has telemetry communication equipment approved by the Department which enables communication with EMT-Paramedics at a remote location through linkage with a base station hospital.

(c) Base Station Hospital means a hospital which provides 24-hour emergency care and has telemetry communication equipment approved by the Department which enables communication by radio and telephone with paramedics at a remote location.

(d) Department means the Utah Department of Health.

(e) EMS Committee means the Utah Emergency Medical Services Committee.

(f) EMT-Paramedic means an emergency medical technician who has completed an advanced life support training program approved by the Department who is certified by the Department as qualified to render services enumerated in R426-3.

(g) License Officer means the Director of the Department or his designee.

(h) Patient means an individual who, as the result of illness or injury, needs immediate medical attention, whose physical or mental condition presents an imminent danger of loss of life or significant health impairment, or who may be otherwise incapacitated or helpless as a result of a physical or mental condition.

(i) Person means any individual, firm, partnership, association, corporation, company, group of individuals acting together for a common purpose, agency, or organization of any kind, public or private.

(j) Physician means a medical doctor licensed to practice medicine and surgery in Utah.

(k) Receiving Center means any hospital which provides emergency care.

(l) Registered Nurse means a registered nurse licensed in Utah.

R426-3-3. Administration of the Mobile Paramedic Rules.

(1) EMS Committee Responsibilities - The EMS Committee is responsible to establish rules as enumerated in the Utah Emergency Medical Services Systems Act, Section 26-8-4. Pursuant to the Act (Subsection 26-8-3-(3)) and to more effectively regulate the paramedic program, a Paramedic Advisory Subcommittee is established as a standing subcommittee advisory to the EMS Committee.

(a) Paramedic Advisory Subcommittee - Membership tenure will be three years. A committee chairman, whose tenure of office shall be one year, will be elected by the committee.

(b) The Paramedic Advisory Subcommittee shall be appointed by the EMS Committee and shall be constituted as follows:

(i) Two members representing the Utah Medical Association, including one representative of the association at large and one cardiologist. In addition, there shall be one emergency room physician from each area with an operating paramedic service. The emergency room physician requirement may be waived if none exists.

(ii) Two representatives of the Utah Nurses' Association, including one representative of the association at large and one representative involved operationally in the paramedic program on a daily basis.

(iii) One representative from the Utah State Hospital Association.

(iv) Paramedic provider representatives as deemed appropriate by the EMS Committee.

(v) The current president and two representatives from the Utah Paramedic Association.

(vi) One representative from the paramedic training institution.

(vii) One consumer representative.

(viii) One representative from a local governmental unit in which a paramedic program is operative.

(ix) One representative of the Utah Ambulance Association.

(x) The above membership list may be modified at the discretion of the Department.

(c) The Paramedic Advisory Committee shall meet at least quarterly or as needed for the purpose of advising the Department on paramedic issues delineated below and others as requested by the Department.

(i) Reviewing applications and making recommendations for licensure of organizations providing paramedic services.

(ii) Recommending appointment of hospitals as base station hospitals or associate hospitals based upon local recommendations.

(iii) Reviewing and making recommendations concerning policies and procedures for the Utah Mobile Paramedic program.

(iv) Make recommendations for selection of paramedic trainees.

(v) Reviewing training curriculum and recommending certification reciprocity policies; reviewing applications for certification of EMT-Paramedics graduated from courses in other states.

(vi) Reviewing local paramedic program plans and needs.

(vii) Reviewing and making recommendations to the EMS Committee for disciplinary action regarding EMT-Paramedics who have not complied with the requirements of R426-3. The EMT-Paramedic and a representative from the licensed provider concerned shall be present at disciplinary hearings.

(2) Department Responsibilities - The Department is responsible for licensing paramedic services, issuing ambulance and emergency response vehicle permits, developing, conducting, or authorizing training programs, testing and certifying EMT-Paramedics and administering rules herein adopted by the EMS Committee.

(a) The Department shall license paramedic services.

(i) An application for a license shall be made to the appropriate Department representative on forms provided by the Department and shall contain at least the following information:

(A) Written support from all related agencies.

(B) Financial statement (agencies are exempted).

(C) Copy of the Articles of Incorporation, if incorporated.

(D) The name and address of the owner of the paramedic service or proposed paramedic service.

(E) The name under which the applicant is doing business or proposes to do business.

(F) The training and experience of the applicant in the transportation and care of patients.

(G) The location and description of the place or places from which the paramedic service is intended to operate.

(H) The proposed geographic service area.

(I) Agreement to provide reports to the Department, for each trip made, on forms specified by the Department.

(J) Agreement to make available, time for recertification programs available by hospitals, division, district, or develop their own as necessary.

(ii) Upon receipt of an appropriately completed application form for a paramedic service license, the license officer shall comply with the requirements in Chapter 8, Title 26. The Paramedic Advisory Committee shall review each application and make recommendations to the EMS Committee for licensure based upon type of paramedic service to be offered, equipment, trained personnel, and whether the public convenience and necessity requires the proposed paramedic service. Upon approval by the EMS Committee, and before issuing a license to a new paramedic service, the license officer shall cause the paramedic vehicle and equipment to be inspected. The paramedic personnel training qualifications designated in each application hereunder will be reviewed to determine compliance with R426-3.

(iii) The applicant for a paramedic service provider license will assure the Department that it complies with the following standards:

(A) Response configuration - Utilize one of the following response configurations which shall be so designated on the license.

(I) Paramedic Rescue - Rescue units to be used for response only, utilizing a licensed ambulance service for transport.

(II) Paramedic Tactical Rescue - A rescue unit trained in combat medical response whose primary mission is the retrieval and field treatment of injured peace officers or victims of traumatic confrontations. In addition to the information required under R426-3-3(2)(a) for licensure as a Paramedic Tactical Rescue Unit (PTRU), the applicant shall provide to the Department its standard operating procedures and a letter of recommendation by the Commissioner of the Utah Department of Public Safety. Upon licensure, a PTRU shall function within another EMS service licensure area at the invitation of the local or state public safety authority. The PTRU shall then notify the local EMS agency to establish medical protocol. The PTRU shall also immediately notify the Department of its activation and circumstances of deployment, including location, situation, possible duration, and special needs.

(III) Paramedic Ambulance - Ambulances to be used routinely to transport patients. These units shall also comply with the requirements of the Ambulance Rules of the Utah Emergency Medical Services Act.

(IV) Paramedic Ambulance Transfer Service - Paramedic ambulance services may be licensed for "Paramedic Transfer Service" only. The service is restricted to movement of patients, upon physician request, between medical or nursing facilities. This service is not intended to be a first response paramedic service.

(B) Staffing Requirements

(I) Paramedic configuration at the scene of an accident or medical emergency should be no less than two persons, each of whom is an EMT-Paramedic, licensed medical doctor or registered nurse under Title 58.

(II) Under extraordinary circumstances, as defined by the EMS Committee, a paramedic vehicle may be manned by one EMT-Paramedic and one EMT. The licensee shall maintain a log of all events and submit them to the Department thirty days prior to the quarterly EMS Committee meeting for Committee review. The log shall show each date of variance, vehicle identification number, variance time period and justification.

(III) When a paramedic ambulance has been requested by the referring or attending physician for non-first response inter-facility movement of a patient, and the physician describes the condition of the patient as "serious or potentially critical," paramedic ambulance minimum staffing shall be as noted under R426-3-3(2)(a)(iii)(B)(I) Where the physician describes the condition of the patient as "critical," minimum paramedic ambulance staffing shall be as noted under R426-3-3(2)(a)(iii)(B)(I), plus a driver who is the holder of a valid driver's license.

(IV) The Department shall not authorize the expansion of an existing paramedic service until the provider can show adequate manning levels to meet the required standard of two paramedics at the scene of each accident or medical emergency.

(C) Availability - Provide 24-hour coverage in the defined geographic service area. Paramedic transfer services shall provide 24-hour on-call coverage.

(D) Response Area - The closest vehicle will be dispatched regardless of geopolitical boundaries between contiguous paramedic services.

(iv) Equipment, Supplies and Medications - Each paramedic unit shall carry medical equipment, supplies, medications, access and extrication equipment, and a standard tool box as described in the "R426 Appendix" hereby incorporated by reference into R426-3. This document may be modified at the discretion of the Department as other needs or new methodology becomes known. Copies may be obtained from the Department.

(A) Tool Box - Paramedic services licensed only to provide paramedic ambulance transfer services are exempt from these requirements.

(B) Access and Extrication Equipment - The equipment specified may either be carried on board the paramedic vehicle or on a second vehicle that routinely accompanies the paramedic vehicle to the scene of an accident. Paramedic services licensed only to provide paramedic ambulance transfer services are exempt from these requirements.

(C) Medications - Due to the nature of the difficulties involved in delivering emergency medical care in the field, it will be the responsibility of the local physician advisor to direct the standardization of the optimal package form of medications and the equipment designed for the administration of medications. These package forms will be made available for the resupplying of the paramedic units.

(I) All medications shall be stored per manufacturers' recommendations for temperature control and packaging

requirements. A record shall be maintained which records the minimum and maximum temperatures inside each drug box during each 24-hour period. Any medications known or suspected to have been subjected to temperature outside the recommended range shall be returned to the hospital for replacement.

(v) Inspections - The Department may conduct periodic inspections to determine that operational procedures, equipment condition and maintenance, drug and medication supplies and inventories are adequate and appropriate to the goals of the paramedic program. In this regard, Department representatives shall take the appropriate action to see that operational procedures, equipment condition and maintenance, drug and medication supplies and inventories found to be inadequate or inappropriate by any party are corrected, remedied, standardized or amended.

(A) Any licensed paramedic service shall allow emergency department physicians, nurses and other persons selected by the Department and participating in emergency medical services to ride with paramedic units for the purposes of:

(I) Evaluation of EMT-Paramedic performance.

(II) Identification of training needs.

(III) Improving communications between manpower resources.

(IV) Clarification of role assignments as related to hospital emergency departments, communications, transportation and other components of the paramedic system.

(V) Training new paramedic personnel.

(VI) Other purposes deemed necessary by the provider, District EMS Director or the Department.

(vi) Accident Reporting - All licensed providers shall send a copy of the official accident report to the Department whenever a permitted vehicle is involved in an accident while responding to or transporting a patient.

(b) The Department shall recommend for designation by the EMS Committee participating base station hospitals and associate hospitals who shall comply with the following:

(i) Maintain a 24-hour emergency facility.

(ii) Assist the Department in collecting statistics and evaluating performance costs relating to the program. Each participating hospital shall use the standard Emergency Department Log or other forms as the Department requires.

(iii) Provide initial supplies of new medication when needed and replenish medical supplies and equipment expended during treatment of patients by mobile units.

(iv) Not transfer to another facility any patient who has been treated by a mobile intensive care paramedic unless or until, in the judgment of a licensed physician or registered nurse, the patient is medically able to be transferred and the transfer is in the best medical interest of the patient.

(v) Abide by the Utah Mobile Paramedic Rules established by the EMS Committee.

(vi) Provide to the Department a list of Hospital Paramedic Committee members. The committee should be composed of at least a licensed physician, designated as Medical Director for paramedic-hospital activities, a registered nurse, a representative of hospital administration and a certified paramedic. The committee shall meet monthly to:

(A) Assess paramedic field performance and evaluate continuing education needs. Each base and associate hospital shall submit a quarterly report of meetings outlining findings, recommendations, follow-up results and the names of paramedics involved in tape critique sessions.

(B) Review telemetry tapes.

(C) Maintain communications among Emergency Department personnel and the total paramedic care system.

(vii) Provide, at all times, operational radio or telephonic telemetry communications utilizing:

(A) Telemetry and recording equipment which conforms with current federal standards.

(B) Radio frequencies approved by the Department in conformance with the State Communications Plan.

(viii) Have a licensed physician or registered nurse, qualified in CPR and ECG interpretation who is supervised by a licensed physician acting in accordance with the provisions of the Utah Nurse Practice Act, immediately available at all times to communicate with the EMT-Paramedics in the field.

(ix) Provide supervised clinical training for initial EMT-Paramedic training and for the continuing education of certified EMT-Paramedics.

(x) Record in a bound log, tape recording of EMT-Paramedic transmissions including equipment checks and calibration tests.

(c) The Department shall approve local plans for paramedic system operation.

(i) Local emergency medical services councils will develop for Department approval, detailed plans for the operation of the paramedic systems within their district. Councils may request assistance from the Department in the development of paramedic system plans. Plans shall be in conformity with the Utah Mobile Paramedic Rules and shall include procedures and protocol as follows:

(A) Communications including public access, paramedic dispatch, and training;

(B) Patient triage;

(C) Patient or guardian refusal of services;

(D) EMT-Paramedic standing orders;

(E) Patient or guardian facility preference;

(F) Patient transfer;

(G) Medical records transfer and accessibility; and

(H) In-service training.

(ii) The plan will include letters of support from local government officials, hospital administration and paramedic providers to assure operational integrity of the paramedic system.

(iii) Plans will include procedures for conducting in-service education programs and the responsible people to contact for the program.

(iv) Plans for new paramedic services shall be submitted to the Department prior to the system start-up.

(v) Paramedic system plans will be reviewed by the Department and returned to the District EMS Director within 30 days of submittal.

R426-3-4. Training and Certification.

(1) EMT-Paramedic certification will be awarded by the Department for a two year period upon successful completion of a training program which shall consist of a minimum of 480

hours training as determined by the Department and a satisfactory score on the Department certification examination. At the discretion of the Department a trainee may be provisionally certified as a an EMT-Paramedic for a period not to exceed 90 days. One of two certification options will be awarded as follows:

(a) EMT-Paramedic Certification: This certification status may be awarded only to EMT-Paramedics currently employed by an agency licensed by the Utah Department of Health to provide paramedic services. The agency is responsible to insure the proficiency of its EMT-Paramedics. It is their obligation to the patients they serve to make certain that any EMT-Paramedic whose job takes him away from patient care for a prolonged time, be reintroduced to patient care in a proper manner which is safe for the patient.

(b) EMT-Paramedic Certification Eligible: This certification status may be awarded to EMT-Paramedics not employed by a licensed paramedic agency or who have terminated employment with a licensed agency. It will be the responsibility of the EMT-Paramedic to immediately notify the Bureau upon termination of employment so that the certification status may be updated.

(2) Hospitals and Teaching Institutions - Hospitals and teaching institutions authorized by the Department to provide initial EMT-Paramedic training or continuing education experiences shall provide the following:

(a) Qualified teaching staff and resource facility.

(b) Adequate clinical facilities to allow for a variety of learning experiences.

(c) Qualified physicians, nurses and other health professionals to supervise trainees during initial training.

(d) Authorized hospitals shall provide a variety of supervised training experiences for trainees during initial training and for certified EMT- Paramedics as part of the continuing education program as defined in R426-3-4(6). Patient care clinical areas shall include the following:

(i) Emergency Department;

(ii) Intensive care unit;

(iii) Coronary care unit;

(iv) Delivery room;

(v) Operating room;

(vi) Recovery room.

(e) Trainees may be accepted into tuition funded programs under criteria established by the training institution, but shall as a minimum provide documentation of successful completion of an 120-hour EMT training program or its equivalent.

(f) The training institution, or Department, shall have the authority to terminate training of any trainee during any phase of the program because of:

(i) Failure to achieve minimum academic standards;

(ii) Disclosure of fraudulent application;

(iii) Failure of clinical or fieldwork training segments due to:

(A) Technical incompetence due to emotional instability under stress.

(B) Technical incompetence as determined by supervisory personnel or instructional staff of the training institution, training hospital or paramedic service involved in field internship training. Reasons for termination by the training institution shall be reduced to written form and submitted to the Department prior to any action taken toward trainee.

(iv) Conviction of any felony or act or moral turpitude.

(3) The Department shall establish EMT-Paramedic testing standards in conjunction with the paramedic training institutions.

(4) The Department shall establish other criteria relevant to the training of EMT-Paramedics.

(5) Training Program Monitoring - The Department shall be responsible for monitoring local in-service educational programs for EMT-Paramedics.

(6) Physician Training Consultant - Each paramedic provider shall provide for a physician operationally involved to serve as training consultant. The training consultant shall be responsible for the provider's paramedic continuing education program in accordance with state in-service training requirements and shall:

(a) Develop and maintain competency skill levels including the following subject areas:

(i) Triage;

(ii) Cardiopulmonary resuscitation;

(iii) Airway management including:

(A) Endotracheal or esophageal intubation;

(B) Removal of foreign objects; and

(C) Suctioning

(iv) Administration of intravenous or intraosseous solutions and intravenous medications;

(v) Drug administration;

(vi) Arrythmia recognition;

(vii) Splinting and bandaging;

(viii) Soft tissue injuries;

(ix) Extrication and movement of injured persons;

(x) Bleeding wounds and shock;

(xi) Oxygen administration;

(xii) Emergency childbirth; and

(xiii) Medical and environmental emergencies.

R426-3-5. Recertification.

(1) EMT-Paramedic

(a) EMT-Paramedic recertification shall be for a period of two years following initial certification. This period may be modified by the Department to standardize all expiration dates to June 30.

(b) Thereafter, recertification shall be for a period of four years.

(c) To recertify an EMT-Paramedic shall:

(i) Be currently working for a licensed paramedic service.

(ii) Submit a completed recertification application form to the Department.

(iii) Submit verification of current certification in Advanced Cardiac Life Support (ACLS) by the American Heart Association.

(iv) Submit verification of annual completion of 25 hours per year of Department approved continuing education (CE).

(v) Submit the results of a sponsoring agency peer evaluation confirming satisfactory field performance.

(vi) Submit a statement from the applicant's sponsoring agency confirming the applicant's physical fitness to perform paramedic functions, including the results of a TB examination.

(vii) Submit an evaluation and recommendation from the sponsoring agency's physician advisor.

(viii) Successfully complete the Department written examination.

(d) At the discretion of the Department, an EMT-Paramedic may have his certification provisionally extended for a period not to exceed 90 days, for evaluation.

(2) EMT-Paramedic Certification Eligible

(a) Certification eligible EMT-Paramedics may remain certification eligible as long as they maintain their CME hours, ACLS certification and testing requirements. Any certification eligible EMT-Paramedic who remains in this status for two years or longer, not delivering paramedic level patient care, who then requests full certification status due to employment by a licensed agency, will be required to successfully complete a skill examination consisting of:

(i) Cardiac Mega Code;

(ii) Trauma Code;

(iii) McSwain Dart;

(iv) Central I.V. Lines.

R426-3-6. EMT-Paramedic Functions.

(1) Upon satisfactory completion of the initial training program and upon Department certification, an EMT-Paramedic may carry out the following functions:

(a) Render advanced first aid, rescue and resuscitation services.

(b) Administer parenteral medications under the direct supervision of a licensed physician or a registered nurse both during training and after certification.

(c) Perform cardiopulmonary resuscitation and defibrillation in a pulseless, non-breathing patient.

(d) Where voice contact or a telemetered electrocardiogram is monitored by a licensed physician or a registered nurse supervised by a licensed physician, and direct communication is maintained, upon order of the physician or nurse, perform procedures and administer drugs approved by the EMS Committee as follows:

(i) Administer intravenous or intraosseous solutions;

(ii) Perform gastric suction by intubation;

(iii) Administer airway intubation by esophageal tube or endotracheal tube;

(iv) Perform needle aspiration of the chest;

(v) Perform a phlebotomy or draw blood specimens for analysis;

(vi) Administer drugs of the following classes:

(A) Antiarrhythmic agents;

(B) Vagolytic agents;

(C) Chronotropic agents;

(D) Ionotropic agents;

(E) Analgesic agents;

(F) Alkalinizing agents; and

(G) Vasopressor agents.

(vii) Provide medication by intracardiac puncture.

(viii) Perform cricothyroidotomy.

(e) Services noted in this section under written standing or contingency orders signed by the Base Station or Associate Hospital Medical Director(s) and approved by the Paramedic Advisory Subcommittee.

(2) At the scene of an accident, in transit, or where a sudden illness occurs, certified EMT-Paramedics shall be responsible for the direction and provision of emergency medical care, as described in this section.

(3) Refusal, Suspension or Revocation of Certification.

(a) The Department may refuse to issue a certification or recertification, or suspend or revoke a certification for any of the following causes:

(i) Habitual or excessive use or addiction to narcotics or dangerous drugs, or conviction of any offense relating to the use, sale, possession, or transportation of narcotics or dangerous drugs.

(ii) Habitual abuse of alcoholic beverages or being under the influence of alcoholic beverages while on call or on duty as an EMT-Paramedic or while driving any emergency vehicle.

(iii) Failure to comply with the EMT-Paramedic training certification or recertification requirements of R426-3.

(iv) Fraud or deceit in applying for or obtaining a certification or fraud, deceit, incompetence, patient abuse, theft, or dishonesty in the performance of duties and practice as an EMT-Paramedic.

(v) Involvement in the unauthorized use or removal of narcotics, drugs, supplies or equipment from any emergency vehicle or health care facility.

(vi) Performing procedures or skills beyond the level of certification or violation of laws pertaining to medical practice and drugs.

(vii) Conviction of a felony or a crime involving moral turpitude, or the entering of a plea of guilty or the finding of guilt by a jury or court of commission of a felony or a crime involving moral turpitude.

(viii) Mental incompetence as determined by a court of competent jurisdiction.

(ix) Demonstrated inabilities and failure to perform adequate patient care.

(x) For good cause, including conduct which is unethical, immoral, or dishonorable.

(4) EMT-Paramedic/Physician Relationships - An EMT-Paramedic, where possible, shall be under medical control of a physician representing a designated base station hospital as described under R426-3-3-1.2. When EMT-Paramedics arrive at the scene of an injury or illness, they should secure radio or telephonic telemetry contact with a base station hospital Emergency Department to establish medical control as quickly as possible. If radio or telephonic telemetry contact cannot be obtained, EMT-Paramedics should so indicate on the Incident Trip Report form and follow local written contingency orders of the base station hospital providing medical control. If there is a physician at the scene who wishes to assist or provide medical direction to the EMT-Paramedics, the EMT-Paramedics shall follow his instructions but only until communications are established with a physician at the base station hospital Emergency Department. Once communications are established with the base station hospital physician, the EMT-Paramedics shall take orders from him. If the physician at the scene wishes to continue directing paramedic activities, the EMT-Paramedics shall place the at-scene physician in radio or telephonic contact with the base station physician. The base station physician has the option of (1) allowing the physician at the scene to assume

or continue medical control, (2) assuming paramedic medical control, but allowing the physician at the scene to assist, or (3) assuming medical control with no participation by the on-scene physician. In the event Option 1 is followed, all orders given to the EMT-Paramedic by the at-scene physician, shall be repeated over the radio or telephone to the base station hospital physician for evaluation and recording. If in the judgment of the base station hospital physician who is monitoring and evaluating the at-scene medical control, the care is inappropriate to the nature of the medical emergency, the base station hospital physician may reassume medical control of the at-scene EMT-Paramedics.

R426-3-7. Fees and Charges.

(1) The base station hospital, associate hospital and receiving center shall not bill or otherwise charge patients for mobile paramedic services provided to patients by EMT-Paramedics at the scene of an emergency, during transport to the hospital or other emergency facility and before admission to the hospital, unless they are the licensed provider of paramedic services. The hospital may recover the cost, through the patient billing process for supplies and drugs administered by the EMT-Paramedic to patients, if the supplies or drugs were subsequently replaced by the hospital as outlined in the Utah Mobile Paramedic rules.

(2) Paramedic Services operating under R426-3 may, at their discretion, make charges for paramedic services not to exceed the standards set in R426-1, Ambulance Rules.

R426-3-8. Denial, Suspension, or Revocation.

See Section 26-8-13.

R426-3-9. Research or Study Projects.

(1) Persons proposing to undertake a research or study project which requires waiver of any rule herein, shall have a project director who is a physician licensed to practice medicine in the state of Utah, and shall submit a written proposal to the Bureau of Emergency Medical Services for presentation to the EMS Committee. The Committee may only waive rules if the waiver is not inconsistent with statutory requirements. The proposal shall include the following:

(a) A project description, including:

(i) Need for project,

(ii) Project goal,

(iii) Specific objectives,

(iv) Methodology for the project implementation,

(v) Geographical area to be covered by the proposed project,

(vi) Specific rule to be waived,

(vii) Proposed waiver language, and

(viii) Evaluation methodology.

(b) A list of the pre-hospital providers and hospitals participating in the project.

(c) A signed statement of endorsement from participating hospital medical directors and administrators, the director of each participating paramedic/ambulance provider, other project participants, and other parties who may be significantly affected.

(d) A description of the skills to be utilized by the EMT-Paramedics, if different from those specified in R426-3, and provision for training and supervising of personnel who are to utilize these skills, including the names of the personnel.

(e) The name and signature of the project director attesting to his support and approval of the project proposal.

(2) Study project approval

(a) The EMS Committee may grant approval to any project found to comply with the conditions specified in this section. Interested and affected parties will be notified of any proposed project and be provided an opportunity to comment. Only one project on any given subject shall be conducted within the state at any given time.

(b) A representative of the State Epidemiological Office or another person with statistical expertise, approved by the Director of the Bureau of Emergency Medical Services, shall review project design and make recommendations regarding technical detail, elimination of bias, study monitoring, hypothesis development in testing, and statistical validity.

(c) When considering any project, the EMS Committee may, at its discretion, require additional conditions to be met.

(d) Project approval shall be granted for a period of one year from the date of approval by the EMS Committee. Approval for continuation beyond this period by the EMS Committee shall be based on the achievement and satisfactory progress as evidenced in written progress reports to be submitted to the Bureau of Emergency Medical Services at least 90 days prior to the end of the approved year. The time periods for the project shall not exceed three years.

(e) Approval of a project by the EMS Committee shall constitute approval of the personnel listed in the proposal to exercise the specified skills of the participants in the project. The Project Director shall submit the names of additional personnel not initially approved, to the Bureau of Emergency Medical Services for consideration by the EMS Committee.

(f) The EMS Committee may rescind approval for the project at any time for just cause. Before any rescission is final the agency involved in the study will be allowed a hearing by the EMS Committee to explain and express their views.

(3) Study recommendations - At least six months prior to the planned completion of the project, the medical director shall submit to the Bureau of Emergency Medical Services, a report with the preliminary findings of the project and any recommendations for changes in the project requirements.

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1991 **26-8-1 et seq.**
Notice of Continuation December 9, 1997

R426. Health, Health Systems Improvement, Emergency Medical Services.
R426-4. Emergency Medical Dispatcher Rules.
R426-4-1. Authority and Purpose.

(1) This rule is established under Section 26-8-4.

(2) The purposes of Rule R426-4 are to:

(a) Provide for the establishment of minimum standards to be met by those providing Medical Dispatch services in the State of Utah to promote the health and safety of the people of this state; and

(b) Establish training and certification standards for dispatchers who voluntarily request certification as Emergency Medical Dispatchers.

R426-4-2. Definitions.

(1) As used in R426-4:

(a) Department means the Utah Department of Health.

(b) Emergency Medical Dispatcher (EMD) means a person certified by the Department who has successfully completed a Department approved Emergency Medical Dispatch Course.

(c) Local Medical Director means a person recognized by the Department who assumes medical leadership for the provision of basic or advanced life support services in the dispatch agency's geographical area.

(d) Person means any individual, firm, partnership, association, corporation, company, group of individuals acting together for a common purpose, agency, or organization of any kind.

(e) Selective Medical Dispatch System means a Department approved reference system used by a local dispatch agency to dispatch aid to medical emergencies which includes:

(i) Systemized caller interrogation questions;

(ii) Systemized pre-arrival instructions; and

(iii) Protocols matching the dispatcher's evaluation of injury or illness severity with vehicle response mode and configuration.

(f) Vehicle Response Mode means the use of emergency driving techniques, such as red-light-and-siren vs. routine driving response.

(g) Vehicle Response Configuration means the specific vehicle(s) of varied types, capabilities, and numbers responding to render assistance.

R426-4-3. Requisites for Providing Medical Dispatch Service.

(1) All agencies who routinely accept calls for EMS assistance from the public and dispatch emergency medical personnel shall have in effect a Selective Medical Dispatch System approved by the local medical directors.

(2) The Department shall assist local dispatch agencies in implementing a Selective Medical Dispatch System by providing technical assistance.

(3) Dispatch agencies shall provide for quality assurance by initiating an ongoing medical call review procedure.

R426-4-4. Personnel.

(1) Dispatchers serving medical providers are not required to be certified as Emergency Medical Dispatchers, but are encouraged to voluntarily seek training and certification through a Department approved course. Certification allows the dispatcher to fall under the liability immunity coverage provided in Subsection 26-8-11(2).

(2) Certification - The Department shall develop an Emergency Medical Dispatch training and certification program. Curriculum standards shall be established by the Department with certification standards as follows:

(a) To be initially certified as an EMD an individual must:

(i) Successfully complete a state approved EMD Course.

(ii) Be currently certified in cardiopulmonary resuscitation (CPR) through a Department approved course.

(iii) Successfully pass the Department's written examination.

(iv) Complete all requirements for certification within 90 days from course completion date. The Department may grant more time to complete all certification requirements to individuals who demonstrate extenuating circumstances that prevented completion within 90 days from the course completion date.

(3) Recertification - Recertification is required every three years to maintain state certification. This period may be modified by the Department.

(a) To recertify an EMD shall:

(i) Submit to the Department a completed application form provided by the Department.

(ii) Submit to the Department a current card or certificate from the American Heart Association or the American Red Cross, reflecting satisfactory course completion and current certification in cardiopulmonary resuscitation.

(iii) Successfully complete the Department's EMD written examination.

(iv) Complete 36 hours of Department approved continuing medical dispatch education or in-service during the three year recertification period.

(4) Reciprocal certification - Reciprocity for applicants certified outside of Utah will be based on the following considerations:

(a) Applicants shall provide the Department with a current copy of their Emergency Medical Dispatcher certification.

(b) Applicants shall provide the Department proof that the certifying course meets the standards established by the Department.

(c) Applicants shall successfully complete the Department's written examination.

(d) Applicants shall meet all Utah certification requirements.

(e) Emergency Medical Dispatchers residing in other states will be considered for reciprocal certification only if they provide emergency medical services within Utah.

(5) Certification and recertification for the handicapped - R426-4 shall not preclude any physically handicapped individual from certifying or recertifying who can demonstrate proficiency in verbally describing the treatment methods outlined in the Department approved EMD Course to a caller.

(6) Lapsed certification - Those individuals who permit their certification to lapse may be recertified by completion of the recertification requirements and personal interview with a Department designated interviewer.

(7) Instructor Standards - Instructors who teach emergency medical dispatchers shall meet certification standards established by the Department.

(8) Refusal, Suspension or Revocation of Certification.

(a) The Department may refuse to issue a certification or recertification, or suspend or revoke a certification for any of the following causes:

(i) Habitual or excessive use or addiction to narcotics or dangerous drugs, or conviction of any offense relating to the use, sale, possession, or transportation of narcotics or dangerous drugs.

(ii) Habitual abuse of alcoholic beverages or being under the influence of alcoholic beverages while on call or on duty as an Emergency Medical Dispatcher or while driving any emergency vehicle.

(iii) Failure to comply with the emergency medical dispatcher training certification or recertification requirements of this rule.

(iv) Fraud or deceit in applying for or obtaining a certification or fraud, deceit, incompetence, patient abuse, theft, or dishonesty in the performance of duties and practice as an emergency medical dispatcher.

(v) Involvement in the unauthorized use or removal of narcotics, drugs, supplies or equipment from any emergency vehicle or health care facility.

(vi) Performing procedures or skills beyond the level of certification or violation of laws pertaining to medical practice and drugs.

(vii) Conviction of a felony or a crime involving moral turpitude, or the entering of a plea of guilty.

(viii) Mental incompetence as determined by a court of competent jurisdiction.

(ix) Demonstrated inabilities and failure to perform adequate patient care.

(x) For good cause, including conduct which is unethical, immoral, or dishonorable.

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R426. Health, Health Systems Improvement, Emergency Medical Services.
R426-5. Hospital Trauma Categorization Standards.
R426-5-1. Authority and Purpose.

(1) Authority - This rule is established under Sections 26-8-4 and 26-8-5, which authorize:

(a) The Department to develop hospital critical care categorization guidelines and treatment protocols for trauma; and

(b) The EMS Committee to approve critical care categorization guidelines and treatment protocols and designate trauma care facilities consistent with the approved guidelines.

(2) This rule provides standards for the categorization and designation of hospital Trauma Centers which will be of assistance to physicians in selecting the most appropriate physician and facility based upon the nature of the patient's critical care problem.

(3) It is intended that the categorization process be dynamic and updated periodically to reflect changes in medical facility capabilities and treatment processes. Also, as suggested by the Utah Medical Association, the standards are in no way to be construed as mandating the transfer of any patient contrary to the wishes of his attending physician, rather the standards serve as an expression of the type of facilities and care available in the respective hospitals for the use of physicians requesting transfer of patients requiring skills and facilities not available in their own hospitals.

R426-5-2. Definitions.

As used in R426-5:

(1) Categorization means the process of identifying and developing a stratified profile of Utah hospital trauma critical care capabilities in relation to the standards defined under R426-5-8.

(2) Department means the Utah Department of Health.

(3) Designation means formal recognition by the Department that a Hospital meets the standards set forth in R426-5 and is authorized by the EMS Committee to function at a specified categorization level.

(4) Director means the Executive Director of the Utah Department of Health.

(5) EMS Committee means The State Emergency Medical Services Committee.

(6) General acute hospital means a facility licensed under Title 26, Chapter 21, which is a facility that provides diagnostic, therapeutic, and rehabilitative services to both in patients and out patients, by or under the supervision of physicians.

(7) Inclusive Trauma System means a coordinated component of the State emergency medical services (EMS) system composed of all acute care facilities, including designated trauma centers and all prehospital providers which have established communication linkages and triage protocols that provide for the effective management, transport care of all injured patients from initial injury to complete rehabilitation.

(9) Level of care means the capabilities and commitment to the care of the trauma patient available within a specified facility.

(810) Patient means an individual who, as the result of illness or injury, needs immediate medical attention, whose physical or mental condition presents an imminent danger of loss of life or significant health impairment, or who may be otherwise incapacitated or helpless as a result of a physical or mental condition.

(11) Trauma Center means a hospital or consortium of hospitals the EMS Committee has designated pursuant to R426-5-6.

(12) Verification means determination by the EMS Committee that designated trauma centers have maintained and are in compliance with standards set forth in R426-5.

R426-5-3. Trauma Center Categorization Guidelines.

(1) To establish a basis for trauma center categorization and designation, the Department shall utilize trauma center criteria established in the 1995 Utah Trauma System Plan as approved by the EMS committee. The criteria takes into consideration current national standards for trauma center categorization.

R426-5-4. Trauma Review Committee.

(1) The Department shall appoint a Trauma Review Committee. The committee shall annually evaluate trauma centers and applicants for compliance to standards set in R426-5-2 for verification. The committee shall report results to the EMS Committee. The committee shall be composed of the following persons:

(a) One surgeon, knowledgeable in trauma

(b) One emergency physician

(c) One nurse

(d) One hospital administrator

(e) One Department representative

(2) With the exception of the Department representative, tenure shall be three years. Initial appointments for the physicians, nurse and hospital administrator shall be for three, two and one year(s), respectively. Committee members may be reappointed. A physician representative shall serve as committee chair.

(3) Trauma Review Committee members shall not review their own hospitals. When this situation arises, the Department shall appoint a temporary alternate member.

R426-5-5. Trauma Center Categorization Process.

The Department shall:

(1) Develop a survey document based upon the Trauma Center Criteria described in R426-5.

(2) Periodically survey all Utah hospitals which provide emergency trauma care to determine the maximum level of trauma care which each is capable of providing.

(3) Disseminate survey results to all Utah hospitals, and as appropriate, to state EMS agencies.

R426-5-6. Trauma Center Designation Process.

(1) Hospitals wishing designation recognition shall complete a Department application as outlined in R426-5-7.

(2) The Department shall, upon receipt of the completed application and appropriate fees, verify compliance to the designation level sought in accordance with protocols established by the Department.

(3) Trauma Centers shall be designated for a period of three years unless the designation is rescinded by the Department for non-compliance to standards set forth in R426-5-7.

(4) The Department shall disseminate a list of designated trauma centers to all Utah hospitals, and state EMS agencies, and as appropriate, to hospitals in nearby states which refer patients to Utah hospitals.

R426-5-7. Trauma Center Verification Process.

(1) All designated Trauma Centers desiring to remain designated, shall apply for verification by submitting the following information to the Department at least six months prior to the anniversary date of initial designation:

(a) A completed and signed application and appropriate fees for Trauma Center verification;

(b) A letter from the hospital administrator of continued commitment to comply with current Trauma Center designation standards as applicable to the applicant's designation level;

(c) The data specified under R426-5-8;

(d) The minutes of pertinent hospital committee meetings for the previous year as specified by the Trauma Review Subcommittee, for example, trauma conferences, surgical morbidity and mortality meetings, emergency department or trauma death audits.

(e) A brief narrative report of trauma outreach education activities for the previous year;

(f) A brief narrative report of trauma research activities for the previous year including protocols and publications.

(2) All trauma centers desiring to apply for verification shall submit the required application and appropriate fees to the Department no later than January 1.

(3) Upon receipt of a verification application from the Department, accompanied by the information specified under R426-5-(7-(1))(a) through f, the Trauma Review Committee shall conduct a review and report the results to the EMS Committee.

(4) Every three years, the Level I and II Trauma Centers must submit written documentation detailing the results of an American College of Surgeons site visit.

(5) Every three years from the date of initial designation or from a date specified by the Department, the Trauma Review Subcommittee shall, conduct a formal site visit for each designated Level III, IV, or V trauma center and report the results to the EMS Committee.

(6) The Department and the Trauma Review Committee may conduct activities with any designated trauma center to verify compliance with designation requirements which may include:

(a) Site visits to observe, unannounced, an actual trauma resuscitation, including the care and treatment of a trauma patient.

(b) Interview or survey prehospital care providers who frequent the trauma center, to ascertain that the pledged level of trauma care commitment is being maintained by the trauma center.

R426-5-8. Data Requirements for an Inclusive Trauma System.

1. Designated trauma centers shall collect and quarterly submit to the Department Trauma Registry information necessary to maintain an inclusive trauma system. The inclusion criteria for a trauma patient is as follows:

(a) ICD9 Diagnostic Codes between 800 and 959.9 (trauma); or 760.5 (fetus or newborn affected by trauma); or 641.8 (antepartum history due to trauma); or 518.5 (pulmonary embolism due to trauma); and

(b) Any of the following patient conditions: admitted to the hospital for 48 hours or longer; transferred in or out of your hospital; died; all air ambulance transports (including death in transport and patients flown in but not admitted to the hospital). The information shall be in a standardized electronic format specified by the Department which includes:

(i) Demographics:

Database Record Number

Institution ID number

Medical Record Number

Social Security Number

Patient Home Zip Code

Sex

Date of Birth

Age Number and Units

(ii) Injury:

Date of Injury

Time of Injury

City of Injury

State of Injury

Zip Code of Injury

Blunt, Penetrating, or Burn Injury
Cause of Injury Description
Cause of Injury Code
Cause of Injury E-code
Site/Location of Injury
Work Related Injury (y/n)
(iii) Prehospital:
Name of EMS Service
Transport Origin Scene or Referring Facility
Trip Form Obtained (y/n)
Arrival Time at (First) Hospital
Arrival Date at Hospital
(iv) Referring Hospital:
Transfer from Another Hospital (y/n)
Name or Code
Arrival Date
Arrival Time
Discharge Date
Discharge time
Transfer Mode
Admitted or ER
Procedures
Pulse
Capillary Refill
Respiratory Rate
Respiratory Effort
Blood Pressure
Eye Movement
Verbal Response
Motor Response
Glascow Coma Score Total
Revised Trauma Score Total
(v) Emergency Department Information:
Mode of Transport
Arrival Date
Arrival Time
Discharge Time
Discharge Date
Pulse
Capillary Refill
Respiratory Rate
Respiratory Effort
Blood Pressure
Eye Movement
Verbal Response
Motor Response
Arrival Glascow Coma Score Total
Revised Trauma Score Total
(vi) Emergency Department Treatment:
Procedures Done (pick list)
Paralytics used prior to GCS (y/n)
Disposition
(vii) Admission Information:
Admit from ER or Direct Admit
Admitted from what Source
Time of Hospital Admission
Date of Hospital Admission
(viii) Hospital Diagnosis:
ICD9 Diagnosis Codes
AIS 90 or 95 Used?
AIS Score for Diagnosis (calculated)
Injury Severity Score
(ix) Operations/Procedures:
ICD9 Codes
(x) Quality Assurance Indicators:
None
(xi) Complications:
None
(xii) Outcome:
Discharge Time
Discharge Date
Total Days Length of Stay
Disposition from Hospital
Destination Facility
GCS Outcome Score
(xiii) Charges:
Payment Sources

R426-5-9. Noncompliance to Standards.

The Department may reduce facility designation to a lower level or rescind the designation for noncompliance to standards adopted under R426-5.

R426-5-10. Statutory Penalties.

A person who violates this rule is subject to the provisions of Title 26, Chapter 23, which provides for a penalty of up to $5,000 per violation or a Class B misdemeanor on the first offense and a Class A misdemeanor on a subsequent offense.

KEY: emergency medical services
September 23, 1997 **26-8**
Notice of Continuation December 9, 1997

R426. Health, Health Systems Improvement, Emergency Medical Services.
R426-6. Emergency Medical Services Grants Program Rules.
R426-6-1. Authority and Purpose.

(1) This rule is established under Subsection 26-8-2.5(3)(b).

(2) The purpose of R426-6 is to provide guidelines for the equitable distribution of grant funds specified under the Emergency Medical Services Grants Program.

R426-6-2. Definitions.

(1) As used in R426-6:

(a) Department means Utah Department of Health.

(b) EMS Committee means the State Emergency Medical Services (EMS) Committee defined in Subsection 26-8-2(9).

(c) County EMS Council or Committee means a group of persons recognized by the county commission as the legitimate entity within the county to formulate policy regarding the provision of EMS. It is recommended that the committee have the following representation: A physician and a nurse involved in the provision of emergency medical care; an ambulance service representative; a paramedic service representative, if

available within county; a dispatcher representative; a local health department director or his designee and; a county commissioner or his designee; other members as locally appointed.

(d) Multi-county EMS council or committee means a group of persons recognized by an association of counties as the legitimate entity within the association to formulate policy regarding the provision of EMS. It is recommended that the committee have the following representation: A physician and a nurse involved in the provision of emergency medical care; an ambulance service representative; a paramedic service representative, if available within county; a dispatcher representative; a local health department director or his designee and; a county commissioner or his designee; other members as locally appointed.

(e) Matching Funds means that portion of funds, in cash, contributed by the grantee to total project expenditures.

(f) State Grant Review Committee means a committee appointed by the EMS Committee to review, evaluate, prioritize and make grant funding recommendations to the EMS Committee.

R426-6-3. Eligibility.

Grantees shall be limited to agencies or political subdivisions of local or state government or incorporated non-profit entities.

R426-6-4. Funding Criteria.

Grant awards may be made under R426-6 for any application which improves the delivery of EMS within the State of Utah.

R426-6-5. Application Process.

(1) Application forms:

(a) The department shall make available, upon request, grant application forms which include, but are not limited to the following information:

(i) Applicant name, address, name of agent and agent signature;

(ii) Applicant representative responsible for implementation of the grant proposal;

(iii) Applicant representative responsible for fiscal management of the grant proposal;

(iv) A concise description of the grant proposal, including need, implementation plan, expected benefits and evaluation criteria; and

(v) Dated signatures from representatives of required review agencies indicating receipt of a copy of the grant application for review.

(2) Grants Program Guidelines:

(a) The grant program guidelines, including the review and awards schedule shall be established annually by the EMS Committee in their January meeting.

(3) Application and Review Process:

(a) Completed application forms will be accepted by the Department in accordance with the guidelines and schedule established pursuant to R426-6-5-2. Incomplete forms may be rejected by the Department and returned to the applicant.

(b) It is the intent of the EMS Committee that there be local EMS council or committee review and prioritization of grant applications. Therefore, grant applications shall be provided by grant applicants to their respective county EMS councils or committees and the multi-county EMS councils or committees, where organized, for a period of at least 30 days for review and prioritization before consideration by the State Grant Review Committee. State reviews may not be conducted for grant proposals which have not been first submitted to the county or the multi-county EMS councils or committees.

(c) After receiving the recommendations of the State Grant Review Committee, the EMS Committee shall conduct a final grant evaluation for prioritization and funding authorization. During this process, the EMS Committee may reject or authorize full or partial funding of any or all grant proposals.

(d) State or non-profit agencies whose service area includes multiple local EMS Committee jurisdictions shall bypass county and multi-county reviews.

R426-6-6. Interim Grant Awards.

(1) The EMS Committee may, at its discretion, consider interim or emergency applications for grant funding assistance where:

(a) Grant funds are available;

(b) The need is clearly demonstrated by the applicant;

(c) The need did not exist at the time of the previous EMS grant application cycle; and

(d) Delay of funding to the next scheduled grant cycle would impair the proposal or the level of EMS care provided by the agency.

(2) Applications shall:

(a) Follow the same format as annual grant applications;

(b) Where possible, be endorsed by the county EMS council or committee prior to submission to the Department; and

(c) Where possible be submitted to the Department at least 30 days prior to the next scheduled EMS Committee meeting.

R426-6-7. Matching Fund Requirements.

(1) Grant recipients shall, for the following categories, provide matching funds in the amount of 50% of total approved expenditures:

(a) Equipment, excluding vehicles, used in direct patient care, communications, extrication or rescue operations;

(b) Registration fees, including travel and per diem costs, for Department approved training programs, seminars or workshops. Travel and per diem reimbursement may be requested only where one-way travel to the conference site is 100 miles or more and shall be computed using state approved rules.

(2) Grant recipients shall, for ambulances or emergency vehicles, provide matching funds in the amount of 60% of total approved expenditures. Grant funds shall not exceed $20,000 per vehicle.

(3) Initial training of Department certifiable personnel shall be funded at levels specified by the EMS Committee.

(4) Matching funds are not required for demonstration or research projects unless specifically stipulated by the EMS Committee.

(5) The EMS Committee may reduce or waive the above

matching fund requirements where deemed appropriate in order to respond to special or pressing local or state EMS problems.

R426-6-8. Grant Implementation.

(1) In accordance with Subsection 26-8-2.5(3)(b), awards shall be implemented by grants between the Department and the grantee.

(a) Grant awards shall reflect the authorization of the EMS Committee and shall terminate on the date set by the EMS Committee.

(b) Grant funding shall be on a reimbursable basis after presentation of documentation of expenditures which are in accordance with the approved grant awards budget.

(c) Grant awards may be extended or amended only upon application to the EMS Committee at least 30 days prior to a regularly scheduled EMS Committee meeting. Grant awards will not be extended or amended after their expiration date.

KEY: emergency medical services
1992 26-8
Notice of Continuation December 2, 1997

R428. Health, Health Data Analysis.
R428-1. Adoption of Health Data Plan.
R428-1-1. Legal Authority.

This rule is promulgated in accordance with Title 26, Chapter 33a.

R428-1-2. Health Data Plan Adoption.

As required by Section 26-33a-104, the Health Data Committee adopts by rule the health data plan dated October 3, 1991.

KEY: health, health policy, health planning
1991 26-33a-104
Notice of Continuation December 23, 1997

R428. Health, Health Data Analysis.
R428-2. Health Data Authority Standards for Health Data.
R428-2-1. Legal Authority.

This rule is promulgated under authority granted by Title 26, Chapter 33a.

R428-2-2. Purpose.

This rule establishes the reporting standards which apply to data suppliers, and the classification, control, use, and release of data received by the committee pursuant to Title 26, Chapter 33a.

R428-2-3. Definitions.

The following definitions apply to all of R428.

A. "Bureau" means the Bureau of Health Data Analysis within the Utah Department of Health, which serves as staff to the Utah Health Data Committee.

B. "Committee" means the Utah Health Data Committee created by Section 26-33a-7.

C. "Data element" means the specific information collected and recorded for the purpose of health care and health service delivery. Data elements include information to identify the individual, the health care provider, the data supplier, the service provided, the charge for service, payer source, medical diagnosis, and medical treatment.

D. "Data release, disclosure, or disclose" means the disclosure or the communication of health care data to any individual or organization outside the committee, its staff, and contracting agencies.

E. "Data supplier" means a health care facility, health care provider, self-funded employer, third-party payer, health maintenance organization, or government department required to provide health data under rules adopted by the committee.

F. "Health Data Plan" means the plan developed and adopted by the Health Data Committee under Chapter 33a, Title 26, Section 104.

G. "Health care provider" means any person, partnership, association, corporation, or other facility or institution that renders or causes to be rendered health care or professional services as a physician, registered nurse, licensed practical nurse, nurse-midwife, dentist, dental hygienist, optometrist, clinical laboratory technologist, pharmacist, physical therapist, podiatrist, psychologist, chiropractic physician, naturopathic physician, osteopathic physician, osteopathic physician and surgeon, audiologist, speech pathologist, certified social worker, social service worker, social service aide, marriage and family counselor, or practitioner of obstetrics, and others rendering similar care and services relating to or arising out of the health needs of persons or groups of persons, and officers, employees, or agents of any of the above acting in the course and scope of their employment.

I. "Health data" means information relating to the health status of individuals, health services delivered, the availability of health manpower and facilities, and the use and costs of resources and services to the consumer.

H. "Identifiable health data" means any item, collection, or grouping of health data that makes the individual supplying or described in the health data identifiable.

J. "Individual" means a natural person.

K. "Order" means a committee action that determines the legal rights, duties, privileges, immunities, or other interests of one or more specific persons, but not a class of persons.

L. "Report" means a compilation, study or data release developed from resource documents to display information in a simplified manner and designed to meet the needs of specific audiences or nontechnical users.

M. "Resource document" means contemplated tabulation formats defined in the Health Data Plan to display information, documents, or records containing measures relating to health care. These documents are classified as standard, special, and electronic.

R428-2-4. Technical Assistance.

The Bureau may provide technical consultation to a data supplier upon request and resource availability. The consultation shall be to enable a data supplier to submit health data according to R428.

R428-2-5. Data Classification and Access Requirements.

A. The Utah Health Data Authority Act, Section 108, specifically classifies all information, reports, statements, memoranda, or other data received by the committee as "strictly confidential." All data received under rules of the Utah Health Data Authority Act are strictly confidential. This strict classification means the committee's data are not public, and as such are exempt from the Classification and Release Requirements specified in the Government Records Access And Management Act, Chapter 2, Title 63, Utah Code Annotated. The committee shall establish guidelines for the protection, use and release of the data.

B. Persons having access to data under control of the committee shall not:

1. take any action that might provide information to any unauthorized individual or agency;

2. scan, copy, remove, or review any information to which specific authorization has not been granted;

3. discuss information with unauthorized persons which could lead to identification of individuals;

4. give access to any information by sharing passwords or file access codes.

C. Any person having access to data under control of the

committee shall:

1. maintain the data in a safe manner which restricts unauthorized access;

2. limit use of the data to the purposes for which access is authorized;

3. report immediately any unauthorized access.

D. A failure to report known violations by others of responsibilities specified in 3 and 4 above is subject to the same punishment as a personal violation.

E. The Bureau shall deny a person access to the facilities, services and data as a consequence of any violation of the responsibilities specified in R428-2-5(C) and R428-2-5(D) above.

F. The committee may, pursuant to Chapter 33a, Title 26, Section 110, subject the person to legal prosecution for any unauthorized use, disclosure, or publication of its data.

R428-2-6. Security.

The Bureau shall implement procedures protecting data confidentiality. These procedures shall ensure the committee's health data against unauthorized access.

R428-2-7. Editing and Validation.

A. The data supplier shall review each health data record prior to submission. The review shall consist of checks for accuracy, consistency, completeness, and conformity.

B. The Bureau may subject health data to edit checks. The Bureau may require the data supplier to correct health data failing an edit check. The data supplier may perform data validation before public disclosure.

1. The Bureau may, by first class U.S. mail, return to the submitting data supplier all health data failing an edit check. The submitting data supplier shall correct all returned health data and resubmit all corrected health data to the Bureau within 35 calendar days of the date the Bureau mails the records.

2. Data validation gives the data supplier the right to review, comment, and provide support for corrections of any information relating to its activities prior to public release. The data supplier shall return the validation document to the Bureau with comments and support for corrections within 35 calendar days of the date the Bureau mails the validation document. If the data supplier fails to return the information within the 35 day period, the committee may conclude that the information is correct and suitable for release.

3. The committee may note in its resource documents, reports, and publications that accurate appraisal of a certain category or entity cannot be presented because of a failure to comply with the committee's request for data, edit corrections, or data validation.

R428-2-8. Error Rates.

The committee may establish and order reporting quality standards based on non-reporting or edit failure rates.

R428-2-9. Data Disclosure.

A. The committee may release information, compilations, reports, statements, memoranda, or other data received or derived from its health data as specified in Chapter 33a, Title 26, Sections 107, 108, and 109. The Bureau may disclose the submitted data as resource documents or reports in either standard, special, or electronic format. The Bureau may prepare data for disclosure annually as standard or special resource documents specified in the health data plan. If the disclosure identifies a health care provider, the Bureau must adhere to the procedures specified in R428-2-9(B).

B. Prior to any release of a compilation, report, or resource document in which a health care provider is identified, the Bureau shall notify the data supplier and the health care provider by first class mail using the last known address. The data supplier and health care provider have the right to:

1. review the information to be disclosed and verify the accuracy of the information contained therein;

2. submit to the Bureau evidence of errors in the disclosure document;

3. develop written comments or alternate interpretations to the information reported for inclusion with the disclosure;

4. return the disclosure notice, evidence of errors, and comments within 35 calendar days of the date the Bureau mails the notice. The committee may interpret the failure to return the notice of disclosure within the designated time period as agreement that the reports are acceptable for release in any format outlined in the Health Data Plan.

5. the Bureau shall correct data it finds to be in error and provide data suppliers and health care providers notification of the corrections subject to the rights specified in R428-2-9(B).

C. The committee may allow exemptions to the notification procedures specified in R428-2-9(B):

1. The Bureau may release to the data supplier its data elements used to create compilations, reports, or resource documents without notification when a data supplier requests the data it supplied.

2. The Bureau may make additional disclosures to other requesters of compilations, reports, or resource documents previously reviewed under the procedures specified in R428-2-9(B).

D. The Bureau may, by its initiative, prepare and disclose special compilations, reports, studies or analyses relating to health care cost, quality, access, health promotion programs, or public health. These actions may be to meet legislative intent or upon request from individuals, government agencies, or private organizations.

E. The committee may make data available for disclosure in computer readable formats.

1. The public data set provides general health care data. The Director of the Bureau may approve written requests for the public data set without approval of the committee. Written requests must include the following:

a. the name, address, and telephone number of the requester;

b. a statement of the purpose for which the data will be used; and

c. the starting and ending dates for which data are requested.

2. The design of the research oriented data set is for bona fide research of health care cost, quality, access, health promotion programs, or public health issues. A research oriented data set is available by request to the committee. Requests for a research oriented data set must be accompanied

by a completed request form as established by the committee. Request forms are included in Technical Manuals that are available from the Bureau. The committee requires documentation of the requester's:

a. need for the research oriented data set to conduct bona fide research;

b. intent to use the data to study, promote, or improve accessibility, quality, or cost-effective health care;

c. integrity and ability to safeguard the data from any breach of confidentiality;

d. competency to effectively use the data in the manner proposed;

e. affiliation with an institutional review board; and

f. guarantee that no further disclosure will occur without prior approval of the Bureau.

R428-2-10. Penalty for Failure to Provide Data.

If a data supplier fails to meet the requirements of rules R428-1 through R428-20, the committee shall order the data supplier to provide the data. Failure to comply with the order may result in the imposition of penalties as provided in the Utah Health Data Authority Act, Section 26-33a-113.

KEY: health, health policy, health planning
1991 26-33a-104
Notice of Continuation December 23, 1997

R428. Health, Health Data Analysis.
R428-5. Appeal and Adjudicative Proceedings.
R428-5-1. Type of Proceeding.

A. The actions of the committee and requests for committee action are designated as formal adjudicative proceedings. The committee may at any time before a final order is issued in any adjudicative proceeding convert a formal adjudicative proceeding to an informal adjudicative proceeding, or an informal adjudicative proceeding to a formal adjudicative proceeding if:

1. conversion of the proceeding is in the public interest;

2. conversion of the proceeding does not unfairly prejudice the rights of any party.

R428-5-2. Formal Proceedings.

A. The committee or its designated representative shall preside over a formal proceeding initiated by a notice of committee action or in response to a request for committee action.

B. The content of the notice of committee action shall comply with Section 63-46b-3(2). Formal hearings shall be held at the next regularly scheduled committee meeting unless prior arrangements are made for an alternate date and proper notice is provided all parties.

C. Within 30 calendar days of the mailing date of a notice of committee action, the respondent or his representative shall file with the Bureau and with each person known to have a direct interest a written, signed response that includes:

1. the agency's file number or other reference number;

2. the name of the adjudicative proceeding;

3. a statement of the relief or action sought;

4. a statement of the facts;

5. a statement summarizing the reasons for granting the relief requested.

D. A conference may be scheduled by the Director of the Bureau or the presiding officer to encourage settlement before the hearing.

E. The committee or its designated representative as presiding officer shall have the authority to issue subpoenas at their discretion.

F. Within a reasonable time after the hearing, or after the filing of any post-hearing papers permitted by the presiding officer, the presiding officer shall sign and issue an order that includes:

1. a statement of the presiding officer's findings of fact;

2. a statement of the presiding officer's conclusions of law;

3. a statement of the reasons for the presiding officer's decision;

4. a statement of any relief ordered by the agency;

5. a notice of the right to apply for committee reconsideration;

6. a notice of any right to administrative or judicial review available;

7. the time limits applicable to any reconsideration or review.

R428-5-3. Default and Reconsideration.

A. The presiding officer may enter an order of default against a party if:

1. a party in an informal adjudicative proceeding fails to participate in the adjudicative proceedings;

2. a party to a formal adjudicative proceeding fails to attend or participate in a properly scheduled hearing after receiving proper notice; or

3. a respondent in a formal adjudicative proceeding fails to file a response within the time frame specified in R428-5-1(3).

4. The order of default shall include a statement of the grounds for default and shall be mailed to all parties.

5. A defaulted party may seek to have the committee set aside the default order and any order in the adjudicative proceeding issued subsequent to the default order, by following the procedures outlined in the Utah Rules of Civil Procedure. A motion to set aside a default and any subsequent order shall be made to the presiding officer.

6. In an adjudicative proceeding begun by the agency, or in an adjudicative proceeding that has other parties besides the party in default, the presiding officer shall, after issuing the order of default, 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.

7. In an adjudicative proceeding that has no parties other than the committee and the party in default, the presiding officer shall, after issuing the order of default, dismiss the proceeding.

B. Any party may file a written request for reconsideration with the committee stating the specific grounds upon which relief is requested. The request must be filed within 20 days

after:

1. the date that an Order of Review is issued in an informal adjudicative proceeding; or

2. the date that a request for review is denied; or

3. the date that a final order is issued in a formal adjudicative proceeding.

4. The request for reconsideration shall be filed with the committee and one copy shall be sent by mail to each party by the person making the request.

5. The committee may issue a written order granting or denying the request within 30 working days of filing of the request.

6. If the committee does not issue an order granting or denying the request within 30 working days after the request is filed, the request for reconsideration shall be considered denied.

R428-5-4. Judicial Review.

An aggrieved party may obtain judicial review of final committee action upon exhaustion of all available administrative remedies. The aggrieved party shall file a petition for judicial review of final agency action within 30 calendar days after the final committee action is issued or is considered to have been issued under R428-5-4.

R428-5-5. Declaratory Orders.

A. Any person or agency may petition for a committee declaratory ruling of rights, status, or other legal relations under a specific statute or rule by submitting a written petition. The petition shall contain the following information:

1. the specific statute or rule to be reviewed;

2. the situation or circumstances in which applicability is to be reviewed;

3. the reason or need for the applicability review;

4. the name, address, and telephone number where the petitioner can be contacted;

5. the date of submission and signature of the petitioner.

B. The committee or its authorized representative shall review and consider the petition and may issue a declaratory ruling setting forth:

1. the applicability or non-applicability of the specific statute or rule;

2. the reasons for the applicability or non-applicability of the specific statute or rule;

3. any requirements imposed on the agency, petitioner, or any other person as a result of the ruling.

C. The committee may as appropriate:

1. interview the petitioner;

2. consult with counsel or the Attorney General;

3. take any action the committee in its judgment deems necessary to provide that the petition receives adequate review and due consideration.

D. If the committee has not issued a declaratory order within 60 days after receipt of the petition, the petition is denied.

E. The committee will not issue a declaratory order concerning any action which could result in the Department imposing sanctions.

R428-5-6. Informal Proceedings.

A. The committee may convert a formal proceeding to informal as specified under R428-5. The Chairman of the committee or his designated representative shall act as presiding officer in an informal proceeding. No response or other pleading is required subsequent to the receipt of a notice of agency decision unless specifically requested and a hearing is not required to be held.

B. The presiding officer may schedule a conference to encourage settlement before issuing a decision.

C. Before issuing a final order in an informal proceeding, the presiding officer may convert the proceeding to a formal proceeding if such action is deemed to be in the public interest and does not unfairly prejudice the rights of any party.

D. Unless a time frame is specified elsewhere in this chapter, the presiding officer shall, within a reasonable time of receipt of a request for agency action, issue a signed order in writing stating:

1. the decision;

2. the reasons for the decision;

3. notice of the right to any administrative or judicial review available;

4. the time limits for requesting review.

E. 1. Within 30 calendar days of the issuance of an order by the presiding officer, a party aggrieved by the decision may seek review of that order by filing a written request for review by the full committee. The request shall:

a. be signed by the party requesting review;

b. state the grounds for review and the relief requested;

c. be dated the date of mailing; and

d. be sent by mail to the presiding officer and to each party of the proceeding.

2. Within 15 calendar days of the mailing of the request for review, any party may file a response with the committee. A copy of the response must also be mailed to the presiding officer and each of the parties.

3. The committee may issue a notice granting or denying the request for review within 30 working days of filing of the request. If the committee does not issue a notice granting or denying the request within the 30 day period the request for review shall be considered denied.

4. If a review of the order is granted, the notice shall specify the date a hearing shall be conducted before the full committee.

5. Within a reasonable time from the completion of the hearing, the committee shall issue a written order on review which shall contain:

a. a designation of the statute or rule permitting or requiring review;

b. a statement of the issues reviewed;

c. findings of fact as to each of the issues reviewed;

d. conclusions of law as to each of the issues reviewed;

e. the reasons for the disposition;

f. whether the decision of the presiding officer or agency is to be affirmed, reversed, or modified, and whether all or any portion of the adjudicative proceeding is to be remanded;

g. a notice of any right of further administrative reconsideration or judicial review available; and

h. the time limit applicable to any review.

KEY: health, health policy, health planning

1991 26-33a-104
Notice of Continuation December 23, 1997

R428. Health, Health Data Analysis.
R428-10. Health Data Authority Hospital Inpatient Reporting Rule.
R428-10-1. Legal Authority.

This rule is promulgated under authority granted by Title 26, Chapter 33a, and in accordance with the Health Data Plan.

R428-10-2. Purpose.

This rule establishes the reporting standards for inpatient discharge data by licensed hospitals. Inpatient discharge data are needed to develop and maintain a statewide hospital inpatient discharge data base.

R428-10-3. Definitions.

These definitions apply to rule R428-10.

(1) "Bureau" as defined (in) R428-2-3(A).

(2) "Discharge data" means the consolidation of complete billing, medical, and personal information describing a patient, the services received, and charges billed for a single inpatient hospital stay into a discharge data record.

(3) "Hospital" means a facility that is licensed under R432-100.

(4) "Level 1 data element" means a required reportable data element.

(5) "Level 2 data element" means a data element that is reported when the information is available from the patient's hospital record.

(6) "Patient Social Security number" is the social security number of the patient receiving inpatient care.

(7) "Record linkage number" is an irreversible, unique, encrypted number that will replace patient social security number. The Bureau assigns the number to serve as a control number for data analysis.

(8) "Uniform billing form" means the uniform billing form recommended for use by the National Uniform Billing Committee.

R428-10-4. Source of Inpatient Hospital Discharge Data Reporting.

The reporting source for hospital inpatient discharge data is Utah licensed hospitals.

(1) A hospital facility, either general acute care or specialty hospital, shall report discharge data records for each inpatient discharged from its facility.

(2) A hospital may designate an intermediary, such as the Utah Hospital Association, or may submit discharge data directly to the committee.

(3) Each hospital is responsible for compliance with these rules. Use of a designated intermediary does not relieve the hospital of its reporting responsibility.

(4) Each hospital shall designate a department within the hospital and a person responsible for submitting the discharge data records. This person shall also be responsible for communicating with the Bureau.

R428-10-5. Data Submittal Schedule.

Each hospital shall submit to the Bureau a single discharge data record for each patient discharged according to the schedule shown in Table 1, Hospital Discharge Data Submittal Schedule. For a patient with multiple discharges, each hospital shall submit a single discharge data record for each discharge. For a patient with multiple billing claims each hospital shall consolidate the multiple billings into a single discharge data record for submission after the patient's discharge.

TABLE 1
HOSPITAL DISCHARGE DATA SUBMITTAL SCHEDULE

YEAR THREE AND BEYOND DISCHARGE DATA SUBMITTAL SCHEDULE
JANUARY 1, 1994 - DECEMBER 31, 1994

PATIENT'S DATE OF DISCHARGE IS BETWEEN	DISCHARGE DATA RECORD IS DUE BY
January 1 through March 31	May 15
April 1 through June 30	August 15
July 1 through September 30	November 15
October 1 through December 31	February 15

R428-10-6. Data Element Reporting.

Tables 2 and 3 display the reportable data elements by defined level. A hospital shall, as a minimum, report the required level 1 data elements shown in Table 2. Each hospital shall report level 2 data elements shown in Table 3 whenever the information is a part of the hospital's patient record. Beginning July 1, 1993, each patient social security number shall be reported as a level 2 (as available) data element. Beginning January 1, 1995, each hospital shall collect patient social security number as a level 1 (required) data element on the hospital discharge record, and report the patient social security number with complete discharge record according to submittal schedule. The Department shall adopt an encryption method to mask patient identity and replace patient social security number with a record linkage number as the control number. The Department may not retain the original record containing patient social security number and shall destroy the original record containing patient social security number after the Department assures the validity of the patient record. The Department of Health may conduct on-site audits to verify the accuracy of all submittals.

Each hospital shall submit the reported data elements on computer diskette or magnetic tape to the Bureau. The Bureau shall provide to each hospital, a Hospital Inpatient Discharge Data Submittal Technical Manual which outlines the specifications, format, and types of data to report. The revised Submittal Technical Manual is effective on January 1, 1995.

TABLE 2
REQUIRED LEVEL 1
HOSPITAL INPATIENT DISCHARGE DATA ELEMENTS

CATEGORY	NAME
Provider	
1.	Provider identifier
Patient	
2.	Patient control number
3.	Patient's medical chart number
4.	Patient's postal zip code for address
5.	Patient's date of birth

6.	Patient's gender
Service	
7.	Admission date
8.	Type of admission
9.	Source of admission
10.	Patient's status
11.	Statement covers period
Charge	
12.	Revenue codes
13.	Units of service
14.	Total charges by revenue code
Payer	
15.	Payer's identification
16.	Patient's relationship to insured
Diagnosis and Treatment	
17.	Principal diagnosis
18.	Other diagnosis codes
19.	Principal procedure code
20.	Other procedure codes
21.	Procedure coding method, required if coding is not ICD-9
Physician	
22.	Attending physician ID
23.	Other physicians' IDs
Other	
24.	Type of bill

TABLE 3
WHEN DATA ELEMENT IS AVAILABLE FROM THE
HOSPITAL'S PATIENT RECORD
LEVEL 2
HOSPITAL INPATIENT DISCHARGE DATA ELEMENTS

CATEGORY	NAME
Patient	
1.	Patient marital status
Payer	
2.	Insured group name
Employer	
3.	Employment status code
4.	Employer name
5.	Employer location
Charge	
6.	Prior payments
7.	Patient Race and Ethnicity
8.	Estimated amount due
Payer	
9.	Certificate/Social Security Number/Health Insurance Claim/Identification Number

R428-10-7. Exemptions, Extensions, and Waivers.

(1) Hospitals may submit requests for exemptions or waivers to the committee within 60 calendar days of the due date as listed in the hospital discharge data submittal schedule in R428-10-5, Table 1. Exemptions or waivers to the requirements of this rule may be granted for a maximum of one calendar year. A hospital wishing an exemption or waiver for more than one year must submit a request annually.

(2) Requests for extensions must be submitted to the Bureau at least ten working days prior to the due date as listed in the hospital discharge data submittal schedule. Extensions to the submittal schedule may be granted for a maximum of 30 calendar days. The hospital must separately request each additional 30 calendar day extension.

(3) The committee may grant exemptions or waivers when the hospital demonstrates that compliance imposes an unreasonable cost to the hospital. The Bureau may grant extensions when the hospital documents that technical or unforeseen difficulties prevent compliance. A petitioner requesting an exemption, extension, or waiver shall make the request in writing. A request for exemption, extension, or waiver must contain the following information:

(a) the petitioner's name, mailing address, telephone number, and contact person;

(b) the date the exemption, extension, or waiver is to start and end;

(c) a description of the relief sought, including reference to the specific sections of the rule;

(d) a statement of facts, reasons, or legal authority in support of the request; and

(e) a proposed alternative to the requirement.

(4) A form for exemption, extension, or waiver can be found in the technical manual available from the Bureau. Exemptions, extensions, or waivers may be granted for the following:

(a) Hospital exemption: All hospitals are subject to the reporting requirements. Reasons justifying an exemption might be a circumstance where the hospital makes no effort to charge any patient for service.

(b) Discharge data consolidation exemption: This exemption allows variation in the data consolidation requirement, such as allowing the hospital to submit multiple records containing the reportable data elements rather than a single consolidated discharge data record.

(c) Reportable data element exemption: Each request for a data element exemption must be made separately.

(d) Submission media exemption: This exemption allows variation in the submission media, such as a paper copy of the uniform billing form.

(e) Submittal schedule extension: The request must specifically document the technical or unforeseen difficulties that prevent compliance.

(f) Submission format waiver: This waiver allows variation in the submission format. Each request must state an alternative transfer electronic media, its format, and the record layout for the discharge data records. Granting of this waiver is dependent on the Bureau's ability to process the submittal media and format with available computer resources.

KEY: health, hospital policy*, health planning
1994 26-33a-104
Notice of Continuation December 23, 1997 26-33a-108

R428. Health, Health Data Analysis.
R428-20. Health Data Authority Request for Health Data Information.
R428-20-1. Legal Authority.

This rule is promulgated under authority granted by Title 26, Chapter 33a, and in accordance with the requirements of the Health Data Plan.

R428-20-2. Purpose.

This rule establishes guidelines by which data suppliers shall be required to provide health data information to the Bureau for the purpose of expanding the committee's health data

plan.

R428-20-3. Definitions.

This definition is specific to R428-20.

A. "Health data information" means a description, specification, or translation of paper forms, computer records, computer record formats, medical chart formats, or procedures for data collection, recording, storage, and processing. Health data information does not mean the patient-specific entries or recordings contained in a paper form, computer record, or medical chart.

R428-20-4. Request for Health Data Information.

The Bureau may request health data information from any data supplier to accomplish the committee's purpose as stated in Section 26-33a-104.

R428-20-5. Time Limits for Response to Request for Information.

A. The data supplier shall respond to requests for health data information within 10 working days of the date the request is made by the Bureau.

B. Extensions to the 10 day response period may be granted by the Bureau to a maximum of 30 calendar days past the initial request date.

R428-20-6. Data Protection.

The health data information received in compliance with this rule shall not be released in any format. The health data information is classified as strictly confidential by Section 26-33a-108. The committee shall use the health data information only in support of the committee's purpose as stated in Section 26-33a-104.

KEY: health, health policy, health planning
1991 26-33a-104
Notice of Continuation December 23, 1997

R432. Health, Health Systems Improvement, Health Facility Licensure.

R432-3. General Health Care Facility Rules Inspection and Enforcement.

R432-3-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-3-2. Purpose.

This rule delineates the role and responsibility of the Department and Health Facility Licensure Bureau in the enforcement of rules and regulations pertaining to health, safety, and welfare in all licensed and unlicensed health facilities regulated by Title 26, Chapter 21. These provisions provide guidelines and criteria to ensure that sanctions are applied consistently and appropriately.

R432-3-3. Deemed Status.

The Department may grant licensure deemed status to facilities accredited by the Joint Commission on Accreditation of Healthcare Organizations (Joint Commission) or Community Health Accreditation Program (CHAP) in lieu of the annual licensure inspection by the Department upon completion of the following by the facility or agency:

(1) As part of the annual license renewal process, the licensee shall identify on the Request for Agency Action/Application its desire to:

(a) initiate deemed status,

(b) continue deemed status, or

(c) relinquish deemed status during the licensure year of application.

(2) This request shall constitute written authorization for the Department to attend the summation conference.

(3) Upon receipt from the accrediting agency, the facility shall submit copies of the following:

(a) Accreditation Certificate;

(b) Joint Commission Statement of Construction;

(c) Survey Reports and Recommendations;

(d) Progress reports of all corrective actions underway or completed in response to accrediting body's action or Department recommendations.

(4) Department Regulatory Responsibility.

The Department may assert regulatory responsibility and authority pursuant to applicable state and federal statutes to include:

(a) annual and follow up inspections,

(b) investigation, or

(c) verification of the following:

(i) Violations of state law, rule, or standard identified in a Department survey.

(ii) Violations of state law, rule, or standard identified in the accrediting body's survey.

(iii) Complaints against the facility or other evidence that indicates non-compliance with state rules.

(iv) Licensed health care facilities that are physically connected to or under the licensure of the accredited facility.

(v) Facilities granted a provisional accreditation by the Joint Commission until a full accreditation status is achieved.

(vi) Any facility that does not have a current, valid accreditation certificate.

(vii) Construction, expansion, or remodeling projects required to comply with standards for construction promulgated in the rules by the Health Facility Committee.

(5) Validation Inspections. The Department may annually conduct validation inspections of facilities or agencies accredited for the purpose of determining compliance with state licensure requirements. If a validation survey discloses a failure to comply with the standards for licensure, the provisions relating to regular annual inspection shall apply.

R432-3-4. Statement of Findings.

(1) Each facility may be inspected by the Department or its designee, at least once during each year that a license has been granted, to determine compliance with standards and the applicable rules and regulations.

(2) Whenever the Department has reason to believe that a health facility is in violation of Title 26, Chapter 21 or any of the these rules, the Department shall serve a written Statement of Findings to the licensee or his designee.

(a) All Statements for Class I and III violations shall be served immediately.

(b) All Statements for Class II violations shall be served within ten working days.

(3) Violations shall be classified as Class I, Class II, and Class III violations.

(a) "Class I Violation" means any violation of a statute or rule relating to the operation or maintenance of a health facility or agency which presents imminent danger to patients or residents of the facility or agency, or which presents a clear hazard to the public health.

(b) "Class II Violation" means any violation of a statute or rule relating to the operation or maintenance of a health facility agency which has a direct or immediate relationship to the health, safety, or security of patients or residents in a health facility or agency.

(c) "Class III Violation" means establishing, conducting, managing, or operating a health care facility or agency regulated under Title 26, Chapter 21 and this rule without a license or with an invalid license.

(4) A facility may be cited with one or more violations.

(5) Contents of the Statement. The Statement of Findings shall include:

(a) The statute or rule violated,

(b) a description of the violation,

(c) the facts which constitute the violation, and

(d) the classification of the violation.

R432-3-5. Plan of Correction.

(1) A health facility shall, within 14 calendar days of the receipt of a Statement of Findings submit a plan outlining the following:

(a) How the required corrections shall be accomplished.

(b) Who is the responsible person to monitor the correction is accomplished;

(c) Identify the date of correction.

(2) Within ten working days of receipt of the Plan of Correction, the Department shall make a determination as to the acceptability of the plan of correction.

(3) If the Department rejects the Plan of Correction, the

Department shall notify the facility of the reasons for rejection and may request a revised Plan of Correction or issue a Notice of Agency Action directing a Plan of Correction and imposing a deadline for the correction. A revised plan of correction shall be submitted within 14 days of receipt of a request.

(4) If the violation has been corrected before submission and approval of a Plan of Correction, the facility shall submit a report of correction.

(5) If violations remain uncorrected after the time specified or if the facility fails to submit a plan of correction as specified, the Department shall notify the facility within ten working days of further agency enforcement action.

(6) Any person aggrieved by the agency action shall have the right to seek review under the provisions R432-30 Adjudicative Proceedings.

(7) Corrective Action Required for Class I Violations.

(a) If a licensed or unlicensed health facility is served with a Statement of Findings citing a Class I violation, the situation, condition, or practice constituting the Class I violation shall be abated or eliminated immediately, unless a fixed period of time is determined by the Department and is specified in the Plan of Correction.

(b) A follow-up inspection shall be conducted within 14 calendar days or within the agreed upon correction period to determine correction of Class I violations.

(c) Failure to correct Class I Violations.

When a health facility or agency fails to correct Class I violations as outlined in the accepted Plan of Correction, sanctions or penalties shall be pursued through a formal adjudicative proceeding R432-30.

(8) Corrective Action Required for Class II Violations.

(a) A facility served with a Statement of Findings citing a Class II violation shall correct the violation within the time specified in the Plan of Correction or within a time approved by the Department, but not to exceed 60 days unless justification is provided in the accepted Plan of Correction.

(b) Failure to Correct Class II Violations

(i) The Department may issue a conditional license or impose sanctions to the license or initiate a formal adjudicative proceeding to close the facility when a facility is cited with a Class II violation and fails to take required corrective action R432-30.

(ii) The Department shall determine which sanction to impose by considering the following:

(A) The gravity of the violation.

(B) The effort exhibited by the licensee to correct violations.

(C) Previous facility violations.

(D) Other relevant circumstances.

(9) Failure to Correct Class III Violations.

(a) A facility served with a Statement of Findings for a Class III violation shall be given 14 days to file a Request for Agency Action/License Application form and pay the required licensing fee.

(b) The Statement may include the names of individuals residing in the facility who require services outside the scope of the proposed licensure category.

(c) Identified individuals shall be immediately relocated to a facility capable of meeting their needs.

(d) If the facility fails to submit the request as specified, the Department shall issue a written notice of agency action ordering closure of the facility.

(e) If the Executive Director determines that the lives, health, safety or welfare of the patients or residents cannot be adequately assured pending a full formal adjudicative proceeding, he may order immediate closure of the facility under an emergency adjudicative proceeding, Rule R432-30.

R432-3-6. Sanction Action on License.

(1) The Department may initiate an action against a health facility pursuant to Section 26-21-11. That action may include the following sanctions:

(a) Denial or revocation of a license if the facility fails to comply with the rules established by the Committee, exhibits evidence of aiding, abetting or permitting the commission of any illegal act, or demonstrates conduct adverse to the public health, morals, welfare, and safety of the people of the state.

(b) Restriction or prohibition on new admissions to a health facility for:

(i) any Class I deficiency;

(ii) Class II deficiencies which indicate a pattern of poor care which has resulted in the substandard quality of care of patients;

(iii) Repeat Class I or II deficiencies which demonstrate continuous noncompliance or chronic noncompliance with the rules; or

(iv) permitting, aiding, or abetting the commission of any illegal act in the health facility.

(c) Distribution of a notice of public disclosure to at least one newspaper of general circulation or other media form stating the violation of licensure rules or illegal conduct permitted by the facility and the agency action taken.

(d) Placement of Department employees as monitors in the facility until such time as corrective action is completed.

(e) Assessment of the cost incurred by the Department in placing the monitors to be reimbursed by the facility.

(2) If the Department imposes a restriction or prohibition on new admissions to a long-term care facility or agency, the Department shall send a written notice to the licensee. The licensee shall post the copies of the notice on all public entry doors to the licensed long-term care facility or agency if:

(i) the long-term care facility or agency has previously received a restriction or prohibition on new admissions within the previous 24 month period;

(ii) the long-term care facility or agency has failed to meet the timeframes in the Plan of Correction which is the basis for the restriction or prohibition on admissions; or

(iii) the Department has notified the long-term care facility or agency that circumstances in the facilty or agency indicate actual harm or a serious and immediate threat to patients.

(3) If telephone inquiries are made to a long-term care facility or agency with a restriction or prohibition on new admissions, the facility or agency shall inform the caller, during the call, about the restriction or prohibition on admissions. If the facility or agency fails to inform the caller, the department may assess penalties as allowed by statute and shall require the facility or ageny to post a written notice on all public entry doors.

(4) Local Agency Coordination. The above actions shall be coordinated with local health, long term care ombudsman, zoning, building, and fire officials.

R432-3-7. Immediate Closure of Facility.

(1) Emergency Proceeding. The Department may order the immediate closure of any licensed or unlicensed health facility when the health, safety, or welfare of the patients or residents cannot be assured pending a full formal adjudicative proceeding.

(2) The provisions for an emergency adjudicative proceeding as provided in 63-46b-20 shall be followed.

(3) Notice to Facility. The Department shall serve an order that the facility is ordered closed as of a given date. The order shall state:

(a) the reasons the facility is ordered closed;

(b) cite the statute or rule violated; and

(c) advise as to the commencement of a formal adjudicative proceeding in accordance with other provisions of this rule.

(4) Failure to Comply. The Department may, upon the advice of the attorney general, maintain an action in the name of the state for injunction or other process against the health facility which disobeys a closure order. Section 26-21-15.

(5) Patient Relocation. The Department, if requested, may assist in relocating patients or residents to another licensed facility.

(6) Lesser Sanctions. The Department may pursue other sanctions in lieu of the closure order.

(7) The Department may in addition to emergency closure seek criminal penalties.

R432-3-8. Mandatory License Revocation.

(1) The Department may revoke a license or refuse to renew a license for a health care facility that is in chronic noncompliance with one or more of the rule requirements identified as mandatory license revocation criteria in the rules specific to the facility licensure category.

(2) The Department may not revoke a license or refuse to renew a license for chronic noncompliance on the third or subsequent violation unless it has documented within 14 working days from receipt of the statement of findings two prior violations and given the licensee or facility administrator a written notice. The written notice shall include a statement that continued violation could result in revocation of the license.

(3) If the Department revokes the license because of chronic noncompliance and the evidence supports the Department's finding of chronic noncompliance, no lesser sanction may be substituted, either by the Department or upon subsequent review by the Health Facility Committee or the courts.

KEY: health facilities
December 18, 1997 **26-21-5**
26-21-14 through 26-21-16

R432. Health, Health Systems Improvement, Health Facility Licensure.

R432-100. General Hospital Standards.

R432-100-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-100-2. Purpose.

The purpose of this rule is to promote the public health and welfare through establishment and enforcement of the licensure standards. The rule sets standards for the construction and operation of a general hospital.

R432-100-3. Construction Standard.

(1) See R432-4-1 through R432-4-24.

(2) An on-site emergency generator shall be provided which is connected to the following services:

(a) life safety branch, as defined in section 517-32 of the National Electric Code NFPA 70;

(b) critical branch, as defined in 517-33 of the National Electric Code NFPA 70; and

(c) equipment system, as defined in 517-34 of the National Electric Code NFPA 70.

(3) Transitional Care units shall be licensed as Nursing Care Facilities under a separate licensure category and shall conform to the Requirements of R432-150.

R432-100-4. Governing Body.

(1) Each licensed hospital shall have a governing body hereinafter called the board.

(2) The board shall be legally responsible for the conduct of the hospital. The board is also responsible for the appointment of the medical staff.

(3) Board Organization.

(a) The board shall be organized in accordance with the Articles of Incorporation or Bylaws.

(b) The Articles or Bylaws shall specify:

(i) The duties and responsibilities of the board;

(ii) The method for election or appointment to the board;

(iii) The size of the board;

(iv) The terms of office of the board;

(v) The methods for removal of board members and officers;

(vi) The duties and responsibilities of the officers and any standing committees;

(vii) The numbers or percentages of members that constitute a quorum for board meetings;

(viii) The board's functional organization, including any standing committees;

(ix) To whom responsibility for operation and maintenance of the hospital, including evaluation of hospital practices, may be delegated;

(x) The methods established by the board for holding such individuals responsible;

(xi) The mechanism for formal approval of the organization, bylaws, rules of the medical staff and hospital departments;

(xii) The frequency of meetings.

(4) Board Meetings.

(a) The board shall meet not less than quarterly.

(b) The board shall keep written minutes of its meetings

and actions, and distribute copies to members of the board.

(5) Board Officer.

The board shall employ a competent executive officer or administrator and vest him with authority and responsibility for carrying out its policies. The administrator's qualifications, responsibilities, authority, and accountability shall be defined in writing. The administrator shall provide liaison among the board, and medical staff.

(6) Board Functions.

The board through its officers, committees, medical and other staff shall:

(a) Develop and implement a long range plan;

(b) Appoint members of the medical staff and delineate their clinical privileges;

(c) Approve organization, bylaws, and rules of medical staff and hospital departments;

(d) Employ competent and well qualified personnel to carry out the functions of the hospital; and

(e) Maintain a list of the scope and nature of all contracted services.

R432-100-5. Administrator.

(1) Appointment and Responsibilities.

(a) The board shall appoint a competent and well trained administrator with authority and responsibility for the operation of the hospital, subject to the policies enacted by the governing board and to such orders as it may issue.

(b) Upon appointment of a new administrator, the board shall inform the Department of Health the name of the new administrator.

(2) The administrator shall establish and maintain an organizational structure for the hospital indicating the authority and responsibility of various positions, departments, and services within the hospital.

(3) To ensure administrative direction for the hospital at all times, the administrator shall designate an individual to act in his absence.

(4) The administrator shall be the direct representative of the board in the management of the hospital, and shall be accountable to the board for the performance of his duties.

(5) The administrator shall provide liaison between the board, the medical staff, the nursing staff, and other departments of the hospital.

(6) The administrator shall advise the board in the formulation of hospital policies.

(7) The administrator shall maintain a written record of all business transactions and patient services rendered in the hospital and submit reports as requested to the board.

R432-100-6. Medical and Professional Staff.

(1) Organization.

(a) Each hospital shall have an organized medical staff that operates under bylaws approved by the board and is responsible for the quality of care provided to patients within the hospital.

(b) The medical staff shall advise and be accountable to the board for the quality of medical care provided to patients.

(2) Bylaws, Policies and Procedures.

The medical staff must adopt bylaws, policies and procedures that address:

(a) The credentialing process including:

(b) The necessary qualifications for membership;

(c) The delineation of privileges;

(d) The scope of privileges for specified professionals who are not members of the medical staff.

(3) The members of the medical and professional staff must be legally, professionally and ethically qualified.

(4) The medical care of all persons admitted to the hospital shall be under the supervision and direction of a fully qualified physician who is licensed by the state.

(5) An applicant for staff Membership and privileges may not be denied solely on the ground that the applicant is a licensed podiatrist or licensed psychologist rather than licensed to practice medicine under the Utah Medical Practice Act or the Utah Osteopathic Medical Licensing Act.

(6) Membership and privileges may not be denied on any ground that is otherwise prohibited by law.

(7) Each applicant for medical and professional staff membership must be oriented to the bylaws, rules and regulations, and policies and must agree in writing to abide by all conditions.

(8) In hospitals participating in professional graduate education programs, the rules and regulations and policies specify the mechanism by which house staff are supervised by members of the medical staff in carrying out patient care responsibilities.

R432-100-7. Medical Orders.

All medical orders shall be in writing and signed by a member of the medical staff.

R432-100-8. Nursing.

(1) Organization.

There shall be an organized nursing department, integrated with other departments and services.

(a) The administrator of the nursing department shall be a registered nurse with demonstrated ability in nursing practice and administration.

(b) A registered nurse shall be designated and authorized to act in the nurse administrator's absence.

(2) Staffing.

Qualified registered nurses shall be on duty at all times to give patients nursing care that requires the judgment and special skills of a registered nurse.

(a) The nursing department or service shall develop and maintain a system for determining staffing requirements for nursing care on the basis of demonstrated patient need, intervention priority for care, patient load, and acuity levels.

(b) The staffing patterns shall assure the presence of registered nurses on a 24-hour basis.

(3) Nursing Documentation.

(a) The nursing process shall be documented for each patient from admission through discharge.

(b) A registered nurse shall document each patient's nursing care on a plan of care.

(c) Nursing documentation shall include the assessments of patient's needs, nursing diagnoses, intervention identified to meet the needs, nursing care provided and the patients response to, and the outcome of the care provided, and the ability of the

patient and if needed their significant other in managing the continued care after discharge.

(d) Patients shall receive instructions prior to discharge, and referrals for follow-up care shall be documented in the record.

(4) Training and Education Programs.

Education and training programs for nursing department or service personnel shall be ongoing and designed to augment their knowledge of pertinent new developments in patient care.

(a) Educational programs must include training:

(i) Fire, safety, and disaster training;

(ii) Infection control;

(iii) Cardiopulmonary resuscitation;

(iv) Patient care education.

(b) Participation of each nursing staff member shall be documented.

(c) New nursing department or service personnel shall receive orientation to prepare them for their specific duties and responsibilities in the hospital.

(d) Professional books and current nursing periodicals shall be available to nursing personnel.

(5) Policies and Procedures.

Written policies and procedures shall define and describe the scope and conduct of patient care provided by the nursing staff.

(a) Policies and procedures shall be reviewed annually and revised as necessary.

(b) Policies and procedures shall relate to:

(i) Assignment of nursing care;

(ii) Acknowledgment, coordination, and implementation of diagnostic and therapeutic orders of staff members;

(iii) Administration of medications according to state and federal laws;

(iv) Reporting medication errors and procedures for adverse drug reactions;

(v) Confidentiality;

(vi) Discharge planning;

(vii) Patient and family education;

(viii) Maintenance of required records, reports, and statistical information;

(ix) Cardiopulmonary resuscitation;

(x) Fire, safety, and disaster;

(xi) Scope of activity of volunteers or paid attendants;

(xii) Any special care units;

(xiii) Telephone orders.

(6) Organizational Plan.

The nursing department or service shall have a written organizational plan consistent with the patient services offered and scope of nursing care activities.

(a) Nursing department or service personnel shall meet at least monthly, to identify problems in nursing care and propose solutions. This function may be performed on a department or service unit level. A written record shall be maintained.

(b) All individuals employed as licensed practical or registered nurses shall be licensed by the state.

(c) There shall be written job descriptions for each individual and each job classification. Job descriptions shall be reviewed annually and revised as needed.

(d) All nursing department or service personnel shall have a yearly performance appraisal based on written standards and job descriptions.

(7) Quality Assurance.

The nurse administrator is responsible for assuring review and evaluation of the quality and appropriateness of nursing care.

(a) The review and evaluation may be performed by the nursing department/service as a whole, by a designated committee, by clinical departments or services, or by nursing units.

(b) The review shall be based on written criteria and may include:

(i) Patient observations;

(ii) Medical record;

(iii) Any incident reports.

R432-100-9. Personnel Management Service.

(1) Organization.

The personnel management system is organized to ensure personnel are competent to perform their respective duties, services, and functions.

(2) Policies and Procedures.

There shall be written policies and procedures that include:

(a) Job descriptions for each position or employee;

(b) Periodic employee performance evaluations;

(c) Documentation of requirements of the Infection Control Committee for employee health maintenance and safeguards;

(d) Policies to ensure that only competent employees are available for service in the hospital.

(3) All personnel shall be registered, certified or licensed as required by the Utah Department of Commerce.

(4) The personnel department shall ensure that all personnel are licensed, certified or registered within 45 days of employment.

(5) A copy of the current certificate, license or registration shall be available for Department review.

(6) Failure to ensure that staff members are licensed, certified or registered may result in sanctions to the facility license.

R432-100-10. Infection Control.

(1) Organization.

There shall be a hospital-wide infection control program that includes:

(a) Definitions of nosocomial infections;

(b) A system for reporting, evaluating, and correcting records of infections;

(c) Review and evaluation of aseptic, isolation, and sanitation techniques;

(d) Method for isolation in relation to the medical condition involved;

(e) Preventive, surveillance, and control procedures.

(f) Laboratory services;

(g) An employee health program;

(h) Orientation of all new employees;

(i) Documented in-service education for all departments and services relative to infection control.

(2) Infection Control Committee.

(a) Responsibility for the infection control program shall be vested in an Infection Control Committee.

(b) One person on the committee shall be responsible for the oversight of the committees' directives.

(c) The Infection Control Committee shall include representatives from the administration, medical, and nursing staff. Other services or departments shall be represented as needed.

(d) The Infection Control Committee shall determine and approve the type and scope of surveillance and reporting programs to be used.

(e) There shall be standard written criteria for reporting all nosocomial infections.

(f) The Infection Control Committee shall meet at least quarterly and shall keep written minutes of its meetings.

(g) The Infection Control Committee shall regularly report its findings and recommendations to the medical staff, the chief executive officer, and the director of nursing, and the person(s) responsible for hospital wide quality assessment and improvement.

(3) Policy.

(a) There shall be written infection-control policies and procedures for each area of the hospital, including requirements dictated by the physical layout, personnel and equipment involved.

(b) The policies and procedures shall be reviewed every two years, revised as necessary, and enforced by the administrator and the medical staff.

(c) Written guidelines shall be available to all personnel involved in patient care and in procedures known to be associated with infections.

(d) There shall be written guidelines for the selection, storage, handling, use, and disposition of disposable or reusable items. Single-use items shall not be reused.

R432-100-11. Quality Assurance Plan.

(1) The Board shall ensure that there is a well-defined Quality Assurance Plan designed to improve patient care.

(2) The plan shall be consistent and within achievable goals and available resources.

(3) The plan shall be implemented and include a method for:

(a) Identifying problems, concerns, or opportunities for improvement of patient care.

(b) Assessing identified problems, concerns, and opportunities for improvement.

(4) The plan shall implement actions that are designed to:

(a) Eliminate identified problems; and

(b) Improve patient care.

(5) The committee shall keep written minutes documenting corrective actions and results. Documentation shall be available for Department review.

(6) The committee shall report findings and concerns to the medical staff, administrator, and Governing Body.

R432-100-12. Patient Rights.

(1) The facility shall inform the patient at the time of admission of his patient's rights and support the individual's exercise of their right to the following:

(a) to access all medical records, and to purchase at a cost not to exceed the community standard, photocopies of his record;

(b) to be fully informed of his medical health status in a language he can understand;

(c) the right to refuse treatment;

(d) the right to formulate an advanced directive;

(e) the right to considerate and respectful care;

(f) the right to participate in decision making involved in managing his health care with his physician or to have a designated representative involved;

(g) to express complaints regarding the care received and to have those complaints resolved when possible;

(h) to refuse to participate in experimental treatment or research; and

(i) to be examined and treated in surroundings designed to give visual and auditory privacy.

(2) The hospital shall establish and inform patients and legal representatives the policy on the withholding resuscitative services and the forgoing or withdrawing of life sustaining treatment. This policy will be consistent with state law.

(3) Itemized Billing Statements.

(a) Patients who receive medical care or other services from a hospital shall be provided an itemized bill which includes a line item for each service or item for which the patient is charged, in compliance with 26-21-20.

(b) The itemized bill shall include the date of service and describe, the quantity of and specific charges for each billed item.

(c) The itemized bill shall be provided at hospital expense to the patient, his personal representative, or his agent at the time any statement is provided to any person or entity for billing purposes.

(i) If the statement is to be provided to a third party, it shall be provided to the patient as soon as possible and practicable and shall be marked "Duplicate: Do Not Pay" or other appropriate language.

(ii) Hospitals are not required to provide an itemized bill to patients who receive medical care or services under Title XIX (Medicaid) of the Social Security Act, in accordance with 26-21-20.

R432-100-13. Ambulatory Surgery.

(1) Organization.

Any ambulatory surgical services provided by the hospital shall be integrated with other departments or services of the hospital according to the nature, extent, and scope of service provided.

(a) The relationship, objective, and scope of all ambulatory surgical services shall be specified in writing.

(b) The standards for ambulatory surgery shall meet the same standards and quality of care that apply to inpatient care (see R432-100-21).

(c) Responsibility for the administrative direction of the Ambulatory Surgery Service provided by the hospital shall be vested in a person appointed and authorized by the hospital administrator.

(i) The qualifications and appointment of director shall be approved by the medical staff.

(ii) The responsibilities and duties of the director shall be defined in writing and these duties and responsibilities shall be approved by the medical staff.

(d) Responsibility for medical direction shall be defined in writing and vested in one or more members of the medical staff.

(e) Qualified registered nurses shall supervise the provision of ambulatory surgical nursing care. Qualified nursing service personnel shall be available to provide the nursing care required during all phases of the patient's hospital stay.

(2) Policies and Procedures.

When surgical services are provided in an ambulatory care setting, the policies and procedures shall be consistent with those applicable to surgery and anesthesia and shall include the following:

(a) Types of elective operative procedures that may be performed and where they may be performed;

(b) Scope of anesthesia services provided and where they may be administered;

(c) Pre-operative and post-operative transportation;

(d) A method of intervention when the designated pre-operative patient workup and preparation are incomplete. An operation shall be performed only after a history, physical examination, and any required laboratory and x-ray examinations have been completed, and the pre-operative diagnosis has been recorded;

(e) Post-operative care, including post-anesthesia patient care guidelines and the role of family members assisting in patient care;

(f) Written discharge instructions.

(3) Medical Records.

(a) A medical record shall be maintained for every patient receiving ambulatory surgical services.

(b) Complete and accurate records shall be maintained and shall be available to the other professional services of the hospital. The outpatient medical record shall be integrated with the patient's overall hospital record or identification system.

(c) The medical record for ambulatory surgical patients shall include written discharge instructions.

(d) If a patient is admitted to the hospital after undergoing surgery as an outpatient, the medical record shall contain documentation of the reason for change in the patient's status.

(4) Quality Assurance.

(a) The medical director of the ambulatory surgery service is responsible for assuring that a review and evaluation of ambulatory surgical services is performed at least twice a year.

(b) The quality assurance program shall include everything required by subsection R432-100-9 plus:

(i) A systematic review and evaluation of surgical patients who require hospitalization after ambulatory surgery.

(ii) A means of assuring that outpatients who undergo surgery under other than local anesthesia receive the same pre-operative and post-operative evaluations as inpatients undergoing the same surgical procedures.

R432-100-14. Special Care Unit.

Hospitals are not required to provide special care units. If the hospital provides the service, subsections R432-100-14(1) through R432-100-14(7) apply.

(1) Medical Direction.

(a) The unit(s) shall be under the medical direction of a qualified physician who is a member of the active medical staff who has received specialty training, acquired experience , and demonstrated competence .

(b) The director is responsible for making decisions, in consultation with the physician responsible for the patient, for the disposition of the patient when the patient load exceeds operational capacity.

(2) Unit Nursing Manager.

Unit nursing direction shall be vested in a designated, qualified registered nurse manager who has relevant education, training and experience. The supervising nurse shall coordinate the care provided by all nursing service personnel in the unit. The manager shall report to the director of nurses. He shall have administrative responsibility for the unit, assuring that a registered nurse who has advanced life support certification is on duty at all times.

(3) Equipment.

Each unit is designed and equipped to facilitate the safe and effective care of patients.

(a) The following equipment shall be available within the unit:

(i) Beds that do not hinder the provision of emergency care;

(ii) Wall and portable oxygen, compressed air, and suction;

(iii) Cardiac defibrillator with synchronization capability;

(iv) Respiratory and cardiac monitoring equipment;

(v) Mechanical ventilatory assistance equipment, including, airways, manual breathing bags, ventilators or respirators;

(vi) Infusion pumps;

(vii) Thoracentesis and closed thoracostomy sets;

(viii) Tourniquets;

(ix) Vascular cutdown sets;

(x) Laryngoscope and endotracheal tubes;

(xi) Tracheobronchial and gastric suction equipment;

(xii) Portable x-ray; and

(xiii) Patient weighing device for bed patients.

(b) Mechanical ventilators shall be available within or in close proximity to the unit.

(c) All equipment including beds shall be kept in working order and shall be grounded as needed for proper operation and to prevent shock or harmful discharge.

(d) An emergency cart within the unit contains appropriate drugs and equipment. The cart is checked every shift and after each use to assure that all items required for immediate patient care are in place in the cart and in usable condition.

(4) Support Services.

The following support services shall be immediately available to the special care unit on a 24-hour basis:

(a) Blood bank or supply;

(b) Clinical laboratory;

(c) Radiology services.

(5) Medical Records.

The medical records for patients in a critical care unit shall conform to the requirements of the Medical Records Section R432-100-35.

(6) In-service Education.

All staff shall participate in an ongoing program of in-service education. This program shall include at least the following:

(a) Use of equipment;

(b) Safety, including electrical safety;

(c) Infection control;

(d) Administration of medications;

(e) Recognizing and recording signs and symptoms, that may require notification of, or intervention by, the physician; and

(f) Emergency procedures.

(7) Policies and Procedures.

The Special Care Unit shall develop and implement policies and procedures to include at least the following:

(a) Administration of medications and intravenous therapy;

(b) Admission to and discharge from, including a priority determination;

(c) Infection control and safety practices;

(d) Traffic control and patient privacy;

(e) Special procedures for medical emergencies including cardiopulmonary resuscitation, cardio defibrillation, endotracheal intubation, tracheostomy, and others;

(f) Observation and isolation;

(g) Unit organization including channels of communication, authority, and relationship of unit to other hospital services;

(h) An incident-reporting system that includes:

(i) Mandatory reporting to the attending physician or the chief of the medical staff; or the appropriate hospital committee;

(ii) Mandatory review by the appropriate hospital committee;

(iii) Steps taken to prevent recurrence of the incident.

R432-100-15. Emergency Service.

(1) The hospital evaluates and classifies itself to indicate its capability in providing emergency care.

(a) Level 1- offers comprehensive emergency care 24 hours a day in-house, with at least one physician experienced in emergency care on staff in the emergency care area. There is in-hospital support by members of the medical staff for at least medica, surgical, orthopedic, obstetric, pediatric, and anesthesia services. Specialty consultation is available within 30 minutes or two-way voice communication is available for the initial consultation.

(b) Level II- offers emergency care 24 hours a day, with at least one physician experienced in emergency care on duty in the emergency care area, and with specialty consultation available within 30 minutes by members of the medical staff.

(c) Level III- offers emergency care 24 hours a day, with at least one physician available to the emergency care area within approximately 30 minutes through a medical staff call roster. Specialty consultation is available by request of the attending medical staff member by transfer to a level I or level II hospital where care can be provided.

(2) Organization.

The emergency service shall be provided by qualified individuals, based on the community need and the defined capability of the hospital. The service shall be staffed according to the nature and extent of health care needs anticipated in the scope of services offered.

(a) Responsibility for the administrative direction of the emergency services provided by the hospital shall be vested in an individual appointed and authorized by the hospital administrator. The qualifications and appointment of the director shall be approved by the medical staff. The responsibilities and duties of the director shall be defined in writing. These duties and responsibilities shall be approved by the medical staff.

(b) Responsibility for medical direction shall be defined in writing and vested in one or more members of the medical staff. The medical staff shall define and provide coverage and back-up of the emergency service.

(c) The evaluation and treatment of a patient who presents himself or is brought to the emergency care area shall be the responsibility of a physician.

(d) The priority, with which persons seeking emergency care shall be seen by a physician, may be determined by trained personnel using guidelines established by the emergency room director or approved by the medical staff.

(e) Rosters designating medical staff members on duty or on call for primary coverage and specialty consultation shall be posted in the emergency care area.

(f) A designated registered nurse who is qualified by relevant training, experience, and current competence in emergency care shall supervise the care provided by all nursing service personnel in the department.

(i) The number of nursing service personnel shall be sufficient for the types and volume of patients served.

(ii) Level I and II emergency departments shall have at least one registered nurse with Advanced Cardiac Life Support certification and sufficient number of other nursing staff assigned and on duty within the emergency care area. Level III emergency departments shall have a registered nurse with Advanced Trauma Life Support certification on an on-call basis at all times.

(iii) The emergency nurse supervisor shall participate in internal committee activities concerned with the emergency service.

(g) The emergency service shall be integrated with other departments in the hospital.

(i) Clinical laboratory services with the capability of performing all routine studies and standard analyses of blood, urine, and other body fluids shall be available 24 hours a day for Level I and Level II and within 30 minutes for Level III. A supply of blood shall be available at all times.

(ii) Diagnostic radiology services shall be available at all times.

(h) The duties and responsibilities of all personnel, including physicians and nurses, providing care within the emergency service area shall be defined in writing.

(3) Emergency Plan.

The hospital shall implement a plan for emergency care, based on community need and on the capability of the hospital.

(a) The hospital shall have a procedure whereby the ill or injured person can be assessed and either treated or referred to an appropriate facility.

(i) Prior to transfer, the hospital shall perform the

emergency procedures needed to minimize aggravation of the patient's condition during transport to another health care facility.

(ii) The patient shall not be transferred until the receiving facility has consented to accept the patient.

(iii) Responsibility for the patient and his records during transfer shall be established.

(iv) Any record of definitive care shall be sent with a patient transferred to another facility.

(b) The role of the emergency service in the hospital's internal and external disaster plans shall be defined.

(c) There shall be a communication system that permits instant contact with law enforcement agencies, rescue squads, ambulance services, and other emergency services within the community.

(4) Personnel.

All personnel and physicians shall be prepared for their emergency-care responsibilities through training and education programs.

(a) A planned, formal orientation program shall be required for all registered and licensed nurses, and for specified professional personnel who provide patient care in the emergency service. The program shall include training in:

(i) Recognizing, interpreting, and recording patient's signs and symptoms;

(ii) Initiation of cardiopulmonary resuscitation and other related life-support procedures (Advanced Cardiac Life Support);

(iii) Parenteral administration of electrolytes, fluids, blood and blood components;

(iv) Wound care and management of sepsis;

(v) Initial burn care;

(vi) Initial management of injuries to extremities and central nervous system;

(vii) Effective and safe use of electrical and electronic life support and other equipment used in the department;

(viii) Prevention of contamination and cross infection;

(ix) Recognition of, and attention to, the psychological and social needs of patients and their families.

(b) All emergency service personnel and physicians shall participate in in-service education programs. The extent of participation shall be documented and shall be related to the size of the staff and to the scope and complexity of the emergency care service provided.

(c) An approved CPR training program shall be conducted at least annually, or more often when necessary, for all persons providing patient care in the emergency service to assure proficiency in the delivery of CPR.

(5) Policies and Procedures.

(a) There shall be written policies and procedures, approved by the medical staff and hospital administration, specifying the scope and conduct of patient care provided in the emergency service. The policies and procedures shall be reviewed annually, revised as necessary, and dated to indicate the time of the last review, and enforced by the director.

(b) The policies and procedures shall address the following:

(i) Location, storage, procurement and dispensing of medications, blood, supplies, and equipment;

(ii) Provision of care to an unemancipated minor not accompanied by parent or guardian, or to an unaccompanied unconscious patient;

(iii) Circumstances under which the patient's personal physician shall be notified or given reports;

(iv) Confidentiality of patient information and the safeguarding of records;

(v) Release of authorized information and materials to police or health authorities;

(vi) Transfer and discharge of patients;

(vii) The emergency medical record, including any consent for treatment;

(viii) Infection control measures, including procedures designed to eliminate the possibility of contamination and cross infection;

(ix) Procedures to be followed in the event of equipment failure;

(x) Pertinent safety practices;

(A) Control of traffic, including visitors;

(B) The handling and safekeeping of patients' valuables;

(C) Assuring patients are not left unattended;

(D) Protecting patients from physical, emotional and environmental hazards;

(E) Protecting patients from self inflicted injuries;

(F) Dispensing medications according to hospital policy;

(xi) The role of the emergency department/service in the hospital disaster plans;

(xii) Specification of the scope of treatment allowed, including the use of anesthesia and general and specific procedures that may not be performed by medical staff in the emergency department/service;

(xiii) Who, other than physicians, may perform special procedures, under what circumstances, and under what degree of supervision. Such procedures may include:

(A) Cardiopulmonary resuscitation, including cardiac defibrillation; endotracheal intubation; tracheostomy or cricothyrotomy;

(B) Endotracheal Intubation;

(C) Percutaneous tracheostomy or cricothyrotomy;

(D) The administration of parenteral antiarrhythmic and other specified medications; and

(E) Obtaining arterial and venous blood samples or other laboratory specimens;

(xiv) The use of standing orders;

(xv) Circumstances that require the patient's return to the emergency department or service for treatment;

(xvi) Handling of alleged or suspected child or adult abuse cases. Criteria that alerts emergency department or service personnel to possible child or adult abuse. Criteria shall be developed to include:

(A) Physical Assault;

(B) Rape or sexual molestation;

(C) Domestic abuse of elders, spouses, partners and children.

(xvii) Procedures for the evaluation of patients who meet the criteria in R432-100-15(5)(xvi)(A-C). Criteria for an adequate medicolegal evaluation shall include:

(A) examination and treatment;

(B) patient consent;

(C) collection, retention, and safeguarding of specimens, photographs, and other evidentiary material;

(D) maintaining a detailed receipt for all material released; and

(E) as legally required, notification of and release of information to the proper authorities.

(F) Examination of, and consultation with the patient shall take place only when visual and auditory privacy are assured;

(G) A list is maintained in the emergency department or service of private and public community agencies that provide, or arrange for, evaluation and care for the victims of abuse, and referrals are made.

(xviii) The management of pediatric emergencies;

(xix) Reporting persons dead-on-arrival to the proper authorities, including legal requirements for the collection and preservation of evidence;

(xx) Handling hazardous materials and contaminated patients.

(6) Facilities and Equipment.

(a) The emergency service shall be designed and equipped to facilitate the safe and effective care of patients.

(b) It shall include the following:

(i) The emergency service shall be close to, and on the same level as the emergency entrances.

(A) The outside entrance shall be clearly identified and accessible to emergency vehicles.

(B) The entrance doors shall be well lit and protected from the weather.

(C) Stretchers and wheelchairs shall be immediately available to the emergency entrance.

(ii) Space shall be provided for the examination and treatment of patients seeking emergency care.

(iii) Rapid communications with other departments in the hospital shall be assured.

(iv) The following equipment shall be available to the emergency service:

(A) Oxygen, and the means of administration;

(B) Ventilatory assistance equipment;

(C) Cardiac defibrillator with synchronization capability;

(D) Respiratory and cardiac monitoring equipment;

(E) Thoracentesis and closed thoracostomy sets;

(F) Tracheostomy set;

(G) Tourniquet;

(H) Vascular cut-down sets;

(I) Laryngoscope and endotracheal tubes;

(J) Tracheobronchial and gastric suction equipment;

(K) Urinary catheters and closed volume urinary systems;

(L) Pleural and pericardial drainage set;

(M) Minor surgical instruments;

(N) Splinting devices and casting materials;

(O) Emergency obstetrical packs.

(P) Set of pneumatic trousers with three compartments and inflation equipment (one adult and one child size);

(Q) Decontamination facilities.

(v) The following supplies shall be available for immediate use:

(A) Standard drugs;

(B) Antivenin;

(C) Common poison antidotes;

(D) Syringes and needles;

(E) Parenteral fluids and infusion sets;

(F) Plasma substitutes and blood administration sets;

(G) Surgical supplies.

(vi) Emergency drug carts or emergency drug storage areas shall be checked at least once per shift and after each use to assure that all items that must be immediately available are actually in the cart and in usable condition.

(vii) There shall be refrigerated storage within the emergency service for biologicals and other supplies.

(7) Medical Records.

A medical record shall be maintained on every patient seeking emergency care and shall be incorporated into the patient's permanent hospital records. (See R432-100-35)

(8) Quality Assurance.

The director of the emergency service is responsible for assuring that a timely review of emergency patient care is performed and documented.

(a) The review shall involve the use of the medical record and pre-established criteria. Particular attention shall be given to individuals who die in the emergency service area or within 24-hours of admission from the emergency service.

(b) Regularly scheduled conferences shall be held with medical and nursing staff to improve the quality of emergency care.

R432-100-16. Obstetrical Services.

(1) Organization.

(a) Each hospital shall comply with the requirements of this section.

(b) Responsibility for the administrative direction of the obstetrical service provided by the hospital shall be vested in a person appointed and authorized by the hospital administrator.

(i) The qualifications and appointment of the medical director shall be approved by the medical staff.

(ii) The responsibilities and duties of the director shall be defined in writing.

(iii) These duties and responsibilities shall be approved by the medical staff.

(c) The medical direction for obstetrical services shall be provided by a qualified member of the medical staff.

(d) The hospital shall establish a well defined program of continuing education for all employees in the obstetrical area, and individuals with obstetrical privileges. The extent of the education program shall be related to the scope and complexity of obstetrical services provided.

(e) A qualified registered nurse shall be immediately available.

(2) Facilities and Equipment.

(a) Obstetrical areas shall be located and arranged to avoid non-related traffic to and from other areas.

(b) The hospital shall isolate patients with infections or other conditions inimical to the safety and welfare of other patients. The use of maternity rooms for other than maternity patients shall be restricted to clean gynecological or other clean surgical patients.

(c) The obstetrical department shall include facilities and equipment for labor and delivery, nursery, postpartum and optional birthing rooms.

(3) Labor and Delivery.

(a) Each institution shall maintain at least one delivery room.

(b) Equipment and supplies shall be maintained for the mother and newborn, including:

(i) Furnishings suitable for labor, birth, and recovery;

(ii) Oxygen with flow meters and masks or equivalent;

(iii) Mechanical suction and bulb suction immediately available;

(iv) Resuscitation equipment;

(v) Emergency medications, intravenous fluids, and related supplies and equipment;

(vi) A device to assess fetal heart rate;

(vii) Equipment to monitor and maintain the optimum body temperature of the newborn;

(viii) A clock capable of showing seconds;

(ix) Adjustable examination light;

(x) Covered or closed containers for soiled linen and waste materials;

(xi) Anesthesia equipment appropriate to the level of anesthesia given;

(xii) Sterile sutures, linens, and instruments packaged and dated for use;

(xiii) A warming unit with temperature controls that comply with Underwriters' Laboratories requirements. The unit shall be capable of administering oxygen and suctioning;

(xiv) A nurse call system;

(xv) A delivery room record book with chronological entries of deliveries including items pertinent to the history of each delivery.

(4) Post-Partum.

Facilities, equipment, and supplies shall be available that include:

(a) Resuscitative equipment;

(b) Nurse call system;

(c) Emergency medications, intravenous fluids, and related supplies;

(d) Capabilities for isolation.

(5) Birthing Rooms.

If birthing rooms are provided, there shall be equipment and supplies in or near the birthing rooms that include:

(a) Furnishings suitable for labor, birth, and recovery;

(b) Oxygen with flow meters and masks or their equivalent;

(c) Mechanical suction and bulb suction;

(d) Resuscitation equipment including resuscitation bags, endotracheal tubes, and oral airways for mother and newborn;

(e) Firm surfaces for resuscitation;

(f) Emergency medications, intravenous fluids, and related supplies for both mother and newborn;

(g) A device to assess and monitor fetal heart rate;

(h) Equipment for monitoring and maintaining the optimum body temperature of the newborn;

(i) A clock capable of showing seconds;

(j) Sterile suturing equipment and supplies;

(k) Adjustable examination light; and

(l) Closed or covered containers for soiled linen and waste materials.

(6) Policies and Procedures.

(a) The hospital shall have written policies and procedures approved by the medical staff relating to the safe delivery of obstetrical and newborn care.

(b) These policies and procedures shall be reviewed annually and enforced through an organized quality assurance program. The policies shall provide for:

(i) Placement, admission, and room assignment of all patients;

(ii) Utilization of personnel;

(iii) Aseptic technique and handwashing;

(iv) Visitation;

(v) Identification of the newborn before removal from the delivery room;

(vi) Administration by qualified personnel of ante-partum and post-partum oxytocin, ante-partum hypertensives, all I.V. medications, tocalytic agents, central nervous system drugs, and all prescription ante-partum medications;

(vii) Qualification and licensure of all persons administering medications to newborns;

(viii) Procedures for handling infected infants;

(ix) Infection control;

(x) Quality assurance;

(xi) Resuscitation of mother or newborn;

(xii) The use of anesthesia for obstetrical patients;

(xiii) Emergency transfer of any patient the hospital or staff is not capable of treating;

(xiv) An incident-reporting system.

(c) The hospital shall establish a policy governing the use of delivery and operating rooms which insures that any patient who appears with parturition imminent or with an obstetrical emergency which requires immediate medical intervention to preserve the health and life of the mother or her infant is given priority over other obstetrical and non-emergent surgical procedures.

(d) The hospital's Infection Control Committee (or an equivalent designated committee) shall approve policies and procedures designed to prevent the transmission of infection through the combined use of surgery or obstetrical facilities including:

(i) shall maintain a system of finding, reporting, and investigating all infections that occur in surgical, obstetrical, or neonatal patients; and

(ii) keep a record of reports and investigations of all such infection on file.

(7) Obstetrical and Newborn records shall comply with R432-100-35(8).

(8) Other Provisions.

(a) No attempt shall be made to delay the imminent, normal birth of a child;

(b) A prophylactic solution approved by the Department of Health shall be instilled in the eyes of the infant within three hours of birth.

(c) Metabolic screening shall be performed in accordance with State Health Laboratory rules developed pursuant to Section 26-10-6.

R432-100-17. Nursery.

(1) Each infant shall have separate equipment and supplies for bathing, dressing, and handling.

(2) Equipment. There shall be equipment and supplies in or near the nursery that includes:

(a) An individual bassinet for each infant;

(b) Accurate scales;

(c) Thermometers;

(i) A reliable wall thermometer. Temperatures between 70-80 degrees F. shall be maintained in the nursery;

(ii) There shall be a thermometer; or one with disposable tips; for each infant.

(d) The minimum humidity shall be 30 percent;

(e) A supply of medication immediately available for emergencies;

(f) A storage area for clean linen;

(g) A covered soiled-diaper container with removable lining;

(h) A linen hamper with removable bag for soiled linen other than diapers;

(i) A warming unit with temperature controls that comply with Underwriters' Laboratories requirements;

(j) Oxygen, oxygen equipment, and suction equipment;

(k) An oxygen concentration monitoring device in working condition;

(l) An emergency call system from the nursery to another nearby professionally staffed area;

(m) A clean workroom with work counters or tables, and storage for supplies;

(n) A clean-up area;

(o) A hand washing sink;

(p) Formula storage space that conforms to the manufacturer's recommendations.

(3) Only single-use bottles shall be used for newborn feeding.

(4) A suspect nursery or isolation area shall be available. Equipment and supplies shall be provided for the isolation area.

(a) Isolation facilities shall be used for any infant who:

(i) Has a transmissible disease;

(ii) Is delivered of an ill mother infected with a transmissible disease;

(iii) Is readmitted after discharge from a hospital; or

(iv) Is delivered outside the hospital.

(b) There shall be separate hand washing facilities for the isolation area.

R432-100-18. Outpatient Services.

(1) Organization.

Outpatient care service provided by the hospital shall be integrated with other departments or services of the hospital according to the nature, extent, and scope of services provided.

(a) Outpatient care shall meet the same standards of quality that apply to inpatient care.

(b) Responsibility for the administrative direction of outpatient services provided by the hospital shall be vested in a person appointed and authorized by the hospital administrator.

(i) The qualifications and appointment of the director shall be approved by the medical staff.

(ii) The responsibilities and duties of the director shall be defined in writing. These duties and responsibilities shall be approved by the medical staff.

(c) Responsibility for medical direction shall be defined in writing and vested in one or more members of the medical staff. The medical staff shall provide and define in writing the medical coverage for outpatient services.

(d) Registered nurses shall supervise the provision of outpatient nursing care. Nursing personnel shall be available to provide the nursing care.

(e) The duties and responsibilities of other staff disciplines and their relationship to physicians and nurses shall be defined in writing.

(2) Personnel.

All personnel shall be prepared for the responsibilities in the provision of outpatient care through education and training programs.

(a) A planned, formal educational program shall be established. All personnel who provide outpatient care shall participate in relevant programs and activities. The extent of participation shall be documented and shall be realistically related to the size of the staff and to the scope and complexity of outpatient services provided.

(b) CPR training shall be conducted annually for professional personnel who work in the outpatient care setting.

(3) Policies and Procedures.

There shall be written policies and procedures specifying the scope and conduct of patient care provided in the outpatient care setting.

(a) The policies and procedures shall be approved by the medical staff, the nursing staff, the hospital administration and other pertinent departments.

(b) The policies shall be reviewed annually, revised as necessary, dated to indicate the time of the last review, and enforced through the Quality Assurance Committee. The policies shall include the following:

(i) The patient appointment system;

(ii) The method used to inform a patient of the responsibility for this care;

(iii) The outpatient medical record;

(iv) Referred outpatients;

(v) The scope of treatment allowed in specific patient care areas, including general and specific elective procedures that may not be performed by medical staff members;

(vi) The limits on the use of anesthetic agents;

(vii) Who, other than members of the medical staff, may perform specified procedures, under what circumstances, and under what degree of supervision;

(viii) Provision of care to unemancipated minors not accompanied by a parent or guardian;

(ix) Location, storage, and procurement of medications, supplies, and equipment;

(x) The dispensing of medications;

(xi) Infection control;

(xii) Pertinent safety practices;

(xiii) Any required reporting of communicable diseases;

(xiv) The role of the outpatient service in the hospital disaster plans;

(xv) Standing orders;

(xvi) Handling and safekeeping of patients' valuables.

(4) Facilities and Equipment.

The outpatient service shall be designed and equipped to facilitate the safe and effective care of patients.

(a) Outpatient care areas shall be accessible to patients.

(b) Radiology, pathology, and laboratory services shall be available as required.

(c) There shall be a nurse call system.

(d) Emergency carts and emergency drug storage areas shall be checked at least daily or after each use to assure that all items are immediately available in usable condition. This may be met by a system designed to assure the continued integrity of the contents between periods of use.

(e) Refrigerated storage for biologicals and other supplies shall be available.

(5) Medical Records.

(a) Complete and accurate medical records shall be maintained for every patient and shall be available to the other professional services of the hospital. The outpatient medical record shall be integrated with the patient's overall hospital record or record identification system.

(b) The hospital shall maintain accurate records on those patients who are referred outpatients. These records shall include:

(i) Patient identification;

(ii) Prescriptions or orders of the medical staff;

(iii) Referral information;

(iv) Reports of procedures, tests, and results.

(6) Quality Assurance.

The medical director of the outpatient care service is responsible for assuring that a review and evaluation of the quality and appropriateness of outpatient care services are performed at least twice yearly.

(a) The review shall include the use of the medical record and pre-established criteria.

(b) The quality assurance program shall include provision for:

(i) Coordination of scheduling and staffing plans;

(ii) Availability of x-rays, laboratory tests, and EKGs;

(iii) Examination of surgical specimens by a pathologist;

(iv) When appropriate, provision of a copy of the record or summary to the practitioner responsible for follow-up care;

(v) Maintenance of patient drug profiles;

(vi) Medical staff review of clinical use of antibiotics;

(vii) Medical staff review of blood utilization;

(viii) A means of communicating in the language of the predominant groups served.

R432-100-19. Pediatric Services.

(1) Organization.

(a) If the hospital provides pediatric services, those services shall include:

(i) An accessible examination or treatment area;

(ii) A safe area for diversional play activities;

(iii) Medical direction for pediatric services by a member of the medical staff who is experienced in pediatrics and whose functions and scope of responsibility are defined by the medical staff;

(iv) A qualified registered nurse to supervise nursing care and to be responsible for implementation of nursing policies, procedures, and practice.

(b) If the hospital provides a pediatric unit, it shall also have an interdisciplinary committee responsible for policy development and review of practice in the unit. This committee shall include representatives from the administration, the medical and nursing staff, and rehabilitative support staff.

(c) Hospitals admitting pediatric patients shall have written policies and procedures specifying the criteria for admission to the hospital and conditions requiring transfer when indicated. These policies and procedures shall be based upon the resources available at the hospital, specifically, in terms of personnel, space, equipment, and supplies.

(2) Policies and Procedures.

(a) Guidelines shall be developed for the placement or room assignment of pediatric patients according to patient acuity under usual, specific, or unusual conditions within the hospital.

(i) Infants and children shall be placed in beds where frequent observation is possible.

(ii) Decisions regarding room assignments of pediatric patients in the hospital shall incorporate the judgment of a registered nurse and medical staff.

(iii) Pediatric patients shall be placed in private rooms or in rooms with peers.

(b) There shall be written guidelines for the use of cribs, bassinets, or beds, including the proper use of restraints, side rails, and other safety devices.

(c) There shall be policies and procedures specific to both infectious childhood diseases and childhood susceptibility to infections and infection control.

(d) Nutritional guidelines shall be developed for pediatric patients to include normal diets and diets for special nutritional needs.

(e) Procedures shall be developed to assure that pediatric patients are given accurate doses of drugs and intravenous fluids.

(i) The medical staff shall adopt written guidelines for the safe amounts of intravenous fluids that pediatric patients of various ages, body surface areas, and weights should receive; required weight control and checking procedures; required or recommended use of rate control measuring chambers; and a system to destroy unused doses.

(ii) Documentation of intravenous therapy including intake and output is required.

(iii) Procedures for calculating the correct dose of medications or agents shall be available to physicians and to licensed nurses who administer medications.

(iv) There shall be double-checking procedures for the administration of highly toxic agents or medications, and blood and blood products.

(v) A list of agents and medication requiring double-checking shall be available in patient care areas.

(f) A mechanism for consultation with a pediatrician or a physician who has training and experience in pediatrics shall be developed for hospitals admitting infants and pediatric patients.

(g) Policies shall specify admission assessment requirements for pediatric patients.

(3) Facilities and Equipment.

Hospitals admitting pediatric patients shall have the following equipment and supplies in infant and child sizes available to the pediatric area of the hospital:

(a) Intubation equipment;

(b) Oxygen masks for the ventilatory bags;
(c) Blood pressure cuffs;
(d) Intravenous equipment and supplies;
(e) Emergency medications;
(f) Stethoscopes;
(g) Defibrillator paddles;
(h) Measuring devices;
(i) Other appropriate equipment.
(4) Personnel.
(a) Personnel working with pediatric patients shall have special training and experience.
(b) An in-service program shall be established and address drugs and toxicology, intravenous therapy, pediatric emergency procedures, infant and child nutrition, the emotional needs and behavioral management of hospitalized children, and child abuse and neglect.

R432-100-20. Psychiatric Services.
(1) Organization.
(a) If provided by the hospital, psychiatric services shall be integrated with other departments or services of the hospital according to the nature, extent, and scope of service provided.
(b) If the hospital does not provide psychiatric services, there shall be a procedure to transfer patients to a facility that can provide the necessary psychiatric services.
(c) Responsibility for the administrative direction of psychiatric services provided by the hospital shall be vested in a person appointed and authorized by the hospital administrator. The qualifications and appointment of the director shall be approved by the medical staff. The responsibilities and duties of the director shall be designated in writing and shall be approved by the medical staff.
(d) Responsibility for the medical direction of psychiatric services provided by the hospital shall be vested in and under the supervision of a member of the medical staff.
(2) Policies and Procedures.
(a) There shall be written policies and procedures specifying the scope and conduct of psychiatric services.
(b) They shall be approved by the medical staff, reviewed annually, revised as necessary, and relate to the following:
(i) Use of restraining devices on a patient;
(ii) Seclusion of a patient;
(iii) Use of drugs;
(iv) Pertinent safety precautions;
(v) Assignment of personnel and job descriptions;
(vi) Continuing education requirements for all personnel;
(vii) An incident-reporting system.
(3) Medical Records.
Medical records required for psychiatric patients shall conform to the Medical Records section R432-100-35. The history and physical for psychiatric patients shall include a mental-status examination.
(4) Quality Assurance.
The director of psychiatric services is responsible for assuring that a review and evaluation of the quality and appropriateness of psychiatric services are performed at least quarterly.
(5) Nursing Service.
Nursing services required for psychiatric patients shall conform to the Nursing Service R432-100-6.
(6) If outreach services are ordered by a physician as part of a plan of care or hospital discharge plan, then the outreach services may be provided in a clinic, physician office, or the patient's home.
(7) If offered, the residential treatment service shall be organized as a specialty program under the direction of the medical director or his designee.
(a) "Residential Treatment" means a 24-hour group living environment for four or more individuals unrelated to the licensee. Individuals are assisted in acquiring the social and behavioral skills necessary for living independently.
(b) Residential treatment services shall meet the requirements identified in R432-101-25.

R432-100-21. Surgery Services.
(1) Organization.
(a) Any surgical services provided by the hospital shall be integrated with other departments or services of the hospital. The relationship, objective, and scope of all surgical services shall be specified in writing.
(b) Responsibility for the administrative direction of the inpatient surgery services provided by the hospital shall be vested in a person appointed and authorized by the administrator. The qualifications and appointment of the director shall be approved by the medical staff. The responsibilities and duties of the director shall be designated in writing and shall be approved by the medical staff.
(c) Responsibility for the medical direction of the surgery service shall be vested in a member of the medical staff.
(d) Qualified registered nurses shall supervise the provision of surgical nursing care. Qualified nursing service personnel shall be available to provide the nursing care required during all phases of the patients' hospital stay.
(e) The surgery service shall be integrated with other departments and services.
(f) The operating room suite shall be directed and supervised by a qualified registered nurse. The supervisor shall have authority and responsibility for:
(i) Assuring that the planned procedure is within the scope of privileges granted to the physician.
(ii) Maintaining the operating room register;
(iii) Other administrative functions, including serving on patient care committees.
(g) The hospital shall establish a policy governing the use of obstetrical delivery and operating rooms to ensure that any patient with parturition imminent, or with an obstetrical emergency requiring immediate medical intervention to preserve the health and life of the mother or her infant, is given priority over other obstetrical and non-emergent surgical procedures.
(h) Qualified assistants shall be used as needed in operations. A qualified assistant is any individual designated in writing by the hospital authorities or medical staff as having sufficient training to assist in a surgical procedure.
(i) Surgical technicians and licensed practical nurses may serve as scrub nurses under the direct supervision of a registered nurse, but may not function as circulation nurses in the operating rooms, unless the scrub nurse is a registered nurse.
(2) Facilities and Equipment.

(a) A safe operating room environment shall be established, controlled and consistently monitored.

(b) Surgical equipment including suction facilities and instruments in good repair shall be provided to assure safe and aseptic treatment of all surgical cases.

(i) Traffic in and out of the operating room shall be controlled. There shall be no through traffic.

(ii) The physical facilities, work surfaces, and equipment shall be maintained in a sanitary condition.

(iii) An auxiliary power system shall be available.

(iv) Equipment shall be in operable condition.

(A) Electrical safety records shall be maintained.

(B) Equipment performance shall be verified.

(v) There shall be a scavenging system for evacuation of anesthetic waste gases.

(vi) Precautions to eliminate hazards of burns, fires and explosions shall be taken.

(vii) The following equipment shall be available to the operating suite:

(A) Call-in system;

(B) Cardiac Monitor;

(C) Ventilation support system;

(D) Defibrillator;

(E) Aspirator;

(F) Equipment for Cardiopulmonary Resuscitation.

(3) Anesthesia. The administration of anesthetics shall conform to the requirements of the Anesthesia Section R432-100-24.

(4) Medical Records.

Surgical records shall conform to the Medical Records Section, R432-100-35.

(a) The surgical records shall justify the diagnosis and operation by:

(i) Recorded evidence of pre-operative study;

(ii) A record of the surgeon's pre-operative diagnosis;

(iii) An operative report describing description of findings, the technical procedures used, the specimen removed, the postoperative diagnoses, and the name of the primary surgeon and any assistants, written or dictated by the surgeon within 24-hours after the operation;

(iv) A history, physical, and lab report in the chart of each patient prior to surgery;

(v) Evidence of consent.

(b) There shall be a complete and current operating room register.

(5) Policies and Procedures.

(a) The operating room shall have written policies and procedures to assure provision of efficient and safe care to patients who undergo surgery. These policies and procedures shall be approved by the medical staff, reviewed annually, and revised as necessary.

(b) They shall include:

(i) Delineation of surgical privileges for all physicians who may participate in surgery;

(ii) Job descriptions and responsibilities;

(iii) Organization;

(iv) Infection control;

(A) Sterilization, disinfection, and decontamination;

(B) Procedure for the reporting and recording of all infections of clean surgical cases;

(v) Quality assurance;

(vi) Safety practices;

(vii) Emergency procedures, including:

(A) Internal and external disaster plans;

(B) Provision for back-up surgeons when the chief surgeon is incapable of continuing the procedure;

(viii) Patient care requirements;

(ix) Appropriate clothing and footwear;

(x) Procedures for verifying the patient's informed consent;

(xi) Post-anesthesia recovery;

(xii) An incident-reporting system;

(xiii) Removal of surgical specimens shall be in conformance with the Laboratory and Pathology Section, R432-100-26.

R432-100-22. Substance Abuse Treatment.

Any specialized hospital or unit within a hospital may provide inpatient or outpatient substance abuse rehabilitation services. Such services shall conform to the rules of the Utah Division of Substance Abuse R544-1,4,5,7 and 8 and the requirements of this rule.

(1) Organization.

(a) Any specialized hospital or unit within a hospital that provides substance abuse rehabilitation services shall be staffed to meet the needs of the patients, and coordinated with other hospital services.

(b) Responsibility for administrative direction shall be vested in an individual appointed and authorized by the administrator of the hospital.

(c) Responsibility for medical direction shall be defined in writing and vested in a qualified physician who is a member of the medical staff.

(d) Responsibility for nursing services shall be under the direction of a full-time registered nurse.

(e) A certified substance abuse counselor shall serve as the primary therapist.

(f) A multidisciplinary team including the physician, registered nurse, and the substance abuse counselor shall be responsible for program and treatment services.

(2) Policies and Procedures.

There shall be written policies and procedures approved by the medical staff and reviewed annually that address at least the following:

(a) Staff and responsibilities;

(b) Program services;

(c) Patient or client assessment;

(d) Treatment and discharge.

(e) Special treatment needs of patients by reason of age, gender, sexual orientation or ethnic origin are evaluated.

(3) Program Services.

Substance abuse rehabilitation services shall include at least the following:

(a) Detoxification. The systematic reduction or elimination of a toxic agent in the body by use of rest, fluids, medication, counseling, or nursing care.

(b) Counseling in at least one of the following areas: individual, group, or family counseling. In addition there shall

be provision for educational, employment, or other counseling as needed.

(c) Referral. Treatment services shall be coordinated with other hospital and community services to assure referrals and continuity of care. Counselors may refer clients to public or private agencies for substance abuse rehabilitation and employment and educational counseling.

(d) Comprehensive assessment.

(e) Physical Examination.

(f) Psychiatric and psychological assessment.

(g) Social Assessment.

(4) Records.

(a) The content of the medical record shall conform to the requirements of section R432-100-35 of these rules and in addition shall include the following:

(i) Patient or client assessment. The assessment shall include a medical, psycho-social, substance abuse, and treatment history.

(ii) Individualized treatment plan. A treatment plan based on the patient assessment including goals and methods of treatment. The plan shall be reviewed and updated every 90 days for outpatient and every 30 days for residential patients.

(iii) Progress notes including description and date of service, and summary of client progress signed by the therapist or service provider.

(iv) Signed discharge summary.

(v) Aftercare follow-up including final evaluation of treatment and goals attained.

(b) The confidentiality of medical records of substance abuse patients shall be maintained according to the federal guidelines in 42 CFR, Part 2, "Confidentiality of Alcohol and Drug Abuse Patient Records."

(5) Quality Assurance.

The medical director of the substance abuse treatment service shall be responsible to review, at least annually, the quality and effectiveness of the services provided.

(6) Residential treatment services may be provided under the direction of the medical director or his designee. Residential services shall comply with R432-101-25.

R432-100-23. Inpatient Hospice.

(1) Definition.

Any specialized hospital or unit within a hospital may provide a hospice program to patients with a terminal prognosis who choose palliative and supportive services. The hospice program shall allow for physical, psychological, social, and spiritual care for dying persons and their families.

(2) Organization.

(a) The hospice service shall be coordinated with other services of the hospital.

(b) Responsibility for administrative direction shall be vested in an individual appointed and authorized by the administrator of the hospital.

(c) Responsibility for medical direction shall be vested in a qualified physician who is a member of the medical staff.

(d) Responsibility for nursing services shall be under the direction of a registered nurse.

(3) Policies and Procedures.

There shall be written policies and procedures approved by the medical staff, and reviewed annually, that address at least the following:

(a) An interdisciplinary team made up of at least a physician, nurse, social worker, clergyman or counselor shall develop a plan of care, based on the needs and requested services of the patient and his family. Interdisciplinary team conferences shall be documented.

(b) The plan of care shall address the provisions for physical, psychological, social, and spiritual care to be provided to the patient and family.

(c) The use of extraordinary measures to extend a patient's life shall be discussed with the patient and family and documented. The patient and family shall sign a consent form if they choose to forgo the use of extraordinary measures such as resuscitation.

(d) Volunteer or family services shall be integrated with the hospice program if requested by the patient.

(e) Counseling and bereavement services shall be provided to patients and their families as needed.

(f) There shall be provisions to assure the privacy of patients and their families including:

(i) Accommodations for family members to remain with the patient throughout the night; and

(ii) Accommodations that permit the family to remain with the dying patient and view him after death.

(g) Hospice services shall be coordinated with other hospital and community services to assure appropriate referrals and continuity of care.

(4) Records.

The content of the patient's medical record shall conform to the requirements of subsection R432-100-35 with particular attention on the following:

(a) Diagnosis and prognosis;

(b) Patient and family assessment and plan of care including the disciplines who shall provide the required services;

(c) Documentation of chronic or acute pain and their management;

(d) Documentation of counseling or bereavement services;

(e) Discharge summary.

(5) Quality Assurance.

The medical director of the hospice service shall be responsible for a review of the quality and effectiveness of the hospice service, at least annually.

R432-100-24. Anesthesiology Services.

(1) Organization.

(a) There shall be facilities and equipment for the administration of anesthesia commensurate with the clinical and surgical procedures planned for the institution. Anesthesia care shall be available on a 24-hour basis. Anesthesia may be provided by individual contractors or may be provided by the hospital.

(b) Responsibility for the administrative direction of anesthesia services provided by the hospital shall be vested in a person appointed and authorized by the hospital administrator. The qualifications and appointment of the director shall be approved by the medical staff. The responsibilities and duties of the director shall be defined in writing. These duties and

responsibilities shall be approved by the medical staff.

(c) Medical direction shall be provided by a physician member of the medical staff, preferably by an anesthesiologist or a physician who has specialized training and experience.

(d) Anesthesia care shall be provided by anesthesiologists, other qualified physicians, anesthetists, dentist, oral surgeons, or Certified Registered Nurse Anesthetists who are members of the medical staff within the scope of their practice and license.

(i) A qualified physician, dentist or oral surgeon shall have documented training that includes the equivalent of 40 days preceptorship with an anesthesiologist and shall be able to perform at least the following:

(A) procedures commonly used to render the patient insensible to pain during the performance of surgical, obstetrical, and other pain producing clinical procedures;

(B) support life functions during the administration of anesthesia, including induction and intubation procedures;

(C) provide pre-anesthesia and post-anesthesia management of the patient.

(ii) The performance of Certified Registered Nurse Anesthetists shall be under the direction of the medical director of the anesthesia service or the physician responsible for the patient's care. Both the patient and operating surgeon shall be informed prior to surgery when anesthesia is administered by a Certified Registered Nurse Anesthetist.

(e) The responsibilities and privileges of each qualified anesthetist shall be clearly defined by the medical staff or the medical director of anesthesiology and included in detailed job descriptions.

(f) When the operating or anesthesia team consists entirely of non-physicians, a physician shall be immediately available in the facility.

(2) Equipment.

(a) The use of flammable anesthetic agents for anesthesia or for the pre-operative preparation of the surgical field is prohibited.

(b) The anesthetic equipment shall be inspected and tested by the anesthetist before use. If a leak or potentially hazardous defect is observed, the equipment shall not be used until the fault is repaired.

(c) Each anesthetic gas machine shall have a pin-index safety system and an oxygen pressure index safety system or equivalent.

(3) Policies and Procedures.

(a) There shall be written policies approved by the medical staff relating to the delivery of anesthesia care, anesthesia safety and operating room hazards. They shall be reviewed annually and enforced through an organized quality assurance program.

(b) The policies shall provide for at least the following:

(i) A pre-anesthesia evaluation of the patient by a member of the medical staff including documentation in the chart regarding the choice of anesthesia and the surgical or obstetrical procedure anticipated. This evaluation shall be recorded prior to administration of anesthesia. This entry shall include any previous drug history, other anesthetic experience, and any potential anesthetic problems;

(ii) A review of the patient's condition immediately prior to induction of anesthesia. This shall include a review of the medical record and consent form with regard to completeness of laboratory data, time of administration and dosage of pre-anesthesia medication, if any, and an appraisal of any comparative changes in the patient's condition.

(iii) A safety check of the equipment to ensure:

(A) the readiness, availability, cleanliness, sterility when required, and working condition of all equipment used in the administration of anesthetic agents prior to administering the anesthesia;

(B) the cleanliness of laryngoscope, airways, breathing bags, masks, endotracheal tubes, and all reusable anesthesia equipment in direct contact with the patient;

(C) the familiarization by all anesthesia personnel with the rate, volume, humidity control, and mechanism of air exchange within the surgical and obstetrical suites.

(iv) Procedures for the anesthetist or his qualified designee(s) to remain with the patient until responsibility for proper patient care has been assumed by other qualified individuals. Personnel responsible for post-anesthetic care shall be advised of specific problems presented by the patient's condition.

(v) A mechanism for the release of patients from any post-anesthesia care unit.

(A) When the responsible physician or surgeon has not issued a written order or authenticated a verbal release, the name of the physician or surgeon responsible for the patient's release shall be recorded in the medical record. Telephone orders shall be signed by the physician within 24-hours.

(B) When the physician or surgeon is not available at the time of release, discharge criteria developed and approved by the medical staff may be used by the nursing staff as the basis for a decision to discharge a patient from any post-anesthesia care. The criteria shall be comprehensive, assure the same standard of care for all patients, and be enforced by the director.

(vi) A record of all pertinent events during the induction of, maintenance of, and emergence from anesthesia, including the dosage and duration of all anesthetic agents, other drugs and treatments, intravenous fluids, and blood or blood components.

(vii) A record of post-anesthetic visits.

(A) One visit shall be made early in the post-operative period. The number of subsequent visits shall be determined by the status of the patient in relation to the procedure performed and anesthesia administered.

(B) Each post-anesthesia note shall specify the date and time of visit and the presence or absence of anesthesia related complications.

(C) The time of discharge from the recovery room shall be listed in the patient's recovery room record.

(D) All anesthesia personnel shall make pertinent post-anesthetic entries in the medical records of patients to whom they have administered anesthesia.

(E) If the record entry by anesthesia personnel is not feasible because of early patient release from the hospital, the discharging physician or dentist is responsible for meeting the requirement.

(viii) Written guidelines defining the role of anesthesia service and of all post-anesthesia care areas in the hospital's infection control program. Equipment designed for reuse shall be sterilized or disinfected before each use.

(ix) The quality assurance program for anesthesia service

shall include procedures for biennial review by an anesthesiologist of all anesthesia equipment, personnel, practices, charts (anesthesia morbidity-mortality), and facilities.

R432-100-25. Blood Bank and Services.

(1) Description of Services.

(a) A "donor center" means a facility that procures, prepares, processes, stores and transports blood and blood components.

(b) A "transfusion service" means a facility that prepares components, but also stores, determines compatibility, transfuses blood and blood components and monitors transfused patients for any ill effect.

(c) A "blood bank" means a facility that combines the functions of a donor center and transfusion service within the same facility.

(2) Requirements.

(a) The blood service shall establish and maintain an appropriate blood inventory in the hospital at all times, have immediate access to community blood services or other institutions, or have an up-to-date list of donors, equipment and trained personnel to draw and process blood. Blood or blood components are collected, stored, and handled in such manner that they retain potency and safety, and they are properly processed, tested, and labeled.

(b) If the hospital operates a donor center, transfusion service or a blood bank and is accredited by the American Association of Blood Banks (AABB), College of American Pathologists (CAP), the Food and Drug Administration (FDA), or The Joint Commission on Accreditation of Hospitals (JCAH), the requirements of the following sections are met.

(c) Facilities not accredited by either the AABB, CAP, FDA, or JCAH shall meet the requirements of R432-100-25(3) through (6).

(3) Organization.

(a) The hospital shall maintain such blood services as determined to be necessary by the medical staff and administration.

(b) These services shall be under the control and direction of a pathologist or other physician knowledgeable in immunohematology, hemotherapy, and blood banking.

(c) The blood bank technical staff shall have training and experience to be technically competent in the services performed.

(d) Supervision of the technical services shall be by a registered medical technologist.

(4) Facility and Equipment.

(a) The hospital shall provide sufficient space, storage facilities, and equipment in order not to compromise the quality, accuracy and safety of the services.

(b) This shall include:

(i) A refrigerator that is large enough to meet the needs of the facility that is used exclusively for blood storage. The temperature shall be continuously recorded and maintained between 1 degree C and 6 degrees C.

(ii) There shall be an audible and visual alarm outside on the refrigerator, adjusted to be triggered below 1 degree C and above 6 degrees C.

(iii) The alarm shall be supported by an emergency generator to ensure that it functions even when the primary power to the refrigerator is cut off.

(c) Other storage facilities shall be provided to safely store other blood products.

(d) Stored blood is inspected at time of use for evidence of hemolysis and for possible bacterial contamination.

(5) Quality Assurance.

(a) Written reports, reviewed monthly by the director or the supervisor of the blood services, of the blood services activities shall be maintained for no less than five years.

(b) These shall include:

(i) reactivity of reagents;

(ii) instrument checks;

(iii) temperature checks;

(iv) results and methods of all patient or donor sample testings;

(v) date of testing and the person performing the test;

(vi) signed consents and eligibility assessments.

(6) Policies and Procedures.

(a) Written policies and procedures shall be readily available.

(b) These shall conform to the latest standards of the AABB.

(c) These policies and procedures shall be reviewed annually by the director of the blood bank.

(d) New policies and procedures may be developed as required by the blood bank director in conjunction with the blood bank and medical staff.

(e) Blood transfusion policies and procedures relate to the following:

(i) release of unused blood to the original organization or another organization;

(ii) the reporting and investigation of adverse reactions;

(iii) the procedure for the return to the blood bank of unused blood that was previously issued for transfusion purposes;

(iv) testing for infectious agents.

R432-100-26. Laboratory and Pathology.

(1) Organization.

(a) Each hospital shall provide laboratory and pathology services that are in accordance with the needs and size of the institution.

(b) Responsibility for the administrative direction of the laboratory and pathology services provided by the hospital shall be vested in a person appointed and authorized by the hospital administrator.

(i) The qualifications and appointment of the director shall be approved by the medical staff.

(ii) The responsibilities and duties of the director shall be defined in writing and shall be approved by the medical staff.

(c) Responsibility for the medical direction of the laboratory services shall be vested in a member of the medical staff who shall be appointed or elected by the medical staff.

(d) The services of a pathologist shall be available on a full-time, part-time or consultative basis.

(i) When the pathologist is used on less than a full-time basis, the services shall be provided as often as required but not less than monthly.

(ii) The time commitment shall allow the pathologist to perform all the necessary functions to meet the pathology needs of the patients and medical staff.

(e) There shall be qualified laboratory and supportive technical staff to perform, promptly and proficiently, the tests required of the pathology and medical laboratory services.

(i) At least one qualified medical technologist shall be on duty or available at all times. A qualified medical technologist shall have:

(A) a bachelor's degree in medical technology from an accredited college or university; or

(B) a bachelor's degree in one of the biological sciences and at least one year of full-time laboratory experience or training in the specialty in which the individual performs tests; or

(C) a satisfactory grade in a proficiency examination approved by the Secretary of Health and Human Services.

(ii) Laboratory staff shall meet all applicable professional licensure requirements.

(iii) Technologists and other technical personnel shall have the opportunity to participate in continuing education programs. Each employee's participation shall be documented.

(A) In-service education programs shall be held at defined intervals that meet the needs of the technical staff;

(B) Continuing education programs shall be based on the review and evaluation of the quality and safety of laboratory services;

(C) An orientation program shall be provided for each new employee.

(2) Facilities.

Space, equipment, and supplies shall be available to perform the required volume of work accurately, efficiently, timely, and safely.

(a) The ventilation system shall be capable of removing toxic and noxious fumes.

(b) There shall be bench space.

(c) There shall be properly located and grounded electrical outlets which stabilize voltage.

(d) In the event of a power failure, the emergency power supply shall ensure staff are able to perform essential laboratory services as well as maintain any essential refrigerating or heating functions.

(e) Records shall be maintained for each piece of equipment showing the date of inspection, validations or performance evaluations, and any corrective actions.

(f) Temperatures shall be recorded daily for all temperature-controlled spaces.

(g) There shall be a communication system between the laboratory and other hospital areas.

(h) Voltage levels at electrical sources to which automated equipment is connected are monitored to identify power surges, fluctuations, or loss of voltage.

(i) Special precautions, including compliance with pertinent requirements of infection control to avoid unnecessary physical, chemical, and biological hazards in the pathology and clinical laboratory services.

(3) Policies and Procedures.

(a) There shall be written policies and procedures concerning the scope and conduct of laboratory services.

(b) The policies shall be reviewed annually, revised as necessary, dated to indicate the time of the last review, and enforced by the director.

(c) They shall include the following:

(i) the ordering of tests;

(ii) identification, storage, and preservation of specimens;

(iii) assuring accurate and timely reporting of test results;

(iv) routine or standing orders;

(v) quality control and proficiency testing, and reporting of test results;

(vi) personnel;

(vii) continuing education;

(viii) infection control;

(ix) methods used to prepare patients and to collect specimens.

(d) Authenticated dated reports of all examinations performed by the pathology or laboratory shall be made a part of the patient's medical record. If the patient is not an inpatient, the hospital shall have a system for assuring that the information is easily available to the patient's practitioner.

(i) When tests are performed in a reference laboratory, the name of the laboratory performing the test shall be included on the report.

(ii) Tests can be performed only by a laboratory holding a valid certification under the Clinical Laboratory Improvement Amendments of 1988, (CLIA);

(e) Reports of all clinical laboratory tests and examinations shall be readily available to the individual ordering the tests;

(f) Results of all clinical laboratory tests shall be retained for two years in a readily retrievable manner.

(4) Quality Assurance.

(a) The laboratory shall have a documented quality control program for each section of the pathology and laboratory services.

(b) The program shall include at least:

(i) preventive maintenance, periodic inspection and testing for proper operation of equipment and instruments, validation of methods, evaluation of reagents and volumetric equipment surveillance of results, corrective action;

(ii) adequacy of facilities, equipment, instruments, and methods for performance of the procedures;

(iii) identification, storage, and preparation of reagents;

(iv) verification and assessment of accuracy and precision of all types of analysis. The laboratory shall have a proficiency testing program that conforms to the requirements of the Utah Department of Health Laboratory Proficiency Testing Criteria and the Clinical Laboratory Improvement Amendments of 1988, (CLIA);

(v) personnel performance appraisal.

(5) Pathology Services.

(a) Specimens removed during a surgical procedure shall be sent to the pathologist for evaluation.

(i) The specimens shall be labeled, packaged, and identified by patient and source.

(ii) The specimen shall be accompanied by clinical information including the preoperative and postoperative diagnoses when known.

(iii) Every gross specimen sent to the laboratory shall be examined by a pathologist.

(b) The medical staff in consultation with the pathologist shall decide the exceptions to sending specimens removed during a surgical procedure to the laboratory. The limited categories of specimens that may be exempted include:

(i) specimens that do not permit productive examination;

(ii) therapeutic radioactive sources;

(iii) traumatically injured and amputated members;

(iv) foreign bodies that are given to law enforcement officials;

(v) specimens that rarely show pathological change and where removal is highly visible post-operatively;

(vi) normal placentas;

(vii) teeth.

(c) Microscopic slides shall be identified, properly indexed and stored to maintain their diagnostic value.

(d) Paraffin blocks shall be identified, properly indexed, stored in a cool place, and protected against damage.

(e) All tissue sections shall be readily available for reference and consultation.

(f) Retention requirements:

(i) Gross tissue specimens shall be retained in fixative for at least seven days after all required microscopic sections are examined and the reports are reviewed and signed;

(ii) Microscopic slides, paraffin blocks, bone marrow aspirates, and needle biopsy specimens shall be stored for two years;

(iii) All abnormal slides shall be stored permanently.

(g) All laboratory tests for individuals on inpatient status shall be ordered by a physician or other licensed practitioner.

(h) Laboratory tests for all other individuals shall be according to hospital policy, and comply with the provisions of Section R432-100-24.

R432-100-27. Pharmacy.

(1) Organization.

(a) The pharmacy of a hospital currently accredited and conforming to the standards of The Joint Commission on Accreditation of Health Care Organizations (JCAHO) shall be determined to be in compliance with these rules.

(b) If a hospital is not accredited by JCAHO, then the pharmacy of such hospital shall comply with rules in this section.

(c) The pharmacy department and service shall be directed by a pharmacist licensed by the Utah Department of Commerce.

(i) Competent personnel shall be employed in keeping with the size and activity of the department and service. If the hospital uses only a drug room and the size of the hospital does not warrant a full-time pharmacist, a consultant pharmacist may be employed;

(ii) The pharmacist shall be responsible for developing, supervising, and coordinating all the activities of the pharmacy.

(iii) Provision shall be made for emergency pharmaceutical services.

(iv) The pharmacist shall be trained in the specific functions of the hospital pharmacy.

(d) The administrator shall appoint a Pharmacy and Therapeutics Committee composed of at least the pharmacist, a physician, and a nurse. The Committee shall:

(i) Advise the medical staff and the hospital pharmacist on pharmacy matters and develop a list of drugs accepted for use in the hospital;

(ii) Make recommendations concerning drugs provided to and stocked in service areas;

(iii) Meet at least quarterly.

(2) Facility.

(a) Facilities shall be provided for the safe storage, preparation, safeguarding, and dispensing of drugs.

(i) All floor-stocks shall be kept in secure areas in the nursing units and shall be routinely checked by the pharmacist;

(ii) Double-locked storage shall be provided for controlled substances.

(b) A current toxicology reference, and other references as needed for effective pharmacy operation and professional information shall be available.

(3) Records.

(a) Records shall be kept of the transactions of the pharmacy and medication storage unit and coordinated with other hospital records.

(b) There shall be a recorded and signed floor-stock controlled substance count once per shift.

(c) The record shall list the name of the patient receiving the controlled substance, the date, type of substance, dosage, and signature of the person administering the substance.

(4) Policies.

Written policies and procedures that pertain to the intra-hospital drug distribution system and the safe administration of drugs shall be developed by the director of the pharmaceutical department or service in concert with the medical staff and others.

(a) Drugs that are provided to floor units shall be administered in accordance with approved policies and procedures of the Pharmacy and Therapeutics Committee.

(b) The medical staff in conjunction with the Pharmacy and Therapeutic Committee shall establish standard stop orders for all medications not specifically prescribed as to time or number of doses.

(c) The pharmacist shall have full responsibility for dispensing of all drugs.

(d) There shall be a policy stating who may have access to the pharmacy or drug room when the pharmacist is not available.

(e) The policy shall also require that records be kept of all transactions.

(f) Medication errors and adverse drug reactions shall be reported immediately in accordance with written procedures, which shall include notification of the practitioner who ordered the drug.

R432-100-28. Physical Therapy.

(1) Organization.

(a) Physical therapy services shall be available.

(b) The physical therapy service shall be directed by a licensed physical therapist who shall have administrative responsibilities for the physical therapy department.

(c) There shall be physical therapy staff and support personnel to provide the physical therapy requested by authorized individuals for the care of patients.

(i) Staff physical therapists shall be licensed by the Utah

Department of Commerce.

(ii) Patient services performed by support personnel, shall be commensurate with each person's documented training and experience.

(iii) A physical therapy aide shall complete an organized program of on-the-job training in aspects of physical therapy services as described in his job description.

(d) Physical therapy services may be initiated by a member of the medical staff or by a licensed physical therapist.

(i) The physician's written request for services shall include reference to the diagnosis or problems for which treatment is planned and any contraindications.

(ii) The patient's physician shall retain responsibility for the specific medical problem or condition for which the referral was made.

(iii) Physical therapy service provided to the patient shall include evaluation of the patient, establishment of goals, development of a plan of treatment, regular and frequent assessment, maintenance of treatment and progress records, and periodic assessment of the quality and appropriateness of the care provided.

(2) Policies and Procedures.

(a) There shall be written policies and procedures developed and approved by the physical therapy services in conjunction with the medical staff.

(b) They shall be reviewed annually, revised as necessary, and include the following:

(i) methods of referral for service;

(ii) scope of service;

(iii) responsibilities of professional and support staff;

(iv) professional consultation;

(v) discharge of patients;

(vi) priorities in the use of services;

(vii) infection control;

(viii) transfer of patient records when patients are transferred between facilities;

(ix) safety;

(x) maintenance of records and reports;

(xi) an incident-reporting system;

(xii) emergency procedures, e.g. fire;

(xiii) clinical record use and retention.

(3) Equipment.

(a) Equipment shall be calibrated according to the manufacturer's directions.

(b) Equipment shall be inspected yearly and maintained in accordance with the hospital's preventive maintenance program. Inspection and maintenance shall be documented.

(4) Records.

(a) There shall be a written plan of care for each patient receiving physical therapy appropriate to his diagnosis and condition.

(b) Records for each physical therapy patient shall include the following:

(i) medical staff orders or referral;

(ii) pertinent diagnoses or a problem list;

(iii) precautions necessitated by the patient's general medical condition;

(iv) short and long term goals;

(v) frequency of review;

(vi) an assessment of patient progress;

(vii) justification for continued care.

(5) Continuing Education.

(a) The physical therapy staff shall participate in any pertinent continuing education and orientation programs of the hospital.

(b) All physical therapists and physical therapy assistants shall maintain cardiopulmonary resuscitation certification.

(6) Quality Assurance.

The physical therapy staff shall participate in quality assurance activities of the hospital.

R432-100-29. Radiology Services.

(1) Organization.

(a) Each hospital shall provide an organized radiology department offering services that are in accordance with the needs and size of the institution.

(b) Responsibility for the administrative direction of the radiology services provided by the hospital shall be vested in a person appointed and authorized by the hospital administrator.

(i) The qualifications and appointment of the director shall be approved by the medical staff.

(ii) The responsibilities and duties of the director shall be defined in writing.

(iii) These duties and responsibilities shall be approved by the medical staff.

(c) Medical direction of the department shall be provided by a member of the medical staff.

(i) When a radiologist is not the medical director, the services of a radiologist shall be retained on a part-time basis.

(ii) When a radiologist provides services on less than a full-time basis, the time commitment shall allow him to complete the necessary functions to meet the radiological needs of the patients and the medical staff.

(d) The radiologist shall:

(i) maintain a quality control program that minimizes unnecessary duplication of radiographic studies and maximizes the quality of diagnostic information available;

(ii) develop technique charts that include part, thickness, exposure factors, focal film distances and whether a grid or screen technique;

(iii) assure the availability of information regarding the purpose and yield of radiological procedures and the risks of radiation.

(e) At least one qualified radiologic technologist shall be on duty or available when needed. Each radiological technologist shall be licensed pursuant to Title 58, Chapter 54.

(f) Job descriptions shall be consistent with the qualifications of the employee.

(g) Student technologists shall be supervised by a qualified technologist, and shall not be solely responsible for call duty until they are in the final phase of clinical training and have the approval of the training program director.

(h) Diagnostic radiology services shall be performed only at the request of a member of the medical staff or other persons authorized by the hospital.

(i) If Radiation Oncology services are provided the following applies:

(i) individuals who provide radiation oncology services

have delineated privileges;

(ii) the director of the radiation oncology services is a physician member of the medical staff who is qualified by education and experience in radiation oncology.

(2) Education.

(a) There shall be continuing education for technologists and other technical personnel which meets Section R156-54-10.

(b) Each employee's participation shall be documented.

(i) An orientation program shall be provided for each new employee which shall include instruction in safety precautions and in the management of emergency radiation hazards and accidents.

(ii) In-service educational programs shall be held at regular and defined intervals.

(3) Policies and Procedures.

(a) There shall be written policies and procedures concerning the scope and conduct of radiology services.

(b) The policies shall be reviewed annually, revised as necessary, dated, and enforced by the director.

(c) They shall include at least the following:

(i) radiotherapy shall be supervised only by the responsible radiotherapist or radiologist practicing therapy;

(ii) safety precautions, electrical and mechanical hazards, fires and explosions;

(iii) guidelines for the management and scheduling of patients;

(iv) infection control;

(v) parenteral administration of diagnostic agents;

(d) Non-physician personnel shall have written authority from the director to administer diagnostic agents;

(e) Safety precautions shall include the provision of an emergency drug tray and access to oxygen, suction airways, I.V.'s, and defibrillator;

(f) There shall be a physician available in-house prior to the administration of parenteral diagnostic agents.

(g) Radiation safety precautions shall conform to rules adopted by the Utah Department of Environmental Quality and include provision for the following:

(i) the safe use, removal, handling, and storage of radioactive elements and their disintegration products;

(ii) A quality control program designed to minimize patient, personnel and public risks and maximize the quality of therapy.

(iii) A qualified physician, medical physicist, or other qualified individual performs:

(iv) monitor performance evaluation of treatment equipment at least monthly;

(v) monitor each patient for the prescribed dose(s) distribution to an acceptable degree of accuracy and precision, and

(vi) monitor therapy machines, radiation sources, and simulators for proper working order.

(vii) guidelines for protecting personnel and patients from radiation;

(4) Medical Records.

(a) All requests for radiologic services shall contain the reasons for the examinations. The requesting practitioner is responsible for providing this information.

(b) Authenticated reports of these examinations shall be filed in the patient's medical record as soon as possible. If copies are retained by the radiology department then the record shall be stored for five years.

(c) When requested by the attending physician and when the quality of the radiograph permits, the radiology department may officially enter the interpretations of the radiologic examinations performed outside of the hospital in the patient's medical record.

(d) Radiotherapy summaries shall be filed in the patient's medical record a copy may be filed in the radiotherapy department. The radiotherapy summary shall be forwarded to the referring physician. Unless otherwise justified, the medical record of the patient receiving radiotherapy for treatment or palliation of a malignancy shall reflect the histologically substantiated diagnosis.

(e) The radiology department shall determine which procedures require consent and document that consent was obtained in the patient record.

(5) Oncology services using radiation therapy shall coordinate the policy and procedures which are approved by both medical directors of the units.

R432-100-30. Respiratory Care Services.

(1) Organization.

(a) Responsibility for the administrative direction of the respiratory care services provided by the hospital shall be vested in a person authorized by the hospital administrator.

(b) The qualifications and appointment of the director shall be approved by the medical staff. Responsibilities and duties of the director shall be defined in writing and shall be approved by the medical staff.

(c) The respiratory care service shall be under the medical direction of a member of the medical staff, who has the responsibility and authority for the overall direction of respiratory care services.

(d) When the scope of services warrants, respiratory care services shall be supervised by a technical director who is registered or certified by the National Board For Respiratory Therapy, Inc., or has the equivalent education, training, and experience.

(e) The technical directors shall inform physicians about the use and potential hazards in the use of any respiratory care equipment.

(f) Respiratory care services shall be provided by qualified personnel. The respiratory care services performed shall be commensurate with each person's documented training and experience.

(g) The scope of the respiratory care services provided to patients shall be defined in writing.

(h) Respiratory care services shall be provided to patients in accordance with a written prescription of the responsible physician which specifies the type, frequency, and duration of the treatment, and when appropriate, the type and dose of medication, the type of diluent, and the oxygen concentration.

(2) Personnel and Education.

(a) The education, training, and experience of personnel who provide respiratory care services shall be documented.

(i) Non-physician respiratory care personnel shall perform patient procedures associated with potential hazard only when

authorized in writing and in accordance with medical staff policy.

(ii) Responsibilities of each person shall be clearly defined in organizational plans and job descriptions.

(b) Respiratory care practitioners shall be trained and oriented to prepare them for their role in the provision of respiratory care services. They shall receive instruction and demonstrate competence in:

(i) fundamentals of cardiopulmonary physiology fluids, and electrolytes;

(ii) recognition, interpretation, and recording of signs and symptoms of respiratory dysfunction and medication side effects, particularly those that require notification of a physician;

(iii) initiation and maintenance of cardiopulmonary resuscitation and other life-support procedures;

(iv) aseptic techniques to prevent contamination of transfer of infection;

(v) principles of airway maintenance;

(vi) effective and safe use of equipment for administering oxygen and other therapeutic gases and for providing humidification, nebulization, and medication;

(vii) methods that assist in the removal of secretions from the bronchial tree;

(viii) procedures and observations to be followed during and after extubation;

(ix) recognition of and attention to the psychological and social needs of the patients and their families;

(x) the mechanics of ventilation and ventilator function, pulmonary testing, and blood gas analysis.

(c) cardiopulmonary resuscitation certification for personnel performing respiratory care services shall be conducted at least annually.

(d) All respiratory care personnel shall participate in a relevant in-service education program that is based in part on the findings of quality assurance activities.

(3) Policies and Procedures.

(a) There shall be written policies and procedures specifying the scope and conduct of respiratory care services.

(b) Policies shall be approved by the medical staff, reviewed annually, revised as necessary, and include the following:

(i) specific respiratory procedures including who may perform these under what circumstances and degree of supervision;

(ii) assembly and sequential operation of equipment and accessories;

(iii) procedures in the event of adverse reaction;

(iv) procuring, handling, storing, and dispensing of therapeutic gases;

(v) pertinent safety practices including the control of electrical, flammable, explosive, and mechanical hazards;

(vi) infection control measures to minimize the possibility of contamination and transfer of infections;

(vii) administration of medications in accordance with physician's orders;

(viii) an established method of response to the absence of explicit instruction in prescriptions for respiratory care services;

(ix) an incident-reporting system;

(x) the transfer of patients who require respiratory care services not provided by the hospital.

(4) Equipment.

(a) Equipment shall be provided to perform any pulmonary function study or blood-gas analysis provided by the hospital.

(b) All equipment shall be calibrated and operated according to the manufacturer's specifications.

(c) The equipment shall be inspected periodically and maintained in working order. Inspection and maintenance shall be documented.

(d) A pin-index system, a diameter-index system, or other approved equivalent safety system shall be used with a therapeutic gas.

(e) Resuscitation, ventilatory, and oxygenation support equipment shall be available for all patients served by the hospital.

(5) Medical Records.

(a) All respiratory care services provided to a patient shall be documented and include the type of therapy, date and time of administration, effects of therapy, and any adverse reactions.

(i) The responsible physician shall document in the patient's medical record a timely and pertinent clinical evaluation of the overall results of respiratory therapy;

(ii) Prior to discharge, instructions shall be given to the patient or patient's guardian about pulmonary care relevant to the respiratory problem.

(b) A written record of the prescription and diagnosis shall be maintained in respiratory care service files.

(6) Quality Assurance.

The respiratory care service in conjunction with the hospital's quality assurance program shall actively participate in any audits of patient care concerning pertinent problems of respiratory care.

R432-100-31. Social Services.

(1) Organization.

(a) In a hospital with an organized social work department or services, a qualified social worker shall direct the provision of social work services. This individual shall be responsible to the administration of the institution. When a hospital does not have a full or part-time qualified social worker, the administrator shall designate an employee to coordinate and assure the provision of social work services. The employee shall be knowledgeable about community agencies, institutions, and other resources.

(b) For social work services present and available in the hospital, there shall be:

(i) policies and procedures relating to the staff and functions of the service;

(ii) written job descriptions for each employee performing social work services;

(iii) arrangements for obtaining consultation from a qualified social worker when a qualified social worker is not employed on at least a part-time basis;

(iv) staff for patient care planning.

(c) The staff shall be oriented to help the patient make the best use of available inpatient, outpatient, extended care, and home health services.

(d) Social Services shall be integrated with services of other departments and services of the hospital.

(2) Records.

(a) Records shall be kept and made available only to the professional personnel concerned.

(b) Records shall include:

(i) medico-social or psycho-social study of referred inpatients and outpatients;

(ii) financial status of the patient;

(iii) follow-up of discharged patients;

(iv) social therapy and rehabilitation of patients;

(v) environmental investigations for attending physicians;

(vi) cooperative activities with community agencies;

(vii) an incident-reporting system.

(3) Quality Assurance.

Social Services shall participate in any quality assurance activities of the hospital.

R432-100-32. Central Supply Services.

(1) Organization.

(a) The central supply service supervisor shall be qualified for the position by education, training, and experience.

(b) New employees shall receive initial orientation and on-the-job training.

(c) All employees, including the supervisors, shall participate in documented continuing education and in-service programs.

(d) Educational programs shall include sterile-supply processing and handling techniques, personal hygiene, infection control, and safety.

(2) Facilities and Equipment.

(a) The hospital shall provide space and equipment for the cleaning, disinfecting, packaging, sterilizing, storing, and distributing of medical and surgical patient care supplies.

(b) A hospital central service area shall provide for the following:

(i) A decontamination area which shall be separated by a barrier or divider to allow the receiving, cleaning, and disinfection functions to be performed separately from all other central service functions;

(ii) A linen assembly or pack-making area which shall have ventilation to control lint.

(A) Area shall be separated from the general sterilization and processing area. The linen assembly area shall have a light table available for the inspection of linen.

(B) All patching of linen shall be by vulcanized-heat pressure patches or equivalent.

(iii) The sterilization area shall contain recognized hospital sterilizers with approved controls and safety features.

(c) The accuracy of the sterilizers performance shall be checked by an approved method that includes a permanent record of each run.

(d) Sterilizers shall be tested by biological monitors at least weekly.

(i) If gas sterilizers are used, they shall be located at least 12 feet from traffic or work areas; or written policies that require all employees to stay 12 feet away from the sterilizer for at least 15 minutes after it is opened.

(ii) Sterilizers shall be tested with biological monitors for each load. The results shall be ascertained prior to the use of gas-sterilized items.

(iii) If the quarantine period cannot be adhered to, the item shall be labeled "quarantine time not assured."

(e) Gas sterilizers shall be vented to the outside and shall have a purge cycle and a gas separator. The gas-sterilizing cycle shall not be interrupted to remove items in the process of sterilization.

(f) The aerator shall be vented to the outside. The aerator shall not be opened for at least two hours after the start of the aeration cycle unless specified by the manufacturer.

(g) The storage area shall be separated into sterile and non-sterile areas. The storage area shall have temperature and humidity controls and shall be free of excessive moisture and dust.

(i) Supplies shall be stored at least eight inches off the floor and 18 inches from the ceiling. Dust covers, closed cabinets, or shelving may be used as a protective measure.

(ii) Outside-shipping cartons shall not be stored in this area.

(h) All service equipment in central supply shall be placed on a documented preventive-maintenance program.

(i) During each shift that central service is staffed, counter tops and tables shall be wiped with a broad spectrum disinfectant.

(j) All apparel worn in central supply shall be issued and laundered by the hospital.

(i) When central supply employees leave their department for other areas of the hospital, they shall wear cover gowns or change clothing on their return.

(ii) Shoe covers shall be worn in the central supply area unless shoes are dedicated and worn only in the central supply department.

(3) Policies and Procedures.

(a) The department shall have written policies and procedures approved by the Infection Control Committee.

(b) They shall include the following:

(i) Methods of receiving, decontaminating, cleaning, preparing, and disinfecting all reusable supplies and equipment;

(ii) Methods for dating and listing contents of packages and materials to be used for all items autoclaved or sterilized including load number, sterilizer number, expiration date, and initials of person preparing the pack;

(iii) Methods for assembling, wrapping, storing, distributing, and assuring the quality of sterile equipment and medical supplies;

(iv) Operation of autoclaves and sterilizers;

(v) Shelf life of packages;

(vi) Recording temperature, time, and pressures for autoclaves and sterilizers;

(vii) Maximum size of linen packs shall be 12 inches x 12 inches x 20 inches and maximum weight shall be 12 pounds;

(viii) The testing of steam and hot-air sterilizers with live bacterial spores at least weekly;

(ix) The use of chemical indicators for each packet of items sterilized;

(x) Aeration requirements for each category of gas-sterilized items;

(xi) Procedure for cleaning and disinfecting of all items;

(xii) Procedure for upkeep of shelves, carts, walls, and vents;

(xiii) Acquisition of supplies after normal working hours or any time the central service supply unit is considered "closed" or not staffed;

(xiv) The recall and disposal or reprocessing of outdated sterile supplies. The attending physician shall be notified promptly when patients are exposed to suspected unsterile supplies;

(xv) The emergency collection and disposition of supplies when special warnings have been issued by the manufacturer. The attending physician shall be notified if patient exposure is suspected;

(xvi) Preventive maintenance schedule for equipment;

(xvii) Guidelines for personal hygiene, grooming, wearing apparel including shoes or shoe covers;

(xviii) Continuing education;

(xix) If ethylene oxide is used, a procedure to follow in the event of spills that includes the care and monitoring of exposed personnel.

R432-100-33. Dietary Service.

(1) Organization.

(a) There shall be an organized dietary department under the supervision of a qualified certified dietitian or a qualified individual who, by education or specialized training and experience, is knowledgeable in food service management. If the latter is head of the department, there must be a registered dietitian on a full-time, regular part-time, or consulting basis.

(b) Responsibility for the direction of the dietary service shall be vested in a person whose qualifications, authority, responsibilities and duties are defined or approved by the administrator. The director shall have the administrative responsibility for the dietary service.

(c) When the services of a qualified certified dietitian are used on less than a full-time basis, the time commitment shall permit performance of all necessary functions to meet the dietary needs of the patients.

(d) There shall be food service personnel to perform all necessary functions.

(e) There shall be written job descriptions for all dietary employees. Work assignments and duty schedules shall be available.

(f) When dietetic services are provided by an outside food management company, the company shall comply with all applicable requirements of these rules.

(2) Facilities and Equipment.

(a) Space and equipment shall be provided for the dietetic department to store food separately from non-food supplies, to prepare and distribute food, and to clean and sanitize utensils and dishes apart from food preparation areas. When storage facilities are limited, paper products may be stored with food supplies.

(b) Food is protected from contamination and spoilage;

(c) Foods are stored at proper temperatures, utilizing thermometers and maintaining temperature records;

(d) Lighting, ventilation, and humidity are controlled to prevent the condensation of moisture and growth of molds;

(e) Methods to prevent contamination are used for making, storing and dispensing ice;

(3) Food Preparation And Service.

(a) A current diet manual approved by the dietary department and the medical staff shall be available to dietary, medical, and nursing personnel.

(b) The food and nutritional needs of patients shall be met in accordance with the Current Dietary Allowances of the Food and Nutrition Board of the National Research Council and in accordance with physicians' orders.

(c) Regular menus and modifications for basic therapeutic diets shall be written at least one week in advance and posted in the kitchen.

(i) The menus shall provide for a variety of foods served in adequate amounts at each meal.

(ii) Records of menus served shall be kept on file for six months.

(d) At least three meals shall be served daily with not more than a 14-hour span between the evening meal and breakfast.

(e) A source of non-neutral exchanged water shall be provided for use in preparation of no sodium meals, snacks, and beverages.

(4) Maintenance of Sanitary Conditions.

(a) The dietary department shall comply with the Utah Department of Health Food Service Sanitation Regulations R392-1.

(b) The dietary facilities and equipment shall be in compliance with federal, state, and local sanitation and safety laws and rules.

(c) Traffic of unauthorized individuals through food preparation areas is controlled.

(5) Policies and Procedures.

(a) There shall be written policies and procedures concerning the scope and conduct of dietetic services, including food procurement, preparation, and nutritional care.

(b) The policies and procedures shall be reviewed annually, revised as necessary, dated to indicate the time of the last review, and enforced by the director.

(c) The policies and procedures shall include the following:

(i) The responsibilities and authority of the director or dietitian who heads the dietetic department;

(ii) Food purchasing, storage, inventory, preparation, and service including procedures for emergency or extraordinary circumstances;

(iii) Diet orders. The orders shall be recorded in the patient's medical record by an authorized individual before the diet is served to the patient;

(iv) The proper use of, and adherence to, standards for nutritional care as specified in a current diet manual or handbook;

(v) Nutritional assessment, counseling, and diet instruction;

(vi) Menus;

(vii) Alterations in diets or diet schedules;

(viii) Provision of food service to persons not receiving the regular meal service and ancillary dietetic services;

(ix) An identification system for patient trays and methods to assure that each patient receives the appropriate diet as ordered;

(x) Personal hygiene and health of dietetic personnel;

(xi) Infection control measures to minimize the possibility

of contamination and transfer of infection;

(xii) Sanitation procedures for cleaning and maintaining equipment and work areas, and washing and storing utensils and dishes;

(xiii) Orientation, in-service, and continuing education program for all dietary personnel.

(4) Written reports of inspections by state or local health departments shall be on file at the facility.

(5) Dietary Orders.

(a) The dietitian or authorized designee is responsible for documenting nutritional information in the patients medical record.

(b) Diets shall be ordered by a member of the medical staff and transmitted in writing to the dietary department.

R432-100-34. Laundry Service.

(1) Organization.

(a) Responsibility for the direction of the laundry service shall be vested in a person whose qualifications, authority, responsibilities and duties are defined or approved by the administrator. The director shall have the administrative responsibility for the laundry service.

(b) Hospitals using commercial linen service shall require written assurance from the commercial service that standards in this subsection shall be maintained.

(i) Clean linen shall be completely packaged and protected from contamination until received by the hospital;

(ii) The use of a commercial linen service does not relieve the hospital from its quality assurance responsibilities.

(c) The laundry area shall be planned, equipped, and ventilated to prevent the dissemination of contaminants. The ventilation system shall include adequate intake, filtration, exchange rate, and exhaust.

(d) A soiled linen processing area, when located in the hospital, shall be separated from the clean linen processing area, from patient rooms, from areas of food preparation and storage, and from areas in which clean material and equipment are stored.

(2) Soiled Linen.

(a) Soiled linen shall be collected in a manner to minimize cross-contamination. When soiled linen is collected from patient areas, it shall be placed in a bag or container. Containers shall be properly closed as filled or before further transport.

(i) Soiled linen shall be sorted only in a sorting area;

(ii) Handwashing after handling soiled linen and prior to handling clean items is required;

(iii) Employees handling soiled linen shall wear protective clothing which must be removed before leaving the soiled work area.

(b) Soiled linen shall be transported separately from clean linen.

(c) Soiled linen from isolation areas and septic surgical cases shall be identified and suitable precautions shall be taken in its subsequent processing.

(3) Clean Linen.

(a) There shall be a supply of clean linen. It shall be handled and stored in a manner to minimize contamination from surface contact or airborne deposition.

(b) Clean linen shall be stored in enclosed closet areas or carts.

(c) All linen shall be covered during transportation.

(4) Policies and Procedures.

(a) There shall be written policies and procedures concerning the scope and conduct of the laundry and linen.

(b) These policies shall include at least:

(i) The responsibilities of the director;

(ii) The responsibilities of the staff, including the nursing, housekeeping, and laundry staffs;

(iii) Operational requirements;

(iv) Maintenance of equipment;

(v) Laundering methods;

(vi) Pick-up and delivery procedures;

(vii) Storage of clean and soiled linen;

(viii) Infection control.

(5) The hospital shall have a linen committee, appointed by the administrator, which meets at least quarterly, or there shall be a laundry representative available to the Infection Control Committee as needed.

R432-100-35. Medical Records.

(1) Organization.

(a) There shall be a medical records service or department.

(b) Responsibility for the direction of the medical records department shall be vested in a person whose qualifications, authority, responsibilities and duties are defined or approved by the administrator.

(i) A Registered Records Administrator (RRA) or an Accredited Records Technician (ART) shall be employed at least on a part-time basis.

(ii) When employment of an ART or RRA is impossible, the hospital shall secure the consultative assistance of a RRA or ART.

(c) The consultant shall visit at least quarterly.

(d) The consultant shall give written reports of the finalized recommendations to the chief executive officer.

(e) The director shall have administrative responsibility for the medical records department.

(2) Facilities.

(a) There shall be space and equipment to enable medical records personnel to function effectively.

(b) Provision shall be made for the filing, safe storage and accessibility of medical records.

(i) The record and its contents shall be safeguarded from loss, defacement, tampering and from use by unauthorized individuals.

(c) Equipment for reviewing the records shall be made available for use by the medical staff.

(3) Employees.

(a) There shall be a written job description for each employee.

(b) Each employee shall participate in a continuing education program.

(4) Medical Record Availability.

A medical record shall be maintained for each patient admitted to the hospital or accepted for treatment.

(a) All records shall be readily available upon the request of:

(i) The attending physician;

(ii) The hospital or its medical staff or any authorized officer, agent or employee of either;

(iii) Authorized representatives of the Department for determining compliance with licensure rules;

(iv) Any other person authorized by consent form.

(A) The consent form shall include the name of the person who is the subject of the record, notification to whom the record is to be released to, signature of the person authorized to grant the release and the date of the consent for release.

(B) The hospital shall implement a policy which will educate individuals signing a consent form to ensure that they are informed that the consent may be withdrawn only through written notification.

(b) When a patient has medical records in more than one department of the hospital, a system shall be established to quickly retrieve all of his records when requested by professional staff for the care and treatment of that patient.

(c) The hospital medical record shall be indexed according to disease, procedure, and physician. The indexes shall be current within six months following discharge of the patient.

(d) Medical records are the property of the hospital and shall not be removed from the hospital's control except by court order or subpoena.

(e) Medical records for persons who have received or requested admission to alcohol or drug programs shall comply with 42 CFR Part 2, "Confidentiality of Alcohol and Drug Abuse Patient Records."

(5) Medical Record Entries.

(a) All medical record entries shall be dated and authenticated including the identity of the authors.

(i) Identification may include signatures, initials, or computer key;

(ii) Delegating the use of rubber stamps to other individuals is prohibited.

(b) Records of discharged patients shall be completed within a reasonable time period, but not to exceed 30 days after discharge. A medical record shall ordinarily be considered complete when the required contents are assembled and authenticated. Completion of the medical record is the responsibility of the attending physician.

(6) Retention and Storage.

(a) Complete medical records for all patients shall be retained for seven years after the last date of patient care, or three years after a minor reaches the age of 18, whichever is greater.

(b) Prior to destroying a patient's record, a summary shall be retained containing:

(i) Name;

(ii) Medical record number;

(iii) Date of birth, admission, and discharge;

(iv) Nearest relative, if available;

(v) Attending physician;

(vi) Final diagnosis;

(vii) Surgical procedure or procedures;

(viii) Pathological findings.

(c) The facility shall completely destroy the medical record to maintain confidentiality.

(d) When a hospital ceases operation, provision shall be made for appropriate safe storage and prompt retrieval of all medical records, patient indexes and discharges for the period specified in R432-2-16. The hospital may arrange for storage of medical records with another hospital or may return patient medical records to the attending physician if he is still in the community.

(7) General Contents of the Medical Record.

All medical records shall contain the following:

(a) Demographic data;

(b) Medical history. A durable and legible copy of the medical history obtained within 24 hours or a history which has been obtained within one week of admission may be used in the patient's hospital record providing changes, if any, have been recorded at the time of admission;

(c) Relevant physical examination. A durable and legible copy of the physical examination obtained within one week of admission may be used in the patient's hospital record providing changes, if any, have been recorded at the time of admission;

(i) When a patient is readmitted within 30 days for the same or a related problem, an interval history and physical reflecting any subsequent changes may be used provided the original information is readily available.

(ii) The medical record shall document a current, thorough physical examination prior to surgery except in case of an emergency when an admission note including significant findings and diagnosis may be written;

(d) Diagnoses including principal, provisional, final, and associate diagnoses;

(e) Laboratory reports. The original lab reports shall be entered in the patient's record with a copy kept in the laboratory. A durable and legible copy of the laboratory report obtained within one week of admission may be used in the patient's hospital record providing changes, if any, have been recorded at the time of admission;

(f) X-ray reports. The original signed radiological report shall be entered in the patient's record with a copy filed in the radiology department. A durable and legible copy of the laboratory report obtained within one week of admission may be used in the patient's hospital record providing changes, if any, have been recorded at the time of admission;

(g) Evidence of informed consent or the reason it is unattainable. It shall be signed and witnessed;

(h) Diagnostic and therapeutic orders by physicians and other authorized practitioners. Verbal orders shall be accepted and transcribed by qualified personnel;

(i) Verbal orders for medications and treatments shall be signed promptly within a time and manner specified by the hospital's bylaws;

(j) Anesthesia record;

(k) Pathology report;

(l) Clinical observations including progress notes, consultation reports, and nursing notes;

(m) When oxygen is prescribed for newborn infants, its use shall be recorded. Oxygen concentration levels shall be recorded at least hourly in accordance with a written policy of the newborn nursery;

(n) When there is a post-anesthesia care unit, the medical record shall include all pertinent events occurring as the patient emerges from anesthesia. Similar information shall be recorded in the medical records of patients whose post-anesthesia

recovery takes place in other than a post-anesthesia care unit;

(o) Discharge summary;

(p) Autopsy findings;

(q) Reports of procedures, tests, and results. If this includes reports from any facilities outside the hospital, the facilities shall be identified on the report;

(r) Physician identification.

(8) Obstetrical Record.

In addition to the requirements for medical records, the obstetrical record shall include:

(a) Admission history and physical examination which has been updated to the time of delivery or pre-natal examination. In the absence of a pre-natal examination, a history and physical shall be taken;

(b) Labor notes;

(c) Obstetrical anesthesia record;

(d) Delivery records;

(e) Operative report, where indicated;

(f) Discharge summary for complicated deliveries. In the case of an uncomplicated delivery, a final progress note may be substituted for the discharge summary;

(g) Record of administration of Rh immune globulin.

(9) Newborn Infant Record.

In addition to the requirements for Obstetrical medical records, the newborn record shall include:

(a) A copy of the maternal history from the mother's record including relevant family history, serological test for syphilis, Rh status, analgesia, anesthesia, length of labor, and type of delivery;

(b) Date and hour of birth; period of gestation; sex; reactions after birth; delivery room care; temperature; weight; time of first urination; and number, character, and consistency of stools;

(c) The identification number of the newborn screening kit, referred to in R398-1;

(d) Record of ophthalmic prophylaxis;

(e) Documentation of the physical examination completed at birth and discharge;

(f) If the infant is discharged to any person other than the infant's parents then the hospital shall record the name and address of such person and where the infant shall be taken.

(10) Emergency Room Record.

(a) For each patient seen or treated in the emergency room there shall be an emergency record that is integrated into the patient's overall record or record identification system.

(b) It shall include:

(i) Patient identification;

(ii) Time and means of arrival;

(iii) Emergency care given to the patient prior to arrival;

(iv) A short history;

(v) Physical findings;

(vi) Lab and x-ray reports, if performed;

(vii) Diagnosis;

(viii) Record of treatment;

(ix) Prognosis;

(x) Disposition of case;

(xi) Discharge instructions;

(xii) Signature of physician rendering service;

(xiii) When a patient leaves against medical advice, a statement to that effect.

(11) Outpatient Records.

Complete and accurate records shall be maintained and available to the other professional services of the hospital.

(a) The outpatient medical record shall be integrated with the patient's overall hospital record or record identification system.

(b) It shall include all information required for an inpatient record, plus discharge instructions.

(12) Other Records.

The following hospital records shall be maintained:

(a) Record of admissions, discharges, and number of autopsies performed. Data shall be maintained for all patients;

(b) Vital statistics. The official records for vital statistics are the responsibility of the administrator. They include:

(i) Register of births;

(ii) Register of deaths;

(iii) Register of operations;

(iv) Register of narcotics.

(13) Vital Statistics.

(a) Birth Certificates (Section 26-2-5). For each live birth which occurs in this state the hospital shall comply with Section 26-2-5 and Section 26-2-5.5.

(b) Death Certificate (Section 26-2-13).

The issuance of a death certificate shall comply with Section 26-2-13.

(c) Fetal Death Certificate (Section 26-2-14).

A fetal death certificate shall comply with Section 26-2-14.

(14) Policies.

(a) The hospital shall have written policies approved by the medical staff and administration relating to medical records. They shall be reviewed annually and enforced through an organized quality assurance program.

(b) The policies shall provide for at least the following:

(i) Duties of the director and ART or RRA;

(ii) Educational requirements for medical records personnel;

(iii) Release of information including child abuse records, psychiatric records, and drug and alcohol abuse records;

(iv) Preparation of medical records;

(v) Filing and record storage;

(vi) Transportation of medical records;

(vii) Indexing;

(viii) Coding;

(ix) Statistical reporting;

(x) Security and confidentiality of records;

(xi) Destruction of records;

(xii) Authorization of individuals for access or non-access to the medical record;

(xiii) Retention of medical records;

(xiv) Prohibition against delegation of rubber stamp usage;

(xv) Duration or revocation of consent and releases.

R432-100-36. Emergency Disaster Plans.

(1) General Provisions.

(a) The hospital shall be responsible to assure the safety and well-being of patients. There must be provisions for the maintenance of a safe environment in the event of an emergency or disaster.

(b) An emergency or disaster may include utility interruption, such as gas, water, sewer, fuel and electricity, explosion, fire, earthquake, bomb threat, flood, windstorm, epidemic, and injury.

(2) Essential Policies.

(a) The administrator or his designee shall be responsible for the development of a plan, coordinated with state and local emergency or disaster offices, to respond to emergencies or disasters. This plan shall be in writing and list the coordinating authorities by name and title. The plan shall be distributed or made available to all hospital staff to assure prompt and efficient implementation.

(b) The plan shall be reviewed and updated as necessary in coordination with local emergency or disaster management authorities. The plan shall be available for review by the Department.

(c) The administrator shall be in charge of operations during any significant emergency. If not on the premises, the administrator shall make every reasonable effort to get to the hospital to relieve subordinates and take charge of the situation.

(d) Staff shall receive education and training and be given simulated drills to insure appropriate response in an emergency. Drills and training shall be documented and shall comply with applicable laws and rules.

(e) The name of the person in charge and names and telephone numbers of emergency medical personnel, agencies and appropriate communication and emergency transport systems shall be readily available.

(3) Emergency Procedures.

The hospital's emergency response procedures shall address the following:

(a) evacuation of occupants to a safe place within the hospital or to another location;

(b) delivery of essential care and services to hospital occupants by alternate means regardless of setting;

(c) delivery of essential care and services when additional persons are housed in the hospital during an emergency;

(d) delivery of essential care and services to hospital occupants when staff is reduced by an emergency;

(e) maintenance of safe ambient air temperatures within the hospital.

(i) Emergency heating must have the approval of the local fire department.

(ii) An ambient air temperature of 58 F (14 C) or lower may constitute a danger to the health and safety of the patients in the hospital. The person in charge shall take immediate and appropriate action.

(4) Emergency Plan.

(a) The hospital's emergency plan shall delineate:

(i) the person or persons with decision-making authority for fiscal, medical, and personnel management;

(ii) on-hand personnel, equipment, and supplies and how to acquire additional help, supplies, and equipment after an emergency or disaster;

(iii) assignment of personnel to specific tasks during an emergency;

(iv) methods of communicating with local emergency agencies, authorities, and other appropriate individuals;

(v) the individuals who shall be notified in an emergency in order of priority. Telephone numbers shall be accessible to staff at each nurses station;

(vi) method of transporting and evacuating patients and staff to other locations;

(vii) conversion of hospital for emergency use.

(b) There shall be documentation of emergency events and responses and a record of patients and staff evacuated from the hospital to another location. Any patient emergency shall be documented in the patient record.

(c) Simulated disaster drills shall be held semiannually for all staff, in addition to fire drills.

(d) There shall be semiannual in-service training on disaster preparedness for all staff.

(5) Fire Emergencies.

(a) There shall be a fire emergency evacuation plan, written in consultation with qualified fire safety personnel.

(b) A physical plant evacuation diagram delineating evacuation routes, location of fire alarm boxes and fire extinguishers, and emergency telephone numbers of the local fire department shall be posted in exit access ways throughout the hospital.

(c) The written plan shall include fire-containment procedures and how to use the hospital alarm systems and signals.

(d) At least one fire drill per shift per quarter shall be held each year. The drill, including a brief description of the event and participants, shall be documented for review by the Department. The actual evacuation of patients during a drill is optional.

R432-100-37. Maintenance Services.

(1) There shall be adequate maintenance services to ensure that the facility equipment, and grounds are maintained in a clean and sanitary condition and in good repair at all times for the safety and well-being of patients, staff, and visitors.

(a) The administrator shall employ a person qualified by experience and training to be in charge of facility maintenance.

(b) If the facility contracts for maintenance services, there shall be a signed and dated agreement that details the services provided.

(c) The facility shall develop and implement a written maintenance program, including preventive maintenance, to ensure continued operation of the facility and sanitary practices throughout the facility.

(2) Each facility shall annually review the maintenance program including:

(a) All buildings, fixtures, equipment and spaces shall be maintained in operable condition;

(b) Qualified personnel shall be employed to provide maintenance services;

(c) A pest-control program shall be conducted to ensure the facility is free from vermin and rodents.

R432-100-38. Housekeeping.

(1) There shall be housekeeping services to maintain a clean, sanitary, and healthful environment in the facility. If the facility contracts for housekeeping services with an outside agency, there shall be a signed and dated agreement that details the services provided.

(2) The administrator shall employ a qualified person to direct the housekeeping services.

(a) The facility shall employ a sufficient number of housekeeping staff to maintain the interior of the building.

(b) Housekeeping personnel shall be trained in proper procedures for cleaning rooms, equipment, trays, disposing of trash, and handling soiled and clean linen.

(c) Personnel engaged in housekeeping or laundry services may not be engaged simultaneously in food service or patient care.

(3) Written housekeeping policies and procedures shall be developed and implemented by each facility.

(a) The policies and procedures shall be reviewed and updated annually.

(b) The policies and procedures shall address personnel, maintenance schedules, equipment and supplies.

(c) If personnel work in food or direct patient care services, facility policy shall be established and followed to govern the transition from housekeeping services to patient care.

R432-100-39. Respite Services.

(1) A rural general acute hospital, with an approved swing bed designation, may provide respite services to provide intermittent, time limited care to give primary caretakers relief from the demands of caring for a person.

(2) Respite services may be provided at an hourly rate or daily rate, but shall not exceed 14-days for any single respite stay. Stays which exceed 14 days are a hospital admission, and are subject to the admission requirements of R432-100.

(3) The hospital shall coordinate the delivery of respite services with the recipient of services, case manager, if one exists, and the family member or primary caretaker.

(4) The hospital shall document the person's response to the respite placement and coordinate with all provider agencies to ensure an uninterrupted service delivery program.

(5) The hospital must complete the following:

(a) A Level 1 Pre-admission Screening upon the person's admission for respite services.

(b) A service agreement which will serve as the plan of care. The service agreement shall identify the prescribed medications, physician treatment orders, need for assistance for activities of daily living and diet orders.

(6) The hospital shall have written policies and procedures available to staff regarding the respite care patients which include:

(a) Medication administration;

(b) Notification of a responsible party in the case of an emergency;

(c) Service agreement and admission criteria;

(d) Behavior management interventions;

(e) Philosophy of respite services;

(f) Post-service summary;

(g) Training and in-service requirement for employees; and

(h) Handling patient funds.

(7) The facility shall provide a copy of the Resident Rights to the patient upon admission.

(8) The facility shall maintain a record for each patient who receives respite services which includes:

(a) Service agreement;

(b) Demographic information and patient identification data;

(c) Nursing notes;

(d) Physician treatment orders;

(e) Records made by staff regarding daily care of the patient in service;

(f) Accident and injury reports;

(g) Post-service summary.

(9) If a patient has an advanced directive the facility shall file a copy of the directive in the record and inform staff.

(10) Retention and storage of records shall comply with R432-100-36.

(11) Confidentiality and release of information shall comply with R432-100-36.

KEY: health facilities

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	26-21-20

R432. Health, Health Systems Improvement, Health Facility Licensure.

R432-101. Specialty Hospital - Psychiatric.

R432-101-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-101-2. Purpose.

This rule applies to a hospital that chooses to be licensed as a specialty hospital and where its major single service is psychiatric service. If a specialty hospital chooses to have a dual service, e.g., psychiatric and substance abuse or chemical dependency, then both of the appropriate specialty hospital rules apply.

R432-101-3. Time for Compliance.

All psychiatric specialty hospitals obtaining initial licensure shall fully comply with this rule.

R432-101-4. Definitions.

(1) See Common Definitions in R432-1-3.

(2) Special Definitions.

(a) "Specialty Hospital" means a facility with the following:

(i) a duly constituted governing body with overall administrative and professional responsibility;

(ii) an organized medical staff which provides 24 hour inpatient care;

(iii) a chief executive officer to whom the governing body delegates the responsibility for the operation of the hospital;

(iv) a distinct nursing unit of at least six inpatient beds;

(v) current and complete medical records;

(vi) provide continuous registered nursing supervision and other nursing services;

(vii) provide in house the following basic services:

(A) laboratory;

(B) pharmacy;

(C) emergency services and provision for interim care of

traumatized patients coordinated with an appropriate emergency transportation service;

(D) specialized diagnostic and therapeutic facilities, medical staff, and equipment required to provide the type of care in the recognized specialty or specialties for which the hospital is organized.

(viii) provide on-site all basic services required of a general hospital that are needed for the diagnosis, therapy and treatment offered or required by patients admitted to or cared for in the specialty facility;

(b) "Investigational Drug" means a drug that is being investigated for human or animal use by the manufacturer or the Food and Drug Administration (FDA); a drug which has not been approved for use by the FDA;

(c) A "physical restraint" means an involuntary intervention employing any device intended to control or restrict the physical movement of a patient, whether applied directly to the patient's body or applied indirectly to act as a barrier to voluntary movement. Simple safety devices are a type of physical restraint.

(d) "Seclusion" means an involuntary intervention employing a procedure that isolates the patient in a specific room or designated area to temporarily remove the patient from the therapeutic community and reduce external stimuli.

(e) "Secure hospital" means a hospital where traffic in and out of the hospital setting is controlled in order to maintain safety for both patients and the community.

(f) "Stable" means a patient is no longer a danger to himself or others, and is able to function and demonstrate the ability to maintain improvements outside the hospital setting.

(g) "Time out" means isolating a patient for a period of time, on a voluntary basis in an unlocked room. This shall be based on hospital policy, as a procedure designed to remove the patient who is exhibiting a specified behavior from the source of stimulation or reinforcement.

(h) "Activity services" means therapies which involve the principles of art, dance, movement, music, occupational therapy, recreational therapy and other disciplines.

(i) "Plan for Patient Care Services" means a written plan which ensures the care, treatment, rehabilitation, and habilitation services provided are appropriate to the needs of the patient population served and the severity of the disease, condition, impairment, or disability.

(j) "Partial Hospitalization" means a time-limited, ambulatory, active treatment program that offers therapeutically intensive, coordinated and structured clinical services where the daily stay lasts no more than 23 hours with the goal of stabilizing the patient to avert inpatient hospitalization or of reducing the length of a hospital stay.

R432-101-5. Licensure.

License required. See R432-2.

R432-101-6. General Construction Rules.

See R432-7, Psychiatric Construction Rule.

R432-101-7. Organization.

(1) The Governing Body, R432-100-4 applies.

(2) The governing body shall develop through its officers, committees, medical and other staff, a mission statement that includes a Plan for Patient Care Services.

R432-101-8. Administrator.

(1) Refer to R432-100-5.

(2) The administrator shall organize and staff the hospital according to the nature, scope and extent of services offered.

R432-101-9. Professional Staff.

(1) The psychiatric services of the hospital shall be organized, staffed and supported according to the nature, scope and extent of the services provided.

(2) Medical and professional staff standards shall comply with R432-100-6. The medical direction of the psychiatric care and services of the hospital shall be the responsibility of a licensed physician who is a member of the medical staff, appointed by the governing body and certified or eligible for certification by the American Board of Psychiatry and Neurology.

(3) Nursing staff standards shall comply with R432-100-8.

(4) The hospital shall provide sufficient qualified, and competent, health care professional and support staff to assess and address patient needs within the Plan for Patient Care Services.

(5) Qualified professional staff members may be employed on a full-time, on a part-time basis or be retained by contract.

(6) Professional staff shall be assigned or assume specific responsibilities on the treatment team as qualified by training and educational experience and as permitted by hospital policy and the scope of the professional license.

R432-101-10. Personnel Management Service.

(1) The hospital shall provide licensed, certified or registered personnel who are able and competent to perform their respective duties, services, and functions.

(2) Written personnel policies and procedures shall include:

(a) job descriptions for each position, including job title, job summary, responsibilities, minimum qualifications, required skills and licenses, and physical requirements;

(b) a method to handle and resolve grievances from the staff.

(3) All personnel shall have access to hospital policy and procedure manuals, a copy of their position description, and other information necessary to effectively perform duties and carry out responsibilities.

(a) The facility shall conduct a criminal background check with the Department of Public Safety for all employees prior to beginning employment.

(b) The facility is responsible for the security and confidentiality of all information obtained in the criminal background check.

(3) All employees shall be oriented to job requirements and personnel policies, and be provided job training beginning the first day of employment. Documentation shall be signed by the employee and supervisor to indicate basic orientation has been completed during the first 30 days of employment.

(a) Registered nurses, licensed practical nurses and psychiatric technologists shall receive additional orientation to

the following:

(i) concepts of treatment provided within the hospital;

(ii) roles and functions of nurses in the treatment programs;

(iii) psychotropic medications.

(b) In-service sessions shall be planned and held at least quarterly and be available to all employees. Attendance standards shall be established by policy.

(c) Licensed professional staff shall receive continuing education to keep informed of significant new developments and to be able to develop new skills.

(d) The following in-service staff development topics shall be addressed annually:

(i) fire prevention;

(ii) review and drill of emergency procedures and evacuation plan;

(iii) prevention and control of infections;

(iv) training in the principles of emergency medical care and cardiopulmonary resuscitation for physicians, licensed nursing personnel, and others as appropriate;

(v) proper use and documentation of restraints and seclusion;

(vi) patients' rights, refer to R432-101-15;

(vii) confidentiality of patient information;

(viii) reporting abuse, neglect or exploitation of adults or children; and

(ix) provision of care appropriate to the age of the patient population served.

(4) Volunteers may be utilized in the daily activities of the hospital but shall not be included in the hospital's staffing plan in lieu of hospital employees.

(a) Volunteers shall be screened by the administrator or designee and supervised according to hospital policy.

(b) Volunteers shall be familiar with the hospital's policies and procedures on volunteers, including patient rights and facility emergency procedures.

(5) All hospital personnel shall be licensed, registered, or certified as required by the Utah Department of Commerce. Copies of the current license, registration or certification shall be in the personnel files. Failure to ensure that the individual is appropriately licensed, registered or certified may result in sanctions to the facility license.

R432-101-11. Quality Assurance.

(1) The facility shall have a well-defined quality assurance plan designed to improve the delivery of patient care through evaluation of the quality of patient care services and resolution of identified problems. The plan shall be consistent with the Plan for Patient Care Services.

(2) The plan shall be implemented and include a method for:

(a) identification and assessment of problems, concerns, or opportunities for improvement of patient care;

(b) implementation of actions that are designed to:

(i) eliminate identified problems where possible;

(ii) improve patient care;

(c) documentation of corrective actions and results;

(d) reporting findings and concerns to the medical, nursing, and allied health care staffs, the administrator, and the governing board.

(3) Documentation of minutes of meetings shall be maintained for Department review.

R432-101-12. Infection Control.

(1) The facility shall have a written plan to effectively prevent, identify, report, evaluate and control infections.

(2) The plan shall include a method to collect and monitor data and carry out necessary follow-up actions.

(3) Infection control actions shall be documented consistent with the requirements of the plan and in accordance with Department requirements and standards of medical practice.

(4) In-service education and training of employees shall be provided to all service and program components of the hospital.

(5) The infection control plan shall be reviewed and revised as necessary, but at least annually.

(6) The hospital shall implement an employee health surveillance program and infection control policy which meets the requirements of R432-100-10 and the following:

(a) complete at the time a person is hired, an employee health inventory that includes the following:

(i) conditions that may predispose the employee to acquiring or transmitting infectious diseases;

(ii) conditions that may prevent the employee from satisfactorily performing assigned duties.

(b) develop employee health screening and immunization components of personnel health programs in accordance with Rule R386-702, concerning communicable diseases;

(c) conduct employee skin testing by the Mantoux Method and follow up for tuberculosis in accordance with R386-702-5, concerning measures for control of tuberculosis:

(i) skin testing must be conducted on each employee annually and after suspected exposure to a resident with active tuberculosis;

(ii) all employees with known positive reaction to skin tests are exempt from skin testing.

(d) report all infections and communicable diseases reportable by law to the local health department in accordance with Section R386-702-2, concerning reportable diseases; and

(e) comply with the Occupational Safety and Health Administration's Bloodborne Pathogen Standard.

R432-101-13. Patient Security.

(1) The facility shall provide sufficient internal and external security measures consistent with the Plan for Patient Care Services. There shall be positive supervision and control of the patient populations at all times to assure patient and public safety.

(2) If a facility offers more than one treatment program or serves more than one age group, patient population or program, the patients shall not be mixed or be co-mingled.

(3) There shall be sufficient supervision to ensure a safe and secure living environment which is defined in the Plan for Patient Care Services.

R432-101-14. Special Treatment Procedures.

There shall be a hospital policy regarding the use of special treatment procedures. It shall include as a minimum:

(1) the use of seclusion, refer to R432-101-23;

(2) the use of restraint, refer to R432-101-23;

(3) the use of convulsive therapy including electroconvulsive therapy;

(4) the use of psychosurgery or other surgical procedures for the intervention or alteration of a mental, emotional or behavioral disorder;

(5) the use of behavior modification with painful stimuli;

(6) the use of unusual, investigational and experimental drugs;

(7) the use of drugs associated with abuse potential and those having substantial risk or undesirable side effects;

(8) an explanation as to whether the hospital will conduct research projects involving inconvenience or risk to the patient; and

(9) involuntary medication administration for emergent and ongoing treatment.

R432-101-15. Patients' Rights.

(1) Each patient shall be provided care and treatment in accordance with the standards and ethics accepted under Title 58 for licensed, registered or certified health care practitioners.

(2) There shall be a committee appointed by the administrator that consists of members of the facility staff, patients or family members, as appropriate, other qualified persons with knowledge of the treatment of mental illness, and at least one person who has no ownership or vested interest in the facility. This committee shall:

(a) review, monitor and make recommendations concerning individual treatment programs established to manage inappropriate behavior, and other programs that, in the opinion of the committee, involve risks to patient safety or restrictions of a patient's rights, or both;

(b) review, monitor and make recommendations concerning facility practices and policies as they relate to drug usage, restraints, seclusion and time out procedures, applications of painful or noxious stimuli, control of inappropriate behavior, protection of patient rights and any other area that the committee believes need to be addressed;

(c) keep minutes of all meetings and communicate the findings to the administrator for appropriate action;

(d) designate a person to act as a patient advocate, to be available to respond to questions and requests for assistance from the patients and to bring to the attention of the committee any issues or items of interest that concern the rights of the patients or their care and status;

(e) recommend written policies with regard to patient rights which are consistent with state law. Once adopted, these policies shall be posted in areas accessible to patients, and made available upon request to the patient, family, next of kin or the public.

(3) The individual treatment plan and clinical orders shall address the following rights to ensure patients are permitted communication with family, friends and others. Restrictions to these rights shall be reviewed by the Patient Rights or Ethics Committee. Limitations to the rights identified in R432-101-(3)(a) through (d) may be established to protect the patient, other patients or staff or where prohibited by law.

(a) Each patient shall be permitted to send and receive unopened mail.

(b) Each patient shall be afforded reasonable access to a telephone to make and receive unmonitored telephone calls.

(c) Each patient shall be permitted to receive authorized visitors and to speak with them in private.

(d) Each patient shall be permitted to attend and participate in social, community and religious groups.

(e) Each patient shall be afforded the opportunity to voice grievances and recommend changes in policies and services to hospital staff and outside representatives of personal choice, free from restraint, interference, coercion, discrimination, or reprisal.

(f) Each patient shall be permitted to communicate via sealed mail with the Utah Department of Human Services, the Utah Department of Health, the Legal Center for the People with Disabilities, legal counsel and the courts. The patient shall be permitted to communicate with and to visit with legal counsel or clergy of choice or both.

(4) Each patient shall be afforded the opportunity to participate in the planning of his care and treatment. The patient's participation in the treatment planning shall be documented in the medical record.

(a) Each patient shall receive an explanation of treatment goals, methods, therapies, alternatives and associated costs.

(b) Each patient shall be able to refuse care and treatment, as permitted by law, including experimental research and any treatment that may result in irreversible conditions.

(c) Each patient shall be informed of his medical condition, upon request, unless medically contraindicated. If contraindicated, the circumstances must be documented in the patient record.

(d) Each patient shall be free from mental and physical abuse and free from chemical and physical restraints except as part of the authorized treatment program, or when necessary to protect the patient from injury to himself or to others.

(5) Each patient shall be afforded the opportunity to exercise all civil rights, including voting, unless the patient has been adjudicated incompetent and not restored to legal capacity.

(a) Patients shall not be required to perform services for the hospital that are not included for therapeutic purposes in the plans of care.

(b) Patients shall not be required to participate in publicity events, fund raising activities, movies or anything that would exploit the patients.

(c) Each patient shall be permitted to exercise religious beliefs and participate in religious worship services without being coerced or forced into engaging in any religious activity.

(d) Each patient shall be permitted to retain and use personal clothing and possessions as space permits, unless doing so would infringe upon rights of other patients or interfere with treatment.

(e) Each patient shall be permitted to manage personal financial affairs, or to be given at least a monthly accounting of financial transactions made on their behalf should the hospital accept a patient's written delegation of this responsibility.

R432-101-16. Emergency and Disaster.

(1) The hospital shall be responsible to assure the safety and well-being of patients.

(a) There must be provisions for the maintenance of a safe

environment in the event of an emergency or disaster.

(b) An emergency or disaster may include to utility interruption, such as gas, water, sewer, fuel and electricity, explosion, fire, earthquake, bomb threat, flood, windstorm, epidemic, and injury.

(2) The administrator or his designee shall be responsible for the development of a plan, coordinated with state and local emergency or disaster offices, to respond to emergencies or disasters.

(a) This plan shall be in writing and list the coordinating authorities by name and title.

(b) The plan shall be distributed or made available to all hospital staff to assure prompt and efficient implementation.

(c) The plan shall be reviewed and updated as necessary in coordination with local emergency or disaster management authorities. The plan shall be available for review by the Department.

(d) The administrator shall be in charge of operations during any significant emergency. If not on the premises, the administrator shall make every reasonable effort to get to the hospital to relieve subordinates and take charge of the situation.

(e) Disaster drills, in addition to fire drills, shall be held semiannually for all staff. Drills and staff response to drills shall be documented.

(f) The facility shall identify and post in a prominent location the name of the person in charge and names and telephone numbers of emergency medical personnel, agencies and appropriate communication and emergency transport systems.

(3) The hospital's emergency response procedures shall address the following:

(a) evacuation of occupants to a safe place within the hospital or to another location;

(b) delivery of essential care and services to hospital occupants by alternate means regardless of setting;

(c) delivery of essential care and services when additional persons are housed in the hospital during an emergency;

(d) delivery of essential care and services to hospital occupants when staff is reduced by an emergency;

(e) maintenance of safe ambient air temperatures within the hospital.

(i) Emergency heating must have the approval of the local fire department.

(ii) An ambient air temperature of 58 degrees F (14 degrees C) or lower may constitute a danger to the health and safety of the patients in the hospital. The person in charge shall take immediate and appropriate action.

(4) The hospital's emergency plan shall delineate shall include:

(a) the person or persons with decision-making authority for fiscal, medical, and personnel management;

(b) on-hand personnel, equipment, and supplies and how to acquire additional help, supplies, and equipment after an emergency or disaster;

(c) assignment of personnel to specific tasks during an emergency;

(d) methods of communicating with local emergency agencies, authorities, and other appropriate individuals;

(e) the individuals who shall be notified in an emergency in order of priority;

(f) method of transporting and evacuating patients and staff to other locations;

(g) conversion of hospital for emergency use.

(5) The facility shall schedule and hold at least one fire drill per shift per quarter. The facility shall document the date and time the drill was held, including a brief description of the event and participants. Documentation shall be maintained for review by the Department.

(a) There shall be a fire emergency evacuation plan, written in consultation with qualified fire safety personnel.

(b) A physical plant evacuation diagram delineating evacuation routes, location of fire alarm boxes and fire extinguishers, and emergency telephone numbers of the local fire department shall be posted in exit access ways throughout the hospital.

(c) The written plan shall include fire-containment procedures and how to use the hospital alarm systems and signals.

(d) The actual evacuation of patients during a drill is optional.

R432-101-17. Admission and Discharge.

(1) The hospital shall develop written admission, exclusion and discharge policies consistent with the Plan for Patient Care Services and the Utilization Review plan. These policies shall be available to the public upon request.

(2) The hospital shall make available to the public and each potential patient information regarding the various services provided, methods and therapies used by the hospital, and associated costs of such services.

(3) Admission criteria shall be clearly stated in writing in hospital policies.

(a) The facility shall assess and screen all potential patients prior to admission and admit a patient only if it determines that the facility is the least restrictive setting appropriate for their needs. The pre-screening process shall include an evaluation of the patient's past criminal and violent behavior.

(b) Patients shall be admitted for treatment and care only if the hospital is properly licensed for the treatment required and has the staff and resources to meet the medical, physical, and emotional needs of the patient.

(c) Patients shall be admitted by, and remain under the care of, a member of the medical staff. There shall be a written order for admission and care of the patient at the time of admission. A documented telephone order is acceptable.

(d) There shall be procedures to govern the referral of ineligible patients to alternate sources of treatment where possible.

(e) Involuntary commitment must be in accordance with Section 62A-12-234.

(4) The patient shall be discharged when the hospital is no longer able to meet the patient's identified needs, when care can be delivered in a less restrictive setting, or when the patient no longer needs care.

(a) There shall be an order for patient discharge by a member of the medical staff except as indicated in R432-101-17(4)(b) below.

(b) In cases of discharge against medical advice, AMA, the attending physician or qualified designee shall be contacted and the response documented in the patient record.

(c) Discharge planning shall be coordinated with the patient, family, and other parties or agencies who are able to meet the patient's needs.

(d) Upon discharge of a patient, all money and valuables of that patient which have been entrusted to the hospital shall be surrendered to the patient in exchange for a signed receipt.

R432-101-18. Transfer Agreements.

(1) The hospital shall maintain a written transfer agreement with one or more general acute hospitals to facilitate the placement of patients and transfer of essential patient information in case of medical emergency.

(2) Patients shall not be referred to another facility without prior contact with that facility.

R432-101-19. Pets in Hospitals.

(1) If a hospital chooses to allow pets in the facility, it shall develop a written policy in accordance with these rules and local ordinances.

(2) Household pets, such as dogs, cats, birds, fish, and hamsters, can be permitted only under the following conditions:

(a) pets must be clean and disease free;

(b) the immediate environment of pets must be kept clean;

(c) small pets such as birds and hamsters are kept in appropriate enclosures;

(d) pets not confined in enclosures must be hand held, under leash control, or under voice control;

(e) pets that are kept at the hospital or are frequent visitors shall have current vaccinations, including, but not limited to, rabies, as recommended by a designated licensed veterinarian.

(3) The hospital shall have written policies and procedures for pet care.

(a) The administrator or designee shall determine which pets may be brought into the hospital. Family members may bring a patient's pet to visit provided they have approval from the administrator and offer reasonable assurance that the pets are clean, disease free, and vaccinated as appropriate.

(b) Hospitals with birds shall have procedures which protect patients, staff, and visitors from psittacosis. Procedures should ensure minimum handling of droppings. Droppings shall be placed in a plastic bag for disposal.

(c) Hospitals with pets that are kept overnight shall have written policies and procedures for the care, feeding, and housing of such pets and for proper storage of pet food and supplies.

(4) Pets are not permitted in food preparation or storage areas. Pets shall not be permitted in any area where their presence would create a significant health or safety risk to others. Persons caring for any pets shall not have patient care or food handling responsibilities.

R432-101-20. Inpatient Services.

(1) Upon admission, a physician or qualified designee shall document the need for admission. A brief narrative of the patient's condition, including, the nurses admitting notes, temperature, pulse, respirations, blood pressure, and weight, shall be documented in the patient's record. The admission record shall be completed according to hospital policy.

(a) A physician or qualified designee shall make an assessment of each patient's physical health and a preliminary psychiatric assessment within 24 hours of admission. The history and physical exam shall include appropriate laboratory work-up, a determination of the type and extent of special examinations, tests, or evaluations needed, and when indicated, a thorough neurological exam.

(b) A psychiatrist or psychologist or qualified designee shall make an assessment of each patient's mental health within 24 hours of admission. A written emotional or behavioral assessment of each patient shall be entered in the patient's record.

(c) There shall be a written assessment of the patient's legal status to include but not be limited to:

(i) a history with information about competency, court commitment, prior criminal convictions, and any pending legal actions;

(ii) the urgency of the legal situation;

(iii) how the individual's legal situation may influence treatment.

(2) A written individual treatment plan shall be initiated for each patient upon admission and completed no later than 7 working days after admission. The individual treatment plan shall be based upon the information resulting from the assessment of patient needs, see R432-101-20(1).

(a) The individual treatment plan shall be part of the patient record and signed by the person responsible for the patient's care. Patient care shall be administered according to the individual treatment plan.

(b) Individual treatment plans must be reviewed on a weekly basis for the first three months, and thereafter at intervals determined by the treatment team but not to exceed every other month.

(c) The written individual treatment plan shall be based on a comprehensive functional assessment of each patient. When appropriate, the patient and family shall be invited to participate in the development and review of the individual treatment plan. Patient and family participation shall be documented.

(d) The individual treatment plan shall be available to all personnel who provide care for the patient.

(e) The Utah State Hospital is exempt from the R432-101-20(2) and R432-101-20(2)(b) time frames for initiating and reviewing the individual treatment plan. The Utah State Hospital shall initiate for each patient admitted an individual treatment plan within 14 days and shall review the plan on a monthly basis.

R432-101-21. Adolescent or Child Treatment Program.

(1) A hospital that admits adolescents or children for care and treatment shall have the organization, staff, and space to meet the specialized needs of this specific group of patients.

(a) Children shall be classified as age five to 12 and adolescents ages 13 - 18.

(b) If a child is considered for admission to an adolescent program, the facility shall assess and document that the child's developmental growth is appropriate for the adolescent program.

(c) Adolescent patients who reach their eighteenth birthday, the age of majority, may remain in the facility on the adolescent unit to complete the treatment program.

(2) A mental health professional with training in adolescent or child psychiatry, or adolescent or child psychology, as appropriate, shall be responsible for the treatment program.

(3) Adolescent or child nursing care shall be under the direction of a registered nurse qualified by training, experience, and ability to effectively direct the nursing staff. All nursing personnel shall have training in the special needs of adolescents or children.

(4) There must be educational provision for all patient's of school age who are in the hospital over one month.

(5) Adolescents may be admitted to an adult unit when specifically ordered by the attending member of the medical staff, but may not remain there more than three days unless the clinical director approves orders for the adolescent to remain on the adult unit.

(6) Specialized programs for children must be flexible enough to meet the needs of the children being served.

(a) There shall be a written statement of philosophy, purposes and program orientation including short and long term goals.

(b) The types of services provided and the characteristics of the child population being served shall also be included in the service's policy document. It shall be available to the public on request.

(c) There shall be a written description of the program's overall approach to family involvement in the care of the patient.

(d) There shall be a written policy regarding visiting and other forms of patient communication with family, friends and significant others.

(e) There shall be a written plan of basic daily routines. It shall be available to all personnel and shall be revised as necessary.

(f) There shall be a written complaint process for children in clear and simple language that identifies an avenue to make a complaint without fear of retaliation.

(g) There shall be a comprehensive written guide of preventive, routine, and emergency medical care for all children in the program, including written policies and procedures on the use and administration of psychotropic and other medication.

(h) There shall be a complete health record for each child including:

(i) immunizations;

(ii) medications;

(iii) medical examination;

(iv) vision and dental examination, if indicated by the medical examination;

(v) a complete record of treatment for each specific illness or medical emergency.

(i) The use of emergency medication shall be specifically ordered by a physician or other person licensed to prescribe and be related to a documented medical need.

(j) In addition to the medical record requirements, the child's record shall contain:

(i) documents related to the referral of the child to the program;

(ii) documentation of the child's current parental custody status or legal guardianship status;

(iii) the child's court status, if applicable;

(iv) cumulative health records, where possible;

(v) education records and reports.

(k) The following standards apply to children's programs within a secure, locked treatment facility:

(i) There shall be a statement in the child's record identifying the specific security measures employed and demonstrating that these measures are necessary in order to provide appropriate services to the child.

(ii) There shall be evidence that the staff and the child are aware of the hospital's emergency procedures and the location of emergency exits.

(iii) If children are locked in their rooms during sleeping hours, there shall be a method to unlock the rooms simultaneously from a central point or upon activation of a fire alarm system.

(iv) There shall be a recreational program offering a wide variety of activities suited to the interests and abilities of the children in care.

R432-101-22. Residential Treatment Services.

(1) If offered, the residential treatment service shall be organized as a distinct part of the hospital service, either free-standing or as part of the licensed facility. Residential treatment services shall be under the direction of the medical director or designee.

(2) "Residential Treatment" means a 24-hour group living environment for four or more individuals unrelated to the owner or provider. Individuals are assisted in acquiring the social and behavioral skills necessary for living independently.

(3) The hospital administrator shall appoint a program manager responsible for the day-to-day operation and resident supervision

(a) The program manager's responsibilities shall be clearly defined in the job description.

(b) Whenever the manager is absent, a substitute manager shall be appointed.

(4) Residential treatment staff shall have specialized training in the area of psychiatric treatment. Staff shall consist of:

(a) a licensed physician;

(b) a certified or licensed clinical social worker;

(c) a licensed psychologist;

(d) a licensed registered nurse; and

(e) unlicensed staff who are trained to work with psychiatric residents and who shall be supervised by a health care practitioner.

(5) Programs admitting children or adolescents shall ensure that their education is continued through grade 12.

(a) Curriculum shall be approved by the Utah Office of Education.

(b) Education services provided by the licensee must be accredited by the Utah State Board of Education or Board Northwest Association of School and Colleges.

(c) Teachers must be certified by the Utah State Board of Education. Certification in Special Education is required where

clearly necessary to supervise or carry out educational curriculum.

(6) An individual treatment plan developed by an interdisciplinary team shall be initiated for each resident upon admission and a completed copy placed in the resident record within seven days.

(a) The treatment plan shall identify the resident's needs, as described by a comprehensive functional assessment.

(b) The resident, his responsible party (if available), and facility staff shall participate in the planning of treatment. The facility staff shall encourage the resident's attendance at interdisciplinary team meetings.

(c) The written treatment plan shall set forth goals and objectives stated in terms of desirable behavior that prescribes an integrated program of activities, therapies, and experiences necessary for the resident to reach the goals and objectives.

(7) The comprehensive functional assessment shall consider the resident's age and the implications for treatment. The assessment shall identify:

(a) the presenting problems and disabilities for admission and, where possible, their cause;

(b) specific individual strengths;

(c) special behavioral management needs;

(d) physical health status to include:

(i) a history and physical exam performed by a physician or nurse practitioner which includes appropriate laboratory work-up;

(ii) a determination of the type and extent of special examinations, tests or evaluations needed.

(e) alcohol and drug history;

(f) degree of psychological impairment and measures to be taken to relieve treatable diseases;

(g) the capacity for social interaction and habilitation and rehabilitation measures to be taken;

(h) the emotional or behavioral status based on an assessment of:

(i) a history of previous emotional or behavioral problems and treatment;

(ii) the resident's current level of emotional or behavioral functioning;

(iii) an evaluation by a psychiatrist, psychologist or qualified designee within 30-days prior to admission, or within 24 hours after admission.

(i) if indicated, psychological testing shall include intellectual and personality testing.

(8) The comprehensive assessment shall be amended to reflect any changes in the resident's condition.

(9) An individual treatment plan shall be implemented which provides services to improve the resident's condition which are offered in an environment that encompasses physical, interpersonal, cultural, therapeutic, rehabilitative, and habilitative components.

(10) The resident shall be encouraged to participate in professionally developed and supervised activities, experiences or therapies in accordance with the individualized treatment plan.

(11) The provisions of R432-101-23. Restraints and Seclusion shall apply.

R432-101-23. Physical Restraints, Seclusion, and Behavior Management.

(1) Physical restraints, including seclusion shall only be used to protect the patient from injury to himself or to others or to assist patients to attain and maintain optimum levels of physical and emotional functioning.

(2) Restraints shall not be used for the convenience of staff, for punishment or discipline, or as substitutes for direct patient care, activities, or other services.

(3) Each hospital shall develop written policies and procedures that will govern the use of physical restraints and seclusion. A major focus of these policies shall be to provide patient safety and ensure civil and patient rights.

(4) Policies shall incorporate and address at least the following:

(a) examples of the types of restraints and safety devices that are acceptable for use and possible patient conditions for which the restraint may be used;

(b) guidelines for periodic release and position change or exercise, with instructions for documentation of this action.

(5) Bed sheets or other linens shall not be used as restraints.

(6) Restraints shall not unduly hinder evacuation of the patient in the event of fire or other emergency.

(7) Physical restraints must be authorized by a member of the medical staff in writing every 24 hours. PRN orders for restraints are prohibited. If a physical restraint is used in behavior management, there must be an individualized behavior management program and an ongoing monitoring system to assure effectiveness of the treatment, see Subsection R432-101-4(2)(c).

(a) Use of restraints will be reviewed routinely in the patient care conference, as the order is renewed by the member of the medical staff, and on a day-to-day basis as care is delivered. This shall be considered an ongoing process, and documented in the patient's record.

(b) Use of physical restraints, including simple safety devices, may be used only if a specific hazard or need for restraint is present. The physician order must indicate the type of physical restraint or safety device to be used and the length of time to be used. A facility restraint policy may be developed addressing the above items and accepted by reference in the patient care plan.

(c) Physical restraints must be applied by properly trained staff, to ensure a minimum of discomfort, allowing sufficient body movement to ensure that circulation will not be impaired. No restraint shall be used or applied in such a manner as to cause injury or the potential for injury.

(d) Staff shall monitor and assess a patient who is restrained. The restraint shall be released or the patient's position changed at least every two hours, unless written justification is provided for why such restraint release is dangerous to the patient or others.

(e) Physical restraints may be used in an emergency, if there is an obvious threat to life or immediate safety, as follows:

(i) Verbal orders may be given by the physician to a licensed nurse by telephone.

(ii) A licensed health care professional, identified by policy, may initiate the use of a restraint; however, verbal or

written approval from the physician must be obtained within one hour.

(iii) A verbal order must be signed by a physician within 24 hours.

(iv) Staff members shall document in the patient's record the circumstances necessitating emergency use of the restraint and the patient's response.

(8) Seclusion must be used in accordance with hospital policy and authorized by a member of the medical staff.

(a) If seclusion is used for behavior management, there must be an individualized behavior management program and an ongoing monitoring system to assure effectiveness of the treatment, see Subsection R432-101-4(2)(e).

(b) Use of seclusion shall be reviewed routinely in the patient care conference, as the order is renewed by the member of the medical staff, and on a day-to-day basis as care is delivered. This shall be considered an ongoing process. The patient shall be monitored for adverse effects. The evaluations and reviews shall be part of the patient record.

(9) Time out shall be used in accordance with hospital policy, but does not have to be authorized by a member of the medical staff for each use.

The use of time out shall be included in the patient care plan and documented in the patient record.

(10) Hospital policy must establish criteria for admission and retention of patients who require behavior management programs, and shall specify the data to be collected and the location of these data in the clinical record.

(a) The program must be developed by the interdisciplinary team. There must be an opportunity for involvement of the patient, next of kin or designated representative.

(b) A behavior management program must be approved for a patient by the team leader, as described by hospital policy.

(c) Behavior management programs must employ the least restrictive methods to produce the desired outcomes and incorporate a process to identify and reinforce desirable behavior. Consent for use of any behavior management program that employs aversive stimuli must be obtained from the patient, next of kin, or designated representative.

(d) The behavior management program shall be incorporated into the patient care plan.

(e) The behavior management program shall be reviewed routinely by the interdisciplinary team as the patient care conference is conducted, as the order is renewed by the member of the medical staff, and on a day-to-day basis as care is delivered. This shall be considered an ongoing process.

(f) Documentation in the patient's record shall include:

(g) a behavior baseline profile, including a description of the undesirable behavior, as well as a statement whether there is a known history of previous undesirable behaviors and prior treatment;

(ii) conditions under which the behavior occurs;

(iii) interventions used and their results;

(iv) a behavior management program including specific measurable behavioral objectives, time frames, names, titles, and signature of the person responsible for conducting the program, and monitoring and evaluation methods;

(v) summaries and dates of the evaluations and reviews by the interdisciplinary team.

R432-101-24. Involuntary Medication Administration.

(1) The facility shall adopt and implement a policy and procedure for patients who refuse a prescribed medication. The policy shall include the following:

(a) the facility staff shall document the refusal of medications in the individual care plan; and

(b) the interdisciplinary team shall review and assess the patient's refusal of medication, ensuring that the patient's rights are protected.

(2) If the interdisciplinary team determines that the patient requires medication, as part of a behavior management program, or for emergency patient management, or for clinical treatment, and a physician or licensed practitioner orders the medication, then the facility staff shall document the physician's order in the individual treatment plan and administer the medication.

(3) If a patient is administered involuntary medications, the facility staff shall review the administration of medications in a patient care conference, each time the physician renews the medication order, and on a day-to-day basis as care is delivered.

(4) The facility staff shall evaluate and assess the patient for adverse side effects. The facility staff shall document the evaluation and assessment in the patient record.

R432-101-25. Outpatient Emergency Psychiatric Services.

(1) If the hospital offers outpatient emergency psychiatric services, the service shall be organized as a service specifically designated for this purpose and under the direction of the medical director or designee.

(a) Services shall be available 24 hours a day to persons presenting themselves for assistance.

(b) If the hospital chooses not to offer emergency outpatient psychiatric services, it shall have a written plan for referral of persons making inquiry regarding such services or presenting themselves for assistance.

(2) The outpatient service shall be supported by policies and procedures including admission, and treatment procedures, and medical and psychiatric reference materials.

(3) Involuntary detention of a person must be according to applicable hospital policy and Utah Law.

R432-101-26. Emergency Services.

(1) Each facility shall provide physician and registered nurse coverage 24 hours per day. Nursing and other allied health professional staff shall be readily available in the hospital. Staff may have collateral duties elsewhere in the hospital, but must be able to respond when needed without adversely affecting patient care or treatment elsewhere in the hospital.

(2) The facility shall have trained staff to triage emergency care for each patient, staff and visitor, to stabilize the presenting condition, and transfer to an appropriately licensed facility.

(3) The facility must have an emergency area which includes a treatment room, storage for supplies and equipment, provisions for reception and control of patients, convenient patient toilet room, and communication hookup and access to a poison control center.

(4) If the hospital offers additional or expanded emergency services, the service must comply with the provisions of the appropriate sections of R432-100-15.

(5) The hospital shall have protocols for contacting local emergency medical services.

R432-101-26. Clinical Services.

(1) If the following services are used, R432-100 shall apply:

(a) Ambulatory Surgery, R432-100-13.

(b) Special Care Unit, R432-100-14.

(c) Inpatient Hospice, R432-100-23.

(2) If services are provided, the R432-102 Specialty Hospital - Chemical Dependency/Substance Abuse Rules apply.

R432-101-27. Laboratory.

(1) Each specialty hospital must have a CLIA certificate. If an outside lab is contracted for providing services, the outside lab shall have a CLIA certificate.

(2) If outside laboratory services are secured through contract, the hospital must maintain an in-house ability to collect, preserve and arrange for delivery to the outside laboratory for testing. If additional laboratory services are provided, the hospital must comply with the appropriate sections of R432-100-26.

R432-101-28. Pharmacy.

(1) Each specialty hospital must have the ability to provide in house certain basic services, such as storage, dispensing, and administration of medication.

(2) All pharmacy services must comply with the appropriate sections of R432-100-27.

(7) The facility must have a policy approved by the board and the medical staff on the use of investigational drugs.

R432-101-29. Social Services.

(1) The facility shall provide social services to assist staff, patients, and patients' families to understand and cope with a patient's social, emotional, and related health problems.

(a) Social services shall be under the direction of a licensed clinical social worker. The role and function of social services shall be listed in policy documents and meet generally accepted practices of Mental Health Professional Practice Act.

(b) Social services personnel shall serve as a patient advocate to:

(i) provide services to maximize each patient's ability to adjust to the social and emotional aspects of his situation, treatments, and continued stay in the hospital;

(ii) participate in ongoing discharge planning to assure continuity of care for the patient;

(iii) initiate referrals to official agencies when the patient needs legal or financial assistance;

(iv) maintain appropriate liaison with the family or other responsible persons concerning the patient's placement and rights;

(v) preserve the dignity and rights of each patient.

(2) Each hospital shall develop social services policies and procedures which include at least the following:

(a) a system to identify, plan, and provide services according to the social and emotional needs of patients;

(b) job descriptions, including title and qualifications of all persons who provide social services;

(c) a method to refer patients to outside social services agencies when the hospital is unable to resolve a patient's problems.

(4) The Social Service director shall participate in any pertinent quality assurance activities of the hospital.

R432-101-30. Activity Therapy.

(1) The hospital shall provide activity therapy services to meet the physical, social, cultural, recreational, health maintenance and rehabilitational needs of patients as defined in the patient care plan.

(a) The activity therapy service shall have policies that describe the organization of the service and provision for services to the patient population.

(i) Program goals and objectives shall be stated in writing.

(ii) Appropriate activities shall be provided to patients during the day, in the evening, and on the weekend.

(iii) Patient participation in planning shall be sought, whenever possible.

(iv) Activity schedules shall be posted in places accessible to patients and staff.

(b) Activity therapy shall be incorporated into the patient care plan.

(c) Patients shall be permitted leisure time and encouraged to use it in a way that fulfills their cultural and recreational interests and their feelings of human dignity.

(2) The activity therapy service shall be supervised by an individual.

(3) The facility shall provide sufficient space, equipment, and facilities to meet the needs of the patients. Space, equipment, and facilities shall meet federal, state and local requirements for safety, fire prevention, health, and sanitation.

R432-101-31. Other Services.

If the following services are provided, R432-100 shall apply:

(a) Anesthesiology, R432-100-25.

(b) Physical Therapy, R432-100-28.

(c) Radiology, R432-100-29.

(d) Respiratory Services, R432-100-30.

R432-101-32. Medical Records.

(1) The hospital shall comply with the provisions of R432-100-35.

(2) Contents of the patient record shall describe a patient's physical, social and mental health status at the time of admission, the services provided, the progress made, and a patient's physical, social and mental health status at the time of discharge.

(a) The patient record identification data recorded on standardized forms shall include the patient's name, home address, date of birth, sex, next of kin, marital status, and date of admission.

(b) The patient record shall include:

(i) involuntary commitment status, including relevant legal documents;

(ii) date the information was gathered, and names and signatures of the staff members gathering the information.

(c) The patient record shall contain pertinent information

on the course of treatment to include:

(i) signed orders by physicians and other authorized practitioners for medications and treatments;

(ii) relevant physical examination, medical history, and physical and mental diagnoses using a recognized diagnostic coding system;

(iii) information on any unusual occurrences, such as treatment complications, accidents, or injuries to or inflicted by the patient, and procedures that place the patient at risk;

(iv) documentation of patient and family involvement in the treatment program;

(v) progress notes written by the psychiatrist, psychologist, social worker, nurse, and others significantly involved in active treatment;

(vi) temperature, pulse, respirations, blood pressure, height, and weight notations, when indicated;

(vii) reports of laboratory, radiologic, or other diagnostic procedures, and reports of medical or surgical procedures when performed;

(viii) correspondence with signed and dated notations of telephone calls concerning the patient's treatment;

(ix) a written plan for discharge including an assessment of patient needs;

(x) documentation of any instance in which the patient was absent from the hospital without permission;

(xi) the patient care plan.

(d) There shall be a discharge summary signed by the attending member of the medical staff and entered into the patient record within 30 calendar days from the date of discharge. In the event a patient dies, the discharge statement shall include a summary of events leading to the death.

(e) The patient record shall contain evidence of informed consent or the reason it is unattainable.

(f) The patient record shall contain consent for release of information, the actual date the information was released, and the signature of the staff member who released the information. The patient shall be informed of the release of information as soon as possible.

(g) The hospital may release pertinent information to personnel responsible for the individual's care without the patient's consent under the following circumstances:

(i) in a life-threatening situation;

(ii) when an individual's condition or situation precludes obtaining written consent for release of information;

(iii) when obtaining written consent for release of information would cause an excessive delay in delivering essential treatment to the individual.

R432-101-33. Ancillary Services.

If the following services are used, R432-100 shall apply:

(a) Central Supply, R432-100-32.

(b) Dietary, R432-100-33.

(c) Laundry, R432-100-34.

(d) Maintenance Services, R432-100-37.

(e) Housekeeping, R432-100-38.

R432-101-34. Partial Hospitalization Services.

(1) If the hospital offers a partial hospitalization program, the following services may be included:

(a) crisis stabilization or the provision of intensive, short-term daily programming which averts psychiatric hospitalization or offers transitional treatment back into community life in order to shorten an episode of acute inpatient care; and

(b) intermediate term treatment which provides more extended, daily, goal directed clinical services for a population at high risk for hospitalization or readmission due to the serious or persistent nature of their psychiatric, emotional behavioral, or addictive disorder.

(2) If the specialty hospital offers partial hospitalization services, the hospital shall establish policies and procedures to address the following:

(a) Criteria for admission indicating a DSM IV Mental or Nervous condition;

(b) Assessment;

(c) Treatment Planning;

(d) Active treatment;

(e) Coordination of Care; and

(f) Discharge criteria.

KEY: health facilities

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	26-21-20

R432. Health, Health Systems Improvement, Health Facility Licensure.

R432-102. Specialty Hospital - Chemical Dependency/Substance Abuse.

R432-102-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-102-2. Purpose.

This rule applies to the hospital that chooses to be licensed as a specialty hospital and which has as its major single service the treatment of patients with chemical dependency and substance abuse. If a specialty hospital chooses to have a dual major service, e.g., chemical dependency or substance and psychiatric care, then both of the appropriate specialty hospital rules apply.

R432-102-3. Time for Compliance.

All specialty hospitals, - chemical dependency or substance abuse, obtaining licensure for the first time shall fully comply with this rule.

R432-102-4. Definitions.

(1) Refer to Common Definitions in R432-1-3.

(2) Refer to R432-101-4(2) definition of "specialty hospitals".

R432-102-5. Licensure.

License required. Refer to R432-2.

R432-102-6. General Construction Rules.

Refer to R432-8, Chemical Dependency or Substance Abuse Hospital Construction Rules.

R432-102-7. Organization and Staff.

(1) The hospital shall be staffed, organized and operated to coordinate all offered services of the hospital.

(2) The responsibility for administrative direction should be vested in a trained chemical dependency/substance abuse counselor or other licensed health care professional with experience or training acceptable to the governing board.

(3) A trained chemical dependency or substance abuse counselor or other professionally licensed staff member, as permitted by law and hospital policy, shall serve as the primary therapist.

(4) A multi-disciplinary team including a physician, registered nurse, and substance abuse counselor shall be responsible for program and treatment services.

(5) There shall be written policies and procedures approved by the board and reviewed annually that address at least the following:

(a) staff and their responsibilities;

(b) program services;

(c) patient assessment;

(d) treatment and discharge.

R432-102-8. Professional Staff.

The chemical dependency or substance abuse services of the hospital shall be organized, staffed and supported according to the nature, scope and extent of the services provided. All staff must be licensed, registered or certified by the Utah Department of Commerce for their respective disciplines.

R432-102-9. Medical Staff.

The medical direction of the chemical dependency or substance abuse care and services of the hospital shall be the responsibility of a licensed physician who is a member of the medical staff and appointed by the governing body.

R432-102-10. Allied Health Care Professional Staff.

(1) The hospital shall have qualified health care professional and support staff available to assess and address patient needs within the hospital's scope of services. Qualified professional staff includes licensed clinical psychologists, licensed clinical social workers, licensed nurses, trained substance abuse counselors and other health care professionals, to include Drug Enforcement Administration registration as appropriate, in sufficient number to provide services offered by the hospital.

(2) A licensed clinical psychologist, licensed clinical social worker and a trained substance abuse counselor shall be employed as part of the professional staff and shall function under the direction of the medical staff.

(3) When qualified professional staff members are not available on a full-time basis, they shall be provided on a part-time basis or by contract agreement to fulfill the requirements and needs of the treatment programs offered.

(4) Allied health care professionals may be assigned specific responsibilities on the treatment team as qualified by training and educational experience and as permitted by hospital policy and the scope of their license.

R432-102-11. Personnel Management Service.

(1) Organization.

The hospital shall provide sufficient personnel who are able and competent to perform their respective duties, services, and functions.

(2) Policies and Procedures.

Refer to R432-101-13(2).

(3) Orientation and Staff Development.

(a) All employees shall be oriented as to job requirements and personnel policies, and provided with job training beginning the first day of employment. Documentation shall be signed by the employee and supervisor to indicate basic orientation has been completed during the first month of employment. Registered nurses and licensed practical nurses shall receive additional orientations to include the following:

(i) concepts of treatment provided within the hospital for patients with chemical dependency or substance abuse problems;

(ii) roles and functions of nurses in treatment programs for patients with chemical dependency/substance abuse problems;

(iii) medications used in the treatment of chemical dependency/substance abuse problems.

(b) In-service sessions shall be planned and held at least quarterly.

(c) Documentation shall be maintained to demonstrate that all staff have attended an annual in-service on the reporting requirements for abuse, neglect and exploitation for adults and children.

(4) The hospital shall ensure that all personnel are licensed, certified or registered as required by the Utah Department of Commerce.

(a) Copies of the license, registration, or certificate shall be maintained for Department review in the personnel files.

(b) Failure to ensure that the individual is appropriately licensed, registered or certified may result in sanctions to the facility license.

R432-102-12. Admission Criteria and Policy.

(1) Refer to R432-101-20.

(2) Commitment of minors must be in accordance with Section 62A-8-501.

R432-102-13. Other Policies and Procedures.

(1) For the following policies and procedures, R432-100 shall apply:

(a) The Governing Body, R432-100-4.

(b) Administrator, R432-100-5.

(c) Nursing, R432-100-8.

(2) For the following policies and procedures, R432-101 shall apply:

(a) Volunteers, R432-101-13(4).

(b) Quality Assurance, R432-101-14.

(c) Patient Rights, R432-101-18.

(d) Emergency and Disaster, R432-101-19.

(e) Admission and Discharge, R432-101-20.

(f) Transfer Agreements, R432-101-21.

(g) Pets In Hospitals, R432-101-22.

R432-102-14. Clinical Services.

A hospital may provide inpatient or outpatient chemical

dependency and substance abuse rehabilitation services.

(1) Inpatient Services.

Services shall include at least the following:

(a) detoxification, the systematic reduction or elimination of a toxic agent in the body by use of rest, fluids, medication, counseling and nursing care;

(b) counseling in at least one of the following areas: individual, group, or family counseling. In addition, there shall be provision for educational, employment, or other counseling as needed;

(c) referral treatment services coordinated with other hospital and community services for continuity of care. Counselors shall refer clients to public or private agencies for substance abuse rehabilitation, employment and educational counseling, as indicated. This service shall be documented in the patient's record.

(2) Residential Treatment services shall comply with R432-101-25.

(3) Adolescent or child treatment programs shall comply with R432-101-24.

R432-102-15. Restraints and Seclusion.

(1) Physical restraints, including seclusion, and chemical restraints shall only be used to protect the patient from injury to himself or to others or to assist patients to attain and maintain optimum levels of physical and emotional functioning.

(a) Restraints shall not be used for the convenience of staff, for punishment or discipline, or as substitutes for direct patient care, activities, or other services.

(b) Simple safety devices are deemed to be a type of physical restraint.

(2) Each hospital shall develop written policies and procedures to govern the use of physical restraints, seclusion and chemical restraints. A major focus of these policies shall be on patient safety. Policies shall incorporate and address at least the following:

(a) examples of the types of restraints and safety devices that are acceptable for use and possible patient conditions for which the restraint may be used;

(b) guidelines for periodic release and position change or exercise, with instructions for documentation of this action.

(3) Bed sheets or other linens shall not be used as restraints.

(4) Restraints shall not unduly hinder evacuation of the patient in the event of fire or other emergency.

R432-102-16. Outpatient Emergency Services.

(1) Organization.

(a) If offered, the service shall be organized as a service specifically designated for this purpose and shall be under the direction of the medical director or designee.

(b) Services shall be available at any hour to persons presenting themselves for assistance.

(c) The following public facilities shall be available:

(i) an interview and treatment area for both individuals and families;

(ii) a reception and control area;

(iii) a public waiting area with telephone, drinking fountain and toilet facilities.

(2) If the hospital chooses not to offer emergency outpatient services, it shall have a written referral plan for persons making inquiry regarding such services or presenting themselves for assistance.

(3) Staff Coverage.

(a) Provision shall be made for physician coverage at all hours.

(b) Nursing and other allied health professional staff shall be available in the hospital.

(c) Staff may have collateral duties elsewhere in the hospital, but must be able to respond when needed without adversely affecting patient care or treatment elsewhere in the hospital.

(4) Policies, General.

(a) The service shall be supported by policies and procedures including admission, treatment, medical procedures and applicable reference materials.

(b) Seclusion or involuntary detention of a person must be done according to applicable hospital policy and Utah Law.

R432-102-17. Other Services.

Where the following services are used, R432-100 shall apply:

(1) Special Care Unit, R432-100-14.

(2) Outpatient Services, R432-100-18.

(3) Pediatric Clinical Services, R432-100-19.

(4) Inpatient Hospice, R432-100-23.

(5) Where the following services are used, R432-101 shall apply:

(a) Psychiatric Clinical Services, R432-101-23.

(b) Restraints - Physical, R432-101-26(7).

(c) Restraints - Chemical, R432-101-26(8).

(d) Seclusion Time Out, R432-101-26(9) and (10).

(e) Behavior Management, R432-101-26(11).

(f) Emergency Services, R432-101-28.

R432-102-18. Complementary Services.

Where the following services are used, R432-100 shall apply:

(1) Physical Therapy, R432-100-28.

(2) Radiology Services, R432-100-29.

(3) Respiratory Care Services, R432-100-30.

R432-102-19. Ancillary Services.

The following services shall be provided in-house as basic services:

(1) Laboratory, R432-101-29.

(2) Pharmacy, R432-101-30.

(3) Social Services, R432-101-31.

(4) Activity Therapy, R432-101-32.

(5) Central Supply Services, R432-100-32.

(6) Dietary Service, R432-100-33.

(7) Laundry Services, R432-100-34

(8) Maintenance Services, R432-100-37.

(9) Housekeeping Services, R432-38.

R432-102-20. Patient Record.

(1) Refer to R432-100-35.

(2) The content of the patient record shall contain at least

the following:

(a) a patient assessment that shall include a medical, psycho-social, substance abuse, and treatment history;

(b) an individualized treatment plan based on the patient assessment including goals and methods of treatment. The plan shall be reviewed and updated quarterly for outpatient care and every week for inpatient clients;

(c) progress notes, including description and date of service, with a summary of client progress, signed by the therapist or service provider;

(d) a discharge summary, including final evaluation of treatment and goals attained and signed by the therapist.

(3) The confidentiality of the records of substance abuse patients shall be maintained according to the federal guidelines is adopted and incorporated as reference 42 CFR, Part 2, "Confidentiality of Alcohol and Drug Abuse Patient Records."

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26-21-20

R432. Health, Health Systems Improvement, Health Facility Licensure.
R432-103. Specialty Hospital - Rehabilitation.
R432-103-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-103-2. Purpose.

The purpose of this rule is to promote the public health and welfare through the establishment and enforcement of program standards for the operation of rehabilitation hospitals.

R432-103-3. Compliance.

All facilities governed by this rule shall be in full compliance at the time of licensure.

R432-103-4. Definitions.

(1) Refer to Common Definitions in R432-1-3.

(2) Refer to definition of "specialty hospital", R432-101-4(2).

R432-103-5. Licensure.

License required. Refer to R432-2.

R432-103-6. General Construction Rules.

Refer to R432-9, Rehabilitation Construction Rule.

R432-103-7. Organization and Staff.

(1) Organization.

(a) The hospital shall be staffed, organized and operated to coordinate all offered services of the hospital.

(b) The responsibility for administrative direction shall be vested in a trained rehabilitation counselor or other licensed health care professional with experience or training acceptable to the governing board.

(c) A trained rehabilitation counselor or other professionally licensed staff member, as permitted by law and hospital policy, shall serve as the primary therapist.

(d) There shall be a multi-disciplinary team that includes a physician, registered nurse, and rehabilitation counselor that is responsible for program and treatment services.

(2) There shall be written policies and procedures approved by the board and reviewed annually that address at least the following:

(a) staff and their responsibilities;

(b) program services;

(c) patient assessment;

(d) treatment and discharge.

R432-103-8. Professional Staff.

(1) The rehabilitation services of the hospital shall be organized, staffed and supported according to the nature, scope and extent of the services provided.

(2) All staff must be licensed, registered or certified by the Utah Department of Commerce for their respective disciplines.

R432-103-9. Medical Staff.

The medical direction of the rehabilitation care and services of the hospital shall be the responsibility of a licensed physician who is a member of the medical staff and appointed by the governing body.

R432-103-10. Other Policies and Procedures.

For the following policies and procedures, R432-100 shall apply:

(1) The Governing Body, R432-100-4.

(2) Administrator, R432-100-5.

(3) Nursing, R432-100-8.

(4) For the following policies and procedures, R432-101 shall apply:

(a) Volunteers, R432-101-13(4).

(b) Quality Assurance, R432-101-14.

(c) Patient Rights, R432-101-18.

(d) Emergency and Disaster, R432-101-19.

(e) Admission and Discharge, R432-101-20.

(f) Transfer Agreements, R432-101-21.

(g) Pets In Hospitals, R432-101-22.

R432-103-11. Rehabilitation Services.

(1) Organization.

(a) Medical staff participation in the delivery of physical rehabilitation services shall be provided by a qualified physician member of the medical staff who is knowledgeable about rehabilitation medicine by reason of training and experience.

(b) Qualified, competent professional and support personnel shall be available to meet the objectives of the service and the needs of the patients.

(2) Care Plan.

(a) A qualified professional for physical rehabilitation services shall complete a functional assessment and evaluation.

(b) A treatment plan shall be developed based on an evaluation that includes an assessment of functional ability appropriate to the patient.

(c) Measurable goals, which are described in functional or behavioral terms, shall be established for the patient and include

time frames for achievement.

(d) The patient's progress and the results of treatment shall be assessed at least monthly for outpatients and at least every two weeks for inpatients.

(e) The patient's progress and response to treatment shall be documented in the medical record.

R432-103-12. Occupational Therapy.

Occupational therapy services shall include the following:

(1) the assessment and treatment of occupational performance, including:

(a) independent living skills,

(b) prevocational or work skills,

(c) educational skills,

(d) leisure abilities, and

(e) social skills;

(2) the assessment and treatment of performance components, including:

(a) neuromuscular,

(b) sensori-integrative,

(c) cognitive, and

(d) psychosocial skills;

(3) therapeutic interventions, adaptations, and prevention; and

(4) individualized evaluations of past and current performance, based on observations of individual or group tasks, standardized tests, record review, interviews, and/or activity histories.

(5) Occupational therapy services staff shall document and monitor the extent to which goals are met relative to assessing and increasing the patient's functional abilities in daily living and relative to preventing further disability.

R432-103-13. Physical Therapy.

Refer to R432-100-28.

R432-103-14. Clinical Services.

Where the following services are used, R432-100 shall apply:

(1) Ambulatory Surgery, R432-100-13.

(2) Special Care Unit, R432-100-14.

(3) Surgery Services, R432-100-21.

(4) Outpatient Services, R432-100-18.

(5) Pediatric Clinical Services, R432-100-19.

(6) Inpatient Hospice, R432-100-23.

R432-103-15. Ancillary Services.

The following services, if provided, shall comply with R432-100 as follows:

(1) Central supply, R432-100-32.

(2) Dietary, R432-100-33.

(3) Laundry, R432-100-34.

(4) Maintenance Services, R432-100-37.

(5) Housekeeping Services, R432-100-38.

R432-103-16. Emergency Services.

(1) Each specialty hospital shall have the ability to provide emergency first aid treatment to patients, staff, visitors, and to persons who may be unaware of or unable to immediately reach services in other facilities (an equivalent of the Joint Commission's Level IV emergency service).

(2) Provisions shall include a treatment room, storage for supplies and equipment, provisions for reception and control of patients, convenient patient toilet room, and communication hookup and access to a poison control center.

(3) Additional Emergency Services.

Any additional or expanded emergency services offered must comply with the provisions of the appropriate sections of R432-100-15.

(4) Provision for protocols for contacting local emergency medical services.

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R432. Health, Health Systems Improvement, Health Facility Licensure.
R432-104. Specialty Hospital - Chronic Disease.
R432-104-1. Legal Authority.
This rule is adopted pursuant to Title 26, Chapter 21.

R432-104-2. Purpose.
The purpose of this rule is to promote the public health and welfare through the establishment and enforcement of program standards for the operation of chronic disease hospitals.

R432-104-3. Definition.
(1) Refer to R432-1-3.

R432-104-4. License.
(1) To be licensed as a chronic disease hospital the facility shall:
(a) Have a duly constituted governing body with overall administrative and professional responsibility;
(b) Have an organized medical staff which provides 24-hour inpatient care;
(c) Have a chief executive officer to whom the governing body delegates the responsibility for the operation of the hospital;
(d) Maintain at least one nursing unit containing patient rooms, patient care spaces, and service spaces defined in construction rules R432-10-3;
(e) Each nursing unit shall contain at least six patient beds;
(f) Rooms and spaces comprising each nursing unit shall be organized in a contiguous arrangement.
(g) Maintain current and complete medical records.
(h) Provide continuous registered nurse supervision and other nursing services;
(i) Provide in house the following basic services:
(i) Pharmacy;
(ii) Laboratory;
(iii) Nursing services
(iv) Occupational, Physical and Speech therapies;
(v) Dietary;
(vi) Social Services;
(vii) Specialized Diagnosis and therapeutic services.
(2) The chronic disease hospital shall provide on site all basic service required of a general hospitals that are needed for the diagnosis, therapy, and treatment offered or required by all patients admitted to the hospital.
(3) Rooms and spaces compromising each nursing unit shall be organized in an contiguous arrangement.

R432-104-5. General Design Requirements.
See R432-10, Chronic Disease Hospital Construction Rules.

R432-104-6. Organization and Staff.
(1) The following services and policies shall comply with R432-100.
(a) Governing Body, R432-100-4.
(b) Administrator, R432-100-5.
(c) Medical Staff, R432-100-6.
(d) Medical Orders, R432-100-7.
(e) Nursing Services, R432-100-8.
(f) Personnel Management, R432-100-9.
(g) Infection Control, R432-100-10.
(h) Quality Assurance, R432-100-11.
(i) Patient Rights, R432-100-12.

R432-104-7. Admission Policy.
(1) A Chronic Disease Hospital shall implement as admission policy which complies with R432-104-7(2) and R432-104-3.
(2) Patients who have one or more of the following conditions may be admitted to a Chronic Disease Hospital:
(a) Patient is medically unstable due to chronic or long-term illness and requires a weekly physician visit.
(b) Patient requires dangerous drug therapy, continuous use of a respirator or ventilator, or suctioning or nasopharyngeal aspiration at least once per nursing shift.
(c) Patient may have one of the following conditions:
(i) uncontrolled epileptic seizures more than three times a week;
(ii) assaultive or disruptive episodes at least once per week along with at least two skilled nursing services at the frequency described in R432-104-7(2)(d) below;
(d) Patient requires skilled nursing services and care in excess of those services provided in a nursing care facility.
(i) Patient is dependent on others for activities of daily living;
(ii) Patient requires at least three of the following treatments at the specified frequency;
(A) extensive dressings for deep decubiti, surgical wounds, or vascular ulcers daily;
(B) isolation for infectious disease 24 hours per day;
(C) suctioning three days per week;
(D) occupational therapy, physical therapy, or speech therapy five days a week;
(E) special ostomy care daily;
(F) oxygen daily;
(G) traction; or
(H) catheter or wound irrigation daily.

R432-104-8. Clinical Services.
The following services shall be provided in-house and comply with R432-100.
(1) Pharmacy Service, R432-100-27.
(2) Laboratory Service, R432-100-26.
(3) Physical Therapy, R432-100-28.
(4) Dietary Service, R432-100-33.
(5) Social Services, R432-100-31.
(6) Occupational Therapy Services shall be available for all patients who require the service.
(a) The occupational therapy services shall be directed by a licensed occupational therapist who shall have administrative responsibility for the occupational therapy department.
(b) Staff occupational therapists shall be licensed by the Utah Department of Commerce Title 58, Chapter 42.
(i) If Occupational Therapy Assistants are employed to

provide patient services they shall be supervised by a licensed therapist.

(ii) Patient services shall be commensurate with each person's documented training and experience.

(c) Occupational Therapy services shall be initiated by an order from the medical staff.

(d) Written policies and procedures shall be developed and approved in conjunction with the medical staff to include:

(i) Methods of referral for services,

(ii) Scope of services to be provided,

(iii) Responsibilities of professional therapists,

(iv) Admission and discharge criteria for treatment,

(v) infection control,

(vi) safety,

(vii) individual treatment plans, objectives, clinical documentation and assessment,

(viii) incident reporting system,

(ix) emergency procedures.

(e) Equipment shall be calibrated to manufacturer's specifications.

(f) There shall be a written individual treatment plan for each patient appropriate to the diagnoses and condition.

(g) The Occupational Therapy department shall organize and participate in continuing education programs.

(7) Speech Therapy services shall be available for all patients who require the service.

(a) The Speech-Pathology language services shall be directed by a licensed Speech-Pathologist or Audiologist who shall have administrative responsibility for the Speech-Audiology therapy department.

(b) Staff speech therapist and audiologist shall be licensed the Utah Department of Commerce, see Title 58, Chapter 41.

(i) If Speech-language pathology aides or audiology aides are employed to provide patient services they shall be supervised by a licensed therapist.

(ii) Patient services shall be commensurate with each person's documented training and experience.

(c) Speech and Audiology services shall be initiated by an order from the medical staff.

(d) Written policies and procedures shall be developed and approved in conjunction with the medical staff to include:

(i) Methods of referral for services,

(ii) Scope of services to be provided,

(iii) Responsibilities of professional therapists,

(iv) Admission and discharge criteria for treatment,

(v) infection control,

(vi) Assistive Technology,

(vii) individual treatment plans, objectives, clinical documentation and assessment,

(viii) incident reporting system,

(ix) emergency procedures.

(e) Equipment shall be calibrated to manufacturer's specifications.

(f) There shall be a written individual treatment plan for each patient appropriate to the diagnoses and condition.

(g) The Department shall organize and participate in continuing education programs.

R432-104-9. Emergency Services.

(1) Each specialty hospital shall have the ability to provide emergency first aid treatment to patients, staff, and visitors and to persons who may be unaware of or unable to immediately reach services in other facilities.

(2) Provisions for services shall include:

(a) Treatment room;

(b) Storage for supplies;

(c) Provisions for reception area and control of walk-in traffic;

(d) Patient toilet room;

(e) Telephone service in order to call the poison control center;

(f) Staff available in the facility to respond in case of an emergency.

R432-104-10. Complementary Services.

When the following services are provided in-house they shall comply with R432-100.

(1) Anesthesiology, R432-100-24.

(2) Radiology, R432-100-29.

(3) Respiratory Service, R432-100-30.

(4) Ambulatory Surgery, R432-100-13.

(5) Special Care Unit, R432-100-14.

(6) Outpatient, R432-100-18.

(7) Pediatrics, R432-100-19.

(8) Hospice, R432-100-23.

R432-104-11. Ancillary Services.

The following services shall be provided in-house and shall comply with R432-100.

(1) Central Supply, R432-100-32.

(2) Laundry, R432-100-34.

(3) Medical Records, R432-100-35.

(4) Maintenance, R432-100-37.

(5) Housekeeping, R432-100-38.

(6) Emergency and Disaster Plans, R432-100-36.

KEY: health facilities

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R432. Health, Health Systems Improvement, Health Facility Licensure.

R432-105. Specialty Hospital - Orthopedic.

R432-105-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-105-2. Purpose.

The purpose of this rule is to promote the public health and welfare through the establishment and enforcement of licensure standards. This rule sets standards for the operation and maintenance of an orthopedic specialty hospital.

R432-105-3. Time for Compliance.

All Orthopedic Specialty hospitals shall be licensed and

in full compliance with R432-105.

R432-105-4. Definitions.

(1) Refer to Common Definitions in R432-1-3.

(2) Special definitions.

(a) "Orthopedic Specialty Hospital" means a specialty hospital that provides evaluation, diagnosis, and treatment of individuals with a primary diagnosis of musculoskeletal disorders and injuries as defined in the Orthopaedic ICD-9-CM.

(b) "Donor center" means a facility that procures, prepares, processes, stores and transports blood and blood components.

(c) "Transfusion service" means a facility that may prepare blood components, but also stores, determines compatibility, transfuses blood and blood components and monitors transfused patients for any ill effect.

(d) "Blood bank" means a facility that combines the functions of a donor center and transfusion service within the same facility.

(3) See definition of "specialty hospital", R432-101-4(2).

R432-105-5. Licensure.

License required. Refer to R432-2.

R432-105-6. General Construction Rules.

Refer to R432-11. Orthopedic Specialty Hospital Construction Rule.

R432-105-7. Organization and Staff.

The following services and policies shall comply with R432-100:

(1) Administrator, R432-100-5.
(2) Medical Staff, R432-100-6.
(3) Medical Orders, R432-100-7.
(4) Nursing, R432-100-8.
(5) Personnel Management Service, R432-100-9.
(6) Infection Control, R432-100-10.
(7) Quality Assurance, R432-100-11.
(8) Patient Rights, R432-100-12.
(9) Governing Body, R432-100-4.

R432-105-8. Admission Policy.

An orthopedic specialty hospital is limited to serving patients that meet the following criteria:

(1) Each patient shall have a primary admitting diagnosis that requires evaluation, diagnosis and treatment of a musculoskeletal disorder or injury, as defined in the Orthopaedic ICD-9-CM, the International Classification of Diseases, 9th Edition, Clinical Modification, Expanded, published by the American Academy of Orthopaedic Surgeons which is adopted and incorporated by reference and;

(2) There is a reasonable expectation that the patient's needs can be met by the services provided by the orthopedic specialty hospital.

R432-105-9. Clinical Services.

The following services shall comply with R432-100:

(1) Ambulatory Surgery, R432-100-13.
(2) Special Care Unit, R432-100-14.
(3) Outpatient, R432-100-18.
(4) Pediatrics, R432-100-19.
(5) Surgery, R432-100-21.

R432-105-10. Emergency Services.

(1) Each specialty hospital shall have the ability to provide emergency first aid treatment to patients, staff, visitors, and to persons who may be unaware of or unable to immediately reach services in other facilities.

(2) Provisions shall include a treatment room, storage for supplies and equipment, provisions for reception and control of patients, convenient patient toilet room, and communication access to a poison control center.

(3) Additional Emergency Services.

Any additional or expanded emergency services offered shall comply with the provisions of the appropriate sections of R432-100-15.

R432-105-11. Complementary Services.

The following services shall comply with R432-100:

(1) Anesthesiology, R432-100-24.
(2) Blood Bank and Services, R432-100-25.
(3) Laboratory and Pathology, R432-100-26.
(4) Pharmacy, R432-100-27.
(5) Radiology, R432-100-29.
(6) Respiratory Care, R432-100-30.
(7) Social Services, R432-100-31.

R432-105-12. Ancillary Services.

The following services shall comply with R432-100:

(1) Central Supply, R432-100-32.
(2) Dietary, R432-100-33.
(3) Laundry, R432-100-34.
(4) Medical Records, R432-100-35.
(5) Emergency and Disaster Plans, R432-100-36.
(6) Maintenance Services, R432-100-37.
(7) Housekeeping Services, R432-100-38.

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26-21-20

R432. Health, Health Systems Improvement, Health Facility Licensure.
R432-150. Nursing Care Facility Rules.
R432-150-1. General Provisions.

R432-150-1 through R432-150-33 govern the operation of skilled level nursing care facilities.

R432-150-2. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-150-3. Purpose.

The purpose of R432-150 is to provide health and safety

standards for the organization, physical plant, maintenance, and operation of Nursing Care Facilities. The requirements of R432-150 promote quality of life and health care to a select and vital segment of our community's population and assist Nursing Care Facilities to recognize the individual and provide for the physical, mental, and social well-being of the whole person.

R432-150-4. Compliance.

Facilities governed by R432-150 shall be in full compliance by at the time of licensure.

R432-150-5. Definitions.

(1) Refer to R432-1-3.

(2) Special definitions.

(a) "Comprehensive Assessment" means the Department of Health designated Resident Assessment Instrument.

(b) "Medically-related Social Services" means assistance provided by the facility social work staff to maintain or improve each resident's ability to control everyday physical, mental, and psychosocial needs.

(c) "Nurse Aide" means any individual, other than an individual licensed in another category, providing nursing or nurse-related services to residents in a facility. This definition does not include an individual who volunteers to provide such services without pay.

(d) "Practitioner" means nurse practitioner or physician assistant as licensed by the Utah Department of Commerce, Division of Occupational and Professional Licensing.

(e) "Unnecessary Drug" means any drug when used in excessive dose, for excessive duration, without adequate monitoring, without adequate indications for its use, in the presence of adverse consequences which indicate the dose should be reduced or discontinued, or any combinations of these reasons.

R432-150-6. Scope of Skilled Level Services.

(1) A skilled level nursing care facility shall maintain and operate 24-hour licensed nursing services.

(2) The facility shall provide the following:

(a) eight hours of registered nurse coverage in accordance with R432-150-19;

(b) medical supervision;

(c) dietary services;

(d) physical therapy;

(e) social services;

(f) recreational therapy;

(g) dental services;

(h) pharmacy services.

(3) The following services shall be provided as required for resident care and identified in the resident care plan:

(a) respiratory therapy;

(b) occupational therapy;

(c) speech therapy;

(d) other services as required to meet the needs of residents.

(4) The facility shall not admit residents whose identified needs cannot be met.

(5) Skilled Care Criteria.

The following criteria apply in classifying a nursing care facility as skilled level:

(a) the services provided are so inherently complex that they can only be safely and effectively performed by, or under the supervision of, professional and technical personnel;

(b) services, which otherwise may ordinarily be classified as non-skilled, are required to be performed or supervised by skilled nursing or rehabilitation personnel due to medical complications or other extenuating conditions;

(c) services are provided to prevent further deterioration or to preserve current capabilities.

(6) Hospice Services.

(a) If, during the care planning process for a terminally ill resident, bereavement services, clergy services, hospice counseling services, or volunteer services are determined to be appropriate under a hospice program of care, the facility shall provide the identified services in accordance with the applicable requirements of R432-750-14.

(b) Facility staff responsible for delivering service shall be properly oriented and trained in the hospice concept and philosophy of care and the proper performance of assigned duties.

(c) Nursing Care Facilities are not required to obtain a Hospice license.

(7) Nursing Care Facilities may provide respite services which comply with the following:

(a) The purpose of respite is to provide intermittent, time limited care to give primary caretakers relief from the demands of caring for a person.

(b) Respite services may be provided at an hourly rate or daily rate, but shall not exceed 14-days for any single respite stay. Stays which exceed 14 days shall be considered a nursing facility admission, and shall be subject to the admission requirements of R432-150.

(c) The facility shall coordinate the delivery of respite services with the recipient of services, case manager, if one exists, and the family member or primary caretaker.

(d) The facility shall document the person's response to the respite placement and coordinate with all provider agencies to ensure an uninterrupted service delivery program.

(e) The facility must complete the following:

(i) A Level 1 Preadmission Screening upon the persons admission for respite services.

(ii) A service agreement to serve as the plan of care. The service agreement shall identify the prescribed medications, physician treatment orders, need for assistance for activities of daily living and diet orders.

(f) The facility shall have written policies and procedures available to staff regarding the respite care clients which include:

(i) Medication administration;

(ii) Notification of a responsible party in the case of an emergency;

(iii) Service agreement and admission criteria;

(iv) Behavior management interventions;

(v) Philosophy of respite services;

(vi) Post-service summary;

(vii) Training and in-service requirement for employees; and

(viii) Handling personal funds.

(g) Persons receiving respite services shall be provided a copy of the Resident Rights documents upon admission.

(h) The facility shall maintain a record for each person receiving respite services which includes:

(i) Retention and storage of records shall comply with R432-150-27(2).

(ii) Confidentiality and release of information shall comply with R432-150-27(3).

(iii) The record shall contain the following:

(A) Service agreement;

(B) Demographic information and resident identification data;

(C) Nursing notes;

(D) Physician treatment orders;

(E) Records made by staff regarding daily care of the person in service;

(F) Accident and injury reports;

(G) Post-service summary.

(i) If a person has an advanced directive, a copy shall be filed in the record and staff informed.

R432-150-7. Licensure.

All standards of R432-2 and R432-3 apply to R432-150.

R432-150-8. General Construction.

See R432-5. Nursing Facility Construction.

R432-150-9. Resident Rights.

The resident has a right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the facility.

(1) Protection of Resident Rights.

The facility staff shall protect and promote the rights of each resident including:

(a) the right to exercise his rights as a resident of the facility and as a citizen or resident of the United States;

(b) the right to be free of interference, coercion, discrimination, or reprisal from the facility in exercising his rights;

(c) in the case of a resident adjudged incompetent under the laws of the state by a court of competent jurisdiction, the rights of the resident are exercised by a person appointed to act on behalf of the resident under state law.

(2) Notice of Rights and Services.

The facility shall inform the resident both orally and in writing in a language that the resident understands of his rights and all rules governing resident conduct and responsibilities during the stay in the facility.

(a) Such notification shall be made prior to or upon admission and periodically during the resident's stay.

(b) Receipt of such information, and any amendments to it, shall be acknowledged in writing.

(3) Records.

The resident has the right upon an oral or written request, to access all records pertaining to the himself, including clinical records, within 24 hours and to purchase at a cost not to exceed the community standard, photocopies of his records or any portions of his records upon request and two working days advance notice to the facility.

(4) Information on health status.

The resident has the right to be fully informed in language that he can understand of his total health status, including:

(a) his medical condition;

(b) the right to refuse treatment;

(c) the right to formulate an advance directive in accordance with Section 75-2-1101.

(d) the right to refuse to participate in experimental research;

(5) Charges.

The facility shall inform each resident or legal resident representative, before or at the time of admission, and periodically during the resident's stay, of services available in the facility and of charges for those services.

(a) The facility shall furnish a written description of legal rights which includes:

(i) A description of the manner of protecting personal funds, in accordance with R432-150-9(8); and

(ii) A statement that the resident may file a complaint with the State Long Term Care Ombudsman, and any other advocacy group, concerning resident abuse, neglect, and misappropriation of resident property in the facility.

(6) Physician contact.

The facility shall inform each resident of the name, specialty, and way of contacting the physician responsible for his care.

(7) Notification of changes.

(a) The facility shall immediately inform the resident, consult with the resident's physician, and, if known, notify the resident's legal representative or interested family member when there is:

(i) an accident involving the resident which results in injury;

(ii) a significant change in the resident's physical, mental, or psychosocial status including a deterioration in health, mental, or psychosocial status, in either life-threatening conditions or clinical complications;

(iii) a need to alter treatment significantly, including a need to discontinue an existing form of treatment due to adverse consequences or to commence a new form of treatment; or

(iv) a decision to transfer or discharge the resident from the facility as specified in R432-150-10.

(b) The facility shall promptly notify the resident and the resident's legal representative or interested family member when there is:

(i) a change in room or roommate assignment; or

(ii) a change in resident rights under state law or rules.

(c) The facility shall record and periodically update the address and phone number of the resident's legal representative or interested family member.

(8) Protection of Resident Funds.

The resident has the right to maintain his financial affairs and the facility may not require a resident to deposit his personal funds with the facility.

(a) Management of personal funds. Upon written authorization by a resident, the facility shall hold, safeguard,

manage and account for the resident's personal funds deposited with the facility, in accordance with R432-150-9(8)(b).

(b) Deposit of funds.

(i) Funds in excess of $50. The facility shall deposit any resident's personal funds in excess of $50 in an interest bearing account that is separate from any of the facility's operating accounts.

(A) Interest earned on the resident's account shall be credited to his account.

(B) In pooled accounts there shall be a separate accounting for each resident's share, including interest.

(ii) Funds less than $50. The facility shall maintain a resident's personal funds that do not exceed $50 in a non-interest bearing account, interest bearing account, or petty cash fund.

(c) Accounting and records. The facility shall establish and maintain a system that assures a full, complete, and separate accounting, according to generally accepted accounting principles, of each resident's personal funds entrusted to the facility on the resident's behalf.

(i) The system shall preclude any commingling of resident funds with facility funds or with the funds of any person other than another resident.

(ii) The individual financial record shall be available through quarterly statements on request to the resident or his legal representative.

(d) Conveyance upon death. Upon the death of a resident with a personal fund deposited with the facility, the facility shall convey within 30 days the resident's funds, and a final accounting of those funds, to the individual administering the resident's estate.

(e) Assurance of financial security. The facility shall purchase a surety bond or otherwise provide assurance satisfactory to the Department that all resident's personal funds deposited with the facility are secure.

(f) Conveyance upon discharge. Upon the discharge of a resident with a personal fund deposited with the facility, the facility shall convey as promptly as possible, but not to exceed ten business days, the resident's funds, and a final accounting of those funds, to the resident or the resident's legal representative.

(9) Free Choice.

The resident has the right to:

(a) choose a personal attending physician;

(b) be fully informed in advance about care and treatment and of any changes in that care or treatment that may affect the resident's well-being;

(c) unless adjudged incompetent or otherwise found to be incapacitated under the laws of the state, participate in planning care and treatment or changes in care and treatment.

(10) Privacy and Confidentiality.

The resident has the right to personal privacy and confidentiality of his personal and clinical records.

(a) Personal privacy includes accommodations, medical treatment, written and telephone communications, personal care, visits, and meetings of family and resident groups.

(b) The right to personal privacy does not require the facility to provide a private room.

(c) Except as provided in R432-150-27, the resident may approve or refuse the release of personal and clinical records to any individual, or other entity, outside the facility.

(d) The resident's right to refuse release of personal or clinical records does not apply when:

(i) the resident is transferred to another health care institution; or

(ii) record release is required by law.

(11) Grievances.

A resident has the right to:

(a) voice grievances with respect to treatment or care that is, or fails to be furnished, without discrimination or reprisal for voicing the grievances;

(b) prompt efforts by the facility to resolve grievances the resident may have, including those with respect to the behavior of other residents.

(c) The facility shall implement a process to promptly resolve resident grievances.

(12) Examination of Survey Results.

A resident has the right to examine the results of the most recent survey of the facility conducted by state surveyors and any plan of correction in effect with respect to the facility.

(a) The survey results and plan of correction, or a notice stating the survey results are available for review, shall be displayed in a public area of the facility easily accessible by the residents.

(b) Receive information from agencies acting as resident advocates, and be afforded the opportunity to contact these agencies.

(13) Work.

The resident has the right to:

(a) refuse to perform work for the facility;

(b) perform work for the facility, if he chooses, when:

(i) the facility has documented the need or desire for work in the care plan;

(ii) the plan specifies the nature of the work performed and whether the services are voluntary or paid;

(iii) compensation for paid services is at or above prevailing rate for like work in the surrounding community; and

(iv) the resident agrees to the work arrangement described in the care plan.

(14) Mail.

The resident has the right to privacy in written communications, including the right to:

(a) send and receive mail promptly that is unopened;

(b) have access to stationery, postage and writing implements at the resident's own expense.

(15) Access and Visitation Rights.

The resident has the right and the facility shall provide immediate access to any resident by the following:

(a) representatives of the state in the due performance of their official responsibilities;

(b) the resident's individual physician;

(c) the State Long Term Care Ombudsman;

(d) the agency responsible for the protection and advocacy system for developmentally disabled individuals as established under part C of the Federal Developmental

Disabilities Assistance and Bill of Rights Act;

(e) the agency responsible for the protection and advocacy system for mentally ill individuals as established under the Protection and Advocacy for Mentally Ill Individuals Act;

(f) subject to the resident's right to deny or withdraw consent at any time:

(i) advocacy groups representing specific segments of the resident population in nursing care facilities;

(ii) immediate family or other relatives of the resident; and

(iii) others who are visiting with the consent of the resident.

(f) The facility shall provide reasonable access to any resident by any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time.

(g) The facility shall allow representatives of the State Long Term Care Ombudsman, to examine a resident's clinical records with the permission of the resident or the resident's legal representative.

(16) Telephone.

The resident has the right to have reasonable access to the use of a telephone where calls can be made without being overheard.

(17) Personal Property.

The resident has the right to retain and use personal possessions, including some furnishings, and appropriate clothing, as space permits, unless to do so would infringe upon the rights or health and safety of other residents.

(18) Married Couples.

Contingent on space and room availability, the resident has the right to share a room with one's spouse when both spouses live in the same facility and consent to the arrangement.

(19) Self-administration of Drugs.

Each resident has the right to self-administer drugs if the interdisciplinary team for each resident that this practice is safe.

R432-150-10. Admission, Transfer, and Discharge.

(1) Transfer and Discharge. The facility shall permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless:

(a) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;

(b) The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;

(c) The safety of individuals in the facility is endangered;

(d) The health of individuals in the facility is endangered;

(e) The resident has failed, after reasonable and appropriate notice, to pay for a stay at the facility; or

(f) The facility ceases to operate.

(2) Documentation. The facility shall document resident transfers or discharges under any of the circumstances specified in R432-150-10(1)(a through f), in the resident's clinical record. The documentation shall be made by:

(a) the resident's physician when transfer or discharge is necessary under R432-150-10(1)(a) and (b);

(b) a physician when transfer or discharge is necessary under R432-150-10(1)(c) and (d).

(3) Notice before transfer. Before a facility transfers or discharges a resident, the facility shall:

(a) provide written notification of the transfer or discharge and the reasons for the transfer or discharge to the resident, in a language and manner he understands, and, if known, to a family member or legal representative of the resident;

(b) record the reasons in the resident's clinical record; and

(c) include in the notice the items described in R432-150-10(5).

(4) Timing of the notice.

(a) Except when specified in R432-150-10(4)(b), the notice of transfer or discharge required under R432-150-10(2), shall be made by the facility at least 30 days before the resident is transferred or discharged.

(b) Notice may be made as soon as practicable before transfer or discharge when:

(i) the safety or health of individuals in the facility would be endangered;

(ii) the resident's health improves sufficiently to allow a more immediate transfer or discharge;

(iii) an immediate transfer or discharge is required by the resident's urgent medical needs; or

(iv) a resident has not resided in the facility for 30 days.

(5) Contents of the notice. The written notice must include the following:

(a) the reason for transfer or discharge;

(b) the effective date of transfer or discharge;

(c) the location to which the resident is transferred or discharged; and

(d) the name, address, and telephone number of the State Long Term Care Ombudsman.

(e) For nursing facility residents with developmental disabilities, the notice must contain the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals established under part C of the Developmental Disabilities Assistance and Bill of Rights Act.

(f) For nursing facility residents who are mentally ill, the notice must contain the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act.

(6) Orientation for transfer or discharge. A facility shall provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

(7) Notice of Bed-hold Policy and Readmission.

(a) Notice before transfer. Before a facility transfers a resident to a hospital or allows a resident to go on therapeutic leave, the facility shall provide written information to the resident and a family member or legal representative that specifies:

(i) the facility's policies regarding bed-hold periods permitting a resident to return; and

(ii) the duration of the bed-hold policy, if any, during which the resident is permitted to return and resume residence in the facility.

(b) Notice upon transfer. At the time of transfer of a resident to a hospital or for therapeutic leave, the facility shall provide written notice to the resident and a family member or legal representative, which specifies the duration of the bed-hold policy.

(i) When transfers necessitated by medical emergencies preclude notification at the time of transfer, notification shall take place as soon as possible after transfer.

(c) Permitting resident to return to facility. The facility shall establish and follow a written policy under which a resident whose hospitalization or therapeutic leave exceeds the bed-hold period is readmitted to the facility.

(8) Equal Access to Quality Care.

A facility shall establish and maintain identical policies and practices regarding transfer, discharge, and the provision of services for all individuals regardless of source of payment;

(9) Admissions Policy.

Residents may be accepted for treatment and care only if the facility is properly licensed for the treatment required and has the staff and resources to meet the medical, physical, and emotional needs of the resident.

(10) Resident Care Policies.

The facility shall have written resident care policies that govern the continuing nursing care, and medical or other services furnished by the facility.

(11) Transfer Agreement.

The facility shall have in effect a written transfer agreement with one or more hospitals that reasonably assures that:

(a) residents shall be transferred from the facility to the hospital, and ensured of timely admission to the hospital when transfer is medically necessary as determined by the attending physician;

(b) medical and other information needed for care and treatment of residents, and, when the transferring facility determines whether such residents can be adequately cared for in a less expensive setting than either the facility or the hospital, shall be exchanged between the institutions;

(c) security and accountability of personal property of the individual transferred is maintained.

R432-150-11. Restraint and Behavior Management Policy.

(1) Restraints.

The resident has the right to be free from any physical restraints imposed or psychoactive drug administered for purposes of discipline or convenience, and not required to treat the resident's medical symptoms.

(2) Restraints - General Policies.

(a) Physical and chemical restraints shall be used to protect the resident from injury to himself or to others or to assist residents to attain and maintain optimum levels of physical and emotional functioning.

(b) Restraints shall not be used for the convenience of staff, for punishment or discipline, or as substitutes for direct resident care, activities, or other services.

(3) Definitions.

(a) Simple safety devices are a type of physical restraint.

(b) A physical restraint means any device intended to control or restrict the physical movement of a resident whether applied directly to the resident's body or applied indirectly to act as a barrier to voluntary movement.

(c) A chemical restraint means any medication administered to a resident to control or restrict the resident's physical, emotional, or behavioral functioning.

(d) Leather restraints, strait jackets, or locked restraints, other than simple single lock posey-type restraints, and bed sheets or other linens shall not be used as restraints.

(e) Only the resident can place himself in a locked room.

(4) Policies and Procedures.

(a) The facility shall develop written policies and procedures to govern the use of physical and chemical restraints.

(b) The major focus of these policies shall be on resident safety.

(c) The Director of Nursing shall be responsible for in-service instruction on current restraint policies and rules for all staff involved in administering or monitoring the use of restraints.

(d) Policies shall incorporate and address at least the following:

(i) assessment criteria which includes:

(A) appropriateness of use;

(B) procedures for use;

(C) purpose or nature of the restraint; and

(ii) examples of the types of restraints and safety devices that are acceptable for the use indicated and possible resident conditions for which the restraint may be used.

(iii) guidelines for periodic release and position change or exercise, with instructions for documentation of this action.

(5) Restraints shall not unduly hinder evacuation of the resident in the event of fire or other emergency.

(6) When use of a restraint is implemented, the resident, next of kin, or legally designated representative shall be informed as soon as practicable of the reasons for the restraint and the circumstances under which the restraint shall be discontinued.

(7) Restraints - Physical.

(a) Physical restraints shall be authorized in writing.

(i) Simple safety devices shall be authorized by a physician, licensed practitioner, the Director of Nursing, or a licensed nurse who is in charge of the unit.

(ii) Physical restraints other than simple safety devices shall be authorized by a physician, physician assistant, or nurse practitioner.

(iii) When the interdisciplinary team determines that restraint is necessary for behavior which interferes with resident treatment, there shall be an individualized treatment plan that deals with this disruptive episodic behavior and an ongoing monitoring system to assure effectiveness of the treatment.

(b) Use of restraints, including simple safety devices,

shall be reviewed routinely by the interdisciplinary team as the resident care conference is conducted, as the order is renewed by the physician, and on a day-to-day basis as care is delivered.

(i) Review of restraint use shall be an ongoing process.

(ii) Documentation in the resident's record shall include summaries and dates of the evaluations and reviews by the interdisciplinary team.

(c) Use of physical restraints, including simple safety devices, shall be integrated into the resident care plan and used only when a specific hazard or need for restraint is present.

(d) The resident care plan shall indicate the type of physical restraint or safety device, the length of time to be used, the frequency of release, and the type of exercise or ambulation to be provided.

(e) Physical restraints shall be applied properly, with minimum of discomfort, allowing sufficient body movement to ensure that circulation is not impaired.

(f) No form of restraint shall be used or applied in such a manner as to cause injury or allow a potential for injury.

(g) Use of the restraint or safety device and the resident's response shall be documented in the resident's medical record.

(h) Periodic release and position change or exercise shall be documented.

(i) At a minimum, opportunity for motion and exercise shall be provided for a period of not less than ten minutes during each two hours in which restraints of any type are employed, except when the resident is sleeping.

(ii) More frequent checks and position changes shall be required in some cases as determined by the specific needs of the resident.

(i) Physical restraints may be used without prior approval by a physician, physician assistant, or nurse practitioner in an emergency only if the following conditions are met and documented:

(i) There is a written policy for emergency use of such devices.

(ii) The Director of Nursing is notified as soon as possible, but no later than the beginning of the day shift, of the emergency use of restraints.

(iii) The attending physician is notified as soon as possible, but at least within 24 hours, of the application of restraints.

(iv) There is documentation in the resident's medical record of the circumstances necessitating emergency use of the restraint and the resident's response.

(8) Restraints - Chemical.

Chemical restraints used for sedation, other than those prescribed to promote sleep or treatment of psychiatric illnesses, may be used when alternative non-pharmacological interventions are assessed and documented as ineffective.

(a) When the interdisciplinary team determines that the restraint is necessary for behavior management, there must be an individualized behavior management program and an ongoing monitoring system to assure effectiveness of the treatment.

(b) Any medication, including chemical restraints, must be ordered by the resident's physician or by a person legally authorized to prescribe the particular medication.

(c) Use of chemical restraints shall be reviewed routinely by the interdisciplinary team as the resident care conference is conducted, as the order is renewed by the physician, and on a day-to-day basis as care is delivered.

(i) Review of the use of chemical restraints shall be an ongoing process.

(ii) The resident shall be monitored for adverse effects that significantly hinder verbal, emotional, or physical summaries.

(iii) Dates of the evaluations and reviews by the interdisciplinary team shall be documented.

(d) Use of the chemical restraint shall be integrated into the resident care plan and used only for the purpose authorized by the physician.

(e) Any medication given to a resident shall be administered according to the requirements of professional and ethical practice and according to the policies and procedures of the facility.

(f) Drug holidays shall be initiated in accordance with R432-150-18(12)(b).

(9) Behavior Management.

(a) Facility policy shall establish criteria for admission and retention of residents who require behavior management programs, and shall specify the data to be collected and the location of the data in the clinical record.

(b) The program may be used only after the environmental and social factors which are likely to precipitate or reinforce the inappropriate behavior are identified and an attempt is made to effect remedial change.

(c) The program shall be developed by the interdisciplinary team which shall include a psychiatrist, a licensed clinical psychologist, or a licensed MSW with clinical experience.

(i) There shall be an opportunity for involvement of the resident, next of kin, or legally designated representative.

(ii) A behavior management program shall be approved for a resident by a physician.

(d) Behavior management programs shall employ the least restrictive methods to produce the desired outcomes and incorporate a process to identify and reinforce a more desirable behavior.

(e) Consent for use of any behavior management program shall be obtained from the resident, next of kin, or legally designated representative, or in their absence, from an interdisciplinary team which must include a resident advocate not employed by the facility.

(f) A competent resident shall have the ultimate decision whether to participate in a behavioral management program. The interdisciplinary team shall meet as necessary to review such programs.

(g) The behavior management program shall be incorporated into the resident care plan.

(h) The behavior management program shall be reviewed routinely by the interdisciplinary team as the resident care conference is conducted, as the order is renewed by the physician, and on a day-to-day basis as care is delivered.

(i) Review of the behavior management program shall

be an ongoing process.

(j) Documentation in the resident's record shall include:

(i) a behavior baseline profile, including a description of the undesirable behavior, and a statement whether there is a known history of previous undesirable behaviors and prior treatment;

(ii) conditions under which the behavior occurs;

(iii) interventions used and their results;

(iv) a behavior management program including specific measurable behavioral objectives; time frames; names, titles, and signatures of the persons responsible for conducting the program; and monitoring and evaluation methods;

(v) summaries and dates of the evaluations and reviews by the interdisciplinary team.

R432-150-12. Abuse Policy.

The resident has the right to be free from verbal, sexual, physical or mental abuse, corporal punishment, and involuntary seclusion.

(1) Staff Treatment of Residents.

The facility staff shall develop and implement written policies and procedures that prohibit mistreatment, neglect, or abuse of residents or misappropriation of resident property.

(2) The facility staff shall not:

(a) use verbal, mental, sexual, or physical abuse, including corporal punishment, or involuntary seclusion; or

(b) knowingly employ individuals who have been convicted of abusing, neglecting, or mistreating individuals.

(3) The facility shall ensure that all alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source, are reported immediately to the administrator of the facility and to other officials in accordance with Section 62A-3-302 of the Adult Protective Services Law.

(4) The facility shall maintain incident reports documenting that all alleged violations are thoroughly investigated internally, and shall prevent further potential abuse while the investigation is in progress.

(5) The results of all internal investigations shall be reported immediately to the administrator or his designated representative or to other appropriate officials.

(6) If the alleged violation is verified, the facility shall take appropriate corrective action and document the action taken.

(7) The licensee shall provide an annual in-service on reporting suspected abuse, neglect or exploitation and document that all staff have attended the annual in-service. This record shall be maintained for Department review.

R432-150-13. Quality of Life.

A facility shall care for residents in a manner and in an environment that promotes maintenance or enhancement of each resident's quality of life.

(1) Dignity.

The facility shall promote care for residents in a manner and in an environment that maintains or enhances each resident's dignity and respect in full recognition of his individuality.

(2) Self-determination and Participation.

The resident has the right to:

(a) choose activities, schedules, and health care consistent with his interests, assessments and care plan;

(b) interact with members of the community both inside and outside the facility;

(c) make choices about aspects of his life in the facility that are significant to the resident.

(3) Participation in Resident and Family Groups.

(a) A resident has the right to organize and participate in resident groups in the facility.

(b) A resident's family has the right to meet in the facility with the families of other residents in the facility.

(c) The facility shall provide a resident or family group, if one exists, with private space.

(d) Staff or visitors may attend meetings at the group's invitation.

(e) The facility shall designate a staff person responsible for providing assistance and responding to written requests that result from group meetings.

(f) When a resident or family group exists, the facility shall listen to the views and act upon the grievances and recommendations of residents and families concerning proposed policy and operational decisions affecting resident care and life in the facility.

(4) Participation In Other Activities.

A resident has the right to participate in social, religious, and community activities that do not interfere with the rights of other residents in the facility.

(5) Accommodation of Needs.

A resident has the right to:

(a) reside and receive services in the facility with reasonable accommodation of individual needs and preferences, except when the health or safety of the individual or other residents would be endangered; and

(b) receive notice before the resident's room or roommate in the facility is changed.

R432-150-14. Activities.

The facility shall provide for an ongoing program of activities designed to meet, in accordance with the comprehensive assessment, the interests and the physical, mental, and psychosocial well being of each resident.

(1) The activities program shall be directed by a qualified recreational therapist licensed in accordance with Title 58, Chapter 40, Recreational Therapy Practice Act.

(2) The activities staff shall:

(i) develop therapeutic recreation schedules that include the activity and the location;

(ii) develop monthly activity calendars for residents activities;

(iii) make the calendar available to residents, staff, and visitors.

(3) Each facility shall supply a variety of supplies and resource equipment to meet the recreational needs and interests of the residents.

R432-150-15. Social Services.

The facility shall provide medically-related social services to attain or maintain the highest practicable physical,

mental, or psychosocial well-being of each resident.

(1) Social services shall be provided by qualified persons under a clearly defined plan.

(2) The plan shall be based on a psychosocial assessment which identifies the social and emotional needs of each resident.

(3) A Certified Social Worker, or a Social Service Worker working under the supervision of a Certified Social Worker, shall complete the assessment. An assessment prepared by a Social Service Worker shall be reviewed, countersigned, and titled by the supervising Certified Social Worker.

(a) If a Social Service Worker provides services, that individual shall consult with a Certified Social Worker who is under contract with the facility to provide consultant services.

(b) Consultations by the Certified Social Worker shall be documented in writing.

(4) A facility with 120 beds or more shall employ a full-time qualified social worker.

(5) Social services shall be provided in accordance with Title 58, Chapter 60, Mental Health Professional Practice Act.

R432-150-16. Environment.

The facility shall provide:

(1) a safe, clean, comfortable environment, allowing the resident to use his personal belongings to create a homelike environment;

(2) housekeeping and maintenance services necessary to maintain a sanitary, orderly, and comfortable interior shall conform with the following;

(a) If the facility contracts for housekeeping services with an outside agency, there shall be signed and dated contracts for housekeeping services that details all services provided.

(b) The administrator shall employ a qualified person to direct the housekeeping services.

(c) Written housekeeping policies and procedures shall be developed and implemented by each facility which include:

(i) Policies and procedures shall be reviewed and updated annually.

(ii) Policies and procedures shall address personnel, maintenance schedules, equipment and supplies.

(d) The facility shall employ a sufficient number of housekeeping and maintenance staff to maintain both the exterior and interior of the facility in a safe, clean, orderly manner.

(i) Housekeeping personnel shall be trained in proper procedures for cleaning rooms and equipment, and in handling clean and soiled linen, trash, and trays.

(ii) Housekeeping and laundry personnel may not be engaged simultaneously in food service or direct resident care. A facility policy shall be established and followed to govern the transition from housekeeping and laundry services to resident care.

(3) clean bed and bath linens that are in good condition;

(4) adequate equipment in good working order to meet the needs of residents;

(5) private closet space in each resident room;

(6) adequate and comfortable lighting levels in accordance with R432-150-26(4);

(7) comfortable and safe temperature levels;

(8) comfortable sound levels.

(9) If used, disposable and single-use items shall be of quality sufficient to meet the needs of residents.

(10) Smoking policies shall comply with R432-149-12.

R432-150-17. Resident Assessment.

The facility shall conduct initial and periodic comprehensive, accurate, standardized, reproducible assessments of each resident's functional capacity.

(1) Admission Orders.

At the time a resident is admitted, the facility shall obtain physician orders for the resident's immediate care in accordance with R432-150-17.

(2) Comprehensive Assessments.

(a) Using the Department designated format, the facility shall complete a comprehensive assessment of a resident's needs, which describes the resident's capability to perform daily life functions and significant impairments in functional capacity.

(b) The comprehensive assessment must include at least the following information:

(i) medically defined conditions and prior medical history;

(ii) medical status measurement;

(iii) physical and mental functional status;

(iv) sensory and physical impairments;

(v) nutritional status and requirements;

(vi) special treatments or procedures;

(vii) mental and psychosocial status;

(viii) discharge potential;

(ix) dental condition;

(x) activities potential;

(xi) rehabilitation potential;

(xii) cognitive status;

(xiii) drug therapy.

(c) The facility shall complete the initial assessment and subsequent revisions as follows:

(i) Initial assessments shall be completed within 14 calendar days of admission;

(ii) Revisions to the initial assessment shall be completed no later than 21 calendar days from admission;

(iii) A significant change in resident's physical or mental condition shall require an interdisciplinary team review and may require a complete new assessment to be completed within 14 calendar days of the condition change;

(iv) At a minimum, three quarterly reviews and one full assessment shall be completed in each 12 month period.

(v) The results of the assessment shall be used to develop, review, and revise the resident's comprehensive care plan, in accordance with R432-150-17(2).

(3) Accuracy of Assessments.

(a) Coordination.

(i) Each assessment shall be conducted or coordinated by a registered nurse who signs and certifies the completion of the assessment.

(ii) Each assessment shall be conducted or coordinated

with the appropriate participation of health professionals.

(b) Certification. Each individual who completes a portion of the assessment shall sign and certify the accuracy of that portion of the assessment.

(c) Use of independent assessors. If the state determines, under a survey or otherwise, that there has been a knowing and willful certification of false statements under R432-150-17(3)(b), the state may require, for a period specified, that resident assessments under this subsection be conducted and certified by state-approved individuals who are independent of the facility.

(4) Comprehensive Care Plans.

(a) The facility shall develop a comprehensive care plan for each resident that includes measurable objectives and timetables to meet a resident's medical, nursing, and mental and psychosocial needs as identified in the comprehensive assessment.

(b) A comprehensive care plan shall be:

(i) developed within seven days after completion of the comprehensive assessment;

(ii) prepared with input from an interdisciplinary team that includes the attending physician, the registered nurse having responsibility for the resident, and other appropriate staff in disciplines determined by the resident's needs, and with the participation of the resident, and the resident's family or legal representative, to the extent practicable;

(iii) periodically reviewed and revised by a team of qualified persons at least after each assessment and as the resident's condition changes.

(c) The services provided or arranged by the facility shall:

(i) meet professional standards of quality;

(ii) be provided by qualified persons in accordance with the resident's written care plan.

(5) Staff qualifications.

(a) The facility shall employ on a full-time, part-time, or consultant basis those professionals necessary to carry out the provisions of:

(b) a final summary of the resident's status to include items in R432-150-17(2)(a), which is prepared at the time of the discharge and is available for release to authorized persons and agencies, with the consent of the resident or legal representative;

(c) a post-discharge care plan, developed with the participation of the resident and his family, to assist the resident to adjust to his new living environment;

(d) in cases where a discharge is based on the inability of the facility to meet the resident's needs, a detailed explanation of why the resident's needs could not be met.

R432-150-18. Quality of Care.

The facility shall provide to each resident, the necessary care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being, in accordance with the comprehensive assessment and care plan.

(1) Activities of Daily Living.

(a) Activities of daily living include the resident's ability to:

(i) bathe, dress, and groom;

(ii) transfer and ambulate;

(iii) use the toilet;

(iv) eat;

(v) use speech, language, or other functional communication systems.

(b) Based on the resident's comprehensive assessment, the facility shall ensure that:

(i) resident's abilities in activities of daily living do not diminish unless circumstances of the individual's clinical condition demonstrates that diminution was unavoidable;

(ii) a resident is given the treatment and services to maintain or improve his abilities specified in R432-150-18(1);

(iii) a resident who is unable to carry out activities of daily living receives the necessary services to maintain good nutrition, grooming, and personal and oral hygiene.

(2) Vision and Hearing.

To ensure that residents receive proper treatment and assistive devices to maintain vision and hearing abilities, the facility shall, if necessary, assist the resident:

(a) in making appointments;

(b) by arranging for transportation to and from the office of a medical practitioner specializing in the treatment of vision or hearing impairment or the office of a professional specializing in the provision of vision or hearing assistive devices.

(3) Pressure Sores.

Based on the comprehensive assessment of a resident, the facility shall ensure that:

(a) a resident who enters the facility without pressure sores does not develop pressure sores unless the individual's clinical condition demonstrates that they were unavoidable;

(b) resident having pressure sores receives necessary treatment and services to promote healing, prevent infection, and prevent new sores from developing.

(4) Incontinence.

Based on the resident's comprehensive assessment, the facility shall ensure that:

(a) a resident who is incontinent of either bowel or bladder, or both, receives the treatment and services to restore as much normal functioning as possible;

(b) a resident who enters the facility without an indwelling catheter is not catheterized unless the resident's clinical condition demonstrates that catheterization is necessary;

(c) a resident who is incontinent of bladder receives appropriate treatment and services to prevent urinary tract infections.

(d) A licensed nurse shall complete a written assessment to determine the resident's ability to participate in a bowel and bladder management program.

(5) Range of Motion.

Based on the comprehensive assessment of a resident, the facility must ensure that:

(a) a resident who enters the facility without a limited range of motion does not experience reduction in range of motion unless the resident's clinical condition demonstrates that a reduction in range of motion is unavoidable;

(b) a resident with a limited range of motion receives

treatment and services to increase range of motion or to prevent further decrease in range of motion.

(6) Psychosocial Functioning.

Based on the comprehensive assessment of a resident, the facility shall ensure that the psychosocial function of the resident remains at or above the level at the time of admission, unless the individual's clinical condition demonstrates that a reduction in psychosocial function was unavoidable. The facility shall ensure that:

(a) A resident who displays psychosocial adjustment difficulty receives treatment and services to achieve as much remotivation and reorientation as possible; and

(b) A resident whose assessment does not reveal a psychosocial adjustment difficulty does not display a pattern of decreased social interaction, increased withdrawn anger, or depressive behaviors, unless the resident's clinical condition demonstrates that such a pattern is unavoidable.

(7) Naso-gastric Tubes.

Based on the comprehensive assessment of a resident, the facility shall ensure that:

(a) a resident who has been able to eat enough alone or with assistance is not fed by naso-gastric tube unless the resident's clinical condition demonstrates that use of a naso-gastric tube is unavoidable; and

(b) a resident who is fed by a naso-gastric or gastrostomy tube receives the treatment and services to prevent aspiration pneumonia, diarrhea, vomiting, dehydration, metabolic abnormalities, and nasal-pharyngeal ulcers and to restore, if possible, normal feeding function.

(8) Accidents.

The facility shall ensure that:

(a) the resident environment remains as free of accident hazards as is possible; and

(b) each resident receives adequate supervision and assistive devices to prevent accidents.

(9) Nutrition.

Based on a resident's comprehensive assessment, the facility shall ensure that a resident:

(a) maintains acceptable nutritional status parameters, such as body weight and protein levels, unless the resident's clinical condition demonstrates that this is not possible;

(b) receives a therapeutic diet when there is a nutritional problem.

(10) Hydration.

The facility shall provide each resident with sufficient fluid intake to maintain proper hydration and health.

(11) Special Needs.

The facility shall ensure that residents receive proper treatment and care for the following special services:

(a) injections;

(b) parenteral and enteral fluids;

(c) colostomy, ureterostomy, or ileostomy care;

(d) tracheostomy care;

(e) tracheal suctioning;

(f) respiratory care;

(g) foot care;

(h) prostheses.

(12) Drug Therapy.

Each resident's drug regimen shall be free from unnecessary drugs and the facility shall ensure that:

(a) residents who have not used antipsychotic drugs are not given these drugs unless antipsychotic drug therapy is necessary to treat a specific condition as diagnosed and documented in the clinical record;

(b) residents who use antipsychotic drugs receive gradual dose reductions and behavioral interventions, unless clinically contraindicated in an effort to discontinue these drugs.

(13) Medication Errors.

The quality assurance committee shall ensure that:

(a) The facility does not have medication error rates of five percent or greater, and

(b) Residents are free of any significant medication errors.

R432-150-19. Nursing Services.

The facility shall have sufficient nursing staff to provide nursing and related services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by resident assessments and individual care plans.

(1) Sufficient Staff.

(a) The facility shall provide licensed nurses and other nursing personnel on a 24-hour basis to provide nursing care to all residents in accordance with resident care plans.

(b) The facility shall designate a licensed nurse to serve as a charge nurse on each tour of duty.

(2) Registered Nurse.

(a) The facility shall provide the services of a registered nurse for at least eight consecutive hours a day, seven days a week.

(b) The facility shall designate a registered nurse to serve as the Director of Nursing on a full-time basis.

(c) The Director of Nursing may serve as a charge nurse only when the facility has a daily occupancy of 60 or fewer residents.

(3) Time Records for Nurse Aides.

The facility shall provide the nursing care required by each resident. Aides performing housekeeping, dietary, or other functions shall maintain time records reflecting the time spent in nursing care and other tasks.

R432-150-20. Dietary Services.

The facility shall provide each resident with a safe, palatable, well-balanced diet that meets the daily nutritional and special dietary needs of each resident.

(1) Staffing.

(a) The facility shall employ a qualified dietitian either full-time, part-time, or on a consultant basis.

(b) A qualified dietitian is one who is certified in accordance with Title 58, Chapter 49, Dietitian Certification Act.

(c) If a qualified dietitian is not employed full-time, the facility shall designate a full-time qualified person to serve as the dietetic supervisor.

(d) A qualified dietetic supervisor shall have completed one of the following requirements:

(i) have training or experience in food service

supervision and management equal to 90 or more hours of classroom instruction in food service supervision;

(ii) be a graduate of a state-approved program that provides 90 or more hours of classroom instruction in food service supervision;

(iii) be a graduate of a Dietetic-Technician or Dietetic-Assistant training program approved by the American Dietetic Association (ADA);

(iv) have a bachelor's degree with major study in food and nutrition, dietetics, or food management and one year experience in the dietetic service of a health care institution;

(v) be a dietitian or eligible for registration as a dietitian with the ADA.

(e) If the dietetic supervisor is not a certified dietitian, there shall be at least monthly documented consultation with a certified dietitian.

(F) The consulting dietitian shall schedule visits when the dietetic supervisor is available.

(2) Sufficient Staff.

The facility shall employ support personnel to carry out the functions of the dietary service.

(3) Menus and Nutritional Adequacy.

Menus shall:

(a) meet the nutritional needs of residents, to the extent medically possible;

(b) be prepared in advance;

(c) be followed;

(d) be different each day; and

(e) be posted for each day of the week.

(4) Food.

Each resident shall be offered and the facility shall provide:

(a) food prepared by methods that conserve nutritive value, flavor and appearances;

(b) food that is palatable, attractive, and at the proper temperature;

(c) food prepared in a form designed to meet individual needs; and

(d) substitutes of similar nutritive value to residents who refuse food served.

(5) Diets.

All diets shall be prescribed by the attending physician.

(6) Frequency of Meals.

(a) Each resident shall be offered and the facility shall provide at least three meals daily, at reasonable times comparable to normal mealtimes in the resident community.

(b) There shall be no more than 14 hours between a substantial evening meal and breakfast the following day, except as provided in R432-150-20(6)(d).

(c) The facility shall offer bedtime snacks daily.

(d) When a nourishing snack is provided at bedtime, up to 16 hours may elapse between a substantial evening meal and breakfast the following day if the resident group agrees to this meal span.

(7) Assistive Devices.

The facility shall provide special eating equipment and utensils for residents who need them.

(8) Sanitary Conditions.

The facility shall:

(a) procure food from sources approved or considered satisfactory by federal, state, or local authorities;

(b) store, prepare, distribute, and serve food under sanitary conditions in accordance with state and local health departments' food service and sanitation rules;

(9) Food Storage.

A one-week supply of nonperishable staple foods and a three-day supply of perishable foods for three meals per day, per resident, shall be maintained in the facility. A supply of food items to complete the established menu shall be maintained.

R432-150-21. Physician Services.

(1) A physician shall personally approve in writing a recommendation that an individual be admitted to a facility.

(a) Each resident shall remain under the care of a physician, licensed in Utah, to deliver the scope of services required by the resident.

(b) Nurse practitioners or physician assistants, working under the direction of a licensed physician may initiate admission to a facility pending personal review by the physician.

(2) Medical Supervision.

The facility shall ensure that:

(a) the medical care of each resident is supervised by a physician.

(b) when a resident's attending physician is unavailable, another qualified physician shall supervise the medical care of the resident.

(c) The following professionals may render medical services to residents in the facility:

(i) nurse practitioners licensed to practice in Utah, Section 58-31;

(ii) physician assistants working under the responsibility and supervision of a physician licensed in Utah and performing only those selected diagnostic and therapeutic tasks identified in the physician assistant's utilization plan as submitted to the Division of Occupational and Professional Licensing, Department of Commerce, Title 58, Chapter 12.

(3) Physician Visits.

The physician shall:

(a) review the resident's total program of care, including medications and treatments, at each visit;

(b) write, sign, and date progress notes at each visit;

(c) indicate, in writing, direction and supervision of health care provided to residents by nurse practitioners or physician assistants;

(d) sign all orders.

(4) Frequency of Physician Visits.

Physician visits shall conform to the following;

(a) The physician shall notify the facility of the name of the nurse practitioner or physician assistant who shall be providing care to the resident at the facility.

(b) The resident shall be seen by the physician within five days of admission to a facility when admission is initiated by a nurse practitioner or physician assistant working under the direction of the physician.

(c) The resident shall be seen by a physician at least once every 30 days for the first 90 days after admission and at

least every 60 days thereafter.

(d) A physician visit is considered timely if it occurs not later than ten days after the date the visit was required.

(e) Except as required by R432-150-21(4)(f), all required physician visits shall be made by the physician personally.

(f) At the option of the physician, required visits after the initial visit may alternate between personal visits by the physician and visits by a physician assistant or nurse practitioner.

(5) Availability of Physicians for Emergency Care

The facility shall provide or arrange for the provision of physician services 24 hours a day, in case of an emergency.

(6) Physician Delegation of Tasks

A physician may delegate tasks to a physician assistant or nurse practitioner who is acting within the scope of practice as defined by R156-12-77 and R156-31-3(k).

R432-150-22. Specialized Rehabilitative Services.

(1) A facility shall provide for, or obtain from an outside source, rehabilitative services which may include:

(a) physical therapy,

(b) speech-language pathology,

(c) occupational therapy, and

(d) health rehabilitative services for mental illness and mental retardation, as identified in a resident's comprehensive care plan.

(2) Specialized rehabilitative services shall be provided under the written order of a physician or by qualified personnel.

R432-150-23. Dental Services.

The facility shall assist residents in obtaining routine and 24-hour emergency dental care.

(1) The facility shall provide or obtain from an outside resource, routine and emergency dental services to meet the needs of each resident.

(2) The facility shall refer residents with lost or damaged dentures to a dentist.

R432-150-24. Pharmacy Services.

The facility shall provide routine and emergency drugs and biologicals to its residents, or obtain them under written agreement.

(1) Procedures.

A facility shall provide pharmaceutical services, including procedures that assure the accurate acquiring, receiving, dispensing, and administering of all drugs and biologicals, to meet the needs of each resident.

(2) Service Consultation.

The facility shall employ or obtain the services of a licensed pharmacist who:

(a) provides consultation on all aspects of pharmacy services in the facility;

(b) establishes a system of records of receipt and disposition of all controlled substances which documents an accurate reconciliation; and

(c) determines that drug records are in order and that an account of all controlled substances is maintained and reconciled monthly.

(3) Drug Regimen Review.

The drug regimen of each resident shall be reviewed at least once a month by a licensed pharmacist.

(a) The pharmacist shall report any irregularities to the attending physician and the Director of Nursing.

(b) The physician and the Director of Nursing shall indicate acceptance or rejection of the report and document any action taken.

(4) Labeling of Drugs and Biologicals.

Facility personnel shall check to insure that labels on drugs and biologicals are in accordance with currently accepted professional principles, and include the appropriate accessory and cautionary instructions, and the expiration date, when required by state law or rule.

(5) Storage of Drugs and Biologicals.

The facility shall store all drugs and biologicals in locked compartments under proper temperature controls according to R432-150-24(5)(e), and permit only authorized personnel to have access to the keys.

(a) The facility shall provide separately locked, permanently affixed compartments for storage of controlled substances listed in Schedule II of the Comprehensive Drug Abuse Prevention and Control Act of 1976 and other drugs subject to abuse, except when the facility uses single unit dose package drug distribution systems in which the quantity stored is minimal and a missing dose can be readily detected.

(b) Provision shall be made for the separate secure storage of all non-medication items such as poisonous and caustic materials.

(c) Containers shall be clearly labeled.

(d) Medication intended for internal use shall be stored separately from medication intended for external use.

(e) The facility shall maintain temperatures for the storage of medications.

(i) Medications stored at room temperature shall be maintained within 59 and 80 degrees F.

(ii) Refrigerated medications shall be maintained within 36 and 46 degrees F.

(6) Emergency Drug Supply. An emergency drug supply shall be maintained in the facility.

(a) Specific drugs and dosages to be included in the emergency drug supply shall be listed.

(b) Containers shall be sealed to prevent unauthorized use.

(c) Contents of the emergency drug supply shall be listed on the outside of the container and the use of contents shall be documented by the nursing staff.

(d) The emergency drug supply shall be stored and located for access by the nursing staff.

(e) The pharmacist shall inventory the emergency drug supply monthly.

(f) Used or outdated items shall be replaced within 72 hours by the pharmacist.

(7) Pharmacy Supply.

The pharmacy shall dispense and the facility shall ensure that necessary drugs and biologicals are provided on a timely basis.

(8) Automatic-Stop Order.

The facility shall limit the duration of a drug order in the absence of the prescriber's specific instructions.

(9) Drug References.

Drug references shall be available on all drugs used in the facility. References shall include generic and brand names, available strength and dosage forms, indications and side effects, and other pharmacological data.

(10) Discharged-Resident Drugs.

Drugs may be sent with the resident upon discharge if so ordered by the discharging physician.

(a) Such drugs shall be released in compliance R156-17-24.

(b) A record of the drugs sent with the resident shall be noted in the resident's health record.

R432-150-25. Infection Control.

(1) Infection Control Committee. There shall be an Infection Control Committee composed of the administrator, medical director/advisory physician, director of nursing services, staff or consulting pharmacist, and, when appropriate, the building engineer or director of maintenance. Representatives from each service offered by the facility shall be available as consultants.

(2) The Committee shall:

(a) Adopt a definition of nosocomial infections;

(b) Develop and implement a system to investigate, report, evaluate, and maintain records of infections among residents and personnel;

(c) Establish uniform cleaning, disinfecting, and sterilization practices and techniques to include:

(i) Care of utensils, instruments, solutions, dressings, articles and surfaces;

(ii) Resident contact techniques including handwashing before and after resident care;

(iii) Criteria and procedures for isolating residents;

(iv) Care of urinary catheters, intravenous catheters, respiratory therapy equipment, and other devices that provide an entry portal for pathogenic microorganisms;

(v) Regimen to prevent and treat decubitus ulcers;

(vi) Selection, storage, use, and disposition of disposable resident care items;

(vii) Selection, storage, use, and disposition of hypodermic needles;

(3) Develop criteria to determine if an employee has a communicable disease or conditions that may interfere with adequate job performance;

(4) Review written reports of state and local sanitary inspectors;

(5) Promptly notify the administrator and local and state health authorities when there is an unusual or high incidence of infectious disease.

(6) Preventing Spread of Infection.

(a) When a resident has a condition that requires use of isolation techniques to prevent the spread of infection to other staff and residents within the facility, the facility shall adopt the isolation technique to be used to prevent the spread of infection or disease within the facility.

(b) The facility shall prohibit employees with a communicable disease or open skin lesions, or weeping dermatitis from contact with residents, their personal or resident care items, or their food, if contact may result in the transmission of the infection or disease.

(c) Facility staff shall wash their hands before and after each prolonged and intense resident contact, after removing personal protective equipment, after using equipment, after using the restroom, before any food handling including assisting or feeding a resident and after contact with any item contaminated by a residents body substance.

(d) The facility shall ensure adherence to accepted professional practice for universal precautions. The CDC's Guidelines for universal precautions is one recommended source of practice.

(e) The facility shall be in compliance with the Occupational Safety and Health Administrations Bloodborne Pathogen Standard.

(7) Linens.

Personnel shall handle, store, process, and transport linens so as to prevent the spread of infection.

R432-150-26. Administration.

A facility shall be administered in a manner that uses its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident.

(1) State and Local Laws.

(a) A skilled nursing facility shall be licensed in accordance with R432-2.

(b) The facility shall operate and provide services in compliance with all applicable state and local laws, rules, and codes, and with accepted professional standards and principles that apply to professionals providing services in such a facility.

(c) The licensee shall be responsible for compliance with Utah law and licensure requirements and for the organization, management, operation, and control of the facility and for assuring the health and safety of the facility residents.

(2) Governing Body.

(a) The facility shall have a governing body, or designated persons functioning as a governing body, that is legally authorized to establish and implement policies regarding the management and operation of the facility.

(b) The governing body shall institute bylaws, policies and procedures relative to the general operation of all facility services including the health care of the residents and the protection of their rights.

(c) The governing body shall provide a written document appointing the administrator.

(3) Administrator.

The designated administrator shall:

(a) be licensed by the state, pursuant to Title 58, Chapter 15;

(b) be responsible for management of the facility;

(c) supervise no more than one facility;

(d) have sufficient freedom from other responsibilities to permit attention to the management and administration of the facility; and

(e) designate, in writing, the name and title of the person

who shall act as administrator in any temporary absence of the administrator. This person shall have sufficient power, authority, and freedom to act in the best interests of resident safety and well-being. It is not the intent of this subsection to permit an unlicensed de facto administrator to supplant or replace the designated, licensed administrator.

(f) Responsibilities.

(i) The administrator's responsibilities shall be included in a written job description on file in the facility.

(ii) The job description shall be available for Department review and include at least the following:

(iii) Complete, submit, and file all records and reports required by the Department;

(iv) Act as a liaison between the licensee, medical and nursing staffs, and other supervisory staff of the facility.

(v) Respond to recommendations made by the quality assurance committee;

(vi) Assure that employees are oriented to their job functions and receive appropriate and regularly scheduled in-service training;

(vii) Implement policies and procedures for the operation of the facility;

(viii) Hire and maintain the required number of licensed and nonlicensed staff to meet the needs of residents;

(ix) Maintain facility staffing records for the preceding 12 months;

(x) Secure and update contracts for required professional and other services not provided directly by the facility;

(xi) Verify all required licenses and permits of staff and consultants at the time of hire or the effective date of contract;

(xii) Review all incident and accident reports and document the action taken or reason for no action.

(A) Incident and accident reports shall be numbered and logged in a manner to account for all reports.

(B) Incident and accident reports shall have space for written comments by the administrator and medical director.

(C) Original incident and accident reports shall be kept on file in the facility and shall be available for review by the Department.

(4) Staff In-service Training.

(a) There shall be planned and documented orientation and in-service training for all facility personnel covering all topics pertinent to the performance of assigned duties and responsibility.

(b) A minimum of six in-service training sessions shall be conducted in each 12-month period.

(5) Staff Qualifications.

(a) The facility shall employ on a full-time, part-time, or consultant basis those professionals necessary to carry out the provisions of this rule.

(b) All staff shall be licensed, certified or registered in accordance with applicable state laws.

(c) The facility shall maintain a copy of the staff's current registration or certification for Department review.

(d) Failure by the facility to ensure that all staff are registered, certified or licensed as required by the Utah Department of Commerce may result in sanctions to the facility license.

(6) Health Surveillance.

(a) The facility shall establish a personnel health program through written personnel health policies and procedures which shall protect the health and safety of personnel and clients commensurate with the service offered.

(b) An employee placement health evaluation to include at least a health inventory shall be completed when an employee is hired.

(c) The health inventory shall obtain at least the employee's history of the following:

(i) conditions that predispose the employee to acquiring or transmitting infectious diseases;

(ii) condition which may prevent the employee from performing certain assigned duties satisfactorily;

(d) Employee health screening and immunization components of personnel health programs shall be developed in accordance with R386-704 Communicable Disease Rules.

(e) Employee skin testing by the Mantoux Method and follow up for tuberculosis shall be done in accordance with R386-702-5, Special Measures for control of Tuberculosis.

(i) Skin testing must be conducted on each employee annually and after suspect exposure to a resident with active tuberculosis.

(ii) Skin testing shall be exempted for all employees with known positive reaction to skin tests.

(iii) All infections and communicable diseases reportable by law shall be reported by the facility to the local health department in accordance with R386-702-2.

(7) Required Training of Nurse Aides.

(a) A facility may not have an employee working in the facility as a nurse aide for more than four months, on full-time, temporary, per diem, or other basis, unless that individual has successfully completed a training and testing program.

(b) Prior to employing an individual as a nurse aide, the responsible staff member in the facility shall, by submitting the applicant's name and other identifying information to the Department of Education's statewide nurse aide registry, determine that a verified report of resident abuse, neglect, or exploitation by that person has not been recorded. If such a verified report exists, the applicant shall not be employed.

(c) When an individual has not performed paid nursing or nursing related services for a continuous period of 24 consecutive months since the most recent completion of a training and competency evaluation program, the facility shall require the individual to complete a new training and competency evaluation program.

(d) The facility shall conduct regular performance reviews and regular in-service education to ensure that individuals used as nurse aides are competent to perform services as nurse aides.

(e) In-service education shall include training for individuals providing nursing and nursing-related services for residents with cognitive impairments.

(8) Proficiency of Nurse Aides.

The facility shall ensure that nurse aides are able to demonstrate proficiency in skills and techniques necessary to care for residents' needs, as identified through resident assessments, and as described in the resident care plan.

(9) Use of Outside Resources.

(a) If the facility does not employ a qualified professional person to furnish a specific service to be provided by the facility, the facility shall have that service furnished to residents by a person or agency outside the facility.

(b) Arrangements or agreements pertaining to services furnished by outside resources shall be specified in writing.

(c) When services are arranged with an outside resource, the facility retains responsibility for:

(i) obtaining services that meet professional standards and principles that apply to professionals providing services in such a facility; and

(ii) the timeliness of the services.

(10) Medical Director.

(a) The facility shall designate a physician to serve as medical director.

(b) The medical director is responsible for:

(i) implementation of resident care policies; and

(ii) the coordination of medical care in the facility.

(11) Laboratory Services.

(a) The facility shall provide or obtain clinical laboratory services to meet the needs of its residents.

(b) A physician or a person licensed to prescribe shall order the laboratory services. The order shall be documented in the resident's medical record.

(c) The facility staff shall promptly notify the attending physician of the laboratory findings.

(d) The facility shall assist the resident in making transportation arrangements to and from the source of services, if the resident needs assistance.

(e) Services shall be performed by qualified providers acceptable to the Department.

(f) If the facility provides its own laboratory service, these services shall comply with R432-100-26.

(12) Radiology and Other Diagnostic Services.

(a) The facility shall provide or obtain radiology and other diagnostic services to meet the needs of its residents.

(i) If the facility provides its own radiology or diagnostic services, the services must meet the requirements set forth in R432-100-29.

(ii) If the facility does not provide radiology or diagnostic services, it shall have an agreement to obtain these services.

(b) The facility shall:

(i) provide or obtain radiology and other diagnostic services only when ordered by the attending physician and licensed practitioner;

(ii) promptly notify the attending physician of the radiological, or other diagnostic test findings;

(iii) assist the resident in making transportation arrangements to and from the source of service, if the resident needs assistance; and

(iv) file in the resident's clinical record signed and dated reports of radiological and other diagnostic services.

R432-150-27. Medical Records.

(1) Medical records shall be complete, accurately documented, and systematically organized to facilitate retrieval and compilation of information. There shall be written policies and procedures to accomplish these purposes.

(2) An employee designated by the administrator shall be responsible and accountable for the processing of medical records.

(a) The medical records department shall be under the direction of a registered record administrator, RRA, or an accredited record technician, ART.

(b) If an RRA or ART is not employed at least part time, the facility shall consult with an RRA or ART according to the needs of the facility, but not less than semi-annually.

(2) Retention and Storage.

(a) The medical record and its contents shall be safeguarded from loss, defacement, tampering, and damage from fires and floods.

(b) Medical records shall be protected against access by unauthorized individuals.

(c) Medical records shall be retained for at least five years after the last date of resident care. Records of minors, including records of newborn infants, shall be retained for three years after the minor reaches legal age under Utah law, but in no case less than five years.

(3) Confidentiality and Release of Information.

(a) Medical record information shall be confidential.

(b) The Nursing Care Facility may disclose medical record information only to authorized persons in accordance with federal, state and local laws.

(c) The Nursing Care Facility shall obtain consent from the resident before releasing resident information identifying the resident, including photographs, unless release is otherwise allowed or required by law.

(4) Content of Medical Records.

(a) The nursing care facility shall maintain an individual medical record for each resident which shall include written documentation of the following:

(i) records made by staff regarding daily care of the resident;

(ii) informative progress notes by staff to record changes in the resident's condition which describe the resident's needs and response to care and treatment in accordance with the care plan;

(iii) pre-admission screening;

(iv) admission record with demographic information and resident identification data;

(v) history and physical examination up-to-date at the time of the resident's admission;

(vi) written and signed informed consent;

(vii) orders by a clinical staff member;

(viii) record of assessments, including the comprehensive resident assessment, care plan, and services provided;

(ix) nurses notes;

(x) monthly nursing summaries;

(xi) quarterly resident assessments;

(xii) record of medications and treatments administered;

(xiii) laboratory and radiology reports;

(xiv) discharge summary for the resident to include a note of condition, instructions given, and referral as appropriate.

(b) All entries into the medical record shall be authenticated including date, name or identifier initials, and title of the person making the entries.

R432-150-28. Disaster and Emergency Preparedness.

(1) The licensee and the administrator shall be responsible for the development of a plan, coordinated with the state and local emergency disaster authorities, to respond to emergencies and disasters.

(2) This plan shall be in writing and shall be distributed or made available to all facility staff and residents to assure prompt and efficient implementation.

(3) The facility shall have detailed written plans and procedures to meet all potential emergencies and disasters, such as fire, severe weather, and missing residents.

(4) The name of the person in charge and names and telephone numbers of emergency medical personnel, agencies, appropriate communication and emergency transport systems shall be posted.

(5) Emergency Procedures.

The facility's response procedures shall address the following:

(a) evacuation of occupants to a safe place within the facility or to another location;

(b) delivery of essential care and services to facility occupants by alternate means;

(c) delivery of essential care and services when additional persons are housed in the facility during an emergency;

(d) delivery of essential care and services to facility occupants when staff are reduced by an emergency;

(e) maintenance of safe ambient air temperatures within the facility.

(i) Emergency heating must have the approval of the local fire department.

(ii) Ambient air temperatures of 58 degrees F or below may constitute an imminent danger to the health and safety of the residents in the facility. The person in charge shall take immediate action in the best interests of the resident.

(iii) The facility shall have, and be capable of implementing, contingency plans regarding excessively high ambient air temperatures within the facility, that may exacerbate the medical condition of residents.

(f) The facility shall train all employees in emergency procedures when they begin to work in the facility, periodically review the procedures with existing staff, and carry out unannounced staff drills using those procedures. Drills, practices and training shall be documented.

R432-150-29. Quality Assessment and Assurance.

(1) The facility shall maintain a multidisciplinary quality assessment and assurance committee which includes:

(a) The director of Nursing Services;

(b) The medical director;

(c) A representative from facility administration; and

(d) At least three other members of the facility's staff.

(2) The quality assessment and assurance committee shall:

(a) review facility operations, protocols, policies and procedures, incident reports, medication usage, infection control, patient care and safety;

(b) meet at least quarterly to identify issues with respect to which quality assessment and assurance activities are necessary;

(c) develop and implement plans of action to correct identified quality deficiencies;

(d) evaluate action plan outcomes;

(e) submit a report of Committee findings and concerns to the administrator and licensee for action.

R432-150-30. Pets in Long-Term Care Facilities.

(1) Each facility shall develop a written policy regarding pets in accordance with local ordinances.

(2) The administrator or designee shall determine which pets may be brought into the facility. Family members may bring resident's pets to visit provided they have approval from the administrator and offer reasonable assurance that the pets are clean, disease free, and vaccinated.

(3) Pets are not permitted in food preparation or storage areas. Pets shall not be permitted in any area where their presence would create a health or safety risk.

R432-150-31. Volunteers.

Volunteers may be used in the daily activities of the facility but may not be included in the facility's staffing plan in lieu of facility employees.

R432-150-32. Laundry Services.

(1) There shall be laundry service to provide clean linens in the facility.

(2) If the facility contracts for laundry service, there shall be a signed, dated agreement that details all services provided.

(3) The laundry service shall meet all requirements of this subsection.

(4) If a facility contracts for laundry service, the contract shall state the procedure used in transporting, handling, and processing contaminated linen.

(5) The administrator shall employ a qualified person to direct the facility's laundry service. The person shall have experience or training in or knowledge of the following:

(a) Proper use of chemicals in the laundry;

(b) Proper laundry procedures;

(c) Proper use of laundry equipment;

(d) Facility policy and procedures;

(e) Federal, state and local rules and regulations.

(6) The facility shall inform the resident and family of facility laundry policy for personal clothing.

(7) Policies and Procedures.

(a) Each facility shall develop and implement laundry policies and procedures.

(b) They shall be reviewed and updated annually.

(c) The policies and procedures shall address at least the following:

(i) Written procedures for handling, storing, transporting and processing of linens shall be available to the staff.

(ii) Linens, towels and resident clothing shall be washed

with hot water unless the manufacturer recommends different temperatures.

(iii) There shall be written procedures for proper handling of wet, soiled, and contaminated linen.

(iv) All soiled linens shall be collected and transported to the laundry in closed, leak-proof laundry bags or covered impermeable containers. Separate linen carts labeled "SOILED LINEN" or "CLEAN LINEN" shall be constructed of washable material and shall be laundered or suitably cleaned to maintain sanitation.

(v) Laundry personnel shall be trained in proper laundry procedures and infection control. Training shall be documented and available for review by the Department.

(vi) Residents' personal laundry shall be marked for identification.

(vii) There shall be enough clean linen for at least three complete changes of the facility's licensed bed capacity.

(viii) The laundry area shall be separate and apart from any room where food is stored, prepared, or served.

(ix) There shall be laundry equipment (e.g., washers, dryers, linen carts, transport carts) to maintain clean laundry for each resident.

(x) Laundry equipment shall be maintained in proper working condition.

(xi) A lavatory with hot and cold running water shall be provided close to the laundry area. Soap and sanitary towels shall also be provided.

(7) Clean Linen.

(a) Clean linen shall be stored, handled, and transported to prevent contamination.

(b) Clean linen shall be stored in clean closets, rooms, or alcoves used only for that purpose.

(c) Clean linen shall be covered if stored in alcoves and when transported through the facility.

(d) Clean linen from a commercial laundry shall be delivered to a designated clean area in a manner that prevents contamination.

(e) Linens shall not be threadbare and shall be maintained in good repair.

(f) A supply of clean washcloths, linens and towels shall be provided and available to staff to meet the needs of residents.

(8) Soiled Linen.

(a) Soiled linen shall be handled, stored, and processed in a manner to prevent the spread of infections.

(b) Soiled linen shall be sorted in a separate room by methods affording protection from contamination, according to facility policy and applicable rules.

(c) Soiled linen shall be stored and transported in a closed container which prevents airborne contamination of corridors, areas occupied by residents, and precludes cross contamination of clean linens.

(d) Laundry chutes shall be maintained in a clean sanitary state.

R432-150-33. Maintenance Services.

(1) Direction.

(a) There shall be adequate maintenance service to ensure that the facility, equipment and grounds are maintained in a clean and sanitary condition and in good repair at all times for the safety and well-being of residents, staff, and visitors.

(b) The administrator shall employ a person qualified by experience and training to be in charge of facility maintenance.

(c) If the facility contracts for maintenance services, there shall be a signed, dated agreement that details all services provided. The maintenance service shall meet all requirements of this subsection.

(d) The facility shall develop and implement a written maintenance program (including preventive maintenance) to ensure the continued operation of the facility and sanitary practices throughout the facility.

(2) General Maintenance.

(a) Each facility shall develop and implement maintenance policies and procedures that shall be reviewed and updated annually.

(b) The policies and procedures shall address at least the following:

(i) All buildings, fixtures, equipment and spaces shall be maintained in operable condition.

(ii) Qualified personnel shall be employed to provide maintenance services. The administrator shall designate in writing all personnel assigned to maintenance duties.

(iii) A pest-control program shall be conducted to ensure the facility is free from vermin and rodents.

(c) Draperies, carpets, and furniture shall be maintained so they are clean and in good repair.

(d) Cracks in plaster, peeling wallpaper or paint, tears or splits in floor coverings, and missing tile shall be repaired promptly.

(3) Electrical systems including appliances, cords, equipment call lights, and switches shall be maintained to guarantee safe functioning and compliance with the National Electrical Code.

(4) Heating and cooling systems shall be inspected annually to guarantee safe operation. Documentation of these inspection reports shall be available for review by the Department.

(5) Air Filters. There shall be regular inspections and cleaning or replacement of all filters installed in heating, air conditioning, and ventilation systems to maintain the systems in normal operating condition.

(6) Emergency Lighting and Power System.

(a) Facilities which provide care for persons who require electrically operated life-support systems shall be equipped with an emergency power system which includes at least an automatic start-up emergency generator as described in R432-150.

(b) Facilities which provide care for residents who are not on electrically operated life-support systems and who cannot be relocated in an emergency shall make provision for emergency lighting and heat to meet the needs of residents.

(c) All facilities shall provide lighting for emergency exiting according to NFPA 101-12-2.9. Flashlights shall be available for emergency use by staff.

(7) Testing Emergency Power Systems.

(a) All emergency power systems shall be maintained in

operating condition and tested as follows:

(i) Emergency generators shall be tested every two weeks, and run under load for 20 minutes every month.

(ii) Transfer switches and battery operated equipment shall be tested every two weeks.

(b) A written record of inspection, performance, test period, and repair of the emergency electrical system shall be maintained on the premises for review by the Department.

(8) Oxygen.

(a) Provision shall be made for safe handling and storage of oxygen.

(b) Facility personnel shall not transfer oxygen from one cylinder to another.

(9) Maintenance Manual.

(a) A written manual on maintenance of heating, air conditioning, plumbing, and ventilation systems shall be adopted by each facility.

(b) A log shall document maintenance work performed.

(c) When maintenance is performed by an equipment-service company. The company shall certify that work has been performed in accordance with acceptable standards. This certification shall be retained by the facility for review by the Department.

(10) Lighting.

(a) All spaces within buildings which house people, machinery, equipment, approaches to buildings, and parking lots shall have fixtures for lighting.

(b) Resident rooms shall have general and night lighting. A reading light shall be provided for each resident.

(i) Flexible light arms, if used, shall be mechanically controlled to prevent the bulb from coming in contact with bed linen.

(ii) At least one night light fixture shall be controlled at the entrance to each resident room.

(iii) All controls for lighting in resident areas shall operate quietly.

(c) Lighting levels shown in the following table shall be used as minimum standards and do not preclude the use of higher levels that may be needed to insure the health and safety of the specific facility population served.

TABLE 1
NURSING CARE FACILITIES
LIGHTING STANDARDS

Physical Plant Area	Minimum Footcandles(a)
Corridors	
Day	20
Night	10
Exits	20
Stairways	20
Nursing Station	
General	30
Charting	75
Med. Prep.	75
Pt./Res. Room	
General	10
Reading/Mattress Level	30
Toilet	30
Lounge	
General	10
Reading	30
Recreation	30
Dining	30
Laundry	30

(a) Based on lighting guidelines published in "Lighting for Health Care Facilities", Illuminating Engineering Society of North America, 1985 edition.

(11) Mechanical Systems.

Heating, air conditioning, and ventilating systems shall be maintained to provide comfortable temperatures.

(12) Water Supply.

(a) Backflow prevention devices shall be maintained in operating condition and tested.

(b) Hot water temperature controls shall automatically regulate temperatures of hot water delivered to plumbing fixtures used by residents. The facility shall endeavor to maintain hot water delivered to resident care areas at temperatures between 105-115 degrees F.

(13) Fire Alarm Systems.

The fire alarm system shall be maintained and tested in accordance with facility policy.

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R432. Health, Health Systems Improvement, Health Facility Licensure.
R432-152. Mental Retardation Facility.
R432-152-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-152-2. Purpose.

It is the purpose of the rule is to meet the Legislatures intent as expressed in 26-21-13.5.

R432-152-3. Compliance.

All facilities governed by these rules shall be in full compliance by at the time of licensure. Any facility constructed, in whole or part, and licensed before July 1, 1989, shall conform with the Utah Department of Health standards of construction and equipment in effect at the time of construction or latest substantial remodel or addition.

R432-152-4. Definitions.

(1) Refer to R432-1-3.

(2) Special Definitions.

(a) "Active Treatment" means a continuous program, which includes active, consistent implementation of a program of specialized and generic training, treatment, health services and related services directed toward:

(i) the acquisition of the behaviors necessary for the client to function with as much self determination and independence as possible;

(ii) the prevention or deceleration of regression or loss of current optimal functional status. Active treatment does not include services to maintain generally independent clients

who are able to function with little supervision or in the absence of a continuous active treatment program.

(b) "Day Treatment" means training and habilitation services delivered outside the client's place of residence which are intended to aid the vocational, pre-vocational, and self-sufficiency skill development of an ICF/MR client. These services shall meet active treatment requirements and shall be coordinated and integrated with the active treatment program of the facility.

(c) "Mental Retardation" means significantly subaverage general intellectual functioning resulting in, or associated with, concurrent impairments in adaptive behavior and manifested during the developmental period.

(d) "Significantly Subaverage General Intellectual Functioning" is operationally defined as a score of two or more standard deviations below the mean on a standardized general intelligence test.

(e) "Developmental Period" means the period between conception and the 18th birthday.

(f) "Resident Living" means residential services provided by an ICF/MR facility.

(g) "Training and Habilitation Services" means services intended to enhance the intellectual, sensorimotor, and emotional development of a client.

R432-152-5. Licensure.

These rules apply to all Intermediate Care Facilities for the Mentally Retarded which have been licensed prior to July 1, 1990. See Section 26-21-13.5.

R432-152-6. Construction and Physical Environment.

See R432-5 Nursing Facility Construction.

R432-152-7. Governing Body and Management.

(1) Governing Body.

The facility shall identify an individual or group to constitute the governing body of the facility.

(2) Duties and Responsibilities. The governing body shall:

(a) exercise general policy, budget, and operating direction over the facility;

(b) set the qualifications, in addition to Title 58, Chapter 15, for the administrator of the facility; and

(c) appoint the administrator of the facility.

(3) Compliance with Federal, State, and Local Laws.

The facility shall be in compliance with all applicable provisions of federal, state and local laws, regulations and codes pertaining to health, safety, and sanitation.

(4) Administrator.

(a) Qualifications.

(i) Each facility shall appoint, in writing, an administrator professionally licensed by the Utah Department of Commerce as a nursing home administrator.

(ii) The administrator shall supervise no more than one licensed health care facility.

(iii) The administrator shall have sufficient freedom from other responsibilities and shall be on the premises of the facility a sufficient number of hours in the business day, and at other times as necessary, to permit attention to the management and administration of the facility.

(iv) The administrator shall designate, in writing, the name and title of the person who shall act as administrator in any temporary absence of the administrator. This person shall have sufficient power, authority, and freedom to act in the best interests of client safety and well-being. It is not the intent of this paragraph to permit an unlicensed de facto administrator to supplant or replace the designated, licensed administrator.

(b) Administrator responsibilities.

(i) The administrator's responsibilities shall be included in a written job description on file in the facility and available for Department review.

(ii) The job description shall include responsibility to insure the following duties are fulfilled:

(A) complete, submit, and file all records and reports required by the Department;

(B) act as a liaison with the licensee, qualified mental retardation professional, QMRP, and other supervisory staff of the facility;

(C) respond appropriately to recommendations made by the facility committees;

(D) assure that employees are oriented to their job functions and receive appropriate and regularly scheduled in-service training;

(E) implement policies and procedures for the operation of the facility;

(F) hire and maintain the required number of licensed and nonlicensed staff, as specified in these rules, to meet the needs of clients;

(G) maintain facility staffing records for at least the preceding 12 months;

(H) secure and update contracts for required professional and other services not provided directly by the facility;

(I) verify all required licenses and permits of staff and consultants at the time of hire or effective date of contract;

(J) review all incident and accident reports and take appropriate action.

(c) Staff Qualifications and Personnel.

(i) The administrator, QMRP, and department supervisors shall develop job descriptions for each position including job title, job summary, responsibilities, qualifications, required skills and licenses, and physical requirements.

(ii) Periodic employee performance evaluations shall be documented.

(iii) All personnel shall have access to facility policy and procedure manuals and other information necessary to effectively perform duties and carry out responsibilities.

(d) Health Surveillance.

(i) The facility shall establish policies and procedures for health screening that meet R432-150-26(6)(a) through (e).

(ii) All dietary and other staff who handle food shall obtain a Food Handler's Permit from the local health department.

R432-152-8. Client Rights.

(1) The facility shall ensure the rights of all clients.

(2) The facility shall:

(a) inform each client, parent, if the client is a minor, or legal guardian, of the client's rights and the rules of the facility;

(b) inform each client, parent, if the client is a minor, or legal guardian, of the client's medical condition, developmental and behavioral status, attendant risks of treatment, and of the right to refuse treatment;

(c) allow and encourage individual clients to exercise their rights as clients of the facility, and as citizens of the United States, including the right to file complaints, and the right to due process, and each client shall be afforded the opportunity to voice grievances and recommend changes in policies and procedures to facility staff and outside representatives of personal choice, free from restraint, interference, coercion, discrimination, or reprisal;

(d) allow individual clients to manage their financial affairs and teach them to do so to the extent of their capabilities;

(e) ensure that clients are not subjected to physical, verbal, sexual or psychological abuse or punishment;

(f) ensure that clients are free from unnecessary drugs and physical restraints and are provided active treatment to reduce dependency on drugs and physical restraints;

(g) provide each client with the opportunity for personal privacy and ensure privacy during treatment and care of personal needs;

(h) ensure the clients are not compelled to participate in publicity events, fund raising activities, movies or anything that would exploit the client;

(i) ensure that clients are not compelled to perform services for the facility and ensure that clients who do work for the facility are compensated for their efforts at prevailing wages commensurate with their abilities;

(j) ensure clients the opportunity to communicate, associate and meet privately with individuals of their choice, including legal counsel and clergy, and to send and receive unopened mail;

(k) ensure that clients have access to telephones with privacy for incoming and outgoing local and long distance calls except as contraindicated by factors identified within their individual program plans;

(l) ensure clients the opportunity to participate in social and community group activities and the opportunity to exercise religious beliefs and to participate in religious worship services without being coerced or forced into engaging in any religious activity;

(m) ensure that clients have the right to retain and use appropriate personal possessions and clothing, and ensure that each client is dressed in his or her own clothing each day;

(n) permit a married couple both of whom reside in the facility to reside together as a couple.

(3) Client Finances.

(a) The facility shall establish and maintain a system that:

(i) assures a full and complete accounting of clients' personal funds entrusted to the facility on behalf of clients;

(ii) precludes any commingling of client funds with facility funds or with the funds of any person other than another client.

(b) The client's financial record shall be available on request to the client, parent, if the client is a minor, or legal guardian.

(c) All monies entrusted to the facility on behalf of clients shall be kept in the facility or shall be deposited within five days of receipt of such funds in an interest-bearing account in a local bank, credit union or savings and loan association authorized to do business in Utah, the deposits of which shall be insured.

(d) When the amount of a client's money entrusted to the facility exceeds $150, all money in excess of $150 shall be deposited in an interest-bearing account as specified in R432- 152-8(2)(c) above.

(e) Upon discharge of a client, all money and valuables of that client which have been entrusted to the licensee shall be surrendered to the client in exchange for a signed receipt. Money and valuables kept within the facility shall be surrendered upon demand and those kept in an interest-bearing account shall be made available within a reasonable time.

(f) Within 30 days following the death of a client, except in a medical examiner case, all money and valuables of that client which have been entrusted to the licensee shall be surrendered to the person responsible for the client or to the executor or the administrator of the estate in exchange for a signed receipt. When a client dies without a representative or known heirs, immediate written notice thereof shall be given by the facility to the State Medical Examiner and the registrar of the local probate court and a copy of said notice shall be filed with the Department.

(4) Communication with Clients, Parents, and Guardians.

The facility shall:

(a) promote participation of parents (if the client is a minor) and legal guardians in the process of providing active treatment to a client unless their participation is unobtainable or inappropriate;

(b) answer communications from clients' families and friends promptly and appropriately;

(c) promote visits by individuals with a relationship to the client, such as family, close friends, legal guardians and advocates, at any reasonable hour, without prior notice, consistent with the right of the client's and other clients' privacy, unless the interdisciplinary team determines that the visit would not be appropriate for that client;

(d) promote visits by parents or guardians to any area of the facility that provides direct client care services to the client, consistent with right of that client's and other clients' privacy;

(e) promote frequent and informal leaves from the facility for visits, trips, or vacations;

(f) notify promptly the client's parents or guardian of any significant incidents, or changes in the client's condition including, but not limited to, serious illness, accident, death, abuse, or unauthorized absence.

(5) Staff Treatment of Clients.

(a) The facility shall develop and implement written policies and procedures that prohibit mistreatment, neglect or

abuse of the client.

(b) Staff of the facility shall not use physical, verbal, sexual or psychological abuse or punishment.

(c) Staff shall not punish a client by withholding food or hydration that contributes to a nutritionally adequate diet.

(d) The facility shall prohibit the employment of individuals with a conviction or prior employment history of child, client abuse, spouse abuse, neglect or mistreatment.

(e) The facility shall ensure that all allegations of mistreatment, neglect or abuse, as well as injuries of unknown source, are reported immediately to the administrator and to other officials in accordance with Sections 62A-3-3 and 62A-4-5, through established procedures.

(f) The facility shall have evidence that all alleged violations are thoroughly investigated and shall prevent further potential abuse while the investigation is in progress.

(g) The results of all investigations shall be reported to the administrator or designated representative and to other officials in accordance with Section 62A-3-3 and 62A-4-5, within five working days of the incident and, if the alleged violation is verified, appropriate corrective action shall be taken.

(h) An in-service shall be held annually to review the reporting requirements of abuse, neglect and exploitation. Documentation shall be maintained for Department review verifying that all staff have been in-serviced on the reporting requirements.

R432-152-9. Facility Staffing.

(1) Qualified Mental Retardation Professional.

(a) Each client's active treatment program shall be integrated, coordinated and monitored by a qualified mental retardation professional.

(b) The qualified mental retardation professional shall:

(i) have at least one year of experience working directly with persons with mental retardation or other developmental disabilities; and

(ii) be one of the following:

(A) a doctor of medicine or osteopathy;

(B) a registered nurse;

(C) an individual who holds at least a bachelor's degree in a professional category specified in R432-152-9(2)(f) below.

(2) Professional Program Services.

(a) Each client shall receive the professional program services needed to implement the active treatment program defined by each client's individual program plan.

(b) Professional program staff shall work directly with clients and with paraprofessional, nonprofessional and other professional program staff who work with clients.

(c) The facility shall have available enough qualified professional staff to carry out and monitor the various professional interventions in accordance with the stated goals and objectives of every individual program plan.

(d) Professional program staff shall participate as members of the interdisciplinary team in relevant aspects of the active treatment process.

(e) Professional program staff shall participate in on-going staff development and training in both formal and informal settings with other professional, paraprofessional and nonprofessional staff members.

(f) Professional program staff shall be licensed, certified, or registered, as applicable, to provide professional services in the State of Utah.

(i) To be designated as an occupational therapist, an individual shall be licensed in accordance with Title 58, Chapter 42.

(ii) To be designated as an occupational therapy assistant, an individual shall be licensed in accordance with Title 58, Chapter 42.

(iii) To be designated as a physical therapist, an individual shall be licensed in accordance with Title 58, Chapter 24.

(iv) To be designated as a physical therapy assistant, an individual shall be licensed in accordance with Title 58, Chapter 24.

(v) To be designated as a psychologist, an individual shall be licensed in accordance with Title 58, Chapter 60.

(vi) To be designated as a social worker, an individual shall be licensed in accordance with Title 58, Chapter 60.

(vii) To be designated as a speech-language pathologist or audiologist, an individual shall be licensed in accordance with Title 58, Chapter 41.

(viii) To be designated as a professional recreation therapist, an individual shall be licensed in accordance with Title 58, Chapter 40.

(ix) To be designated as a professional Dietitian, an individual shall be certified in accordance with Title 58, Chapter 49.

(x) Those professional program staff who do not fall under the jurisdiction of state licensure, certification, or registration requirements, specified in Title 58, shall meet the following qualifications:

(A) to be designated as a human services professional, an individual shall have at least a bachelor's degree in a human services field, including, but not limited to: sociology, special education, rehabilitation counseling, and psychology.

(xi) If the client's individual program plan is being successfully implemented by facility staff, professional program staff meeting the qualifications of R432-152-9(2)(f) is not required:

(A) except for qualified mental retardation professionals;

(B) except for the requirements of R432-152-9(2)(c) of this section concerning the facility's provision of enough qualified professional program staff;

(C) unless otherwise specified by State licensure and certification requirements.

(3) Direct Care Staffing.

(a) The facility shall not depend upon clients or volunteers to perform direct care services for the facility.

(b) There shall be responsible direct care staff on duty and awake on a 24-hour basis, when clients are present, to take prompt, appropriate action in case of injury, illness, fire or other emergency, in each defined residential living unit housing:

(i) clients for whom a physician has ordered a medical care plan;

(ii) clients who are aggressive, assaultive or security risks;

(iii) more than 16 clients;

(iv) Sixteen or fewer clients within a multi-unit building.

(c) There shall be a responsible direct care staff person on duty on a 24-hour basis, when clients are present, to respond to injuries and symptoms of illness, and to handle emergencies, in each defined residential living unit housing:

(i) clients for whom a physician has not ordered a medical care plan;

(ii) clients who are not aggressive, assaultive or security risks;

(iii) sixteen or fewer clients.

(d) The facility shall provide sufficient support staff so that direct care staff are not required to perform support services to the extent that these duties interfere with the exercise of their primary direct client care duties.

(e) All staff shall be registered as a health care assistant with the Utah Department of Commerce if they provide direct assistance with activities of daily living. Documentation that the registration is current shall be maintained for Department review.

(4) Residential Living Unit Staff.

(a) The facility shall provide sufficient direct care staff to manage and supervise clients in accordance with their individual program plans.

(b) Direct care staff are defined as the present on-duty staff calculated over all shifts in a 24-hour period for each defined residential living unit.

(c) Direct care staff shall be provided by the facility in the following minimum ratios of direct care staff to clients:

(i) for each defined residential living unit serving children under the age of 12, severely and profoundly retarded clients, clients with severe physical disabilities, or clients who are aggressive, assaultive, or security risks, or who manifest severely hyperactive or psychotic-like behavior, the staff to client ratio is 1 to 3.2 (2.5 hours per client per 24 hour period);

(ii) for each defined residential living unit serving moderately retarded clients, the staff to client ratio is 1 to 4 (2.0 hours per client per 24 hour period);

(iii) for each defined residential living unit serving clients who function within the range of mild retardation, the staff to client ratio is 1 to 6.4 (1.25 hours per client per 24 hour period).

(d) when there are no clients present in the living unit, a responsible staff member shall be available by telephone.

(5) Staff Training Program.

(a) The facility shall provide each employee with initial and continuing training that enables the employee to perform his or her duties effectively, efficiently, and competently.

(b) For employees who work with clients, training shall focus on skills and competencies directed toward clients' developmental, behavioral, and health needs.

(c) Staff shall be able to demonstrate the skills and techniques necessary to administer interventions to manage the inappropriate behavior of clients.

(d) Staff shall be able to demonstrate the skills and techniques necessary to implement the individual program plans for each client for whom they are responsible.

(5) All staff shall be registered, licensed or certified as required by the Utah Department of Commerce.

(a) The facility shall maintain a copy of the license, certification or registration for Department review.

(b) Failure to comply with these requirements may result in sanctions to the facility license.

R432-152-10. Volunteers.

(1) Volunteers may be utilized in the daily activities of the facility but may not be included in the facility's staffing plan in lieu of facility employees.

(2) Volunteers shall be supervised and familiar with a client's rights and the facility's policies and procedures.

(3) Volunteers who provide personal care to clients shall be adequately screened and under the direct supervision of a qualified employee.

R432-152-11. Transfer Agreement.

(1) The licensee shall maintain, where appropriate, a written transfer agreement with one or more hospitals, or nearby health facilities, to facilitate the transfer of clients and essential client information.

(2) The transfer agreement shall include provisions for:

(a) criteria for transfer;

(b) appropriate methods of transfer;

(c) transfer of information needed for proper care and treatment of the individual transferred;

(d) security and accountability of personal property of the individual transferred;

(e) proper notification of hospital and responsible person before transfer;

(f) the facility responsible for client care in the process of transfer;

(g) client confidentiality.

R432-152-12. Services Provided Under Agreements with Outside Sources.

(1) Contracts.

(a) If a service required under this subpart is not provided directly, the facility shall have a written agreement with an outside program, resource, or service to furnish the necessary service, including emergency and other health care.

(b) The agreement shall:

(i) contain the responsibilities, functions, objectives, and other terms agreed to by both parties;

(ii) provide that the facility is responsible for assuring that the outside services meet the standards for quality of services contained in this subpart.

(2) The facility shall assure that outside services meet the needs of each client.

(3) If living quarters are not provided in a facility owned by the ICF/MR, the ICF/MR remains directly responsible for the standards relating to physical environment that are specified in R432-5.

R432-152-13. Client Treatment Services.

(1) Individual Program Plan.

(a) Each client shall have an individual program plan developed by an interdisciplinary team that represents the professions, disciplines or service areas that are relevant to:

(i) identifying the client's needs, as described by the comprehensive functional assessments required in R432-152-13(1)(d);

(ii) designing programs that meet the client's needs.

(b) Appropriate facility staff shall participate in interdisciplinary team meetings.

(i) Participation by other agencies serving the client is encouraged.

(ii) Participation by the client, client's parent, if the client is a minor, or the client's legal guardian is required unless that participation is unobtainable or inappropriate.

(c) Within 30 days after admission, the interdisciplinary team shall perform accurate assessments or reassessments as needed to supplement the preliminary evaluation conducted prior to admission.

(d) The comprehensive functional assessment shall take into consideration the client's age and the implications for active treatment and shall:

(i) identify the presenting problems and disabilities and where possible, their causes;

(ii) identify a client's specific developmental strengths;

(iii) identify a client's specific developmental and behavioral management needs;

(iv) identify a client's need for services without regard to the actual availability of the services needed;

(v) include physical development and health, nutritional status, sensorimotor development, affective development, speech and language development, auditory functioning, cognitive development, social development, adaptive behaviors and independent living skills necessary for a client to be able to function in the community, and as applicable, vocational skills.

(2) Within 30 days after admission, the interdisciplinary team shall prepare for each client an individual program plan that states the specific objectives necessary to meet the client's needs, as identified by the comprehensive assessment required by R432-152-13(2)(d), and the planned sequence for dealing with those objectives.

(a) These objectives shall:

(i) be stated separately, in terms of a single behavioral outcome;

(ii) be assigned projected completion dates;

(iii) be expressed in behavioral terms that provide measurable indices of performance;

(iv) be organized to reflect a developmental progression appropriate to the individual;

(v) be assigned priorities.

(b) Each written training program designed to implement the objectives in the individual program plan shall specify:

(i) the methods to be used;

(ii) the schedule for use of the method;

(iii) the person responsible for the program;

(iv) the type of data and frequency of data collection necessary to be able to assess progress toward the desired objectives;

(v) the inappropriate client behavior, if applicable;

(vi) provision for the appropriate expression of behavior and the replacement of inappropriate behavior, if applicable, with behavior that is adaptive or appropriate.

(c) The individual program plan shall also:

(i) describe relevant interventions to support the individual toward independence;

(ii) identify the location where program strategy information, which shall be accessible to any person responsible for implementation, can be found;

(iii) include, for those clients who lack them, training in personal skills essential for privacy and independence, including, but not limited to, toilet training, personal hygiene, dental hygiene, self-feeding, bathing, dressing, grooming, and communication of basic needs, until it has been demonstrated that the client is developmentally incapable of acquiring them;

(iv) identify mechanical supports, if needed, to achieve proper body position, balance, or alignment. The plan shall specify the reason for each support, the situations in which each is to be applied, and a schedule for the use of each support;

(v) provide that clients who have multiple disabling conditions spend a major portion of each waking day out of bed and outside the bedroom area, moving about by various methods and devices whenever possible;

(vi) include opportunities for client choice and self-management.

(3) A copy of each client's individual program plan shall be made available to all relevant staff, including staff of other agencies who work with the client, and to the client, parents, if the client is a minor, or legal guardian.

(4) Program Implementation.

(a) As soon as the interdisciplinary team has formulated a client's individual program plan, each client shall receive a continuous active treatment program consisting of needed interventions and services in sufficient number and frequency to support the achievement of the objectives identified in the individual program plan.

(b) The facility shall develop an active treatment schedule that outlines the current active treatment program and that is readily available for review by relevant staff.

(c) Except for those facets of the individual program plan that shall be implemented only by licensed personnel, each client's individual program plan shall be implemented by all staff who work with the client, including professional, paraprofessional, and nonprofessional staff.

(5) Program Documentation.

(a) Data relative to accomplishment of the criteria specified in client individual program plan objectives shall be documented in measurable terms.

(b) The facility shall document significant events that are related to the client's individual program plan and assessments and that contribute to an overall understanding of the client's ongoing level and quality of functioning.

(6) Program Monitoring and Change.

(a) The individual program plan shall be reviewed at least by the qualified mental retardation professional and revised as necessary, including, but not limited to, situations

in which the client:

(i) has successfully completed an objective or objectives identified in the individual program plan;

(ii) is regressing or losing skills already gained;

(iii) is failing to progress toward identified objectives after reasonable efforts have been made;

(iv) is being considered for training towards new objectives.

(b) At least annually, the comprehensive functional assessment of each client shall be reviewed by the interdisciplinary team for relevancy and updated as needed, and the individual program plan shall be revised, as appropriate, repeating the process set forth in R432-152-13(1)(d).

R432-152-14. Human Rights Committee.

(1) The facility shall designate and use a specially constituted committee or committees consisting of members of the facility staff, parents, legal guardians, clients as appropriate, qualified persons who have experience or training in contemporary practices to change inappropriate client behavior, and persons with no ownership or controlling interest in the facility to:

(a) review, approve, and monitor individual programs designed to manage inappropriate behavior and other programs that, in the opinion of the committee, involve risks to client protection and rights;

(b) insure that these programs are conducted only with the written informed consent of the client, parent, if the client is a minor, or legal guardian;

(c) review, monitor and make suggestions to the facility about its practices and programs as they relate to drug usage, physical restraints, time-out rooms, application of painful or noxious stimuli, control of inappropriate behavior, protection of client rights and funds, and any other area that the committee believes need to be addressed.

(2) The provisions of R432-152-14(1) may be modified only if in the judgment of the state survey agency, court decrees, state law or regulations provide for equivalent client protection and consultation.

R432-152-15. Admissions, Transfers, and Discharge.

(1) Clients who are admitted by the facility shall be in need of and receiving active treatment services.

(2) Admission decisions shall be based on a preliminary evaluation of the client that is conducted or updated by the facility or by outside sources to determine if the facility can provide for the client's needs and if the client is likely to benefit from placement in the facility.

(3) A preliminary evaluation shall contain background information as well as current valid assessments of the following:

(a) functional developmental,

(b) behavioral status,

(c) social status, and

(d) health and nutritional status.

(4) If a client is to be either transferred or discharged, the facility shall:

(a) have documentation in the client's record that the client was transferred or discharged for good cause;

(b) provide a reasonable time, except in emergencies, to prepare the client and his or her parents or guardian for the transfer or discharge;

(c) At the time of discharge, the facility shall:

(i) develop a final summary of the client's developmental, behavioral, social, health and nutritional status;

(ii) with the consent of the client, parents, if the client is a minor, or legal guardian, provide a copy to authorized persons and agencies; and

(iii) provide a post-discharge plan of care that will assist the client to adjust to the new living environment.

R432-152-16. Client Behavior and Facility Practices.

(1) Conduct Toward Clients.

(a) The facility shall develop and implement written policies and procedures for the management of conduct between staff and clients.

(b) These policies and procedures shall:

(i) promote the growth, development and independence of the client;

(ii) address the extent to which client choice will be accommodated in daily decision-making, emphasizing self-determination and self-management, to the extent possible;

(iii) specify client conduct to be allowed or not allowed;

(iv) be available to all staff, clients, parents of minor children, and legal guardians.

(c) To the extent possible, clients shall participate in the formulation of these policies and procedures.

(d) Clients shall not discipline other clients, except as part of an organized system of self-government, as set forth in facility policy.

(2) Management of Inappropriate Client Behavior.

(a) The facility shall develop and implement written policies and procedures that govern the management of inappropriate client behavior.

(b) These policies and procedures shall be consistent with the provisions of R432-152-16(1).

(c) These procedures shall:

(i) specify all facility approved interventions to manage inappropriate client behavior;

(ii) designate these interventions on a hierarchy to be implemented, ranging from most positive or least intrusive, to least positive or most intrusive;

(iii) ensure, prior to the use of more restrictive techniques, that the client's record documents that programs that incorporate the use of less intrusive or more positive techniques have been tried systematically and demonstrated to be ineffective;

(iv) address the following:

(A) the use of time-out rooms;

(B) the use of physical restraints;

(C) the use of chemical restraints to manage inappropriate behavior;

(D) the application of painful or noxious stimuli;

(E) the staff members who may authorize the use of specified interventions;

(F) a mechanism for monitoring and controlling the use

of such interventions.

(d) Interventions to manage inappropriate client behavior shall be employed with sufficient safeguards and supervision to ensure that the safety, welfare and civil and human rights of clients are adequately protected.

(e) Techniques to manage inappropriate client behavior shall never be used for disciplinary purposes, for the convenience of staff or as a substitute for an active treatment program.

(f) The use of systematic interventions to manage inappropriate client behavior shall be incorporated into the client's individual program plan, in accordance with R432-152- 16(2).

(g) Standing or as needed programs to control inappropriate behavior are not permitted.

(3) Time-Out Rooms.

(a) A client may be placed in a room from which egress is prevented only if the following conditions are met:

(i) The placement is part of an approved systematic time-out program as required by R432-152-16(2).

(ii) The client is under the direct constant visual supervision of designated staff.

(iii) The door to the room is held shut by staff or by a mechanism requiring constant physical pressure from a staff member to keep the mechanism engaged.

(b) Emergency placement of a client into a time-out room is not allowed.

(c) Placement of a client in a time-out room shall not exceed one hour.

(d) Clients placed in time-out rooms shall be protected from hazardous conditions including, but not limited to, presence of sharp corners and objects, uncovered light fixtures, unprotected electrical outlets.

(e) A log of the use of each time-out room shall be kept.

(4) Physical Restraints.

(a) The facility may employ physical restraint only:

(i) as an integral part of an individual program plan that is intended to lead to less restrictive means of managing and eliminating the behavior for which the restraint is applied;

(ii) as an emergency measure, but only if absolutely necessary to protect the client or others from injury;

(iii) as a health-related protection prescribed by a physician, but only if absolutely necessary during the conduct of a specific medical or surgical procedure, or only if absolutely necessary for client protection during the time that a medical condition exists.

(b) Authorizations to use or extend restraints as an emergency shall be:

(i) in effect no longer than 12 consecutive hours;

(ii) obtained as soon as the client is restrained or stable.

(c) The facility shall not issue orders for restraint on a standing or as needed basis.

(d) A client placed in restraint shall be checked at least every 30 minutes by staff trained in the use of restraints, released from the restraint as quickly as possible, and a record of these checks and usage shall be kept.

(e) Restraints shall be designed and used so as not to cause physical injury to the client and so as to cause the least possible discomfort.

(f) Opportunity for motion and exercise shall be provided for a period of not less than 10 minutes during each two hour period in which restraint is employed, and a record of such activity shall be kept.

(g) Barred enclosures shall not be more than three feet in height and shall not have tops.

(5) Chemical Restraint.

(a) The facility shall not use drugs in a dose that interferes with the individual client's daily living activities.

(b) Drugs used for control of inappropriate behavior shall be approved by the interdisciplinary team and be used only as an integral part of the client's individual program plan that is directed specifically towards the reduction of and eventual elimination of the behaviors for which the drugs are employed.

(c) Drugs used for control of inappropriate behavior shall not be used until it can be justified that the harmful effects of the behavior clearly outweigh the potentially harmful effects of the drugs.

(d) Drugs used for control of inappropriate behavior shall be:

(i) monitored closely, in conjunction with the physician and the drug review requirement;

(ii) gradually withdrawn at least annually in a carefully monitored program conducted in conjunction with the interdisciplinary team, unless clinical evidence justifies that this is contraindicated.

R432-152-17. Physician Services.

(1) General Requirements.

(a) The facility shall ensure the availability of physician services 24 hours a day.

(b) The physician shall develop, in coordination with licensed nursing personnel, a medical care plan of treatment for a client if the physician determines that an individual client requires 24-hour licensed nursing care.

(c) This plan shall be integrated in the individual program plan.

(d) Each client requiring a medical care plan of treatment shall be admitted by, and remain under the care of, a physician or individual licensed to prescribe medical care for the client.

(e) There shall be written orders for medical treatment (documented telephone orders are acceptable) at the time of admission.

(f) The facility shall provide or obtain preventive and general medical care as well as annual physical examinations of each client that at a minimum include the following:

(i) evaluation of vision and hearing;

(ii) immunizations, using as a guide the recommendations of the Public Health Service Advisory Committee on Immunization Practices or of the Committee on the Control of Infectious Diseases of the American Academy of Pediatrics;

(iii) routine screening laboratory examinations, as determined necessary by the physician, and special studies when needed;

(iv) tuberculosis control, appropriate to the facility's population, and in accordance with the recommendations of

the American College of Chest Physicians or the Section of Diseases of the Chest of the American Academy of Pediatrics, or both.

(g) The following professionals may render medical services to clients in the facility, as permitted by state law and regulation:

(i) nurse practitioners licensed to practice in Utah;

(ii) physician assistants that work under the responsibility and supervision of a physician licensed in Utah and perform only those selected diagnostic and therapeutic tasks identified in R156-12d;

(iii) Physicians licensed to practice in Utah.

(2) Physician Participation in the Individual Program Plan.

(a) A physician shall participate in the establishment of each newly admitted client's initial individual program plan as required by R432-152-13.

(b) If appropriate, physicians shall participate in the review and update of an individual program plan as part of the interdisciplinary team process either in person or through written report to the interdisciplinary team.

(c) A physician shall participate in the discharge planning of clients under a medical care plan of treatment.

(d) In cases of discharge against medical advice, AMA, the attending physician or practitioner shall be contacted and the response documented.

R432-152-18. Nursing Services.

(1) General Requirements.

(a) The facility shall provide clients with nursing services in accordance with their needs.

(b) Nursing services shall include:

(i) participation as appropriate in the development, review, and update of an individual program plan as part of the interdisciplinary team process;

(ii) the development, with a physician, of a medical care plan of treatment for a client when the physician has determined that an individual client requires such a plan;

(iii) for those clients certified as not needing a medical care plan, a review of their health status which shall:

(A) be by a direct physical examination;

(B) be by a licensed nurse;

(C) be on a quarterly or more frequent basis depending on client need;

(D) be recorded in the client's record;

(E) result in any necessary action, including referral to a physician to address client health problems;

(iv) other nursing care as prescribed by the physician or as identified by client needs.

(c) implementing, with other members of the interdisciplinary team, appropriate protective and preventive health measures that include:

(i) training clients and staff as needed in appropriate health and hygiene methods;

(ii) control of communicable diseases and infections, including the instruction of other personnel in methods of infection control;

(iii) training direct care staff in detecting signs and symptoms of illness or dysfunction, first aid for accidents or illness, and basic skills required to meet the health needs of the clients.

(2) Nursing Staff.

(a) Nurses providing services in the facility shall have a current license to practice in the state.

(b) The facility shall employ or arrange for licensed nursing services sufficient to care for clients' health needs, including those clients with medical care plans.

(c) The facility shall utilize registered nurses when appropriate and as required by Title 58, Chapter 31.

(d) If the facility utilizes only licensed practical or vocational nurses to provide health services, it shall have a formal arrangement with a registered nurse to be available for verbal or on site consultation to the licensed practical or vocational nurse.

(e) Non-licensed nursing personnel who work with clients under a medical care plan shall do so under the supervision of licensed persons.

(3) Nursing Services Supervisor.

(a) The administrator shall employ and designate, in writing, a nursing services supervisor.

(b) The nursing services supervisor may be either a registered nurse or a licensed practical nurse.

(c) The nursing services supervisor shall designate, in writing, a licensed nurse to be in charge during any temporary absence of the nursing services supervisor.

(4) Responsibilities of Nursing Services Supervisor.

(a) The nursing services supervisor shall be responsible to ensure that the following duties are carried out:

(i) establish a system to assure nursing staff implement physician orders and deliver health care services as needed;

(ii) plan and direct the delivery of nursing care, treatments, procedures, and other services to assure that each client's needs are met;

(iii) review each client's health care needs and orders for care and treatment;

(iv) review client individual program plans to assure necessary medical aspects are incorporated;

(v) review the medication system for completeness of information, accuracy in the transcription of physician's orders, and adherence to stop-order policies;

(vi) instruct the nursing staff on the legal requirements of charting and ensure that a nurse's notes describe the care rendered and include the client's response;

(vii) teach and coordinate rehabilitative nursing to promote and maintain optimal physical and mental functioning of the client;

(viii) inform the administrator, attending physician, and family of significant changes in the client's health status;

(b) When appropriate, plan with the physician, family, and health-related agencies for the care of the client upon discharge;

(c) Develop, with the administrator, a nursing services procedure manual including all procedures practiced in the facility;

(d) coordinate client services through appropriate quality assurance and interdisciplinary team meetings;

(e) Respond to the pharmacist's quarterly medication report;

(f) develop written job descriptions for all levels of nursing personnel and orient all new nursing personnel to the facility, and their duties and responsibilities;

(g) complete written performance evaluations for each member of the nursing staff at least annually. Documentation of the evaluation shall be available for departmental review;

(h) plan or conduct documented training programs for nursing staff and clients.

R432-152-19. Dental Services.

(1) General Requirements.

(a) The facility shall provide or make arrangements for comprehensive diagnostic and treatment services for each client from qualified personnel, including a licensed dentist and dental hygienist, either through organized dental services in-house or through arrangement.

(b) If appropriate, a dental professional shall participate in the development, review and update of an individual program plan as part of the interdisciplinary process either in person or through written report to the interdisciplinary team.

(c) The facility shall provide education and training in the maintenance of oral health.

(2) Comprehensive Dental Diagnostic Services.

Comprehensive dental diagnostic services include:

(a) a complete extra-oral and intra-oral examination, using all diagnostic aids necessary to properly evaluate the client's oral condition, not later than one month after admission to the facility, unless the examination was completed within twelve months before admission;

(b) periodic examination and diagnosis performed annually, including radiographs when indicated and detection of manifestations of systemic disease;

(c) a review of the results of examination and entry of the results in the client's dental record.

(3) Comprehensive Dental Treatment.

The facility shall ensure comprehensive dental treatment services that include:

(a) the availability for emergency dental treatment on a 24-hour-a-day basis by a licensed dentist;

(b) dental care needed for relief of pain and infection, restoration of teeth, and maintenance of dental health.

(4) Documentation of Dental Services.

(a) If the facility maintains an in-house dental service, the facility shall keep a permanent dental record for each client, with a dental summary maintained in the client's living unit.

(b) If the facility does not maintain an in-house dental service, the facility shall obtain a dental summary of the results of dental visits and maintain the summary in the client's record.

R432-152-20. Pharmacy Services.

(1) Direction.

(a) The facility shall provide or make arrangements for the provision of routine and emergency drugs and biologicals to its clients.

(b) Drugs and biologicals may be obtained from community or contract pharmacists or the facility may maintain a licensed pharmacy.

(c) Pharmacy services shall be under the direction and responsibility of a qualified pharmacist currently licensed in Utah.

(d) The pharmacist may be employed full time by the facility or may be retained by contract.

(e) The pharmacist shall develop pharmacy service policies and procedures in conjunction with the administrator.

(f) These policies and procedures shall be in accordance with requirements set forth in applicable State laws and professional practice acts and shall address:

(i) drug orders;

(ii) labeling;

(iii) storage;

(iv) emergency drug supply;

(v) administration of medications;

(vi) pharmacy supplies;

(vii) automatic-stop orders.

(2) Drug Regimen Review.

(a) A pharmacist, with input from the interdisciplinary team, shall review the drug regimen of each client at least quarterly.

(b) The pharmacist shall report any irregularities in client drug regimen to the prescribing physician and interdisciplinary team.

(c) The pharmacist shall prepare a record of each client's drug regimen review and the facility shall maintain that record.

(d) An individual medication administration record shall be maintained for each client.

(e) As appropriate, the pharmacist shall participate in the development, implementation, and review of each client's individual program plan either in person or through written report to the interdisciplinary team.

(3) Drug Administration.

(a) The facility shall have an organized system for drug administration that identifies each drug up to the point of administration.

(b) The system shall assure that all medications and treatments:

(i) are administered in compliance with the physician's orders;

(ii) are administered without error;

(iii) shall be administered by licensed medical or licensed nursing personnel;

(c) Self Administration of Medication.

(i) Clients shall be taught how to administer their own medications, if the interdisciplinary team determines that self-administration of medications is an appropriate objective.

(ii) The client's physician shall be informed of the interdisciplinary team's recommendation that self-administration of medications is an objective for the client;

(iii) No client shall self-administers medications until he or she demonstrates the competency to do so;

(d) Drugs used by clients while not under the direct care of the facility are packaged and labeled in accordance with State law;

(e) Drug administration errors and adverse drug reactions are recorded and reported immediately to a physician.

(4) Drug Record Keeping.

(a) All telephone orders shall be recorded immediately and shall include the date and time of the order and the receiver's signature and title.

(b) The order shall be countersigned and dated within 15 days by the person who prescribed the order.

(c) The facility shall maintain records of the receipt and disposition of all controlled drugs.

(d) Records of Schedule III and IV Drugs shall be maintained in such a manner that the receipt and disposition shall be readily traced.

(e) The facility shall, on a sample basis, periodically reconcile the receipt and disposition of all controlled drugs in schedules II through IV, drugs subject to the Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. 801 et sec., as implemented by 42 CFR Part 308.

(5) Drug Storage.

(a) The facility shall store drugs under proper conditions of sanitation, temperature, light, humidity, and security.

(b) All controlled substances shall be secured in a manner consistent with applicable state pharmacy laws.

(c) Provision shall be made for the separate secure storage of all non-medication items such as poisonous and caustic materials.

(d) Containers shall be clearly labeled.

(e) Only persons authorized by facility policy shall have access to medications.

(f) Medication intended for internal use shall be stored separately from medication intended for external use.

(g) The facility shall maintain appropriate temperatures for the storage of medications.

(i) Medications stored at room temperature shall be maintained within 59 - 80 degrees F (15 to 30 degrees C).

(ii) Refrigerated medications shall be maintained within 36 - 46 degrees F (2 to 8 degrees C).

(iii) Medications and similar items that require refrigeration shall be stored securely and segregated from food items.

(h) Medication shall be stored in an orderly fashion that allows ready retrieval by authorized persons.

(i) Medication shall be kept in the original container and shall not be transferred to other containers. Drugs taken out of the facility for home visits, workshops, school, etc. shall be packaged and labeled in accordance with State law by a person authorized to package medications.

(j) Clients who have been trained to self administer drugs in accordance with R432-152-20(3)(c) may have access to keys to their individual drug supply.

(6) If the facility maintains a licensed pharmacy, the facility shall comply with the regulations for controlled drugs.

(7) Drug Labeling and Disposal.

(a) Labeling of drugs and biologicals shall:

(i) be based on currently accepted professional principles and practices;

(ii) include the appropriate accessory and cautionary instructions, as well as the expiration date, if applicable.

(b) The facility shall remove from use:

(i) outdated drugs; and

(ii) drug containers with worn, illegible, or missing labels.

(c) Drugs and biologicals packaged in containers designated for a particular client shall be immediately removed from the client's current medication supply if discontinued by the physician.

(d) Drugs may be sent with the client upon discharge if so ordered by the discharging physician.

(i) Such drugs shall be released in compliance with Utah pharmacy law and rules.

(ii) A record of the drugs sent with the client shall be noted in the client's health record.

(e) Discontinued individual client drugs supplied by prescription or those which remain in the facility after discharge or death of the client shall be destroyed within one month by the facility in the following manner:

(i) All drugs shall be destroyed by the facility in the presence of the staff pharmacist or consulting pharmacist and an appointed licensed nurse employed by the facility.

(ii) If one or both of these persons are not available within the month, a licensed nurse and an individual appointed by the administrator may serve as witnesses.

(iii) These appointments shall be rotated periodically among responsible staff members.

(iv) The name of the client, the name and strength of the drug, the prescription number, the amount destroyed, the method of destruction, the date of destruction, and the signatures of the witnesses required above shall be recorded in the client's record or in a separate log.

(v) Such log shall be retained for at least three years.

(f) Unless otherwise prohibited under applicable federal or state laws, individual client drugs supplied in sealed containers may be returned, if unopened, to the issuing pharmacy for disposition provided that:

(i) no controlled drugs are returned;

(ii) all such drugs are identified as to lot or control number;

(iii) the signatures of the receiving pharmacist and a licensed nurse employed by the facility are recorded in a separate log which lists the name of the client, the name, strength, prescription number, if applicable, the amount of the drug returned, and the date of return.

(iv) The log shall be retained for at least three years.

(8) Emergency Drug Supply.

(a) An emergency drug supply appropriate to the needs of the clients served shall be maintained in the facility.

(b) The consultant pharmacist in coordination with the administrator shall develop an emergency drug supply policy to include the following requirements:

(i) Specific drugs and dosages to be included in the emergency drug supply shall be listed.

(ii) Containers shall be sealed to prevent unauthorized use.

(iii) Contents of the emergency drug supply shall be listed on the outside of the container and the use of contents shall be documented by nursing staff.

(iv) The emergency drug supply shall be stored and located so it is accessible to nursing staff.

(v) The pharmacist shall inventory the emergency drug supply monthly.

(vi) Used or outdated items shall be replaced within 72 hours by a pharmacist.

(9) Pharmacy Supply.

(a) The pharmacy shall furnish the necessary drugs and biologicals on a prompt and timely basis.

(b) Drugs ordered for administration as soon as possible, which are not included in the emergency drug supply, shall be available to the facility and administered within two hours of a physician's order.

(c) Anti-infectives shall be available to the facility and administered within four hours of the physician's order.

(d) All new drug orders shall be initiated within 24 hours of the order or as indicated by the physician.

(e) There shall be provision for the timely refill of prescription drugs.

(f) Orders for controlled substances shall be sent to the pharmacy within 48 hours of the order. This may be a written prescription by the prescriber, a direct copy of the original order, or an electronic reproduction.

R432-152-21. Laboratory Services.

(1) For purposes of this section, "laboratory" means an entity for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological or other examination of materials derived from the human body, for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or assessment of a medical condition.

(2) Laboratory Direction, for In-house Laboratory.

(a) The laboratory director shall be technically qualified to supervise the laboratory personnel and test performance and shall meet licensing or other qualification standards established by the state with respect to directors of clinical laboratories.

(b) The director shall be either:

(i) a pathologist or other doctor of medicine or osteopathy with training and experience in clinical laboratory services;

(ii) a laboratory specialist with a doctoral degree in physical, chemical or biological sciences, and training and experience in clinical laboratory services.

(c) The laboratory director shall provide adequate technical supervision of the laboratory services and assure that tests, examinations and procedures are properly performed, recorded and reported.

(d) The laboratory director shall ensure that the staff:

(i) has appropriate education, experience, and training to perform and report laboratory tests promptly and proficiently;

(ii) is sufficient in number for the scope and complexity of the services provided;

(iii) receives in-service training appropriate to the type and complexity of the laboratory services offered.

(3) If a facility chooses to contract for laboratory services, the laboratory shall be CLIA certified as identified in R432-100-26.

R432-152-22. Environment.

(1) Infection Control. See R432-150-25.

(2) Safety Committee.

(a) The facility shall have a Safety Committee which shall include the administrator, QMRP, head housekeeper, chief of facility maintenance, and others as designated by facility policy.

(b) The Committee shall:

(i) review all incident and accident reports and recommend changes to the administrator to prevent or reduce reoccurrence;

(ii) review facility safety policies and procedures at least annually, and make appropriate recommendations;

(iii) establish a procedure to inspect the facility periodically for hazards.

(c) An inspection report shall be filed with the Safety Committee.

R432-152-23. Emergency Plan and Procedures.

(1) Emergency Procedures.

(a) The facility shall develop and implement detailed written plans and procedures to meet all potential emergencies and disasters such as fire, severe weather, and missing clients.

(b) The facility shall periodically review and update its written emergency procedures.

(c) The written plans must be made available to the staff.

(d) The staff must receive periodic training on the emergency procedures contained in the written plans.

(e) The facility's emergency response procedures shall address the following:

(i) evacuation of occupants to a safe place within the facility or to another location;

(ii) delivery of essential care and services to facility occupants by alternate means;

(iii) delivery of essential care and services when additional persons are housed in the facility during an emergency;

(iv) delivery of essential care and services to facility occupants when the staff is reduced by an emergency;

(v) maintenance of safe ambient air temperatures within the facility.

(f) Emergency heating shall have the approval of the local fire department.

(g) An ambient air temperature of 58 degrees F (14 degrees C) or lower may constitute a danger to the health and safety of the clients in the facility.

(h) The person in charge shall take immediate and appropriate action in the best interests of the client.

(2) Emergency Plan.

(a) The facility's emergency plan shall identify:

(i) the person with decision-making authority for fiscal, medical, and personnel management;

(ii) on-hand personnel, equipment, and supplies and how to acquire additional help, supplies, and equipment after an emergency or disaster;

(iii) assignment of personnel to specific tasks during an emergency;

(iv) methods of communicating with local emergency agencies, authorities, and other appropriate individuals;

(v) the individuals who shall be notified in an

emergency in order of priority. Telephone numbers shall be posted near telephones accessible to staff;

(vi) method of transporting and evacuating clients and staff to other locations;

(vii) conversion of facility for emergency use.

(b) There shall be documentation of emergency events and responses and a record of clients and staff evacuated from the facility to another location.

(c) Simulated disaster drills shall be held semi-annually for all staff, in addition to fire drills.

(d) There shall be regular in-service training on disaster preparedness for all staff.

(3) Fire Emergencies.

(a) The licensee and administrator shall develop a written fire emergency and evacuation plan in consultation with qualified fire safety personnel.

(b) The evacuation plan shall delineate evacuation routes and location of fire alarm boxes and fire extinguishers.

(c) The written fire-emergency plan shall include fire-containment procedures and how to use the facility alarm systems and signals.

(4) Evacuation Fire Drills.

(a) The facility shall hold evacuation fire drills at least quarterly for each shift of personnel and under varied conditions to:

(i) ensure that all personnel on all shifts are trained to perform assigned tasks;

(ii) ensure that all personnel on all shifts are familiar with the use of the facility's fire protection features;

(iii) evaluate the effectiveness of emergency and disaster plans and procedures.

(b) The facility shall:

(i) actually evacuate clients during at least one drill each year on each shift;

(ii) make special provisions for the evacuation of clients with physical disabilities;

(iii) file a report and evaluation on each evacuation drill;

(iv) investigate all problems with evacuation drills, including accidents, and take corrective action;

(v) during fire drills, clients may be evacuated to a safe area in facilities certified under the Health Care Occupancies Chapter of the Life Safety Code 101, 1991 Edition.

R432-152-24. Smoking Policies.

Smoking policies shall comply with Title 26, Chapter 38 the, "Utah Clean Air Act", and Section 31-4.4 of the 1991 Life Safety Code.

R432-152-25. Pets in Long-Term Care Facilities.

(1) Each facility shall develop a written policy regarding pets in accordance with these rules and local ordinances.

(2) See R432-150-30.

R432-152-26. Housekeeping Services.

(1) Organization.

(a) There shall be housekeeping services to maintain a clean, sanitary, and healthful environment in the facility.

(b) If the facility contracts for housekeeping services with an outside agency, there shall be a signed and dated agreement that details all services provided.

(c) The housekeeping service shall meet all the requirements of R432-149-34.

R432-152-27. Laundry Services.

See R432-150-32.

R432-152-28. Maintenance Services.

See R432-150-33.

R432-152-29. Dietary Services.

See R432-150-20.

R432-152-30. Client Records.

(1) Record System.

(a) The facility shall develop and maintain a record keeping system that includes a separate record for each client and that documents the client's health care, active treatment, social information, and protection of the client's rights.

(b) The facility shall keep confidential all information contained in the client's records, regardless of the form or storage method of the records.

(c) The facility shall develop and implement policies and procedures governing the release of any client information, including consents necessary from the client, parents, if the client is a minor, or legal guardian.

(d) Any individual who makes an entry in a client's record shall make it legibly, date it, and sign it.

(e) The facility shall provide a legend to explain any symbol or abbreviation used in a client's record.

(f) The facility shall insure each identified residential living unit has available on-site appropriate aspects of each client's record.

(g) Client's records shall be complete, accurately documented, and systematically organized to facilitate retrieval and compilation of information. There shall be written policies and procedures to accomplish these purposes.

(2) Organization.

(a) The client record department shall be under the direction of a registered record administrator, RRA, or an accredited record technician, ART.

(b) If a RRA or an ART is not employed at least part time, the facility shall consult at least semi-annually with a RRA or ART according to the needs of the facility.

(3) Retention and Storage.

(a) Provision shall be made for the filing, safe storage, and easy accessibility of client records.

(i) The record and its contents shall be safeguarded from loss, defacement, tampering, fires, and floods.

(ii) Records shall be protected against access by unauthorized individuals.

(b) Client records shall be retained for at least seven years after the last date of client care. Records of minors shall be retained as follows:

(i) at least two years after the minor reaches age 18 or the age of majority;

(ii) a minimum of seven years.

(c) All client records shall be retained within the facility upon change of ownership.

(d) When a facility ceases operation, provision shall be made for appropriate safe storage and prompt retrieval of all client records, client indices, and discharges for the period specified.

(e) The facility may arrange storage of client records with another facility or may return client records to the attending physician who is still in the community.

(4) Signature Authorization.

Computer signatures and rubber stamp signatures may be used in lieu of the written signature of the physician or licensed practitioner, if the facility retains the signator's signed statement acknowledging ultimate responsibility for the use of the computer or stamp signature and specifying the conditions for its use.

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R432. Health, Health Systems Improvement, Health Facility Licensure.
R432-200. Small Health Care Facility (Four to Sixteen Beds).
R432-200-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-200-2. Purpose.

This rule allows services at varying levels of health care intensity to be provided in structures that depart from the traditional institutional setting. Health care may be delivered in a less restrictive, residential, or home-like setting. Small health care facilities are categorized as Level I, Level II, Level III, or Level IV according to the resident's ability or capability for self-preservation: to exit a building unassisted in an emergency.

R432-200-3. Compliance.

All small health care facilities shall be in full compliance at the time of licensure. All Medicare and Medicaid certified facilities must comply with Title XVIII and Title XIX regulations.

R432-200-4. Definitions.

(1) See common definitions in R432-1-3.

(2) Special Definitions:

(a) "Levels of Care" mean the range of programs and the physical facilities in which they may be offered according to these rules.

(b) "Level I" refers to a skilled nursing care facility that provides at least 24-hour care and licensed nursing services to persons who are non-mobile and non-ambulatory. All Level I facilities shall conform to the requirements in the Utah Department of Health, Nursing Care Facility rules R432-150. A Level I facility with a bed capacity of 16 beds or less, may request a variance from some construction standards for nursing care facilities, if the health, safety, and welfare of residents can be preserved.

(i) Skilled Nursing Facility shall maintain and operate 24-hour skilled nursing services for the care and treatment of chronically ill or convalescent residents whose primary need is the availability of skilled nursing care or related service on an extended basis.

(ii) Intermediate Care Facility shall provide 24-hour in resident care to residents who need licensed nursing supervision and supportive care, but who do not require continuous nursing care.

(c) "Level II" refers to a facility that provides at least 24-hour care, 24-hour staff coverage, and licensed therapy or nursing care (based on program requirements) to 4-16 persons who are non-mobile and non-ambulatory. Level II facilities may include:

(i) Health Care Nursery shall provide full-time supervision and care to children under six years of age who do not require continuous nursing care. The facility shall provide at least the following:

(A) Twenty-four hour care and/or staff availability;

(B) Provision for medical coverage;

(C) Provision for dietary services;

(D) Provision for licensed therapies, as required.

(ii) Intermediate Care Facility for the Mentally Retarded shall provide 24-hour supervisory care to developmentally disabled and mentally retarded individuals, (note: An ICF/MR facility may be categorized as a Level IV facility if no resident is under therapy that utilizes chemical or physical restraints which may render the resident incapable of self-preservation in an emergency), who need supervision in a coordinated and integrated program of health, habilitative and supportive services, but who do not require continuous nursing care. The facility shall, except as indicated in the supplement, provide the following:

(A) Twenty-four hour care and staff availability;

(B) Provision for medical coverage;

(C) Provision for dietary services;

(D) Provision for licensed therapies, as required.

(iii) Home for the Aging shall provide group housing, supervision, social support, personal care, therapy, and some nursing care to elderly persons who do not need intermediate or skilled nursing care. The facility shall provide at least the following:

(A) Twenty-four hour staff availability;

(B) Provision for medical coverage;

(C) Provision for dietary services for at least three meals;

(D) Provision for licensed therapies, as necessary.

(iv) Social Rehabilitation Facility shall provide group housing, personal care, social rehabilitation, and treatment for alcoholism, drug abuse, or mental problems to persons who do not require intermediate or skilled nursing care. (Note: if each resident in the program is certified by a physician or QMRP as ambulatory and in an alcohol or drug abuse rehabilitation program designed to lead to independent living, then the facility may be categorized as a Level IV facility.) The facility shall provide the following:

(A) Twenty-four hour staff availability or program care;

(B) Provision for medical coverage;

(C) Provision for dietary services for at least three

meals;

(D) Provision for licensed therapies, as necessary.

(d) "Level III" refers to a facility that provides at least 24-hour staff coverage and licensed therapy (based on program requirements) to 4-16 persons who are ambulatory and mobile but who are under chemical or physical restraints. Level III facilities may include:

(i) Mental Health Facility shall provide 24 hour care to persons with mental illness who require medical and psychiatric supervision including diagnosis and treatment. The facility shall provide at least the following:

(A) Twenty-four hour staff coverage;

(B) Provision for medical and psychiatric supervision;

(C) Provision for dietary services;

(D) Provision for licensed therapies, as necessary.

(ii) Youth Correction Center shall provide 24-hour supervision, care, training, treatment, and therapy to persons who by court order may be restricted in their daily activities, and under security control that includes lock-up. The facility shall provide at least the following:

(A) Twenty-four hour staff coverage;

(B) Provision for medical and psychiatric supervision;

(C) Provision for dietary services;

(D) Provision for licensed therapies, as necessary.

(e) "Level IV" refers to a facility that provides specialized program and support care to 4-16 persons who are ambulatory and mobile, who require programs of care and more supervision than provided in a residential care facility. Level IV facilities may include:

(i) Intermediate Care Facility for the Mentally Retarded. All mentally retarded residents in a Level IV facility must be ambulatory to qualify for Medicaid/Medicare reimbursement.

(ii) Mental Health Facility. (See R432-200-4(2)(d)(i), Level III)

(iii) Home for the Aging. (See R432-200-4(2)(c)(iii), Level II)

(iv) Social Rehabilitation Facility. (See R432-200-4(2)(c)(iv), Level II)

R432-200-5. License Required.

See R432-2.

R432-200-6. Construction and Physical Environment.

(1) See R432-12, Small Health Care Facility Construction rules.

R432-200-7. Administration and Organization.

(1) Organization.

Each facility shall be operated by a licensee.

(2) Duties and Responsibilities.

The licensee shall be responsible for compliance with Utah law and licensure requirements and for the organization, management, operation, and control of the facility. Responsibilities shall include at least the following:

(a) Comply with all federal, state and local laws, rules, and regulations;

(b) Adopt and institute by-laws, policies and procedures relative to the general operation of the facility including the health care of the residents and the protection of their rights;

(c) Adopt a policy that states the facility will not discriminate on the basis of race, color, sex, religion, ancestry or national origin in accordance with Section 13-7-1;

(d) Appoint, in writing, a qualified administrator to be responsible for the implementation of facility by-laws and policies and procedures, and for the overall management of the facility;

(e) Secure and update contracts for professional and other services;

(f) Receive and respond, as appropriate, to the annual licensure inspection report by the Department;

(g) Notify the Department, in writing, at least 30 days prior to, but not later than five days after, a change of administrator. The notice shall include the name of the new administrator and the effective date of the change.

(3) Administrator.

(a) Administrator's Appointment.

Each facility shall appoint, in writing, an administrator professionally licensed by the Utah Department of Commerce in a health care field.

(b) A copy of the administrator's license or credentials shall be posted alongside the facility's license in a place readily visible to the public.

(c) The administrator shall act as the administrator of no more than four small health care facilities (or a maximum of 60 beds) at any one time.

(d) The administrator shall have sufficient freedom from other responsibilities and shall be on the premises of the facility a sufficient number of hours in the business day (at least four hours per week for each six residents) and as necessary to properly manage the facility and respond to appropriate requests by the Department.

(e) The administrator shall designate, in writing, the name and title of the person who shall act as administrator in his absence. This person shall have sufficient power, authority, and freedom to act in the best interests of resident safety and well-being. It is not the intent of this paragraph to permit an unlicensed de facto administrator to supplant or replace the designated, licensed administrator.

(4) Administrator Responsibilities.

The administrator shall have the following responsibilities:

(a) Complete, submit and file all records and reports required by the Department;

(b) Act as a liaison among the licensee, medical and nursing staff, and other supervisory staff of the facility, as appropriate, and respond to recommendations of the quality assurance committee;

(c) Assure that employees are oriented to their job functions and receive appropriate in-service training;

(d) Implement policies and procedures for the operation of the facility;

(e) Hire and maintain the required number of licensed and non-licensed staff as specified in these rules to meet the needs of residents;

(f) Maintain facility staffing records for 12 months;

(g) Secure and update contracts required for professional and other services not provided directly by the facility;

(h) Verify all required licenses and permits of staff and consultants at the time of hire and effective date of contract;

(i) Review all incident and accident reports and take appropriate action.

(5) Medical Director.

The administrator of each facility shall retain, by formal agreement, a licensed physician to serve as medical director or advisory physician on a consulting basis according to the residents' and facility's needs.

(6) Medical Director Responsibilities.

The medical director or advisory physician shall have responsibility for at least the following:

(a) Review or develop written resident-care policies and procedures including the delineation of responsibilities of attending physicians;

(b) Review resident-care policies and procedures annually with the administrator;

(c) Serve as liaison between the resident's physician and the administrator;

(d) Serve as a member of the quality assurance committee (see R432-200-10);

(e) Review incident and accident reports at the request of the administrator to identify health hazards to residents and employees;

(f) Act as consultant to the health services supervisor in matters relating to resident-care policies.

(7) Staff and Personnel.

(a) Organization.

The administrator shall employ qualified personnel who are able and competent to perform their respective duties, services, and functions.

(b) Qualifications and Orientation.

(i) The administrator shall develop job descriptions including job title, job summary, responsibilities, qualifications, required skills and licenses, and physical requirements for each position or employee.

(ii) Periodic employee performance evaluations shall be documented.

(iii) All personnel shall have access to the facility's policies and procedures manuals, resident-care policies, therapeutic manuals, and other information necessary to effectively perform their duties and carry out their responsibilities.

(8) Health Surveillance.

(a) The facility shall establish a policy and procedure for the health screening of all facility personnel which conforms with the provisions of R432-150-26(6).

(b) All dietary and other staff who handle food shall obtain a Food Handler's Permit from the local health department.

(9) In-service Training.

There shall be planned and documented in-service training for all facility personnel. The following topics shall be addressed annually:

(a) Fire prevention (see R432-200-11);

(b) Accident prevention and safety procedures including instruction in the following:

(i) Body mechanics for all employees required to lift, turn, position, or ambulate residents;

(ii) Proper safety precautions when floors are wet or waxed;

(iii) Safety precautions and procedures for heat lamps, hot water bottles, bathing and showering temperatures;

(c) Review and drill of emergency procedures and evacuation plan (See R432-200-11);

(d) Prevention and control of infections (see R432-150-25);

(e) Confidentiality of resident information;

(f) Residents' rights;

(g) Behavior Management and proper use and documentation of restraints;

(h) Oral hygiene and first aid; and

(i) Training in the principles of Cardiopulmonary Resuscitation (CPR) for licensed nursing personnel and others as appropriate;

(j) Training in habilitative care;

(k) Reporting abuse, neglect and exploitation.

R432-200-8. Smoking Policies.

Smoking policies shall comply with Title 26, Chapter 38 the, "Utah Indoor Clean Air Act", and Section 31-4.4 of the 1991 Life Safety Code.

R432-200-9. Contracts and Agreements.

(1) Contracts.

(a) The licensee shall secure and update contracts for required professional and other services not provided directly by the facility.

(b) Contracts shall include:

(i) The effective and expiration dates of the contract;

(ii) A description of goods or services provided by the contractor to the facility;

(iii) A statement that the contractor will conform to the standards required by Utah law or rules.

(c) The contract shall be available for review by the Department.

(2) Transfer Agreements.

(a) The licensee shall maintain, a written transfer agreement with one or more hospitals (or nearby health facilities) to facilitate the transfer of residents and essential resident information.

(b) The transfer agreement shall include provisions for:

(i) Criteria for transfer;

(ii) Appropriate methods of transfer;

(iii) Transfer of information needed for proper care and treatment of the individual being transferred;

(iv) Security and accountability of the personal property of the individual being transferred;

(v) Proper notification of the hospital and next of kin or responsible person before transfer.

R432-200-10. Quality Assurance.

(1) The administrator shall monitor the quality of services offered by the facility through the formation of a committee that addresses infection control, pharmacy, therapy, resident care, and safety, as applicable.

(2) The committee shall include the administrator, consulting physician or medical director, health services

supervisor, and consulting pharmacist. Special program directors and maintenance and housekeeping personnel shall serve as necessary.

(3) The committee shall meet quarterly and keep minutes of the proceedings.

(4) Infection Control Requirements.

See R432-150-25.

(5) Pharmacy Requirements.

Based on the services offered, the committee shall:

(a) Monitor the pharmaceutical services in the facility;

(b) Recommend changes to improve pharmaceutical services;

(c) Evaluate medication usage; and

(d) Develop and review pharmacy policies and procedures annually, and recommend changes to the administrator and licensee.

(6) Resident Care Requirements.

Based on the services offered, the committee shall address the following:

(a) Review, at least annually, the facility's resident care policies including rehabilitative and habilitative programs, as appropriate.

(b) Make recommendations to the medical director and advisory physician as appropriate;

(c) Review recommendations from other facility committees to improve resident care.

(7) Safety Requirements.

Based on the services offered, the committee shall address the following:

(a) Review all incident and accident reports and recommend changes to the administrator to prevent or reduce their reoccurrence;

(b) Review facility safety policies and procedures, at least annually, and make recommendations;

(c) Establish a procedure to inspect the facility periodically for hazards. An inspection report shall be filed with the Committee.

R432-200-11. Emergency and Disaster.

(1) Facilities have the responsibility to assure the safety and well-being of their residents in the event of an emergency or disaster. An emergency or disaster may include utility interruption, explosion, fire, earthquake, bomb threat, flood, windstorm, or epidemic.

(2) Policies and Procedures.

(a) The licensee and the administrator shall be responsible for the development of a plan, coordinated with state and local emergency or disaster authorities, to respond to emergencies and disasters.

(b) The written plan shall be distributed to all facility staff to assure prompt and efficient implementation.

(c) The plan shall be reviewed and updated to conform with local emergency plans, at least annually, by the administrator and the licensee.

(d) The plan shall be available for review by the Department.

(3) Staff and residents shall receive education, training, and drills to respond in an emergency.

(a) Drills and training shall be documented and comply with applicable laws and regulations.

(b) The name of the person in charge and names and telephone numbers of emergency medical personnel, agencies, and emergency transport systems shall be posted.

(4) Emergency Procedures.

The facility's response procedures shall address the following:

(a) Evacuation of occupants to a safe place within the facility or to another location;

(b) Delivery of essential care and services to facility occupants by alternate means;

(c) Delivery of essential care and services when additional persons are housed in the facility during an emergency;

(d) Delivery of essential care and services to facility occupants when staff is reduced by an emergency;

(e) Maintenance of safe ambient air temperatures within the facility;

(i) Emergency heating plans must have the approval of the local fire department.

(ii) An ambient air temperature of 58 degrees F (14 degrees C) or less constitutes an imminent danger to the health and safety of the residents in the facility. The person in charge shall take immediate and appropriate action in the best interests of the resident.

(5) Emergency Plan.

(a) The facility's emergency plan shall delineate:

(i) The person or persons with decision-making authority for fiscal, medical, and personnel management;

(ii) On-hand personnel, equipment, and supplies and how to acquire additional help, supplies, and equipment after an emergency or disaster;

(iii) Assignment of personnel to specific tasks during an emergency;

(iv) Methods of communicating with local emergency agencies, authorities, and other appropriate individuals;

(v) The individuals who shall be notified in an emergency in the order of priority. Telephone numbers shall be accessible to staff at each nurse's station;

(vi) Methods of transporting and evacuating residents and staff to other locations;

(vii) Conversion of facility for emergency use.

(b) Documentation of emergency events and responses and a record of residents and staff evacuated from the facility to another location shall be kept. Any resident emergency shall be documented in the resident's record.

(c) Drills shall be held semi-annually for all residents and staff.

(d) There shall be regular in-service training on disaster prepare

(6) Fire Emergencies.

(a) The licensee and administrator shall develop a written fire-emergency and evacuation plan in consultation with qualified fire safety personnel.

(b) An evacuation plan delineating evacuation routes, location of fire alarm boxes, fire extinguishers, and emergency telephone numbers of the local fire department shall be posted throughout the facility.

(c) The written fire-emergency plan shall include fire-

containment procedures and how to use alarm systems and signals.

(d) Fire and internal disaster drills shall be held, at least quarterly, under varied conditions for each shift.

(i) The actual evacuation of residents during a drill is optional except in a facility caring for residents who are capable of self-preservation.

(ii) The actual evacuation of residents during a drill on the night shift is optional.

R432-200-12. Residents' Rights.

(1) Residents' Rights Policies and Procedures.

(a) A committee shall be appointed to update policy, evaluate, and act on residents' rights complaints.

(b) Written residents' rights shall be established, posted in areas accessible to residents, and made available to the resident, or guardian, or next of kin.

(c) These shall be available to the public and the Department upon request.

(2) Each resident admitted to the facility shall have the following rights:

(a) To be fully informed, as evidenced by the resident's written acknowledgement prior to or at the time of admission and during stay, of residents' rights and of all rules governing resident conduct;

(b) To be fully informed, prior to or at the time of admission and during stay, of services available in the facility and of related charges, including any charges for services not covered by the facility's basic per diem rate or not covered under Titles XVIII or XIX of the Social Security Act;

(c) To be fully informed of his medical condition, by a physician, unless medically contraindicated and documented in the resident's health record by the attending physician;

(d) To be afforded the opportunity to participate in the planning of his medical treatment and to refuse to participate in experimental research;

(e) To refuse treatment to the extent permitted by law and to be informed of the medical consequences of such refusal;

(f) To be transferred or discharged only for medical reasons, or his welfare or that of other residents, or for nonpayment for his stay, and to be given reasonable advance notice to ensure orderly transfer or discharge; such actions shall be documented in his health record;

(g) To be encouraged and assisted throughout the period of stay to exercise rights as a resident and as a citizen, and to this end to voice grievances and recommend changes in policies and services to facility staff or outside representatives of his choice, free from restraint, interference, coercion, discrimination, or reprisal;

(h) To manage his personal financial affairs, or to be given at least quarterly or upon request an accounting of financial transactions made on his behalf should the facility accept his written delegation of this responsibility;

(i) To be free from mental and physical abuse and to be free from chemical and (except in emergencies) physical restraints except as authorized in writing by a physician for a specified and limited period of time, or when necessary to protect the resident from injury to himself or to others (see R432-150-11);

(j) To be assured confidential treatment of his personal and medical records and to approve or refuse their release to any individual outside the facility, except in the case of his transfer to another health facility, or as required by law or third party payment contract;

(k) To be treated with consideration, respect and full recognition of his dignity and individuality, including privacy in treatment and in care for personal needs;

(l) Not to be required to perform services for the facility that are not included for therapeutic purposes in his plan of care;

(m) To associate and communicate privately with persons of his choice, and to send and receive personal mail unopened;

(n) To meet with and participate in activities of social, religious, and community groups at his discretion;

(o) To retain and use personal clothing and possessions as space permits, unless to do so would infringe upon rights of other residents;

(p) If married, to be assured privacy for visits by his spouse and if both are residents in the facility, to be permitted to share a room;

(q) To have daily visiting hours established;

(r) To have members of the clergy admitted at the request of the resident or person responsible at any time;

(s) To allow relatives or persons responsible to visit residents at any time;

(t) To be allowed privacy for visits with family, friends, clergy, social workers or for professional or business purposes;

(u) To have reasonable access to telephones both to make and receive confidential calls.

(v) To wear appropriate personal clothing and religious or other symbolic items as long as they do not interfere with diagnostic procedures or treatment.

(3) Safeguards for Residents' Monies and Valuables

Each facility to whom a resident's money or valuables have been entrusted according to R432-200-12(2)(h), above shall comply with the following:

(a) No licensee shall use residents' monies or valuables as his own or mingle them with his own.

(i) Residents' monies and valuables shall be separated and intact and free from any liability that the licensee incurs in the use of his own or the institution's funds and valuables.

(ii) Each licensee shall maintain adequate safeguards and accurate records of residents' monies and valuables entrusted to the licensee's care.

(b) Records of residents' monies which are maintained as a drawing account shall include a control account for all receipts and expenditures, an account for each resident and supporting vouchers filed in chronological order. Each account shall be kept current with columns for debits, credits, and balance.

(c) Records of residents' monies and other valuables entrusted to the licensee for safekeeping shall include a copy of the receipt furnished to the resident or to the person responsible for the resident.

(d) Residents' monies not kept in the facility shall be

deposited within five days of receipt of such funds in an interest-bearing account in a local bank authorized to do business in Utah, the deposits of which must be insured.

(e) A person, firm, partnership, association or corporation which is licensed to operate more than one health facility shall maintain a separate account for each such facility and shall not commingle resident funds from one facility with another.

(f) When the amount of residents' money entrusted to a licensee exceeds $150, all money in excess of $150 shall be deposited in an interest-bearing account as specified in R432-200-12(3)(c) and (d) above.

(g) Upon discharge of a resident, all money and valuables of that resident which have been entrusted to the licensee shall be surrendered to the resident in exchange for a signed receipt. Money and valuables kept within the facility shall be surrendered upon demand and those kept in an interest-bearing account shall be made available within three normal banking days.

(h) Within 30 days following the death of a resident, except in a coroner or medical examiner case, all money and valuables of that resident which have been entrusted to the licensee shall be surrendered to the person responsible for the resident or to the executor or the administrator of the estate in exchange for a signed receipt. When a resident dies without a representative or known heirs, immediate written notice thereof shall be given by the facility to the State Medical Examiner and the registrar of the local probate court, and a copy of said notice shall be filed with the Department.

R432-200-13. Admission and Discharge.

Each facility shall develop admission and discharge policies that shall be available to the public upon request.

(1) Admission Policies.

(a) Residents shall be accepted for treatment and care only if the facility is properly licensed for the treatment required and has the staff and resources to meet the medical, physical, and emotional needs of the resident.

(b) Residents shall be admitted by, and remain under the care of, a physician or individual licensed to prescribe care for the resident.

(c) There shall be a written order (a documented telephone order is acceptable) for admission and care at the time of admission.

(d) A resident shall be assessed within seven days of admission unless otherwise indicated by a program requirement. Admission policies shall define the assessment process including an identification of the resident's medical, nursing, social, physical, and emotional needs.

(e) A physical examination shall be performed, in accordance with R432-200-14(2), by the attending physician or by an individual licensed and so authorized.

(f) Upon admission, a brief narrative of the resident's condition including his temperature, pulse, respiration, blood pressure, and weight shall be documented.

(g) The resident shall be informed of his rights as a resident.

(i) A written copy of the facility's residents' rights shall be explained and given to the resident.

(ii) If the resident is unable to comprehend his rights, a written copy shall be given to the next of kin or other responsible party.

(iii) The inability of the resident to provide consent shall be documented in the resident's record.

(2) Discharge Policies.

(a) The resident shall be discharged when the facility is no longer able to meet the resident's identified needs.

(b) There shall be an order for the resident's discharge by the physician or person in charge of the resident's care.

(c) A discharge summary containing a brief narrative of the resident's diagnoses, course of treatment, conditions, and final disposition shall be documented in the medical record.

(d) Upon discharge of a resident, all money and valuables of that resident which have been entrusted to the licensee shall be surrendered to the resident in exchange for a signed receipt (see R432-200-12(3)).

R432-200-14. Physician Services.

(1) General Requirements.

(a) Each resident in need of nursing services, habilitative, or rehabilitative care shall be under the care of a licensed physician.

(b) Each resident shall be permitted to choose his physician.

(c) Upon admission, each resident shall have orders for treatment and care.

(2) Physician Responsibilities.

(a) Each resident shall have a medical history and pertinent physical examination at least annually.

(b) Each intermediate care resident shall be seen at least once during the first 60 days of residency.

(c) The attending physician or medical practitioner shall see the resident whenever necessary but at least every 60 days, unless the attending physician or practitioner documents in the resident's record why the resident does not need to be seen this frequently.

(d) The physician or practitioner shall establish and follow a schedule alternating visits.

(e) Each visit and evaluation shall be documented in the resident's record.

(3) Policies and Procedures.

There shall be policies and procedures that provide for:

(a) Access to physician services in case of medical emergency or when the attending physician is not available;

(b) Names and telephone numbers of on-call physicians in the health services supervisor's office;

(c) Reevaluation of the resident and review of care and treatment orders when there is a change of attending physician which shall be completed within 15 days of such change.

(4) Non-Physician Practitioners.

The following practitioners may render medical services according to state law:

(a) Nurse practitioners licensed to practice in the state of Utah;

(b) Physicians' assistants working under the supervision of a licensed physician and performing only those selected diagnostic and therapeutic tasks identified in Rules and

Regulations and Standards for Utilization of Physician Assistants.

(5) Physician Orders and Notes.

(a) The following items shall be part of the treatment record and shall be signed and dated by a physician:

(i) Admission orders;

(ii) Medication, treatment, therapy, laboratory, and diet orders;

(iii) History and physical examinations;

(iv) Physician's progress notes;

(v) The discharge summary;

(vi) All discharge orders;

(b) All telephone orders shall be recorded immediately and include:

(i) date and time of order;

(ii) the receiver's signature and title; and

(iii) the order shall be countersigned and dated within 15 days by the physician who prescribed the order.

(c) The attending physician shall complete the resident's medical record within 60 days of the resident's discharge, transfer, or death.

(6) Notification of Physician.

(a) The attending physician shall be notified promptly upon:

(i) Admission of the resident;

(ii) A sudden and/or marked adverse change in the resident's signs, symptoms, or behavior;

(iii) Any significant weight change in a 30-day period unless the resident's physician stipulates another parameter in writing;

(iv) Any adverse response or reaction by a resident to a medication or treatment;

(v) Any error in medication administration or treatment;

(vi) The discovery of a decubitus ulcer, the beginning of treatment, and if treatment is not effective. Notification shall be documented.

(b) The physician shall be notified if the facility is unable to obtain or administer drugs, equipment, supplies, or services promptly as prescribed. If the attending physician or his designee is not readily available, emergency medical care shall be provided. The telephone numbers of the emergency care physician shall be posted at the control station.

(c) All attempts to notify physicians shall be noted in the resident's record including the time and method of communication and the name of the person acknowledging contact, if any.

R432-200-15. Nursing Care.

(1) Organization.

(a) Each facility shall provide nursing care services commensurate with the needs of the residents served.

(b) All licensed nursing personnel shall maintain current Utah licenses to practice nursing.

(2) Responsibilities of the Health Services Supervisor.

The health services supervisor shall have the following responsibilities and comply with R432-150-19:

(a) Direct the implementation of physician's orders;

(b) Plan and direct the delivery of nursing care, treatments, procedures, and other services to assure that each resident's needs are met;

(c) Review the health care needs of each resident admitted to the facility and formulate with other professional staff a resident care plan according to the attending physician's orders;

(d) Review the medication system for completeness of information, accuracy in the transcription of physician's orders, and adherence to stop-order policies;

(e) Ensure that nursing notes describe the care rendered including the resident's response. Instruct staff on the legal requirements of charting;

(f) Supervise clinical staff to assure they perform restorative measures in their daily care of residents;

(g) Teach and coordinate habilitative and rehabilitative care to promote and maintain optimal physical and mental functioning of the resident;

(h) Keep the administrator and attending physician informed of significant changes in the resident's health status;

(i) Plan with the physician, family, and health-related agencies the care of the resident upon discharge;

(j) Coordinate resident services through the quality assurance committees (see R432-200-10);

(k) Assign qualified supervisory and supportive staff throughout the day and night to assure that the health needs of residents are met;

(l) Develop written job descriptions for all health service personnel and orient all new personnel to the facility and their duties and responsibilities;

(m) Evaluate and document the performance of each member of the staff at least annually. This evaluation shall be available for Departmental review;

(n) Plan and conduct documented orientation and in-service programs for staff.

(3) Required Staffing Hours.

(a) Any facility that provides nursing care shall provide at least two hours (120 minutes) of nursing-staff coverage (RN + LPN + Aides) per resident per 24 hours of which 20 percent or 24 minutes per resident shall be provided by licensed staff (RN + LPN).

(b) Facilities providing rehabilitative or habilitative care shall:

(i) Provide adequate staff care and supervision to meet the resident's needs based on the resident-care plan, or;

(ii) Conform to the specific program requirements in the appropriate supplement.

(c) The above requirements are minimum only. Additional staff may be necessary to ensure adequate coverage in the event of staff illness, turnover, sudden increase in resident population, or similar event.

(d) Facilities that participate in the Medicare/Medicaid programs shall, as a condition of such participation, meet the staffing standards approved through administrative rule.

(4) Nursing or Health Care Services.

(a) The health services procedure manual shall be reviewed and updated annually by the health services supervisor.

(b) The manual shall be accessible to all clinical staff and available for review by the Department.

(c) The procedures shall address the following:

(i) Bathing;
(ii) Positioning;
(iii) Enema administration;
(iv) Decubitus prevention and care;
(v) Bed making;
(vi) Isolation procedures;
(vii) Clinitest procedures;
(viii) Laboratory requisitions;
(ix) Telephone orders;
(x) Charting;
(xi) Rehabilitative nursing;
(xi) Diets and feeding residents;
(xii) Oral hygiene and denture care;
(xiii) Naso-gastric tube insertion and care (by registered nurses, LPNs, with appropriate training, or physicians only).

(5) Measures to Reduce Incontinence.

Measures shall be implemented to prevent and reduce incontinence for each resident.

(a) There shall be a written assessment by a licensed nurse to determine the resident's ability to participate in a bowel and bladder management program.

(b) An individualized plan for each incontinent resident shall begin within two weeks of the initial assessment.

(c) A weekly evaluation of the resident's performance in the bowel/bladder management program shall be recorded in the resident's record by a licensed nurse.

(d) Fluid intake and output shall be recorded for each resident as ordered by the physician or charge nurse.

(i) Intake and output records shall be evaluated at least weekly and each evaluation shall be included in the resident's record;

(ii) Physician's or nurse's orders shall be reevaluated periodically.

(6) Rehabilitative Nursing.

Nursing personnel shall be trained in rehabilitative nursing.

(a) Rehabilitative nursing services shall be performed daily for residents who require such services and shall be documented in the resident's record when provided.

(b) Rehabilitative services shall be provided to maintain function or to improve the resident's ability to carry out the activities of daily living.

(c) Rehabilitative nursing services shall include the following:
(i) Turning and positioning of residents;
(ii) Assisting residents to ambulate;
(iii) Improving resident's range of motion;
(iv) Restorative feeding;
(v) Bowel and bladder retraining;
(vi) Teaching residents self-care skills;
(vii) Teaching residents transferring skills;
(viii) Teaching residents self-administration of medications, as appropriate;
(ix) Taking measures to prevent secondary disabilities such as contractions and decubitus ulcers.

R432-200-16. General Resident Care Policies.

(1) Each resident shall be treated as an individual with dignity and respect in accordance with Residents' Rights (R432-200-12).

(2) Each facility shall develop and implement resident care policies to be reviewed annually by the health services supervisor.

(3) These policies shall address the following:

(a) Each resident upon admission shall be oriented to the facility, services, and staff.

(b) Each admission shall comply with R432-200-13(1).

(c) Each resident shall receive care to ensure good personal hygiene. This care shall include bathing, oral hygiene, shampoo and hair care, shaving or beard trimming, fingernail and toenail care.

(d) Linens and other items in contact with the resident shall be changed weekly or as the item is soiled.

(e) Each resident shall be encouraged and assisted to achieve and maintain the highest level of functioning and independence including:
(i) teaching the resident self-care,
(ii) assisting residents to adjust to their disabilities and prosthetic devices,
(iii) directing residents in prescribed therapy exercises, and
(iv) redirecting residents interests as necessary.

(f) Residents must be reevaluated annually to determine if a less restrictive setting might be more appropriate to help them achieve independence.

(g) Each resident shall receive care and treatment to ensure the prevention of decubiti, contractions, and deformities.

(h) Each resident shall be provided with good nutrition and adequate fluids for hydration.
(i) All residents shall have ready access to water and drinking glasses;
(ii) Residents unable to feed themselves shall be assisted to eat in a prompt, orderly manner;
(iii) Residents shall be provided with adapted equipment to assist in eating and drinking.

(i) Visual privacy shall be provided for each resident during treatments and personal care.

(j) Call lights or signals (where required) shall be answered promptly.

(k) Humidifier bottles on oxygen equipment shall be sterile and changed every 24 hours or at the manufacturers direction.

(4) Notification of Family.

The person in charge shall immediately notify the resident's family or guardian of any accident, injury, or adverse change in the resident's condition after the first attempt to notify the physician. This notification shall be documented in the resident's record.

R432-200-17. Resident-Care Plans.

(1) General Provisions.

(a) A written resident-care plan, coordinated with nursing and other services, shall be initiated for each resident upon admission.

(b) The resident-care plan shall be personalized and indicate measurable and time-limited objectives, the actual plan of care, and the professional discipline responsible for

each element of care.

(c) The resident care plan shall be developed, reviewed, revised, and updated at least annually through conferences with all professionals involved in the resident's care. Such conferences shall be documented.

(d) Each resident's care shall be based on this plan.

(e) The resident-care plan shall be available to all personnel who care for the resident.

(f) The resident and family shall participate in the development and review of the resident's plan.

(g) Upon transfer or discharge of the resident, relevant information from the resident-care plan shall be available to the responsible institution or agency.

(h) A licensed nurse or other clinical specialist, where appropriate, shall summarize, each month, the resident's status and problems identified in the resident-care plan.

(2) Resident-Care Plans Contents.

The resident-care plan shall include at least the following:

(a) Name, age, and sex of resident;

(b) Diagnosis, symptoms, complaints;

(c) A description of the functional level of the individual;

(d) Care objectives and time frames for accomplishment, reevaluation, and completion;

(e) Discipline or person responsible for each objective;

(f) Discharge plan;

(g) Date of admission;

(h) Name of attending physician or medical practitioner.

R432-200-18. Medication Administration.

(1) Standing Orders.

Standing orders for medications, treatments, and laboratory procedures shall not be used. All orders shall be written for the individual resident.

(2) Administration of Medication and Treatments.

Medication and treatment shall be administered as follows:

(a) No medication or treatment shall be administered except on the order of a person lawfully authorized to give such order.

(b) Medications and treatments shall be administered as prescribed and according to facility policy.

(c) All medications and treatments shall be administered by licensed medical or licensed nursing personnel. Student doctors and nurses may administer medication and treatment only in the course of study and when supervised by a licensed instructor or designated staff.

(d) Monitoring of vital signs and other observations done in conjunction with the administration of medication shall be carried out as ordered by the physician or practitioner and as indicated by accepted professional practice.

(e) Preparation of doses for more than one scheduled time of administration shall not be permitted.

(f) Medication shall be administered when ordered or as soon thereafter as possible but no more than two hours after the dose has been prepared.

(g) Medication shall be administered by the same person who prepared the dose for administration.

(h) Residents shall be identified prior to the administration of any drug or treatment.

(i) No medication shall be used for any resident other than the resident for whom it was prescribed.

(j) If the person who prescribed a medication does not limit the duration of the drug order or the number of doses, the facility's automatic stop-order policy shall indicate how long a drug may be administered. The prescriber shall be notified before the medication is discontinued.

(k) All orders for treatment or therapy shall contain:

(i) the name of the treatment or therapy,

(ii) the frequency and time to be administered,

(iii) the length of time the treatment or therapy is to continue,

(iv) the name and professional title of the practitioner who gave the order,

(v) the date of order, and

(vi) signature of the person prescribing the treatment or therapy.

(l) All nursing personnel shall comply with the provisions for administration of medication according to standards and ethics of the profession.

(m) Injectable medications shall be administered only by authorized persons.

(i) If a physician certifies that a resident is capable of administering his own insulin or oral medications, the resident may self-inject the prescribed insulin or self-administer the prescribed medications.

(ii) The physician's order, authorizing the resident's self-administration of medications, shall be documented and available for Departmental review.

R432-200-19. Behavior Management and Restraint Policy.

See R432-150-11.

R432-200-20. Resident Care Equipment.

(1) The facility shall provide equipment, in good working order, to meet the needs of residents.

(2) Disposable and single-use items shall be properly disposed of after use.

(3) Resident care equipment shall include at least the following:

(a) Self-help ambulation devices such as wheelchairs, walkers, and other devices deemed necessary in the resident plan of care. Facility policy may require that residents obtain their own equipment for long-term use;

(b) Blood pressure apparatus and stethoscopes, appropriate to the needs and number of residents;

(c) Thermometers appropriate to the needs of residents;

(d) Weight scales to weigh all residents;

(e) Bedpans, urinals, and equipment to clean them;

(f) Water pitchers, drinking glasses, and resident gowns;

(g) Drug service trays;

(h) Access to emergency oxygen including equipment for its administration;

(i) Emesis basins;

(j) Linens including sheets, blankets, bath towels, and wash cloths for not less than three complete changes for the

facility's licensed bed capacity. There shall be a bedspread for each resident bed;

(k) Personal items including toothbrush, comb, hair brush, soap for bathing and showering, denture cups, shaving apparatus, and shampoo;

(l) An individual chart for each resident;

(m) Gloves (sterile and unsterile);

(n) Ice bags.

R432-200-21. Pharmacy Service.

The facility shall make provision for pharmacy service.

(1) This service shall be under the direction of a qualified pharmacist currently licensed in the state of Utah.

(2) The pharmacist may be retained by contract.

(3) The pharmacist shall develop policies, direct, supervise and assume responsibility for any pharmacy services offered in the facility.

(4) Pharmacy services shall meet R432-150-24.

R432-200-22. Dietary Services.

(1) Organization.

(a) There shall be an organized dietary service that provides safe, appetizing, and nutritional food service to residents.

(b) The service shall be under the supervision of a qualified dietetic supervisor or consultant.

(c) If a facility contracts with an outside food management company, the company shall comply with all applicable requirements of these rules.

(2) See R432-150-20.

R432-200-23. Social Services.

(1) The facility shall provide social services which assist staff, residents, and residents' families to understand and cope with residents' personal, emotional, and related health and environmental problems.

(2) This service may be provided by a consultant.

(3) See R432-150-15.

(4) Responsibilities.

Whether provided directly by the facility or by agreement with other agencies, social service personnel shall:

(a) Provide services to maximize each resident's ability to adjust to the social and emotional aspects of their condition, treatments, and continued stay in the facility;

(b) Participate in ongoing discharge planning to guarantee continuity of care;

(c) Initiate referrals to official agencies when the resident needs financial assistance;

(d) Maintain appropriate liaison with the family or other responsible person concerning the resident's placement and rights;

(e) Preserve the dignity and rights of each resident;

(f) Maintain records, including a social history and social-services-needs evaluation, (updated annually);

(g) Integrate social services with other elements of the resident-care plan.

R432-200-24. Recreation Services.

(1) There shall be an organized resident activity program for the group and for each resident in the facility.

(2) See R432-149-28.

R432-200-25. Laboratory and Radiology Services.

(1) The facility shall make provision for laboratory and radiology services.

(2) See R432-149-29, Laboratory Services, and R432-149-30, Radiology Services.

R432-200-26. Dental Services.

The facility shall make provision for annual and emergency dental care for residents. Such provisions shall include:

(1) Developing oral hygiene policies and procedures with input from dentists;

(2) Presenting oral hygiene in-service programs by knowledgeable persons to both staff and residents;

(3) Allowing resident's freedom of choice in selecting their own private dentists;

(4) Developing an agreement with a dental service for those residents who do not have a personal dentist;

(5) Arranging transportation to and from the dentist's office.

R432-200-27. Specialized Rehabilitative Services.

(1) Organization.

(a) A facility that provides specialized rehabilitative services may offer these services directly or through agreements with outside agencies or qualified therapists.

(b) Services may be offered either on-site or off-site.

(c) If the facility does not provide specialized rehabilitative services, the facility shall neither admit nor retain residents in need of such services.

(2) Personnel.

(a) Specialized rehabilitative services shall be provided by qualified licensed therapists in accordance with Utah law and accepted practices.

(b) Therapists shall offer the full scope of services to the resident.

(c) All therapy assistants shall be qualified and shall work under the direct supervision of a licensed therapist at all times.

(d) Speech pathologists shall be licensed under Title 58, Chapter 41.

(3) Policies and Procedures.

(a) Services shall be provided only on the written order of an attending physician.

(b) Safe and adequate space and equipment shall be available commensurate with the needs of residents.

(c) An appropriate plan of treatment shall be initiated by an attending physician and developed by the therapist in consultation with the nursing staff.

(d) An initial progress report shall be submitted to the attending physician two weeks after treatment has begun or when specified by the physician.

(e) The physician and therapist shall review and evaluate the plan of treatment monthly, unless, the physician recommends an alternate schedule in writing.

(f) There shall be documentation in the resident's record

of the specialized plan of treatment.

R432-200-28. Medical Records.

(1) Organization.

(a) Medical records shall be complete, accurately documented, and systematically organized to facilitate retrieval and compilation.

(b) There shall be written policies and procedures to accomplish these purposes.

(c) The medical record service shall be under the direction of a registered record administrator (RRA) or an accredited record technician (ART).

(d) If an RRA or an ART is not employed at least part-time, the facility shall consult at least annually with an RRA or ART according to the needs of the facility.

(e) A designated individual in the facility shall be responsible for day-to-day record keeping.

(2) Retention and Storage.

(a) Provision shall be made for the filing, safe storage, and easy accessibility of medical records.

(i) The record and its contents shall be safeguarded from loss, defacement, tampering, fires, and floods.

(ii) Records shall be protected against access by unauthorized individuals.

(b) Medical records shall be retained for at least seven years after the last date of resident care. Records of minors shall be retained until the minor reaches age 18 or the age of majority plus an additional two years. In no case shall the record be retained less than seven years.

(c) All resident records shall be retained within the facility upon change of ownership.

(d) When a facility ceases operation, provision shall be made for appropriate safe storage and prompt retrieval of all medical records.

(3) Release of Information.

(a) There shall be written procedures for the use and removal of medical records and the release of information.

(b) Medical records shall be confidential.

(i) Information may be disclosed only to authorized persons in accordance with federal, state, and local laws.

(ii) Requests for other information which may identify the resident (including photographs) shall require the written consent of the resident or guardian if the resident is judged incompetent.

(c) Authorized representatives of the Department may review records to determine compliance with licensure rules and standards.

(4) Physician or Licensed Practitioner Documentation

Rubber-stamp signatures may be used in lieu of the written signature of the physician or licensed practitioner if the facility retains the signator's signed statement acknowledging ultimate responsibility for the use of the stamp and specifying the conditions for its use.

(5) Medical Record.

(a) Records shall be permanent (typewritten or hand written legibly in ink) and capable of being photocopied.

(b) Records shall be kept for all residents admitted or accepted for treatment and care.

(c) Records shall be kept current and shall conform to good medical and professional practice based on the service provided to each resident.

(d) All records of discharged residents shall be completed and filed within 60 days of discharge.

(e) All entries shall be authenticated including date, name or identified initials, and title of persons making entries.

(6) Contents of the Medical Record

A facility shall maintain an individual medical record for each resident which shall include:

(a) Admission record (face sheet) including the resident's name; social security number; age at admission; birth date; date of admission; name, address, telephone number of spouse, guardian, authorized representative, person or agency responsible for the resident; and name, address, and telephone number of the attending physician;

(b) Admission and subsequent diagnoses and any allergies;

(c) Reports of physical examinations signed and dated by the physician;

(d) Signed and dated physician orders for drugs, treatments, and diet;

(e) Signed and dated progress notes including but not limited to:

(i) Records made by staff regarding the daily care of the resident;

(ii) Informative progress notes by appropriate staff recording changes in the resident's condition. Progress notes shall describe the resident's needs and response to care and treatment, and shall be in accord with the plan of care;

(iii) Documentation of administration of all "PRN" medications and the reason for withholding scheduled medications;

(iv) Documentation of use of restraints in accordance with facility policy including type of restraint, reason for use, time of application, and removal;

(v) Documentation of oxygen administration;

(vi) Temperature, pulse, respiration, blood pressure, height, and weight notations, when required;

(vii) Laboratory reports of all tests prescribed and completed;

(viii) Reports of all x-rays prescribed and completed;

(ix) Records of the course of all therapeutic treatments;

(x) Discharge summary including a brief narrative of conditions and diagnoses of the resident and final disposition;

(xi) A copy of the transfer form when the resident is transferred to another health care facility;

(xii) Resident-care plan.

R432-200-29. Housekeeping Services.

Organization.

(1) There shall be adequate housekeeping services to maintain a clean sanitary and healthful environment in the facility.

(2) See R432-149-34.

R432-200-30. Laundry Services.

(1) There shall be adequate laundry service to provide clean linens and clothing for residents and staff.

(2) See R432-150-32.

R432-200-31. General Maintenance.

(1) Each facility shall develop and implement maintenance policies and procedures that shall be reviewed and updated annually.

(2) See R432-150-33.

KEY: health facilities
March 3, 1995 **26-21-5**
Notice of Continuation December 15, 1997

R432. Health, Health Systems Improvement, Health Facility Licensure.
R432-201. Mental Retardation Facility: Supplement "A" to the Small Health Care Facility Rule.
R432-201-1. Legal Authority.

This rule is adopted pursuant to Section 26-21-13.5.

R432-201-2. Purpose.

The purpose of this rule is to meet the legislative intent pursuant to 26-21-13.5.

R432-201-3. Special Definitions.

(1) See R432-1-3.

(2) Special Definitions.

(a) "Significantly Subaverage General Intellectual Functioning" is operationally defined as a score of two or more standard deviations below the mean on a standardized general intelligence test.

(b) "Developmental Period" means the period between conception and the 18th birthday.

R432-201-4. Compliance.

All facilities governed by these rules shall be in full compliance at the time of initial licensure.

R432-201-5. Licensure.

(1) See Categories of licensure R432-200-4(2).

(2) See R432-2.

R432-201-6. Construction and Physical Environment.

See R432-12, Small Health Care Facility Rules.

R432-201-7. Governing Body and Management.

(1) Governing Body.

The facility shall identify an individual or group to constitute the governing body of the facility.

(2) Duties and Responsibilities.

The governing body shall:

(a) exercise general policy, budget, and operating direction over the facility;

(b) set the qualifications for the administrator of the facility;

(c) appoint the administrator of the facility.

(3) Compliance with Federal, State, and Local Laws.

The facility shall be in compliance with all applicable provisions of federal, state and local laws, regulations and codes pertaining to health, safety, and sanitation.

(4) Administrator.

Each facility shall appoint, in writing, an administrator professionally licensed by the Utah Department of Commerce in a health care field.

(a) A copy of the administrator's license or credentials shall be posted alongside the facility's license in a place readily visible to the public.

(b) The administrator shall act as the administrator of no more than four small health care facilities and no more than a total of 60 beds in any type of licensed health care facility.

(c) The administrator shall have sufficient freedom from other responsibilities and shall be on the premises of the facility a sufficient number of hours in each business day (at least four hours per week for each six clients) and as necessary to properly manage the facility and respond to requests by the Department and the public.

(d) The administrator shall designate, in writing, the name and title of the person who shall act as administrator in his absence.

(i) This person shall have sufficient power, authority, and freedom to act in the best interests of client safety and well-being.

(ii) It is not the intent of this paragraph to permit an unlicensed de facto administrator to supplant or replace the designated, licensed administrator.

(5) Administrator Responsibilities.

(a) The administrator's responsibilities shall be included in a written job description on file in the facility and available for Department review.

(b) The job description shall include responsibility to insure the following duties are fulfilled:

(i) complete, submit, and file all records and reports required by the Department;

(ii) act as a liaison with the licensee, qualified mental retardation professional, QMRP, and other supervisory staff of the facility;

(iii) respond to recommendations made by the facility committees;

(iv) assure that employees are oriented to their job functions and receive appropriate and regularly scheduled in-service training;

(v) implement policies and procedures for the operation of the facility;

(vi) hire and maintain the required number of licensed and nonlicensed staff, as specified in these rules, to meet the needs of clients;

(vii) maintain facility staffing records for at least the preceding 12 months;

(viii) secure and update contracts for required professional and other services not provided directly by the facility;

(ix) verify all required licenses and permits of staff and consultants at the time of hire or effective date of contract;

(x) review all incident and accident reports and document action taken.

(A) Incident and accident reports shall be numbered and logged in a manner to account for all reports.

(B) Incident and accident reports shall have space for written comments by the administrator and, as appropriate,

the attending physician and constituted committee.

(C) Original incident and accident reports shall be kept on file in the facility and shall be available for review by the Department.

R432-201-8. Staff and Personnel.

(1) Staff Qualifications and Orientation.

(a) The administrator, QMRP, and department supervisors shall develop job descriptions for each position including job title, job summary, responsibilities, qualifications, required skills and licenses, and physical requirements.

(b) Periodic employee performance evaluations shall be documented.

(c) All personnel shall have access to facility policy and procedure manuals and other information necessary to effectively perform duties and carry out responsibilities.

(2) Health Surveillance.

(a) The facility shall establish policies and procedures for the health screening of all facility personnel.

(b) See R432 150-26(6).

(c) All dietary and other staff who handle food shall obtain a Food Handler's Permit from the local health department.

(3) Qualified Mental Retardation Professional, QMRP.

(a) Each client's active treatment program shall be integrated, coordinated and monitored by a qualified mental retardation professional.

(b) The qualified mental retardation professional shall meet the standards in R432-152-9(1)(b)(i) through (ii).

(4) Professional Program Services.

See R432-152-9(2)(a) through (f).

(5) Direct Care Staffing.

See R432-152-9(3)(a) through (d).

(6) Residential Living Unit Staff.

See R432-152-9(4)(a) through (d).

(7) Staff Training Program.

See R432-152-9(5)(a) through (d).

R432-201-9. Volunteers.

Volunteers may be utilized in the daily activities of the facility but may not be included in the facility's staffing plan in lieu of facility employees. See R432-152-10.

R432-201-10. Contracts and Agreements.

(1) Contracts.

(a) If a service required under this subpart is not provided directly, the facility shall have a written agreement with an outside program, resource, or service to furnish the necessary service, including emergency and other health care.

(b) The agreement shall:

(i) contain the responsibilities, functions, objectives, and other terms agreed to by both parties;

(ii) provide that the facility is responsible for assuring that the outside services meet the standards for quality of services contained in this subpart.

(c) The facility shall assure that outside services meet the needs of each client.

(d) If living quarters are not provided in a facility owned by the ICF/MR, the ICF/MR remains directly responsible for the standards relating to physical environment that are specified in R432-200-6 and R432-152-22.

(2) Transfer Agreements.

(a) The licensee shall maintain, where appropriate, a written transfer agreement with one or more hospitals, or nearby health facilities to facilitate the transfer of clients and essential client information.

(b) The transfer agreement shall include provisions for:

(i) criteria for transfer;

(ii) appropriate methods of transfer;

(iii) transfer of information needed for proper care and treatment of the individual transferred;

(iv) security and accountability of personal property of the individual transferred;

(v) proper notification of the hospital and the responsible person before transfer;

(vi) the facility responsible for client care in the process of transfer;

(vii) client confidentiality.

R432-201-11. Client Rights.

(1) The facility shall ensure the rights of all clients.

(2) The facility shall:

(a) inform each client, parent, if the client is a minor, or legal guardian, of the client's rights and the rules of the facility;

(b) inform each client, parent, if the client is a minor, or legal guardian, of the client's medical condition, developmental and behavioral status, attendant risks of treatment, and of the right to refuse treatment;

(c) allow and encourage individual clients to exercise their rights as clients of the facility, and as citizens of the United States, including the right to file complaints and the right to due process, and each client shall be afforded the opportunity to voice grievances and recommend changes in policies and procedures to facility staff and outside representatives of personal choice, free from restraint, interference, coercion, discrimination, or reprisal;

(d) allow individual clients to manage their financial affairs and teach them to do so to the extent of their capabilities;

(e) ensure that clients are not subjected to physical, verbal, sexual or psychological abuse or punishment;

(f) ensure that clients are free from unnecessary drugs and physical restraints and are provided active treatment to reduce dependency on drugs and physical restraints;

(g) provide each client with the opportunity for personal privacy and ensure privacy during treatment and care of personal needs;

(h) ensure the clients are not compelled to participate in publicity events, fund raising activities, movies or anything that would exploit the client;

(i) ensure that clients are not compelled to perform services for the facility and ensure that clients who do work for the facility are compensated for their efforts at prevailing wages commensurate with their abilities;

(j) ensure clients the opportunity to communicate, associate and meet privately with individuals of their choice,

including legal counsel and clergy, and to send and receive unopened mail;

(k) ensure that clients have access to telephones with privacy for incoming and outgoing local and long distance calls except as contraindicated by factors identified within their individual program plans;

(l) ensure clients the opportunity to participate in social and community group activities and the opportunity to exercise religious beliefs and to participate in religious worship services without being coerced or forced into engaging in any religious activity;

(m) ensure that clients have the right to retain and use appropriate personal possessions and clothing, and ensure that each client is dressed in his or her own clothing each day;

(n) permit a married couple both of whom reside in the facility to reside together as a couple.

(3) Client Finances.

(a) The facility shall establish and maintain a system that:

(i) assures a full and complete accounting of clients' personal funds entrusted to the facility on behalf of clients;

(ii) precludes any commingling of client funds with facility funds or with the funds of any person other than another client.

(b) The client's financial record shall be available on request to the client, parents, if the client is a minor, or legal guardian.

(c) All monies entrusted to the facility on behalf of the clients shall be kept in the facility or shall be deposited within five days of receipt of such funds in an interest-bearing account in a local bank or savings and loan association authorized to do business in Utah, the deposits of which shall be insured.

(d) When the amount of a client's money entrusted to the facility exceeds $150, all money in excess of $150 shall be deposited in an interest-bearing account as specified in R432-201-11(3) above.

(e) A person, firm, partnership, association or corporation which is licensed to operate more than one health facility shall maintain a separate account for each such facility and shall not commingle client funds from one facility with another.

(f) Upon discharge of a client, all money and valuables of that client which have been entrusted to the licensee shall be surrendered to the client in exchange for a signed receipt. Money and valuables kept within the facility shall be surrendered upon demand and those kept in an interest-bearing account shall be made available within a reasonable time.

(g) Within 30 days following the death of a client, except in a medical examiner case, all money and valuables of that client which have been entrusted to the licensee shall be surrendered to the person responsible for the client or to the executor or the administrator of the estate in exchange for a signed receipt. When a client dies without a representative or known heirs, immediate written notice thereof shall be given by the facility to the State Medical Examiner and the registrar of the local probate court and a copy of said notice shall be filed with the Department.

(4) Communication with Clients, Parents, and Guardians.

The facility shall:

(a) promote participation of parent, if the client is a minor, and legal guardian in the process of providing active treatment to a client unless their participation is unobtainable or inappropriate;

(b) answer communications from a client's family and friends promptly and appropriately;

(c) promote visits by individuals with a relationship to a client, such as family, close friends, legal guardian and advocate, at any reasonable hour, without prior notice, consistent with the right of a client's and other clients' privacy, unless the interdisciplinary team determines that the visit would not be appropriate for that client;

(d) promote visits by parents or guardians to any area of the facility that provides direct client care service to a client, consistent with right of that client's and other clients' privacy;

(e) promote frequent and informal leaves from the facility for visits, trips, or vacations;

(f) notify promptly a client's parent or guardian of any significant incident, or change in a client's condition including, but not limited to, serious illness, accident, death, abuse, or unauthorized absence.

(5) Staff Treatment of Clients.

(a) The facility shall develop and implement written policies and procedures that prohibit mistreatment, neglect or abuse of a client.

(i) Staff of the facility shall not use physical, verbal, sexual or psychological abuse or punishment.

(ii) Staff shall not punish a client by withholding food or hydration that contribute to a nutritionally adequate diet.

(b) The facility shall prohibit the employment of individuals with a conviction or prior employment history of child, client abuse, spouse abuse, neglect or mistreatment.

(c) The facility shall ensure that all allegations of mistreatment, neglect, or abuse, or injuries of unknown source, are reported immediately to the administrator and to other officials in accordance with 62A-3-3, and 62A-3-4, Part 5 through established procedures.

(d) The facility shall have evidence that all alleged violations are thoroughly investigated and shall prevent further potential abuse while the investigation is in progress.

(e) The results of all investigations shall be reported to the administrator or designated representative and to other officials in accordance with Title 62A, Chapter 3, Part 3, and Chapter 4, Part 5 within five working days of the incident and, if the alleged violation is verified, appropriate corrective action shall be taken.

R432-201-12. Client Treatment Services.

See R432-152-13.

R432-201-13. Admissions, Transfers, and Discharge.

(1) A client who is admitted by the facility shall be in need of and receive active treatment services.

(2) See R432-152-15, Admissions, Transfer and Discharge.

R432-201-14. Behavior Management and Restraint Policy.

(1) See R432-152-16, Client Behavior and Facility Practice.

(2) See R432-152-14, Human Rights Committee.

R432-201-15. Physician Services.

See R432-152-17.

R432-201-16. Nursing Services.

See R432-152-18.

R432-201-17. Dental Services.

See R432-152-19.

R432-201-18. Pharmacy Services.

See R432-152-20.

R432-201-19. Laboratory Services.

See R432-152-21.

R432-201-20. Environment.

See R432-152-22.

R432-201-21. Emergency Plan and Procedures.

See R432-152-23.

R432-201-22. Smoking Policies.

Smoking policies shall comply with R432-149-12.

R432-201-23. Pets in Long-Term Care Facilities.

Each facility shall develop a written policy regarding pets in accordance with R432-150-30.

R432-201-24. Housekeeping Services.

See R432-150-16(2).

R432-201-25. Laundry Services.

See R432-150-32.

R432-201-26. Maintenance Services.

See R432-150-33.

R432-201-27. Dietary Services.

See R432-150-20.

R432-201-28. Record System.

See R432-152-30.

KEY: health facilities
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Notice of Continuation December 15, 1997 **26-21-13.5**

R432. Health, Health Systems Improvement, Health Facility Licensure.
R432-250. Residential Health Care Facilities.
R432-250-1. Legal Authority.

This rule is promulgated pursuant to Title 26, Chapter 21.

R432-250-2. Purpose.

The purpose of this rule is to establish standards for the operation and maintenance of residential health care facilities. This rule sets standards in providing an array of services for long-term care to provide quality health care.

R432-250-3. Time for Compliance.

Facilities governed by these rules shall comply with these standards, except that construction standards for any currently licensed residential health care facility constructed before October 1, 1992, shall be the same as the Utah Department of Health standards of construction and equipment in effect at the time of construction or latest substantial remodel or addition. Limited Capacity-Residential Health Care Facilities which are licensed prior to February 1, 1994 shall submit the required policy and procedure manuals by July 1, 1994.

R432-250-4. Definitions.

See common definitions R432-1-3.

R432-250-5. Licensure.

(1) Residential care facilities shall be licensed according to the following categories:

(a) A large residential care facility is a facility that houses 17 or more residents.

(b) A small residential health care facility health care facility is a facility that houses six to 16 residents.

(c) A limited capacity residential health care facility is a facility that houses two to five residents.

(2) A residential care facility shall provide living arrangements for two or more persons. The facility may admit and retain only a person who is ambulatory or mobile.

(3) Care provided for residents shall include the following:

(a) Safe and clean living accommodations;

(b) Three nutritionally well-balanced meals;

(c) Twenty-four hour, seven-day-a-week general monitoring of residents;

(d) A system to monitor and record significant changes in the resident's physical or mental status and promptly report such change to the resident's responsible person or physician;

(e) Protection of residents' rights.

(f) Personal care and social care as required by the resident and according to facility policy.

(4) See R432-2.

R432-250-6. General Construction Rules.

See R432-6, Residential Health Care Construction Rules.

R432-250-7. Administration and Organization.

(1) Organization.

(a) The licensee shall exercise general supervision over the affairs of the facility and establish policies to comply with these rules.

(b) If the licensee is a corporation or an association a governing body shall be active and functioning to assure accountability.

(2) Duties and Responsibilities.

(a) The licensee shall be responsible for compliance with Utah law and for the overall organization, management, operation, and control of the facility.

(b) Responsibilities shall include the following:

(i) Comply with all federal, state, and local laws;

(ii) Establish policies and procedures for the welfare of residents, the protection of their rights and the general operation of the facility;

(iii) Adopt a policy that states the facility will not discriminate on the basis of race, color, sex, religion, ancestry or national origin in accordance with Section 13-7-1;

(iv) Appoint, in writing, a qualified administrator (the licensee and administrator may be the same person) who shall assume full responsibility for the day-to-day operation and management of the facility;

(v) Secure and update contracts for required services not provided directly by the facility;

(vi) Respond appropriately to reports requested by the Department.

(3) Administrator.

The administrator shall have sufficient freedom from other responsibilities and shall be on the premises a sufficient number of hours in the business day, and at other times as necessary, to manage and administer the facility.

(4) Qualifications.

The administrator of a residential care facility shall have the following qualifications:

(a) Be at least 21 years of age;

(b) Have knowledge of and comply with applicable laws, and rules;

(c) Have knowledge and ability to deliver, or direct the delivery of appropriate care to residents;

(d) Have an associate degree or two years experience in a health care facility.

(5) Responsibilities.

The administrator's responsibilities shall include at least the following:

(a) The administrator shall designate in writing a competent employee (at least 21 years of age) to act as administrator in his absence. This person shall have authority to act in the residents' best interests;

(b) Recruit, employ, and train staff to meet the needs of the residents and facility;

(c) Maintain a 12-month record of daily work schedules or payroll records;

(d) Accept and retain only those residents who meet acceptance criteria and whose needs can be met by the facility;

(e) Maintain a log indicating any significant change in any resident's condition and the facility's action or response;

(f) Notify the resident's responsible person and physician of significant changes or deterioration of the resident's health and ensure his transfer to an appropriate health care facility if the resident requires services beyond the scope of the facility's license;

(g) Review every injury, accident and incident to a resident or employee, take appropriate corrective action, and document corrective action taken;

(h) Notify the nearest peace officer, law enforcement agency, or protective services agency whenever there is reason to believe that a resident has been subject to abuse, neglect, or exploitation (Section 62A-3-201 to 312);

(i) Conduct regular inspections of the facility to ensure it is safe from potential hazards.

R432-250-8. Personnel.

(1) There shall be sufficient number of competent personnel who are able to perform their duties, provide services, and function to meet the needs of residents on duty 24-hours a day to ensure the residents receive personal and social care. Additional staff shall be employed as necessary to perform office work, cooking, housekeeping, laundering and general maintenance.

(2) Qualifications and Orientation.

(a) All employees who provide personal care to residents shall:

(i) be at least 18 years of age;

(ii) be licensed, registered or certified as required by the Department of Commerce;

(iii) produce a copy of the registration, certification, or license within 45-days to the employer.

(iv) maintain a copy of the registration, certification or license for Department review.

(b) Each employee shall have related experience in the job assigned or receive on-the-job training.

(c) Written job descriptions for each position including job title, job responsibilities, qualifications or required skills shall be available in facilities that are licensed for 17 or more residents.

(d) All personnel shall have access to the facility's policies and procedures manuals and other information necessary to effectively perform their duties and carry out their responsibilities.

(e) There shall be documentation that all employees are oriented to the facility and the job for which they are hired. Orientation shall include:

(i) Job description;

(ii) Ethics, confidentiality, and resident's rights;

(iii) Fire and disaster plan;

(iv) Policy and procedures

(v) Reporting requirements for witnessing abuse, neglect and exploitation.

(3) Health Requirements.

(a) The Facility shall establish a personnel health program through written personnel health policies and procedures which shall protect the health and safety of personnel and clients commensurate with the service offered.

(b) An employee placement health evaluation to include at least a health inventory shall be completed when an employee is hired. Facilities may use their own evaluation or the Department approved form.

(c) The health inventory shall obtain at least the employee's history of the following:

(i) conditions that predispose the employee to acquiring

or transmitting infectious diseases;

(ii) condition which may prevent the employee from performing certain assigned duties satisfactorily.

(d) Employee health screening and immunization components of personnel health programs shall be developed.

(e) Employee skin testing by the Mantoux Method and follow up for tuberculosis shall be done in accordance with R386-702-5, Special Measures for control of Tuberculosis.

(i) Skin testing must be conducted on each employee annually and after suspect exposure to a resident with active tuberculosis.

(ii) Skin testing shall be exempted for all employees with known positive reaction to skin tests.

(f) All infections and communicable diseases reportable by law shall be reported by the facility to the local health department in accordance with R386-702-2.

(g) The facility shall comply with the Occupational Safety and Health Administration's Blood-borne Pathogen Standard.

(4) In-service Training.

All staff shall receive documented in-service training which shall include the following:

(a) Principles of good nutrition, menu planning, food preparation, and storage;

(b) Principles of good housekeeping and sanitation;

(c) Principles of providing personal and social care;

(d) Proper procedures in assisting residents with self-administered medications;

(e) Recognizing early signs of illness and determine when there is a need for professional help;

(f) Accident prevention including safe bath and shower water temperatures;

(g) First Aid;

(h) Residents' rights and reporting requirements of Section 62A-3-201 to 312;

(i) Fire and disaster drills;

(j) Principles of personal interaction;

(5) Failure to ensure that personnel are licensed, registered or certified may result in sanctions to the facility license.

R432-250-9. Volunteers.

(1) Volunteers may be utilized in the daily activities of the facility but shall not be included in the facility's employee staffing plan.

(2) Volunteers shall be supervised and familiar with resident's rights and the facility's policies and procedures.

(3) Volunteers who provide personal care to residents shall be in good health, competent, and at least 18 years of age.

(4) Residents may participate voluntarily in performing housekeeping duties and other tasks suited to the resident's needs and abilities. Residents shall not be used as substitutes for staff.

R432-250-10. Contracts.

(1) The licensee may secure contracts for services such as food service, laundry and maintenance services.

(2) Contracts shall include the effective and expiration dates of agreement, and the goods or services provided by the contractor to the facility.

R432-250-11. Facility Records.

(1) Each facility shall maintain accurate and complete records as required by licensure rules. Records shall be filed, stored safely, and be easily accessible.

(2) Records shall be protected against access by unauthorized individuals.

(3) The following records shall be maintained:

(a) General policies and procedures;

(b) Personnel records for each employee, retained for at least three years following termination of employment. The record shall include at least the following:

(i) Employee's application;

(ii) Date of employment, termination date, and reason for leaving;

(iii) A copy of the employee's current registration, food handler's permit and other documentation required for in-service requirements.

(c) A copy of any variance requests granted;

(d) Resident records;

(i) Resident's records shall be retained for at least three years following discharge.

(ii) The record shall include at least the following:

(A) Resident's name, date of birth, and last address;

(B) Name, address, and telephone number of the person who will set up medications;

(C) Name, address, and telephone number of the individual to be notified in case of accident or death;

(D) Religious preference;

(E) Name, address, and telephone number of physician and dentist to be called in an emergency;

(F) Acceptance agreement and acceptance assessment;

(G) Physician's assessment;

(H) A list of medications.

(e) If the facility assists the resident with self-administration of medications, a list of current medications with precautions and instructions for their use;

(f) A chronological log of incident and accident reports;

(g) A 12-month record of daily work staff assignments and hours of duty;

(h) A three month record of menus including substitutions; and

(i) A file of incident and accident reports to located on site.

R432-250-12. Acceptance and Transfer Criteria.

(1) Each facility shall develop written acceptance, retention, and transfer policies based on this section which shall be available to the public upon request.

(2) The facility shall accept and retain only residents who meet the following criteria and who can be properly accommodated and receive required care by the facility according to these rules.

(3) Facilities may choose to limit acceptance of residents to more restrictive criteria.

(4) Before accepting a resident, the facility shall obtain sufficient information about the person's ability to function in

the facility through a interview with the resident, responsible person, the physician's assessment and completion of an acceptance appraisal. If the Department determines during inspection or interview that the facility knowingly and willfully admits or retains residents who do not meet license criteria, then the Department may, for a time period specified, require resident assessments be conducted by an individual who is independent from the facility.

(5) Residents shall meet the following criteria before being admitted:

(a) Be ambulatory or mobile and be capable of taking life saving action in an emergency;

(b) Have stable health and:

(i) Require no assistance or only some assistance from facility staff in the activities of daily living;

(ii) Require and receive regular or intermittent care or treatment in the facility from a licensed health professional on an individual contract basis, if permitted by facility policy;

(iii) Be capable of managing their own medication as defined in R432-250-19;

(iv) Be able to manage their personal hygiene as defined in R432-250-18;

(v) Require assistance from a licensed professional on an individual contract basis, as permitted by facility policy.

(6) If permitted by facility policy, residents who have developed a minor illness or have an accident while in the facility, who require intermittent care from a health professional to restore them to a condition that would permit them to continue to reside at the facility may continue to reside at the facility.

(7) Persons who have the following conditions shall not be accepted nor retained by a residential health care facility:

(a) Active tuberculosis or other communicable disease;

(b) Require inpatient hospital or long-term nursing care;

(c) Mental disorders that manifest behavior which is suicidal, assaultive, or harmful to self or others, or manifest behavior that requires close supervision and a controlled environment;

(d) Require significant assistance during night sleeping hours;

(e) Persons who are unable to take life-saving action in an emergency.

(8) Acceptance Agreement.

(a) A written agreement shall be signed by the resident and responsible person prior to admission, and shall be kept on file.

(b) The agreement shall specify at least the following:

(i) Basic and optional services available and the charges;

(ii) Provision for a 30-day notice prior to a change in basic and supplemental charges;

(iii) Refund conditions;

(iv) Acceptance, retention, discharge, and eviction policies;

(v) Notice that the Department has the authority to examine resident's records to determine compliance with licensure requirements;

(vi) Conditions under which the agreement may be terminated;

(vii) The name of the person who will assume responsibility for the resident's well-being.

(c) A copy of the residents' rights.

(9) Transfer policy.

The resident shall only be discharged, transferred, or evicted for one or more of the following reasons:

(a) When the facility is no longer able to meet the resident's needs;

(b) Nonpayment for basic services as per the acceptance agreement;

(c) The resident fails to comply with written policies or rules of the facility;

(d) When a resident poses a danger to self or other(s);

(e) Inability to take life saving action in an emergency;

(f) The resident or responsible person shall have 30 days advance notice of discharge except in cases of medical emergency, in which case the responsible person shall be notified as soon as possible;

(g) Discharge or transfer shall be coordinated with the resident, his family or responsible person, or appropriate agency;

(h) All money and valuables of that resident which have been entrusted to the licensee shall be surrendered to the resident upon discharge or transfer;

(i) The date and reason for termination of services shall be documented.

R432-250-13. Resident Assessment.

(1) Each person accepted to a residential facility shall have a personal physician or a licensed practitioner prior to admission.

(2) A signed and dated functional assessment shall be completed on each resident prior to admission and annually.

(3) The functional assessment shall be completed by a physician, an advanced practice registered nurse, physician assistant, or a registered nurse.

(4) The functional assessment shall document the following:

(a) Current medications with dose, route, and time of administration;

(b) A description of the resident's mental status and limitations;

(c) A physical assessment and limitations;

(d) Description of the nutrition and special diet needs or referral for a dietary evaluation;

(e) Allergies;

(f) Level of assistance required to complete the following tasks:

(i) Taking medications;

(ii) Mobility;

(iii) Dressing;

(iv) Bathing;

(v) Toileting (personal hygiene);

(vi) Eating;

(vii) Managing personal resources;

(viii) Scheduling appointments (medical, hair, etc);

(g) Description of the recreation/leisure activities.

(5) The initial assessment shall be updated annually and as necessary to document significant changes in the resident's physical, mental, and social condition.

(6) The assessment shall include a statement that the resident is able to function in a residential health care facility with minimal assistance.

(7) The administrator or facility staff shall promptly notify the resident's licensed practitioner and responsible person of any change.

R432-250-15. Residents' Rights.

(1) The facility shall develop written residents' rights statement based on this section.

(2) Resident Rights shall include the following:

(a) The right to be treated with respect, consideration, fairness, and full recognition of personal dignity and individuality;

(b) The right to be transferred, discharged, or evicted by the facility only in accordance with the terms of the signed acceptance agreement;

(c) The right to be free of mental and physical abuse, and chemical and physical restraints;

(d) The right to not do work for the facility without compensation;

(e) The right to privacy during visits with family, friends, clergy, social workers, ombudsman, and advocacy representatives;

(f) The right to share a room with a spouse, if both are residents;

(g) The right to privacy when receiving personal care or services;

(h) The right to keep personal possessions and clothing as space permits;

(i) The right to participate in religious and social activities of their choice;

(j) The right to send and receive mail unopened; and have access to telephones to make and receive confidential calls;

(k) The right to be fully informed, prior to or at the time of acceptance and during stay, of services available in the facility and of related charges, including any charges for services not covered by the facility's basic per diem rate;

(l) The right to arrange for medical and personal care;

(m) The right to have a family or responsible person informed by the facility of significant changes in his condition or needs;

(n) The right to leave the facility at any time and not be locked into any room, building, or on the facility premises during the day or night. This does not prohibit the establishment of house rules such as locking doors at night for the protection of residents;

(o) The right to be informed of complaint or grievance procedures and to voice grievances and recommend changes in policies and services to facility staff or outside representatives without restraint, discrimination, or reprisal;

(p) The right to be encouraged and assisted throughout his period of stay to exercise these rights as a resident and as a citizen;

(q) The right to manage and control his personal cash resources, or to be given at least a quarterly accounting of financial transactions made on his behalf, if the facility has accepted written delegation of this responsibility.

(3) Resident Rights shall be posted or reviewed annually with each resident and responsible party.

R432-250-16. Safeguards for Residents' Monies and Valuables.

(1) Every facility shall safeguard residents' cash resources, personal property, and valuables which have been entrusted to the licensee or facility staff.

(2) A facility shall not be required to handle resident's cash resources or valuables. However, if the facility accepts a resident's cash resources or valuables, then the facility shall safeguard the resident's cash resources in accordance with the following:

(a) No licensee or facility staff member may use residents' monies or valuables as his own or mingle them with his own. Residents' monies and valuables shall be separated and intact and free from any liability that the licensee incurs in the use of his own or the institution's funds and valuables.

(b) Each licensee shall maintain accurate records of residents' monies and valuables entrusted to the licensee.

(c) Records of residents' monies which are maintained as a drawing account shall include a control account for all receipts and expenditures, and an account for each resident and supporting receipts filed in chronological order.

(d) Each account shall be kept current with columns for debits, credits, and balance.

(e) Records of residents' monies and other valuables entrusted to the licensee for safekeeping shall include a copy of the receipt furnished, for funds received.

(f) All money deposited, with the facility, in a residents' account in excess of $150 shall be deposited in an interest-bearing account in a local financial institution within five days of receipt.

(3) Each health facility shall maintain a separate account for residents funds for each facility and shall not commingle with resident funds with another facility.

(4) Upon discharge, a resident's money and valuables, which have been entrusted to the licensee, shall be returned to the resident that day. Money and valuables kept in an interest-bearing account shall be made available within three working days.

(5) Within 30 days following the death of a resident, except in a medical examiner case, the resident's money and valuables entrusted to the licensee shall be surrendered to the responsible persons or to the administrator of the estate.

R432-250-17. Emergency and Disaster.

(1) Each facility has the responsibility to ensure the safety and well being of residents in the event of an emergency or disaster.

(2) An emergency or disaster may include interruption of public utilities, explosion, bomb threat, earthquake, flood, windstorm, epidemic, or mass casualty.

(3) The administrator shall be in charge during an emergency. If not on the premises, he shall make every effort to report to the facility, relieve subordinates and take charge during the emergency.

(4) The licensee and the administrator shall be responsible for the development of a written emergency and

disaster plan, coordinated with state and local authorities, to respond to fire emergencies and disasters.

(5) This plan shall be made available to all facility staff.

(6) The plan shall be reviewed annually and updated as necessary by the administrator and the licensee to conform with local emergency plans. The plan shall be available for review by the Department.

(7) Staff and residents shall receive instruction and training to respond appropriately in an emergency. Simulated disaster drills shall be held semi-annually, simulated fire drills shall be held quarterly on each shift for staff and residents, in accordance with R710-3.

(8) All drills shall be documented to include date, participants, problems encountered, and the ability of each resident to evacuate.

(9) The facility shall provide in the facility all equipment and supplies required in an emergency including emergency lighting, heating equipment, food, potable water, extra blankets, first aid kit, and radio.

(10) The facility will have arrangements for transportation of residents to another, prearranged, location.

(11) An ambient air temperature of 58 degrees F. (14 degrees C.) or lower may constitute an imminent danger to the health and safety of the residents. The person in charge shall take immediate and appropriate action.

(12) The facility's emergency plan shall contain:

(a) The names of the person in charge and persons with decision-making authority;

(b) The names of persons who shall be notified in an emergency in order of priority;

(c) The names and telephone numbers of emergency medical personnel, fire department, paramedics, ambulance service, police, and other appropriate agencies;

(d) A list of these telephone numbers shall be posted;

(e) Evacuation routes, location of fire alarm boxes, and fire extinguishers shall be posted in prominent locations throughout the facility;

(f) Instructions on how to contain a fire and how to use the facility alarm systems;

(g) Assignment of personnel to specific tasks during an emergency;

(h) The procedure to transport and evacuate residents and staff to other locations;

(i) How to recruit additional help, supplies, and equipment, to meet the residents needs, after an emergency or disaster.

R432-250-18. Personal Care.

(1) There shall be competent staff on duty 24 hours a day, every day of the week to meet the needs of residents. Qualified facility staff shall assist residents with the activities of daily living, independent activities of daily living and social care.

(2) Assistance with the activities of daily living and independent activities of daily living includes prompting and assisting residents with the following:

(a) personal grooming and dressing;

(b) oral hygiene and denture care;

(c) toileting and toilet hygiene;

(d) eating during mealtime;

(e) encourage and support residents to be independent or maintain independence if they use assistive devices (crutches, braces, walkers, wheelchairs) or prosthetic devices (glasses and hearing aids);

(f) housekeeping;

(g) self-administration of medication;

(h) arranging for medical and dental care including accessing transportation to and from the medical or dental facility;

(i) encouraging the resident to maintain his independence and sense of self-direction;

(j) administering emergency first aid;

(k) taking and recording oral temperatures.

(3) Social care includes:

(a) Providing residents opportunities for social interaction in the facility and in the community;

(b) Providing services to promote resident's independence and sense of self-direction.

R432-250-18. Medication Policies.

(1) The facility shall have written policies and procedures addressing the levels and types of assistance provided to a resident in a self-administration medication program, and the storage, control, and release of medications.

(2) The self administration medication program shall include one or all of the following:

(a) The resident administers their own medications.

(b) The resident shall have all medications set up by a pharmacy in a package which identifies the medication and time to administer.

(i) Facility staff may assist resident to open package at the request of the resident.

(ii) No additional training is required for the individual opening the package.

(c) Family members may set up medications in a package which identifies the medication and time to administer. If a family assists with medication administration they shall sign a waiver indicating that they understand that they assume the responsibility to fill prescriptions, administer medication and document that the medication has been administered. Facility staff may assist the families by:

(i) Reminding residents to take medications.

(ii) Opening the container at the resident's request.

(d) An Unlicensed Assistive Personnel may assist with medication administration under the supervision of a consulting Registered Nurse.

(i) A Registered Nurse consulting for the facility may delegate the task of assisting with medication administration to an Unlicensed Assistive personnel in accordance with the Nurse Practice Act R156-31-603.

(ii) The consulting registered nurse who delegates the assisting with medication administration must verify and evaluate the practitioner's orders, perform a nursing assessment, and determine whether the unlicensed assistive personnel can safely perform the assisting with administration of medications.

(iii) The medications must be administered according to a plan of care developed by the consulting Registered Nurse.

(iv) The consulting Registered Nurse shall provide and document supervision, evaluation, and training of the unlicensed assistive personnel assisting with medication administration.

(v) The delegating nurse or another qualified nurse shall be readily available either in person or by telecommunication.

(3) If a resident chooses to have a licensed nurse administer the medications, the following shall apply:

(a) The resident may have a home health agency nurse administer medications; or

(b) the resident may contract with a private nurse to administer medications; or

(c) the resident may use the facility's contracted licensed nurse, if available, to administer medications.

(4) Documentation and Record Keeping

(a) All medications which are administered shall be recorded on a form and initialed by the individual who has assisted the resident with their self-administration program.

(b) Documentation shall include if the resident refuses to take medications or is absent from the facility when medication was supposed to be taken.

(c) The licensed practitioner shall be notified when medication errors occur, if the resident refused the medication or if the resident misses medications.

(d) Any change in the dosage or schedule of medication administration shall be made by the resident's licensed practitioner, be documented in the medication record and all personnel notified of the medication change.

(5) Storage of Medication.

(a) Medication shall be stored securely in the resident's room or in a central storage area to prevent unauthorized access.

(b) If medication is stored in a central location, the resident shall have access to the medication.

(c) Medications that require refrigeration shall be stored separately from food items and at temperatures between 36 - 46 degrees F.

(d) Facility staff shall not repack or relabel resident medication.

(6) Disposal and Release of Medications.

(a) The resident's medication shall be returned to the resident or responsible person or family upon discharge.

(b) Discontinued medication shall be disposed of by the resident or his family.

(c) The administrator shall document the return to the resident of medication, which had been stored in a central supply, to the resident or his family.

R432-250-20. First Aid.

(1) There shall be one staff person on duty at all times who has training in basic first aid, heimlich maneuver, certified in cardiopulmonary resuscitation and emergency procedures to ensure that each resident receives prompt first aid as needed.

(2) First aid training refers to any basic first aid course approved by the American Red Cross or Utah Emergency Medical Training Council.

(3) Each facility, except those attached to a medical unit, shall have a first aid kit available at a designated location in the facility.

(4) The kit shall contain the following:

(a) A current edition of a basic first aid manual approved by the American Red Cross, The American Medical Association, or a state or federal health agency;

(b) Sterilized gauze squares (assorted sizes 2",and 4") six each;

(c) Rolled bandage (King) (1", 2", 3") one of each;

(d) Assorted adhesive dressing such as Band-Aids;

(e) Adhesive tape (1/2" or 1" wide);

(f) Bandage or other safe scissors;

(g) Tweezers;

(h) Thermometers;

(i) Tongue blades and cotton tipped applicator sticks;

(j) Cleansing agent or disinfectant solution;

(k) Lubricant;

(l) Assorted safety pins;

(m) Airway for mouth-to-mouth resuscitation.

R432-250-21. Arrangements for Medical or Dental Care.

(1) The facility shall arrange for medical or dental care as needed and requested by residents.

(2) Staff shall:

(a) Notify the resident's responsible person; or

(b) Make an appointment for the resident and arrange for transportation to and from the practitioner's office; or

(c) Notify the physician or other health care professional when the resident requires immediate medical attention.

R432-250-22. Activity Program.

(1) Resident shall be encouraged to maintain and develop their fullest potential for independent living through participation in activity and recreational programs.

(2) The facility shall provide opportunities for the following:

(a) Socialization activities;

(b) Independent living activities to foster and maintain independent functioning;

(c) Physical activities;

(d) Community activities to promote resident participation in activities away from the facility.

(3) Activity Coordinator.

(a) The administrator shall designate a person to be the activity coordinator to direct the facility's activity program.

(b) The activity coordinator shall:

(i) Coordinate all recreational activities including volunteer and auxiliary activities;

(ii) With resident participation, plan, organize, and conduct the residents' activity program.

(c) Based on a resident interest evaluation develop monthly activity calendars, including information on community activities.

(4) Each facility shall provide sufficient indoor and outdoor space, equipment, and supplies to meet the recreational needs and interests of residents.

(5) Storage shall be provided for recreational equipment and supplies. Locked storage shall be provided for potentially dangerous items such as scissors, knives, and toxic materials.

R432-250-23. Pets in the Facility.

(1) A facility may permit residents to keep household pets such as dogs, cats, birds, fish, and hamsters if permitted by local ordinance.

(2) Pets shall be kept clean and disease-free.

(3) The pet's environment shall be kept clean.

(4) Small pets such as birds and hamsters shall be kept in appropriate enclosures.

(5) Pets not confined in enclosures shall be hand held, under leash control, or under voice control.

(6) Pets that are kept at the facility shall have current vaccinations and the resident will maintain a record of the vaccinations.

(7) Upon approval of the administrator, family members may bring resident's pets to visit. Visiting pets must have current vaccinations.

(8) Facilities with birds shall have procedures which prevent the transmission of psittacosis. Procedures shall ensure minimum handling of and placing of droppings into a closed plastic bag for disposal.

(9) Pets shall not be permitted in food preparation, storage or dining areas or in any area where their presence would create a significant health or safety risk to others.

R432-250-24. Food Service.

(1) Meals served on the premises shall be served in a designated dining area suitable for the purpose.

(2) Tray service shall only be provided in a resident's room on a temporary basis.

(3) Residents shall be encouraged to eat their meals in the dining room with other residents.

(4) Each facility's food service shall comply with the Utah Department of Health Food Service Sanitation Regulations.

(5) Inspection reports by the local health department shall be maintained at the facility for review by the Department.

(6) If the facility accepts residents requiring therapeutic or special diets, the facility shall have an approved dietary manual for reference when preparing meals.

(7) Large and small facilities shall have an organized dietary service supervised by a qualified food service supervisor.

(8) A qualified food service supervisor shall have completed, prior to or within one year of employment, one of the following requirements:

(a) Have training in food service supervision and management consisting of 25 hours of classroom instruction in food service supervision; or

(b) Be a graduate of a dietetic technician or dietary managers' training program approved by the Dietary Managers' Association; or

(c) Have a bachelor's degree with major study in food management and nutrition, or dietetics; or

(d) Be a certified dietitian.

(9) An approved food service supervisor course shall cover, as a minimum, the following subjects:

(a) Menu writing;

(b) Basic nutrition;

(c) Sanitation and safety;

(d) Food preparation;

(e) Purchasing;

(f) Therapeutic diets and portion control;

(g) Alteration and consistency;

(h) Interpersonal communication;

(10) The qualified food service supervisor shall attend a minimum of three two-hour approved in-service training sessions each year.

(11) Dietary staff shall receive a minimum of four hours of documented in-service training each year.

(12) The qualified food service supervisor shall train, and supervise all persons who work in food services.

(13) Documented quarterly consultation shall be provided by a certified dietitian if residents requiring therapeutic diets are accepted.

(14) There shall be an adequate number of food service personnel on duty to meet the needs of residents.

(15) All food service personnel shall observe personal hygiene and sanitation practices which protect food from contamination.

(16) While on duty in food service, the cook and other kitchen staff shall not be assigned concurrent duties outside the food service area.

(17) All persons who prepare or serve food shall have a current Food Handler's Permit.

R432-250-25. Nutrition and Menu Planning.

(1) At least three meals or their equivalent shall be served daily.

(2) There shall be no more than a 14-hour interval between the evening meal and breakfast, unless a substantial snack is served in the evening.

(3) A different menu shall be planned for and followed for each day of the week.

(4) Menus may be cycled at a minimum of three weeks.

(5) The current week's menu shall be posted and signed by a certified dietitian.

(6) Substitutions to the menu, that are served, shall be recorded and retained for three months for review by the department.

(7) Food Storage and Supplies. A one-week supply of non-perishable food and a three-day supply of perishable food shall be available within the facility.

(8) Food Preparation and Service.

(a) All food shall be of good quality, palatable, and attractively served.

(b) Powdered milk shall be pasteurized if it is used as a beverage.

R432-250-26. Housekeeping Services.

(1) There shall be adequate housekeeping services to maintain a clean and sanitary environment in the facility.

(2) A qualified person shall direct housekeeping services. (3) Laundry, maintenance, and cleaning schedules shall be posted for housekeeping staff.

(4) There shall be adequate numbers of housekeeping and maintenance staff to maintain both the exterior and interior of the facility in a safe, clean, orderly manner.

(5) Housekeeping personnel shall be trained in preparing and using cleaning solutions, cleaning methods, use of equipment, and the method of handling clean and soiled linen, and trash.

(6) There shall be a linen supply to permit change of bed linens at least two times per week.

(7) Odors shall be controlled by maintaining cleanliness.

(8) There shall be a trash container in every occupied room.

(9) Cleaning agents, bleaches, insecticides, or poisonous, dangerous, or flammable materials shall be stored in a locked area to prevent unauthorized access.

(10) Bathtubs, shower stalls, or lavatories shall not be used as storage places.

(11) Throw or scatter rugs shall not be used.

R432-250-27. Laundry Services.

(1) There shall be laundry service to meet the needs of the residents.

(2) The facility shall inform the resident and his responsible person of the facility's laundry policy for resident's personal clothing.

(3) The laundry area shall be separate and apart from any room where food is stored, prepared, or served.

(4) At least one washing machine and clothes dryer in good repair shall be available for use by residents who desire to do their personal laundry.

(5) An iron and ironing board in good repair shall be available to residents.

R432-250-28. Maintenance Services.

(1) Maintenance shall be done according to an established schedule to ensure that the facility equipment, buildings, fixtures, spaces, and grounds are safe, clean, operable, and in good repair.

(2) In large facilities, a person shall be designated to direct the facility's maintenance.

(3) A pest control program shall be conducted in the facility buildings and on the grounds by a licensed pest control contractor or a qualified employee to ensure the absence of vermin and rodents. Documentation of the pest control program shall be maintained for Department review.

(4) Draperies, carpets, and furniture shall be maintained so they are clean and in good repair.

(5) Cracks in plaster, peeling wallpaper or paint, tears, splits or folds in floor coverings, and missing tile shall be repaired promptly.

(6) Entrances, exits, steps, and outside walkways shall be maintained in a safe condition, free of ice, snow, and other hazards.

R432-250-29. Waste Storage and Disposal.

Facilities and equipment shall be provided for the sanitary storage and treatment or disposal of all categories of waste, including hazardous and infectious wastes, if applicable, using techniques acceptable to the Department of Environmental Quality and the local health authority.

R432-250-30. Lights and Power System.

(1) All emergency power systems shall be maintained in operating condition.

(2) Battery operated equipment shall be tested quarterly and documentation shall include a record of performance, test period, and repairs.

(3) Lighting within the facility shall be maintained at the illuminating levels described in R432-6-21.

R432-250-31. Water Supply.

(1) Plumbing and drainage facilities shall be maintained in compliance with the Utah Plumbing Code.

(2) Hot water provided to resident tubs, showers, whirlpools, and handwashing facilities shall be regulated for safe use within a temperature range of 105 - 120 degrees F.

(3) Thermostatically controlled automatic mixing valves may be used to maintain hot water at the above temperature.

R432-250-32. Respite Services.

(1) Residential Health Care facilities may offer respite services and are not required to obtain a respite license from the Utah Department of Health.

(2) The purpose of respite is to provide intermittent, time limited care to give primary caretakers relief from the demands of caring for a person.

(3) Respite services may be provided at an hourly rate or daily rate, but shall not exceed 14-days for any single respite stay. Stays which exceed 14 days shall be considered a residential health care facility admission, and shall be subject to the admission requirements of R432-250.

(4) The facility shall coordinate the delivery of respite services with the recipient of services, case manager,if one exists, and the family member or primary caretaker.

(5) The facility shall document the person's response to the respite placement and coordinate with all provider agencies to ensure an uninterrupted service delivery program.

(6) The facility must complete a service agreement to serve as the plan of care. The service agreement shall identify the prescribed medications, physician treatment orders, need for assistance for activities of daily living and diet orders.

(7) The facility shall have written policies and procedures available to staff regarding the respite care clients which include:

(a) Medication administration;

(b) Notification of a responsible party in the case of an emergency;

(c) Service agreement and admission criteria;

(d) Behavior management interventions;

(e) Philosophy of respite services;

(f) Post-service summary;

(g) Training and in-service requirement for employees; and

(h) Handling personal funds.

(8) Persons receiving respite services shall be provided a copy of the Resident Rights documents upon admission.

(9) The facility shall maintain a record for each person receiving respite services which includes:

(a) Retention and storage of records.

(b) Confidentiality and release of information.

(c) The record shall contain the following information:

(i) Service agreement;

(ii) Demographic information and resident identification data;

(iii) Physician treatment orders;

(iv) Records made by staff regarding daily care of the person in service;

(v) Accident and injury reports;

(vi) Post-service summary.

(10) If a person has an advanced directive, a copy shall be filed in the record and staff be informed of its existence.

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Notice of Continuation December 30, 1997 **26-21-1**

R432. Health, Health Systems Improvement, Health Facility Licensure.
R432-300. Residential Health Care Facility - Limited Capacity - Type N.
R432-300-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-300-2. Purpose.

The purpose of this rule is to establish standards for protection of the health, safety, and welfare of individuals who receive nursing care in privately owned homes.

R432-300-3. Time for Compliance.

All facilities governed by these rules shall be in full compliance at the time of licensure. Each facility shall comply with these rules and their own policies and procedures.

R432-300-4. Definitions.

(1) Refer to common definitions R432-1-3, in addition;

(2) "Owner or operator occupied" means the owner or operator resides in the facility as opposed to simply working a duty shift in the facility.

(3) "Residential Health Care Facility- Type N" means a home or a residence occupied by the owner or operator that provides protected living arrangements plus nursing care and services on a daily basis for two to three individuals unrelated to the owner or operator of the facility.

R432-300-5. License Required.

A license is required to operate Residential Health Care Facility Type "N", see R432-2.

R432-300-6. Criteria for Type "N" Facility.

The licensee shall meet the following criteria to obtain a license for a Residential Health Care Facility-Limited Capacity (Type "N"):

(1) Provide care in a residence where the owner lives full time;

(2) Meet local zoning requirements to allow the facility to be operated at the given address;

(3) Obtain a certificate of fire clearance annually from the local fire marshal having jurisdiction;

(4) Have a physician assessment and approval for each resident's admission;

(5) Provide daily, licensed nursing care;

(6) Provide 24-hour direct care staff available on the premises.

R432-300-7. Guidelines.

When not addressed in these rules nursing care and other services provided in type "N" facilities shall comply with the standards in R432-150-19.

R432-300-8. Physical Environment.

(1) The facility shall provide comfortable living accommodations and privacy for residents who live in the facility.

(2) Bedrooms.

(a) Single-bed rooms shall have a minimum of 100 square feet of floor space.

(b) Multiple-bed rooms shall have a minimum of 80 square feet of floor space per bed.

(c) Beds shall be placed at least three feet away from each other.

(d) Residential family members or staff shall not share sleeping quarters with patients.

(e) Each resident shall have a separate standard sized bed.

(f) No room ordinarily used for other purposes (such as a hall, corridor, unfinished attic, garage, storage area, shed or similar detached building) shall be used as a sleeping room for a resident.

(g) Each bedroom shall be provided with light and ventilation.

(h) Each bedroom shall have a window to the outside which opens easily.

(i) Each room shall have a closet or space suitable for hanging clothing and personal belongings.

(j) There shall be a reading lamp for each patient.

(3) Toilet and Bathing Facilities.

(a) Toilets and bathrooms shall be well-ventilated, accessible to and usable by all persons accepted for care.

(b) There shall be provisions for privacy.

(c) Grab bars which comply with ADAAG shall be placed around each toilet, tub, and shower.

(d) If the facility accepts a resident with disabilities, the bath, shower, sink, and toilet shall be equipped for use by persons with disabilities which meet ADAAG.

(4) Heating, air conditioning, and ventilating systems shall be maintained to provide comfortable temperatures for the resident.

(a) Heating system shall be capable of maintaining temperatures of 80 degrees F. in areas occupied by residents.

(b) Cooling system shall be capable of maintaining temperatures of 72 degrees F. in areas occupied by residents.

(5) There shall be provision for essential lighting and heating during an emergency. All emergency heating devices shall be approved by the local fire jurisdiction.

(6) Residents shall be housed on the main floor only, unless an outside exit leading to the ground grade level is

provided from any upper or lower levels.

R432-300-9. Administration and Organization.

(1) The owner shall be responsible for compliance with Utah law and licensure requirements, management, operation, and control of the facility.

(2) The owner shall employ a sufficient number of competent people who are able to perform their respective duties to meet the needs of residents.

(3) All employees must be 18 years of age, and successfully complete an orientation program in order to provide personal care and demonstrate competency.

(a) All staff shall be registered, certified or licensed as required by the Utah Department of Commerce.

(b) Registration, license and certificates must be current, filed in the personnel files, and presented to the licensee within 45-days of employment.

(c) Failure to ensure that all personnel are licensed, registered or certified may result in sanctions to the health facility license.

(4) The Facility shall establish written policies and procedures for a personnel health program which shall protect the health and safety of personnel and clients commensurate with the service offered. The policies shall include and employee health evaluation.

(a) Each employee shall complete a health evaluation which shall include a health inventory when hired.

(b) The health inventory shall document the employee's health history of the following:

(i) conditions that predispose the employee to acquiring or transmitting infectious diseases;

(ii) conditions which may prevent the employee from performing certain assigned duties satisfactorily;

(iii) health screening and immunization components of personnel health programs shall be in accordance with R386-704 Communicable Disease Rules.

(c) Employee skin testing by the Mantoux Method and follow up for tuberculosis shall be done in accordance with R386-702-5, Special Measures for control of Tuberculosis.

(i) Skin testing shall be conducted on each employee annually and after suspect exposure to a resident with active tuberculosis.

(ii) Skin testing shall be exempted for all employees with known positive reaction to skin tests.

(d) All infections and communicable diseases reportable by law shall be reported by the facility to the local health department in accordance with R386-702-2.

R432-300-10. Resident Records.

(1) A separate resident's record shall be maintained and readily available.

(2) Records shall be retained for at least seven years following discharge.

(3) The resident record shall include at least:

(a) Admission Record (face sheet) including the resident's name; social security number; age at admission; birth date; date of admission; last known address; religious preference, if any; name, address, telephone number of spouse, guardian, or person or agency responsible for the resident; name, address, and telephone number of attending physician and dentist;

(b) Admission diagnoses and reason for admission;

(c) Any known allergies;

(d) Temperature, pulse, respirations, blood pressure, height, and height notations, when indicated;

(e) Physician's assessment;

(f) If entrusted to the facility, a record of the resident's cash resources and valuables;

(g) Incident and injury reports.

R432-300-11. Acceptance and Retention of Residence.

(1) Each owner shall establish acceptance criteria which includes:

(a) the resident's health needs;

(b) the residents's ability to perform activities of daily living;

(c) the ability of the facility to address the residents needs.

(2) Residents shall not be accepted nor retained by a Type "N" Limited Capacity Residential Health Care Facility when:

(a) A resident has active tuberculosis or serious communicable diseases;

(b) A resident requires inpatient hospital care;

(c) A resident with a mental illness manifests behavior which is suicidal, assaultive, or harmful to self or others, or who manifests behavior that requires close supervision and a controlled environment.

(3) The facility shall notify both the family, or responsible person and the physician of a change in the resident's condition.

(4) The facility shall request that the family or responsible person relocate the resident within seven days if the resident requires care which cannot be provided in the "N"- type facility.

(5) The facility shall refer the family to a licensed health care facility or agency who is able to meet the resident's needs.

(6) If the department determines at the time of inspection that the facility knowingly and willfully admits or retains residents who do not meet the licensure criteria, then the department may, for a time period specified, require that the resident assessment be conducted by an approved individual who is independent of the facility.

R432-300-12. Personal Physician.

(1) Each resident shall have a personal physician and shall have a physician's assessment completed prior to admission.

(2) The physician's signed assessment shall document:

(a) The resident is capable of functioning in a limited capacity type residential health care facility;

(b) The resident is free of communicable diseases or any condition which would prevent admission to the facility;

(c) A list of current medications including:

(i) Dosage, time of administration, and route;

(ii) Whether medication is self-administered and what assistance, if any, is required from facility staff;

(d) Type of diet and restrictions or special instructions;
(e) Any known allergies;
(f) Any physical or mental limitations, or restrictions on activity.

R432-300-13. Emergency Services.
A facility shall have the ability to safely evacuate the disabled and bed fast patient in the event of an emergency without impeding the self evacuation of other residents.

R432-300-14. Health Care Services.
(1) The facility owner shall be responsible to coordinate with nursing personnel to ensure that the following duties are carried out:
(a) Implementing physicians' orders;
(b) Planning and directing the delivery of nursing care, treatments, procedures, and other services assuring that each resident's needs are met;
(c) Reviewing and documenting each resident's health care needs, orders for care and treatment, and into a care plan;
(d) Notifying the responsible party and attending physician of significant changes in the resident's health status or behavior and documenting notifications in the resident's record;
(e) Ensuring that the resident is treated for and prevent decubitus ulcers from occurring.
(f) Notification of the resident's family or guardian promptly of any injury or change in the resident's condition after notification of the physician. A record of this notification shall be maintained in the facility;
(g) Providing equipment to meet the needs of residents;
(h) Ensuring that licensed nurses are available and on site every day to provide licensed nursing services.
(2) The owner shall orient employees to the residents daily routine and train the employee to assist the resident in the activities of daily living.
(3) The owner shall have experience in administering a health facility or two years experience working in a health care facility.

R432-300-15. Nursing Staff.
(1) The owner shall ensure that there is licensed nurse coverage daily.
(2) The owner may contract with a licensed nurse to perform the health care services or hire a full time employee.
(3) The licensed nurse may be the owner.
(4) Licensed nurses shall be on-site working directly with residents a minimum of 24 minutes per patient per day. Chronically ill patients may require a minimum of 45 minutes per patient per day.
(5) Nursing staff shall be licensed by the state and perform nursing care as license to practice.

R432-300-16. Personal Care.
(1) There shall be competent, registered or certified staff available 24 hours a day, every day of the week, to meet the needs of residents.
(2) Each resident shall receive the following:
(a) preventive health care and treatment;
(b) personal hygiene for the prevention of conditions as decubitus, contracture, and other deformities;
(c) receive good nutrition and adequate fluids;
(i) All residents shall have access to water and cups.
(ii) Residents unable to feed themselves shall be assisted to eat, in a prompt manner.
(iii) Residents shall be provided assistive devices to maximize their independence when eating or drinking.
(d) Each resident shall receive assistance to make arrangements for medical and dental care including transportation to and from the medical or dental facility.
(3) Staff shall be trained to administer emergency first aid.
(4) The owner shall document and review every accident or incident causing injury to a resident or employee and take appropriate corrective action. A report of each incident shall be maintained in a separate file for one year then placed in the residents record.

R432-300-17. Medications.
(1) Medications shall be administered by a licensed nurse.
(a) Facility staff shall assist a resident with self-administration of medications pursuant to R432-250-20.
(b) If the physician certifies that a resident is capable of administering insulin and oral medications, the patient may self-inject the prescribed insulin and self-administer the prescribed medications.
(2) Immediate family members may administer medications.

R432-300-18. Resident Rights.
(1) The facility shall ensure that each resident is provide a written copy of his rights, and the home's rules.
(2) Each resident has the right to be treated with respect and full recognition of personal dignity and individuality.
(3) Each resident shall have the right to be free of verbal, mental and physical abuse.
(4) Each resident shall be free of chemical and physical restraints. Restraints shall not be used in limited capacity programs.
(5) The facility shall provide an opportunity for and encourage the resident to visit with family and friends to maintain social interaction in the facility and in the community.
(6) The resident has the right to participate in decisions regarding placement, health care status and financial matters unless there is a court appointed guardian or a signed durable power of attorney.
(7) Each resident shall be provided privacy for treatments and hygiene care.
(8) Resident rights shall be posted or reviewed with the resident and the responsible party annually.

R432-300-19. Activity Program.
(1) The facility shall provide activities for the residents to encourage independent functioning.
(2) The facility shall, complete a resident interest survey and with the residents' involvement, develop a monthly

activity calendar.

(3) The activity program shall be developed to include the residents' needs and interests to include:

(a) Socialization activities;

(b) Independent Activities of Daily Living;

(c) Physical activities;

(4) Community activities away from the facility. These activities may include:

(a) Attendance at a place of worship;

(b) Service activities for the community;

(c) Concerts, tours, and plays;

(d) Senior citizen groups, sport leagues, and service clubs.

R432-300-20. Food Service.

(1) There shall be adequate space and equipment for the following:

(a) Resident dining;

(b) An adequate supply, at least three days, of food items to complete the established menus;

(c) Space for meal planning and preparation.

(2) Menus shall be planned and followed to meet the residents' nutritional needs using the four basic food groups on a daily basis.

(a) A different menu shall be followed for each day of the week.

(b) At least three meals or their equivalent shall be served daily.

(c) There shall be no more than a 14-hour span between the evening meal and breakfast unless a substantial snack is provided.

(d) Bedtime snacks of nourishing quality and quantity shall be offered routinely to all residents whose diets permit.

(3) Food shall be palatable and attractively served.

(4) If the facility accepts residents who require special diets, the diets shall be provided to residents as ordered by the resident's physician. If the facility is unable to provide the required diet, the resident, physician, and responsible person shall be notified so arrangements can be made to meet the resident's needs including discharge or transfer to another facility.

(5) Facility food service shall be maintained in accordance with the Utah Department of Health Food Service Sanitation rules, R392-100.

R432-300-21. Housekeeping.

(1) There shall be adequate housekeeping services to maintain a clean, sanitary, and healthful environment in the facility.

(2) Entrances, exits, steps, and outside walkways shall be maintained and kept free of ice, snow, and other hazards.

(3) Furniture, bedding, linens, and equipment shall be cleaned periodically and before use by another resident.

(4) Odors shall be controlled by maintaining cleanliness and proper ventilation. Deodorizers shall not be used to cover odors caused by poor housekeeping or unsanitary conditions.

(5) A facility may keep household pets providing the pets are kept clean, disease free, and not allowed in food preparation and serving areas.

(6) Dangerous or hazardous conditions shall not be permitted to exist.

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R432. Health, Health Systems Improvement, Health Facility Licensure.
R432-500. Freestanding Ambulatory Surgical Center Rules.
R432-500-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-500-2. Purpose.

The purpose of this rule is to establish standards for the operation of a freestanding surgical facility which provides surgical services to patients not requiring hospitalization.

R432-500-3. Time for Compliance.

All facilities governed by this rule shall be in full compliance at the time of licensure.

R432-500-4. Definitions.

(1) See common definitions R432-1-3.

(2) Special definitions.

(a) "Anesthesia service" means services for all patients who:

(i) receive general, spinal, or other major regional anesthesia, or

(ii) undergo surgery or other procedures when receiving either or both of the following:

(A) general, spinal, or other regional anesthesia;

(B) intravenous, intramuscular, or inhalation sedation or analgesia that may result in the loss of the patient's protective reflexes.

(b) "Continual" means repeated regularly and frequently in steady rapid succession.

(c) "Continuous" means prolonged without any interruption at any time.

(d) "Monitored Anesthesia Care" means intraoperative monitoring by qualified anesthesia personnel, of the patient's vital physiological signs, in anticipation of the need for administration of general anesthesia or of the development of adverse physiological patient reaction to the surgical procedure. Monitored anesthesia care also includes performing a preanesthetic examination, evaluating and prescribing anesthesia care required, and providing indicated postoperative anesthesia care.

(e) "Qualified Anesthetist" means an anesthesiologist, another qualified physician, dentist, oral surgeon, or certified registered nurse anesthetist, who:

(i) is licensed to provide anesthesia care in accordance with Utah laws for occupational and professional licensing,

(ii) is a member of the staff of the ambulatory surgical center,

(iii) has been determined by the facility to be competent,

and

(iv) has been granted privileges to provide anesthesia care to patients in the facility.

(f) "Qualified Anesthesia Personnel" means qualified anesthetists the ambulatory surgical center appoints to the staff and grants privileges to provide anesthesia care to patients in the facility.

(g) "Extended Recovery Services" means patient care after the initial post surgery recovery period.

(h) "Initial Post Surgery Recovery Period" means patient care no longer than six hours beyond the completion of surgery.

R432-500-5. Licensure.

(1) License Required. See R432-2.

(2) Exempt facilities shall meet the provisions of Section 26-21-7. Physician based surgical centers shall request an exemption to this rule in order to apply for Medicaid/Medicare certification.

R432-500-6. General Construction Rules.

(1) See R432-13. Ambulatory Surgical Center Construction Rule.

R432-500-7. Administration and Organization.

(1) Direction.

(a) Each facility shall be operated by a licensee.

(b) If the licensee is other than a single individual, there shall be an organized functioning governing authority to assure accountability.

(c) The governing authority shall meet at least quarterly and keep written minutes of its meetings.

(2) Responsibilities.

(a) The licensee shall have the overall responsibility and authority for the organization.

(b) Responsibilities shall include at least the following:

(i) Comply with all applicable federal, state and local laws, rules and requirements;

(ii) Adopt and institute bylaws, operating room protocols, policies and procedures relative to the operation of the facility;

(iii) Appoint, in writing, a qualified administrator (the licensee, administrator, or medical director may be the same person) to be responsible for the implementation of facility bylaws, policies and procedures, and for the overall management of the facility;

(iv) Appoint, in writing, a qualified medical director to advise and be accountable to the licensee for the quality of patient care;

(v) Ensure that patients requiring hospitalization are not admitted to the facility;

(vi) Appoint members of the medical staff and delineate their clinical privileges.

R432-500-8. Administrator.

(1) Direction.

(a) Each facility shall designate in writing an administrator who shall have freedom from other responsibilities to be on the premises of the facility a sufficient number of hours in the business day to manage the facility and to respond to appropriate requests by the Department.

(b) The administrator shall designate a person, in writing, to act as administrator in his absence.

(i) This person shall have sufficient power, authority, and freedom to act in the best interests of patient safety and well-being and shall be available at the facility.

(ii) It is not the intent to permit a de facto administrator to supplant or replace the designated facility administrator.

(c) The administrator shall be the direct representative of the board in the management of the facility and shall be responsible to the board for the performance of his duties.

(2) Qualifications.

The administrator and his designee shall be 21 years or older and shall be experienced in administration and supervision of personnel and shall be knowledgeable about the practice of medicine to interpret and be conversant in surgery protocols.

(3) Duties and Responsibilities.

(a) The administrator's responsibilities shall be written in a job description and shall be available for Department review.

(b) Responsibilities shall include:

(i) Compliance with all applicable federal, state and local laws, and facility bylaws;

(ii) Develop, evaluate, update, and implement facility policies and procedures annually;

(iii) Maintain an adequate number of qualified and competent staff to meet the needs of patients;

(iv) Develop clear and complete job descriptions for each position;

(v) Notify appropriate authorities when a reportable disease is diagnosed;

(vi) Review all incident and accident reports and take appropriate action;

(vii) Establish a quality assurance committee that will respond to the quality and appropriateness of services and respond to the recommendations made by the committee;

(viii) Secure through contracts the necessary services not provided directly by the facility;

(ix) Receive and respond to the licensure inspection report by the Department.

R432-500-9. Medical Director.

(1) Direction.

(a) The licensee of the surgical facility shall retain, by formal agreement, a qualified physician to serve as medical director.

(b) The medical director shall have freedom from other responsibilities to assume professional, organizational, and administrative responsibility.

(c) The medical director shall be accountable to the governing authority for the quality of services rendered.

(2) Qualifications.

The physician designated as the medical director shall have at least the following qualifications:

(a) Be currently licensed to practice medicine in Utah;

(b) Have training and expertise in those branches of

surgery and anesthesia services offered to provide supervision at the facility.

(3) Responsibilities.

(a) The medical director shall have overall responsibility for surgery and anesthesia services delivered in the facility.

(b) Applicable laws relating to use of anesthesia, professional licensure acts and facility protocols shall govern both medical staff and employee performance.

(c) The medical director shall be responsible for at least:

(i) Review and update facility protocols;

(ii) Periodically conduct reappraisals of medical staff privileges and revise those privileges as appropriate;

(iii) Recommend to the governing authority, names of qualified health care practitioners to perform approved procedures, and to recommend facility privileges to be granted;

(iv) Establish and maintain a quality assurance mechanism to review identified problems and take appropriate action;

(v) Coordinate, direct and evaluate all clinical operations of the facility;

(vi) Evaluate and recommend the type and amount of equipment needed in the facility;

(vii) Assure that a qualified physician available when patients are in the facility;

(viii) Ensure physician documentation is recorded immediately and reflects an accurate description of care given;

(ix) Assure that planned surgical procedures are within the scope of privileges granted to the physicians.

R432-500-10. Director of Nursing Services.

(1) Direction.

Each facility shall employ and designate in writing a registered nurse who will be responsible for the supervision and direction of the nursing staff and the operating room suite.

(2) Qualifications.

The director of nursing shall be a registered nurse who is qualified by training or education to supervise nursing services.

(3) Responsibilities.

(a) The director of nursing, in consultation with the medical director shall plan and direct the delivery of nursing care.

(b) The director of nursing shall be responsible for at least:

(i) Maintain qualified health care personnel that are available and used as needed under the supervision of a registered nurse;

(ii) Assure a licensed nurse is on duty when patients are in the facility;

(iii) Maintain the operating room register;

(iv) Review and update nursing care policies and procedures;

(v) Ensure that nursing documentation is recorded immediately and reflects an accurate description of care given;

(vi) Maintain policies and procedures for pre-operative and post-operative care;

(vii) Ensure post-operative instructions are in writing and are reviewed with the patient or other responsible person following surgery;

(viii) Supervise all non-physician direct patient care services, as defined in facility policy;

(ix) Review identified problems with the medical director through quality assurance mechanisms and take appropriate action;

(x) Ensure patient care policies including admission and discharge policies are reviewed annually. Patient care policies shall be developed and revised by a group representing all professionals involved in patient care.

R432-500-11. Staff and Personnel.

(1) Health Surveillance.

(a) The facility shall establish a policy and procedure for the health screening of all personnel which shall protect the health an safety of personnel and patients. Employee health screening and immunization components of personnel health programs shall be developed in accordance with R386-704. Communicable Disease rules.

(b) The facility shall prohibit employees with a communicable disease or open skin lesions, or weeping dermatitis, from direct contact with patients, patient care items, if direct contact may result in the transmission of the infection or the disease.

(c) This health screening shall be performed within the first two weeks of employment and as defined in facility protocols.

(d) Skin testing shall be done within two weeks of beginning employment. Employee skin testing by the Mantoux method and follow-up for tuberculosis shall be done in accordance with R386-702-5., Special Measures for the Control of Tuberculosis.

(i) Skin testing shall be conducted on each employee annually and after suspect exposure to a person with active tuberculosis.

(ii) Skin testing shall be exempted for all employees with known positive reaction to skin tests.

(e) All infections and communicable diseases reportable by law shall be reported by the facility to the local health department in accordance with R386-702-2.

(f) The facility shall be in compliance with the Occupational Safety and Health Administrations Bloodborne Pathogen Standard.

(2) In-service Training and Orientation.

(a) There shall be planned and documented in-service training programs for all personnel.

(b) The frequency and content of training programs shall be defined in facility policy.

(c) The training program shall include a review of all facility policies and procedures.

(d) All personnel shall have access and knowledge of the facility's policy and procedure manuals.

R432-500-12. Contracts and Agreements.

(1) Contracts.

(a) The licensee shall secure and update contracts for

services not provided directly by the facility.

(b) Contracts shall include a statement that the contractor will conform to the standards required by these rules.

(2) Transfer Agreements.

(a) The licensee shall maintain hospital admitting privileges for all staff or a written transfer agreement with one or more full-service licensed hospitals located within an overall travel time of 15 minutes or less from the facility.

(b) The transfer agreement shall include provisions for:

(i) Transfer of information needed for proper care and treatment of the patient transferred;

(ii) Security and accountability of the personal effects of the patient being transferred.

R432-500-13. Quality Assurance.

(1) The administrator and the medical director, shall establish a quality assurance program and a quality assurance committee to review facility operations, protocols, policies and procedures, incident reports, medication usage, infection control, patient care, and safety.

(2) General Provisions Quality Assurance Committee.

(a) The committee shall include a representative from the facility administration, the medical director, the director of nursing, and may also include other representatives, as appropriate.

(b) The committee shall meet at least quarterly and keep written minutes available for Department review.

(c) The committee shall report findings and concerns to the medical director, administrator, and governing authority as applicable.

R432-500-14. Emergency and Disaster.

Each facility has the responsibility to assure the safety and well-being of patients in the event of an emergency or disaster. An emergency or disaster may include utility interruption, explosion, fire, earthquake, bomb threat, flood, windstorm, epidemic, and injury.

(1) General Provisions.

(a) The administrator shall be in charge of facility operations during any significant emergency. If not on the premises, the administrator should make every effort to get to the facility to relieve the administrator designee to take charge during an emergency.

(b) The licensee and the administrator shall be responsible for the development of a written emergency and disaster plan, coordinated with state and local emergency or disaster authorities.

(c) The plan shall be made available to all staff to assure prompt and efficient implementation (see R432-500-14(2)).

(d) The administrator and the licensee shall review and update the plan at least annually.

(e) The names and telephone numbers of facility staff, emergency medical personnel, and emergency service systems shall be conveniently posted.

(2) Emergency and Disaster Plan and Drills.

The facility shall have an internal and external emergency or disaster plan including the following:

(a) Evacuation of occupants to a safe place, as specified;

(b) Delivery of emergency care and services to facility occupants when staff is reduced by an emergency;

(c) The receiving of patients to the facility from another location, including housing, staffing, medication handling, and record maintenance and protection;

(d) The person or persons with decision-making authority for fiscal, medical, and personnel management;

(e) An inventory of available personnel, equipment, supplies and instructions and how to acquire additional assistance;

(f) Staff assignment for specific tasks during an emergency;

(g) Names and telephone numbers of on-call physicians and staff at each telephone;

(h) Documentation of emergency events;

(i) Emergency or Disaster drills, other than fire drills shall be held at least biannually, at least one per shift, with a record of time and date maintained. Actual evacuation of patients during a drill is optional;

(j) Notification of the Department if the facility is evacuated.

(3) Fire Emergencies.

The licensee and administrator shall develop a written fire emergency and evacuation plan in consultation with qualified fire safety personnel.

(a) An evacuation plan shall identify:

(i) evacuation routes,

(ii) location of fire alarm boxes and fire extinguishers, and

(iii) emergency telephone numbers including the local fire department.

(b) The evacuation plan shall be posted at several locations throughout the facility.

(c) The emergency plan shall include fire containment procedures and how to use the facility alarm systems, extinguishers, and signals.

(d) Fire drills shall be held at least quarterly on each shift and documentation of the drill shall include a record of the time and date. Actual evacuation of patients during a drill is optional.

(4) Smoking Policies.

Smoking policies shall comply with Title 26, Chapter 38 the, "Utah Indoor Clean Air Act", and Section 31-4.4 of the 1991 Life Safety Code.

R432-500-15. Patients' Rights.

(1) Written policies regarding the patient rights shall be made available.

(2) The policies and procedures shall ensure that each patient admitted to the facility shall be treated as an individual with dignity and respect and have the following rights:

(a) To be fully informed, prior to or at the time of admission and during stay, of the patient rights and of all facility rules that pertain to the patient;

(b) To be fully informed prior to admission of the treatment to be received, potential complications, and outcome;

(c) To refuse treatment and to be informed of the

medical consequences of such refusal;

(d) To be informed, prior to or at the time of admission and during stay, of services available in the facility and of any expected charges for which the patient may be liable;

(e) To participate in decisions involved in their health care;

(f) To refuse to participate in experimental research;

(g) To be assured confidential treatment of personal and medical records and to approve or refuse release to any individual outside the facility, except in the case of transfer to another health facility, or as required by law or third party payment contract;

(h) To be treated with consideration, respect, and full recognition of personal dignity and individuality, including privacy in treatment and in care for personal needs.

R432-500-16. Patient Care Services.

(1) Each patient shall be under the care of a member of the medical staff or under contract.

(2) Medical Staff Bylaws shall establish the credentialing process and shall include the delineation of professional staff privileges.

(3) Responsibilities.

(a) The attending member of the medical staff including any non-physician specialist shall be responsible for the quality of patient care delivered and the supervision of patients admitted to the facility.

(b) All facility staff members and those under contract by the facility shall comply with current laws, facility protocols and current standards as interpreted by the medical director.

R432-500-17. Extended Recovery Services.

(1) Extended recovery care services provided by a Freestanding Ambulatory Surgical Center shall not exceed 24 hours. The facility shall provide services to no more than three patients, anywhere within the facility, between the hours of 10:00 p.m. and 6:00 a.m.

(2) Extended recovery care services shall be integrated with other departments and services of the facility.

(3) Extended recovery care services shall have policies and procedures that describe the nature and extent of the extended recovery services provided, which are consistent with ambulatory surgery and anesthesia services.

(4) A minimum of two health care workers, one of which shall be a registered nurse with Advanced Cardiac Life Support certification (ACLS), shall be on duty when patients are in the extended recovery care unit.

(5) In addition to the items required in a patient's medical record under section R432-500-22, the physician shall document the following:

(a) the reason(s) or need for a patient's admission to the extended recovery service, and

(b) dietary orders to meet the nutritional needs of the patient.

(6) The facility shall obtain a Food Service Establishment Permit, if required by the local health department.

(a) Inspection reports by the local health department shall be maintained at the facility for review by the Department.

(b) All personnel who prepare or serve food shall observe personal hygiene and sanitation practices which protect food from contamination.

R432-500-18. Nursing Services.

(1) Direction.

Each facility shall provide nursing services commensurate with the needs of the patients served.

(2) Organization.

All non-medical patient services shall be under the general direction of the director of nursing, except as exempted by facility policy.

(3) Responsibilities.

(a) Nursing service personnel shall be responsible to plan and deliver nursing care, and assist with treatments and procedures.

(b) All nursing personnel shall maintain a current Utah license.

(4) Equipment.

(a) The facility shall provide equipment in good working order to meet the needs of patients.

(b) The type and amount of equipment shall be indicated in facility policy and approved by the medical director.

(c) The following equipment shall be available to the operating suite:

(i) Emergency call system;

(ii) Cardiac Monitor;

(iii) Ventilation support system;

(iv) Defibrillator;

(v) Suction equipment;

(vi) Equipment for Cardiopulmonary Resuscitation and Airway Management;

(vii) Portable Oxygen; and

(viii) Emergency Cart.

R432-500-19. Pharmacy Service.

Pharmacy space and equipment required depends upon the type of drug distribution system used, number of patients served, and extent of shared or purchased services.

(1) Direction.

(a) There shall be a pharmacy supply under the direction of a pharmacist.

(b) If the facility does not have a staff pharmacist, it shall retain a consultant pharmacist by written contract.

(c) There shall be written policies and procedures to govern the acquisition, storage, and disposal of medications.

(d) The medical director and facility pharmacist shall approve these policies.

(e) The quality and appropriateness of medication usage shall be monitored by the Quality Assurance Committee.

(2) Pharmacy Supply.

(a) Provision will be made to supply necessary drugs and biologicals in a prompt and timely manner.

(b) A current pharmacy reference manual shall be available to all staff.

(3) Storage.

(a) All medications, solutions, and prescription items shall be kept secure and separate from non-medicine items in a conveniently located storage area.

(b) An accessible emergency drug supply shall be maintained in the facility if the facility does not have a pharmacy.

(i) The emergency drug supply shall be approved by the medical director and the facility pharmacist.

(ii) Contents of the emergency drug supply shall be listed on the outside of the container. An inventory of the contents shall be documented by nursing staff after each use and at least weekly.

(iii) Used items shall be replaced within 48 hours.

(c) Medications stored at room temperature shall be maintained within 59 - 80 degrees F. (15 to 30 degrees C.). Refrigerated medications shall be maintained within 36 - 46 degrees F. (2 to 8 degrees C.).

(d) Medications and other items that require refrigeration shall be stored securely and separately from food items.

(4) Controlled Drugs.

(a) Drugs shall be accessible only to licensed nursing, pharmacy, and medical personnel as designated by facility policy. Schedule II drugs shall be kept under double-lock and separate from other medication.

(b) Separate records of drug use shall be maintained on each Schedule II drug.

(i) Records shall be accurate and complete including patient name; drug name; strength; administration documentation; and name, title, and signature of person administering the drug.

(ii) The record shall be reconciled at least daily and retained for at least one year.

(iii) If medications are supplied as part of a unit-dose medication system, separate records are not required.

(c) Records of Schedule III and IV Drugs shall be maintained in such a manner that the receipt and disposition of the drugs can be readily traced.

(5) Disposal of Drugs.

(a) All discontinued and outdated drugs, including those listed in Schedules II, III or IV of the "Federal Comprehensive Drug Abuse Prevention and Control Act of 1970," shall be destroyed promptly by the facility. The destruction shall be witnessed and documented by two licensed members of the facility staff, preferably a physician and a registered nurse designated by the facility.

(b) The name of the patient, the name and strength of the drug, the prescription number, the amount destroyed, the method of destruction, the date of destruction and the signatures of the witnesses shall be recorded in a separate log kept for this purpose. The log shall be retained for at least three years.

(6) Administration.

(a) A single dose or pre-packaged medications may be sent with the patient upon discharge, when ordered by the discharging physician.

(b) Use of multiple dose medications shall be released in compliance with Utah pharmacy law.

(c) All medications used shall be documented in the patient's medical record.

R432-500-20. Anesthesiology Services.

Organization.

(1) The licensee shall provide facilities and equipment for the provision of anesthesia services commensurate with the surgical procedures planned for the facility.

(2) The medical director shall provide for the safety of anesthesia services administered to patients by qualified anesthesia personnel through written policies and protocols approved by the medical staff for anesthetic agents, delivery of anesthesia and potential hazards of anesthesia.

(a) The medical staff shall appoint a director of anesthesia services by name and in writing who shall meet the following requirements:

(i) be licensed to practice medicine in Utah;

(ii) have training and expertise in anesthesia services offered to ensure adequate supervision of patient care.

(b) The director of anesthesia services shall implement, coordinate, and insure the quality of anesthesia services provided in the facility.

(c) The medical staff shall define in writing, and approve, the responsibilities of the director of anesthesia services.

(d) The medical staff or the director of anesthesia services shall clearly delineate in writing both the responsibilities of, and the privileges granted to, each qualified anesthetist.

(e) Only qualified anesthesia personnel shall provide anesthesia care.

(f) Qualified anesthesia personnel shall meet the following:

(i) Provide anesthesia care within the scope of facility-approved privileges and individual licenses;

(ii) Provide monitored anesthesia care for a patient who is administered sedation that may result in a loss of protective reflexes;

(g) During the surgical procedure, a qualified anesthetist shall be responsible for the following:

(i) monitor, by continuous presence in the operating room (except for short periods of time for personal safety, such as radiation exposure), a patient who is undergoing a surgical procedure and who is receiving general anesthetics, regional anesthetics, or monitored anesthesia care;

(ii) continually evaluate a patient's oxygenation, ventilation, and circulation, and have means available to measure temperature during administration of all anesthetics.

(h) The non-physician anesthetists shall be supervised by and perform duties under the direction of the director of anesthesia services, the anesthesiologist, or the operating surgeon.

(i) The patient and operating surgeon shall be informed prior to surgery if anesthesia services will be performed by a non-physician qualified anesthetist.

(j) A qualified physician shall be available in the facility to care for any medical emergency, including an anesthetic-related emergency, when the operating team consists entirely of non-physicians, and the patient is undergoing procedures with regional, general, or monitored anesthesia care.

(3) Policies and Procedures.

(a) The medical staff shall develop, implement, and review the anesthesia quality assurance program.

(b) The written policies and procedures for anesthesia services shall be reviewed annually and enforced by the medical staff.

(c) Written anesthesia service policies shall include the following:

(i) Anesthesia care policies and procedures for preanesthesia evaluation, preanesthesia care including documenting a time-based record of events, and postanesthesia care;

(ii) A qualified anesthetist, or the physician responsible for delivering the patient's anesthesia, shall conduct a preanesthesia evaluation, and document the evaluation in the patient's medical record;

(iii) The preanesthesia evaluation shall include the following information:

(A) planned anesthesia choice;

(B) assessing anesthesia risk;

(C) anticipated surgical procedure;

(D) current medications and previous untoward drug experiences;

(E) prior anesthetic experiences;

(F) any unusual potential anesthetic problems.

(G) Information required in the pre-anesthesia evaluation must be documented in the patient's medical record prior to inducing anesthesia.

(d) Qualified anesthesia personnel shall remain with the patient until the patient's status is stable. The qualified anesthetist or the anesthetist's qualified designee shall remain with the patient until the patient's protective reflexes have returned to normal, and it is determined safe as defined in facility policy.

(e) The director of anesthesia services shall define the mechanism for the release of patients from postanesthesia care.

(i) The facility shall release a patient only when a member of the medical staff determines that it is safe and appropriate to discharge the patient.

(ii) Each patient who is admitted to an ambulatory surgical facility, and who receives other than unsupplemented local anesthesia, shall be discharged in the company of a responsible adult.

R432-500-21. Laboratory and Radiology Services.

(1) General Requirements.

(a) The facility shall make provisions, as appropriate, for laboratory, radiology and associated services according to facility policy.

(b) Services shall be provided with an order from a physician or a person licensed to prescribe such services. The order for laboratory and radiology services and the test results shall be included in the patient's medical record.

(c) If services are provided by contract, a CLIA certified, State- approved laboratory shall perform such services. Reports or results shall be reported promptly to the attending physician and documented in the patient's medical record.

(2) Facility Laboratory Services.

If the facility provides CLIA certified or state approved laboratory service, these services shall comply with R432-100-26.

(3) Facility Radiology Services.

If the facility provides its own radiology services, these services shall comply with R432-100-29.

R432-500-22. Medical Records.

(1) Direction.

Medical records shall be complete, accurately documented, and systematically organized to facilitate storage and retrieval for staff use. There shall be written policies and procedures to accomplish these purposes.

(2) Medical Record Organization.

(a) A permanent individual medical record shall be maintained for each patient admitted.

(b) All entries shall be permanent (typed or handwritten legibly in ink) and capable of being photocopied. Stamps are not acceptable unless a co-signature is present. Entries must be authenticated including date, name or identified initials, and title of the person making the entry.

(c) Records shall be kept current and shall conform to good medical and professional practice based on the service provided to the patient. Automated Record Systems may be utilized provided the medical record content maintained meets the requirements as defined within these rules.

(d) All records of discharged patients shall be completed and filed within a time frame established by facility policy. The physician has the responsibility to complete the medical record.

(3) Medical Record Content.

Each patient's medical record shall include the following:

(a) An admission record (face sheet) that includes the name, address, and telephone number of the patient, physician and responsible person and the patient's age and date of admission;

(b) A current physical examination and history, including allergies and abnormal drug reactions;

(c) Informed consent signed by the patient or, if applicable, the patient's representative;

(d) Complete findings and techniques of the operation;

(e) Signed and dated physician orders for drugs and treatments;

(f) Signed and dated nurse's notes regarding care of the patient. Nursing notes shall include vital signs, medications, treatments and other pertinent information;

(g) Discharge summary which contains a brief narrative of conditions and diagnoses of the patient's final disposition, to include instructions given to the patient and responsible person;

(h) The pathologist's report of human tissue removed during the surgical procedure, if any;

(i) Reports of laboratory and x-ray procedures performed, consultations and any other pre-operative diagnostic studies;

(j) Pre-anesthesia evaluation.

(4) Retention and Storage.

(a) Medical records shall be retained for at least seven years after the last date of patient care. Records of minors shall be retained until the minor reaches age 18 or the age of majority plus an additional three years.

(b) All patient records shall be retained by the new owners upon change of ownership.

(c) Provision shall be made for filing, safe storage, security, and easy accessibility of medical records.

(5) Release of Information.

(a) Medical record information shall be confidential.

(i) There shall be written procedures for the use and removal of medical records and the release of patient information.

(ii) Information may be disclosed only to authorized persons in accordance with federal and state laws, and facility policy.

(iii) Requests for information identifying the patient (including photographs) shall require written consent by the patient.

(b) Authorized representatives of the Department may review records to determine compliance with licensure rules and standards.

R432-500-23. Housekeeping Services.

(1) Organization.

There shall be housekeeping services to maintain a clean, sanitary, and healthful environment. If the facility contracts for housekeeping services with an outside agency, there shall be a signed, dated agreement that details all services provided. The housekeeping service shall meet all the requirements of this section.

(2) Policies and Procedures.

Written housekeeping policies and procedures shall be developed and implemented by the facility, and reviewed and updated annually.

(3) Personnel.

A sufficient number of housekeeping staff shall be employed to maintain both the exterior and interior of the facility in a safe, clean, orderly manner.

(4) Equipment and Supplies.

(a) Housekeeping equipment shall be suitable for institutional use and properly maintained.

(b) Cleaning solutions for floors shall be prepared according to manufacturer's instructions and be checked periodically to insure proper germicidal concentrations are maintained.

(c) There shall be sufficient numbers of noncombustible trash containers. Lids shall be provided where appropriate.

(d) Storage areas containing cleaning agents, bleaches, insecticides, or poisonous, dangerous, or flammable materials, shall be safeguarded. Toilet rooms shall not be used for storage.

(e) Throw or scatter rugs shall not be used in the main traffic areas of the facility or in exitways.

R432-500-24. Laundry Services.

(1) Direction.

(a) Each facility shall have provisions for storage and processing of clean and soiled linen as required for patient care.

(i) Processing may be done within the facility, in a separate building (on or off site), or in a commercial or shared laundry.

(ii) If the facility contracts for laundry service, there shall be a signed, dated agreement that details all services provided.

(iii) The laundry service shall meet all requirements of this section.

(b) If the facility processes laundry on the premises, a qualified person shall be employed to direct the facility's laundry service. The person shall have experience or training in the following:

(i) Proper use of the chemicals in the laundry;

(ii) Proper laundry procedures;

(iii) Proper use of laundry equipment;

(iv) Appropriate facility policy and procedures;

(v) Appropriate federal regulations, state rules, and local laws.

(2) Physical Plant.

(a) If laundry is processed by a commercial laundry which is not part of the facility, the facility must provide at least the following:

(i) A separate room, vented to the outside, for holding and sorting soiled linen until ready for transport;

(ii) A central, clean linen storage area in addition to the linen storage provided in each unit. The central storage capacity shall be sufficient for the facility's operation;

(iii) A separate storage area to maintain clean and soiled linen carts out of traffic areas;

(iv) Handwashing facilities shall be provided in each area where unbagged soiled linen is handled.

(b) If laundry is processed by the facility (within or in a separate building), provision shall be made for the following:

(i) Receiving, holding and sorting room for control and distribution of soiled linen. Soiled linen chutes may empty into this room;

(ii) A laundry room with washing machines adequate for the quantity and type of laundry to be processed;

(iii) A laundry room with dryers adequate for the quantity and type of laundry to be processed;

(iv) A clean storage room with space and shelving adequate to store one half of all laundry being processed;

(v) Convenient access to employee lockers and lounge;

(vi) Storage for laundry supplies;

(vii) Storage area to park clean and soiled linen carts out of traffic;

(viii) Traffic pattern through laundry area shall be:

(A) From building corridor to receiving and sorting/soiled linen room;

(B) From sorting soiled linen room to wash room;

(C) From wash room to dry room. The dry room shall be separated from the wash room by a wall with a door;

(D) From dry room to clean storage or building corridor (covered and protected);

(E) Air flow shall be positive in direction; from clean to soiled, to exterior.

(3) Policies and Procedures.

Each facility shall develop and implement policies and

procedures relevant to operation of the laundry. These policies and procedures shall be reviewed and updated annually, and shall address the following:

(a) Methods to handle, store, transport and process clean, soiled, contaminated, and wet linens;

(b) Water temperature to wash laundry that is at least 150 degrees F (66 degrees C) unless the laundry equipment manufacturer recommends other temperatures. An automatic chemical sterilizing system may be used in lieu of 150 degrees F water with Department approval;

(c) Collection and transportation of soiled linen to the laundry in closed, leak-proof laundry bags or covered impermeable containers. Separate linen carts labeled "SOILED" or "CLEAN LINEN" shall be constructed of washable material and shall be laundered or suitably cleaned to maintain sanitation;

(d) The training of laundry personnel in proper procedures for laundry infection control;

(e) Provision for adequate laundry equipment (washers, dryers, linen carts, transport carts) to maintain clean laundry for the facility;

(f) Maintenance of laundry equipment in proper working condition;

(g) Provision for a lavatory with hot and cold running water, soap and sanitary towels within the laundry area.

(4) Clean Linen.

(a) Clean linen shall be stored, handled, and transported in a manner to prevent contamination. Clean linen shall be stored in clean closets, rooms, or alcoves used only for that purpose.

(b) Clean linen must be covered if stored in alcoves or transported through the facility. Clean linen from a commercial laundry shall be delivered to a designated clean area in a manner that prevents contamination.

(c) Linens shall be maintained in good repair. A supply of clean linen and other supplies shall be provided and available to staff to meet the needs of patients.

(5) Soiled Linen.

(a) Soiled linen shall be handled, stored and processed to prevent the spread of infections. Soiled linen shall be sorted by methods to protect from contamination, and as specified in facility policy.

(b) Soiled linen shall be stored and transported in a closed container which prevents airborne contamination of corridors and areas occupied by patients, and precludes cross contamination of clean linens. Laundry chutes shall be maintained in a clean sanitary condition.

R432-500-25. Maintenance, Physical Environment, and Safety.

Surgical centers shall provide a safe and sanitary environment. All ambulatory surgical facilities shall comply with this Section.

(1) Direction.

(a) The administrator shall employ a person qualified by experience and training to be in charge of facility maintenance, or if the facility contracts for maintenance services, there shall be a signed, dated agreement that specifies agreement to comply with all requirements of this section.

(b) The facility shall develop and implement a written maintenance program (including preventive maintenance) to ensure continued equipment function and sanitary practices throughout the facility.

(2) Policies and Procedures.

(a) Each facility shall develop and implement maintenance, safety, and sanitation policies and procedures that shall be reviewed and updated annually.

(b) When maintenance is performed by an equipment-service company, the company shall certify that work performed, is in accordance with acceptable standards. This certification shall be retained by the facility for review.

(c) A pest control program shall be developed to ensure the facility is free from vermin and rodents which shall be conducted in the facility buildings and grounds by a licensed pest control contractor or an employee trained in pest control procedures. All openings to the outside of the facility shall prevent the entrance of insects and vermin.

(d) Architectural and engineering drawing, specification books, and maintenance literature concerning the design and construction of built-in systems should be available for use by maintenance and safety personnel.

(e) Instructional information, cautions, specifications, and operational data on all facility equipment shall be available for reference by all concerned departments.

(f) Systems-disconnects location information shall be readily available.

(g) Documentation shall be maintained for Department review of the pest control program and other maintenance activity.

R432-500-26. General Maintenance.

(1) Equipment used in the facility shall be approved by Underwriter's Laboratory and meet all applicable Utah Occupational Safety and Health Act requirements in effect at the time of purchase.

(2) Draperies, carpets, and furniture shall be maintained clean and in good repair.

(3) Electrical systems including appliances, cords, equipment, call systems, switches, and grounding systems shall be maintained to assure safe functioning.

(4) Heating and cooling systems shall be inspected and documented annually to assure safe operation. Written records of maintenance on high intensity (90%) filters and humidifiers shall be kept.

(a) Heating equipment shall be capable to maintain 80 degrees F.

(b) Cooling equipment shall be capable to maintain 74 degrees F.

(5) Electric circuits shall be tested annually to show that phase, voltage, amperage, grounding and load balancing are as required.

(6) Grounding systems in operating rooms shall be tested monthly and documented.

(7) Medical gas systems shall be inspected quarterly.

(8) Steam systems driving autoclaves and other sterilization equipment shall be tested regularly to assure proper operating temperatures, volumes, and pressures.

Gauges shall be tested annually.

(9) All switch-over devices, relays, breakers, outlets, and receptacles in the emergency system shall be tested quarterly.

(10) Air supplies, main burners and stack afterburners shall be inspected annually.

(11) All new equipment shall be tested prior to use.

(12) All patient care equipment shall be tested as specified in facility policy but at least according to manufacturer's specifications.

(13) All other electric and electronic equipment shall be tested at least annually.

(14) All testing and inspections of systems and equipment shall be done by qualified persons.

(15) Records shall be maintained of all inspections and testing.

(16) Maintenance work performed shall be documented. All required records including maintenance, safety inspections, and drill schedules shall be retained for two years or from the date of the last major inspection.

(17) All buildings, fixtures, equipment, spaces, and sanitation systems shall be maintained in operable condition.

(18) Any chemical of a poisonous nature shall be properly labeled and shall not be stored with patient care items.

R432-500-27. Air Filters.

All air filters installed in heating, air conditioning, and ventilation systems, shall be inspected and filters replaced as needed to maintain the systems in operating condition.

R432-500-28. Emergency Electric Service.

(1) The facility shall make provision for an emergency generator to provide power to critical areas essential for patient safety in the event of an interruption in normal electrical power service.

(2) There shall be provision for emergency exit lighting in accordance with NFPA 101.

(3) Flash lights shall be available for emergency use by staff.

(4) Testing Emergency Power Systems.

(a) All emergency electrical power systems shall be maintained in operating condition and tested as follows:

(i) The emergency power generator shall be tested weekly and run under load for a period of 30 minutes monthly.

(ii) Transfer switches and battery operated equipment shall be tested at approximately 14-day intervals.

(b) A written record of inspection, performance, test period, and repair of the emergency generator shall be maintained on the premises for review.

R432-500-29. Storage and Disposal of Garbage, Refuse, and Waste.

Facilities and equipment shall be provided for the sanitary storage and treatment or disposal of all categories of waste, including hazardous and infectious wastes if applicable, using techniques acceptable to the Department of Environmental Quality, and the local health department having jurisdiction.

R432-500-30. Provisions for Gas Usage.

(1) Flammable anesthetic agents or chemicals may not be used unless the building is properly constructed for its use in accordance with NFPA guidelines.

(a) Compressed gases and flammable liquids shall be stored safely. All compressed gas cylinders in storage shall be capped and secured. Oxidizing agents may not be stored with flammables.

(b) Oxygen and flammable agents shall be stored away from combustibles. Liquid flammable agents shall be stored in metal cabinets with no more than ten gallons of any one flammable liquid or 60 gallons total of flammable liquids stored per cabinet. Warning signs shall be posted when compressed gases or flammable liquids are used.

(2) Equipment shall be available to extinguish liquid oxygen and enriched gases. Employees shall be trained in the proper use of equipment and containment of combustions.

(3) When using oxygen, provision shall be made for at least the following:

(a) Safe handling and storage;

(b) Facility personnel shall not transfer gas from one cylinder to another;

(c) Piped oxygen system shall be tested in accordance with The NFPA 56F and 56K and a written report shall be filed as follows:

(i) Upon completion of initial installation;

(ii) Whenever changes are made to the system;

(iii) Whenever the integrity of the system has been breached;

(iv) There shall be a scavenging system for evacuation of anesthetic waste gas.

R432-500-31. Lighting.

(1) Sodium and mercury vapor lights shall not be used inside the facility, but may be used as a source of exterior lighting.

(2) All accessible storeroom, stairway, ramp, exit and entrance areas shall be illuminated by at least of 20 foot-candles of light at floor level.

(3) All corridors shall be illuminated with a minimum of 20 foot-candles of light at floor level.

(4) Other areas shall be provided with the following minimum foot candles of light at working surfaces:

(a) Operating rooms : 50 Foot-candles

(b) Medication preparation areas : 50 foot-candles

(c) Charting areas : 50 foot-candles

(d) Reading areas : 50 foot-candles

(e) Laundry areas : 30 foot-candles

(f) Toilet, bath, and shower rooms : 30 foot-candles

(g) Nutritional area : 30 foot-candles.

R432-500-32. Water Supply.

(1) Plumbing and drainage facilities shall be maintained in compliance with Utah Plumbing Code.

(2) Backflow prevention devices shall be maintained in operating condition and tested when required by the Utah Plumbing Code and Utah Public Drinking Water Regulations.

(3) Hot water temperature controls shall automatically regulate temperatures of hot water delivered to plumbing fixtures used by staff and patrons. The facility shall maintain hot water delivered to patient care areas at temperatures between 105 and 115 degrees F. Temperatures shall be regularly tested and a record maintained as part of the preventive maintenance program.

(4) There shall be grab bars at each bathroom facility used by patients.

(5) Water sterilizers, exchangers, distilleries, deionizers and filters shall be functional and shall provide the quality of water intended in each application.

R432-500-33. Sanitation Facilities.

(1) Handwashing and toilet facilities shall be adequate in number and convenient for use by employees and patrons. Facilities shall be kept clean, in good repair and adequately ventilated.

(2) An adequate supply of hand cleansing soap and a supply of sanitary towels or approved hand drying appliance shall be available for use. Common towels are prohibited.

(3) Adequate and conveniently located toilet facilities shall be provided for employees and patrons. Toilet facilities shall be kept clean, in good repair, and free of objectionable odors. They shall be adequately ventilated.

(4) All toilet and bathroom doors used by patients and opening inward into the bath or toilet room shall also allow the door to be removed from the outside of the bath or toilet room.

(5) Other Safety and Sanitation Provisions.

(a) Trash chutes, laundry chutes, and dumb waiters shall be safe and sanitary. Trash and laundry chutes, elevators, dumb waiters, message tubes, and other such systems shall not pump contaminated air into clean areas.

(b) The use of exposed element portable heaters is prohibited.

(c) If virulent agents are tested in the facility, a shielded exhaust hood or other equivalent protective device(s) shall be provided.

(d) Building, grounds, walkways, and parking shall be free of hazards and in good repair. Parking and walkways shall be clear of snow and ice. A clear unobstructed path shall be maintained from all emergency exits to a public way.

(e) Floors shall be maintained so they are in good repair. Floors in labs, toilet rooms, baths, kitchens, and isolation rooms shall be of ceramic tile, roll-type vinyls, or seamless bonded flooring which is resilient, non-absorbent, impervious, and easily cleaned.

(f) Traffic in all patient care areas shall be monitored. Only authorized individuals shall have access to sterile areas.

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R432. Health, Health Systems Improvement, Health Facility Licensure.

R432-550. Birthing Centers (Five or Fewer Birth Rooms).

R432-550-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-550-2. Purpose.

This rule provides health and safety standards for the organization, physical plant, maintenance and operation of birthing centers.

(1) Birthing centers are restricted to five or fewer birth rooms.

(2) Birthing centers provide quality care and services in a pleasing and safe environment to a select low risk population of healthy maternal patients who choose a safe and cost-effective alternative to the traditional hospital childbirth experience.

(3) Birthing center clinical staff assess the maternal patient's risk for obstetric complications through careful prenatal screening for potential problems throughout pregnancy.

(4) Birthing centers recognize the individual needs of, and provide service to, low risk maternal patients expected to have an uncomplicated pregnancy, labor and delivery.

R432-550-3. Time for Compliance.

Facilities governed by these rules shall be in full compliance with these rules at the time of licensure.

R432-550-4. Definitions.

(1) Common definitions R432-1-3.

(2) Special Definitions:

(a) "Birth room" means a room and environment designed, equipped and arranged to provide for the care of a maternal patient and newborn and to accommodate a maternal patient's support person during the process of vaginal birth and recovery.

(b) "Birthing center" means a freestanding facility, receiving maternal patients and providing care during pregnancy, delivery and immediately after delivery.

(c) "Patient" means a woman or newborn receiving care and services provided by a birthing center during pregnancy, childbirth and recovery.

(d) "Clinical staff" means the physicians, certified nurse-midwives and other licensed health care practitioners appointed by the governing authority to practice within the birthing center and governed by rules approved by the governing body.

(e) "Support person" means the individual or individuals selected or chosen by a patient to provide emotional support and to assist her during the process of labor and childbirth.

(f) "Vaginal birth" means the three stages of labor.

R432-550-5. Licensure.

License Required. See R432-2.

R432-550-6. General Construction Rules.

See R432-14 Birthing Center Construction Rules.

R432-550-7. Governing Body.

(1) Direction.

The licensee shall appoint in writing an individual or group to constitute the facility's governing body.

(2) Responsibilities.

The governing body shall:

(a) comply with federal, state and local laws, rules and regulations;

(b) adopt written policies and procedures which describe the functions and services of the birthing center and protect patient rights;

(c) adopt a policy prohibiting discrimination because of race, color, sex, religion, ancestry, or national origin in accordance with Sections 13-7-1 through 4.

(d) develop an organizational structure establishing lines of authority and responsibility;

(e) when the governing body is more than one individual, conduct meetings in accordance with facility policy, but at least annually, and maintain written minutes of the meetings;

(f) appoint by name and in writing a qualified administrator;

(g) appoint by name and in writing a qualified director of the clinical staff;

(h) notify the licensing agency in writing no later than five days after a change of administrator, identifying the name of the new administrator and the effective date of the change;

(i) appoint members of the clinical staff and delineate their clinical privileges;

(j) review and approve at least annually a quality assurance program for birthing center operation and patient care provided. R432-550-12.

(k) establish a system for financial management and accountability;

(l) provide for resources and equipment to provide a safe working environment for personnel;

(m) act on findings and recommendations of facility-created committees relevant to compliance with these birthing center rules;

(n) ensure that facility patient admission eligibility criteria are strictly applied by clinical staff and are evaluated through quality assurance review in accordance with R432-550-12.

(3) Policies and Procedures.

Written policies and procedures shall:

(a) clearly, accurately and comprehensively define the methods by which the facility will be operated to protect the health and safety of patients;

(b) provide for meeting the patient's needs;

(c) provide for continuous compliance with federal, state and local laws, rules and regulations.

(d) Written policies and procedures shall include, but not be limited to:

(i) defining the term "low risk maternal patient" which shall include eligibility criteria for birth services offered in the birthing center;

(ii) defining specific criteria, to include as a minimum the criteria set forth in R432-550-29, which shall in normally anticipated circumstances render a maternal patient ineligible for birth services or continued care at the birthing center;

(iii) identifying and outlining methods for transferring patients who, during the course of pregnancy, labor or recovery, are determined to be ineligible for birthing center services or continued care at the birthing center;

(iv) planning for consultation, back-up services, transfer and transport of a newborn and maternal patient to a hospital where necessary care is available;

(v) documenting the maternal patient has been informed of the benefits, risks and eligibility requirements of an out-of-hospital birthing center labor and birth;

(vi) providing for the education of patients, family and support persons in postpartum and newborn care;

(vii) planning for post-discharge follow-up of patients;

(viii) registering birth, fetal death or death certificates in accordance with Sections 26-2-5, 26-2-13, 26-2-14, 26-2-23 and rules promulgated pursuant thereto in R436.

(ix) prescribing and instilling a prophylactic solution approved by the Department of Health in the eyes of the newborn in accordance with R386-702-9, Special Measures for the Control of Ophthalmia Neonatorum;

(x) performing phenylketonuria (PKU) and other metabolic disease tests in accordance with Department of Health Laboratory rules developed pursuant to Section 26-10-6;

(xi) providing for prenatal laboratory screening including but not limited to:

(A) blood type and Rh Factor and provision for appropriate use of Rh immunoglobulin;

(B) hematocrit or hemoglobin;

(C) antibody screen;

(D) rubella;

(E) syphilis;

(F) urine glucose and protein.

(xii) providing for infection control to include housekeeping; cleaning, sterilization, sanitization and storage of supplies and equipment; and prevention of transmission of infection in personnel, patients and visitors.

R432-550-8. Administrator.

(1) Direction.

(a) The administrator shall be responsible for the overall management and operation of the birthing center.

(b) The administrator shall designate in writing a competent employee to act as administrator in the temporary absence of the administrator.

(c) The administrator's designee shall have authority and responsibility to:

(i) act in the best interests of patient safety and well-being;

(ii) operate the facility in a manner which ensures compliance with these birthing center rules.

(2) Qualifications.

The administrator and administrator's designee shall be knowledgeable:

(a) by education, training or experience in administration and supervision of personnel and qualified as required by facility policy;

(b) in birthing center protocols;

(c) in applicable federal, state and local laws, rules and regulations.

(3) Responsibilities.

(a) The administrator's responsibilities shall be included in a written job description available for Department review.

(b) The administrator shall:

(i) complete, submit and file records and reports required by the Department;

(ii) develop and implement facility policies and procedures;

(iii) review facility policies and procedures at least annually and report to the governing body on the review;

(iv) employ or contract with competent personnel whose qualifications are commensurate with job responsibilities and authority and who have the appropriate Utah license or certificate of completion;

(v) develop, for all employee positions, job descriptions that delineate functional responsibilities and authority;

(vi) review and act on incident or accident reports.

R432-550-9. Clinical Director.

(1) Direction.

The clinical director shall be responsible for implementing, coordinating and assuring the quality of patient care services.

(2) Qualifications.

The clinical director shall:

(a) be currently licensed to practice medicine or midwifery in Utah;

(b) have training and expertise in obstetric and newborn services offered to ensure adequate supervision of patient care services.

(3) Responsibilities.

(a) The clinical director's responsibilities shall be included in a written job description available for Department review.

(b) The clinical director shall:

(i) review and update facility protocols;

(ii) review and evaluate clinical staff privileges and revise them as necessary;

(iii) recommend, to the governing body, names of qualified licensed health care practitioners to perform approved procedures and the corresponding clinical staff privileges to be granted;

(iv) coordinate, direct and evaluate clinical operations of the facility;

(v) evaluate and recommend to the administrator the type and amount of equipment needed in the facility;

(vi) ensure that qualified staff are on the premises when patients are in the facility;

(vii) ensure clinical staff documentation is recorded immediately and reflects a description of care given;

(viii) ensure that planned birthing center services are within the scope of privileges granted to the clinical staff;

(ix) recommend to the administrator appropriate remedial action and disciplinary action, when necessary, to correct violations of clinical protocols.

R432-550-10. Personnel.

The administrator shall employ a sufficient number of qualified professional and support staff who are competent to perform their respective duties, services and functions.

(1) Personnel Policies.

(a) The facility shall maintain written personnel policies and procedures which shall be available to personnel and shall address at least the following:

(i) content of personnel records;

(ii) job descriptions, qualifications and validation of licensure or certificates of completion as appropriate for the position held;

(iii) conditions of employment;

(iv) management of employees.

(b) The facility shall maintain personnel records for employees and shall retain personnel records for terminated employees for a minimum of one year following termination of employment.

(2) Health Surveillance.

(a) The facility shall establish a personnel health program through written personnel health policies and procedures which shall protect the health and safety of personnel and patients commensurate with the services offered.

(b) An employee placement health evaluation to include at least a health inventory shall be completed when an employee is hired.

(c) The health inventory shall obtain at least the employee's history of the following:

(i) conditions that predispose the employee to acquiring or transmitting infectious diseases;

(ii) conditions which may prevent the employee from performing certain assigned duties satisfactorily.

(d) Employee health screening and immunization components of personnel health programs shall be developed in accordance with R386-702, Code of Communicable Disease Rules.

(e) Employee skin testing by the Mantoux method shall be done annually or at the time of exposure and follow-up for tuberculosis shall be done in accordance with R386-702-5, Special Measures for the Control of Tuberculosis.

(3) In-service Training and Orientation.

(a) The birthing center shall provide staff development programs to include at least documented orientation for new staff and ongoing in-service training for personnel.

(b) Facility policy shall define an orientation program, standardized for employee categories of responsibility, and shall specify the time for completion.

(c) The in-service training program shall define the frequency and content of training to include at least:

(i) an annual review of facility policies and procedures;

(ii) infection control, personal hygiene and each employee's responsibility in the personnel health program.

(d) Personnel shall have ready access to the facility's policy and procedure manuals when on duty.

(4) Licensing.

(a) Personnel shall maintain current licensing, certification or registration appropriate for the work performed and as required by the Utah Department of Commerce.

(b) Personnel shall provide evidence of current licensure, registration or certification to the Department upon

request.

(c) Failure to ensure personnel are licensed, certified or registered may result in sanctions to the facility license.

R432-550-11. Contracts and Agreements.

(1) Contracts.

(a) The licensee shall secure a written contract or agreement for services not provided directly by the facility.

(b) Contracts or agreements shall include a statement that contract personnel shall:

(i) perform according to facility policies and procedures;

(ii) conform to standards required by laws, rules and regulations;

(iii) provide services that meet professional standards and are timely.

(c) Contracts or agreements shall be available for Department review.

(2) Transfer Agreements.

(a) The licensee shall maintain one or both of the following:

(i) admitting privileges for clinical staff at a general hospital within 30 minutes travel distance of the birthing center;

(ii) a written transfer agreement with one or more general hospitals located within 30 minutes travel distance of the birthing center.

(b) The general hospital transfer agreement shall include provisions for:

(i) transfer of information needed for proper care and treatment of the individual transferred;

(ii) security and accountability of the personal effects of the individual being transferred.

R432-550-12. Quality Assurance.

(1) The administrator shall establish a program to ensure quality in the operation of the birthing center and the services provided.

(2) The quality assurance program shall include a written organizational plan to identify and resolve problems.

(3) The quality of services offered by the facility shall be monitored by a quality assurance committee:

(a) The quality assurance committee shall include at least representatives from facility administration and clinical services and a knowledgeable person who is not an owner or employee of the birthing center.

(b) The quality assurance committee shall meet as prescribed in facility policy or at least quarterly and shall keep written minutes available for department review.

(c) The quality assurance committee shall initiate action to resolve identified quality assurance problems by filing a written report of findings and recommendations with the governing body and with the administrator and clinical director as necessary to produce desired results.

(4) The quality assurance program shall include surveillance, prevention and control of infection.

R432-550-13. Emergency and Disaster.

(1) The administrator shall make provisions to maintain a safe environment in the event of an emergency or disaster. An emergency or disaster includes but is not limited to utility interruption, explosion, fire, earthquake, bomb threat, flood, windstorm, epidemic and injury.

(2) The administrator shall educate, train and drill staff to respond appropriately in an emergency in accordance with NFPA 101-31-4, Life Safety Code 1991.

(3) The administrator shall review the written emergency procedures at least annually and update them as appropriate.

(4) Personnel shall have ready access to written emergency and disaster plans when on duty.

(5) The administrator shall review the disaster plan with local disaster agencies as appropriate.

(6) Smoking Policies.

The smoking policy shall comply with Title 26, Chapter 38, the "Utah Clean Air Act" and Section 31-4.4 of the Life Safety Code, 1991 edition.

R432-550-14. Patients' Rights.

(1) Policies and Procedures.

Written patients' rights shall be established and made available to the patient as determined by facility policy.

(2) Statement of Patients' Rights.

(a) Facility staff shall ensure the rights of patients.

(b) A patient receiving care has the following rights:

(i) to be fully informed, prior to or at the time of admission, and during stay, of these rights and of facility rules that pertain to the patient;

(ii) to be fully informed, prior to admission, of the treatment to be received, potential complications and expected outcomes;

(iii) to refuse treatment to the extent permitted by law and to be informed of the medical consequences of such refusal;

(iv) to be informed, prior to or at the time of admission and during stay, of services available in the facility and of any expected charges for which the patient may be liable;

(v) to be afforded the opportunity to participate in decisions involving personal health care, except when contraindicated;

(vi) to refuse to participate in experimental research;

(vii) to be ensured confidential treatment of personal and medical records and to approve or refuse release to any individual outside the facility, except in the case of transfer to another health facility, or as required by law or third party payment contract;

(viii) to be treated with consideration, respect and full recognition of personal dignity and individuality, including privacy in treatment and in care for personal needs.

R432-550-15. Clinical Staff and Personnel.

(1) A physician applying for privileges at the birthing center must maintain admitting privileges at a general hospital within 30 minutes travel distance of the birthing center.

(2) A certified nurse-midwife applying for privileges must provide evidence of, and maintain, a collaborative relationship with a back-up physician to include at least a written and signed agreement approved by the clinical director. Written agreements a certified nurse-midwife

establishes with a back-up physician shall include at least the following:

(a) documentation that the back-up physician agrees to accept consultation calls and referrals from the certified nurse-midwife 24 hours a day;

(b) documentation that the back-up physician has admitting privileges at a general acute hospital within 30 minutes travel distance of the birthing center;

(c) provisions to ensure adequate and timely services by the back-up physician.

(3) Information identifying current clinical staff, back-up physicians and on-call and emergency telephone numbers shall be readily available to birthing center personnel.

(4) Clinical staff and licensed personnel of the birthing center shall be trained in emergency and resuscitation measures for infants and adults, including but not limited to, cardiopulmonary resuscitation certification through an American Heart Association or American Red Cross approved course.

(5) A physician or certified nurse-midwife shall be present at each birth and remain until the maternal patient and newborn are stable postpartum.

(6) A second employee who is licensed or certified to give cardiopulmonary resuscitation shall be present at each birth.

(7) Clinical staff, licensed personnel and support staff shall be provided to meet patients' needs, to ensure patients' safety and to ensure that patients in active labor are attended.

R432-550-16. Clinical Staff.

(1) The attending member of the clinical staff shall ensure the supervision of, and quality of, care delivered to the patient admitted to the facility.

(2) Each patient shall be under the care of a member of the clinical staff.

(3) Clinical staff members shall comply with applicable professional practice laws and written birthing center protocols approved by the clinical director.

(4) The attending member of the clinical staff shall verify in writing that the patient conforms to facility eligibility criteria.

(5) The attending member of the clinical staff shall decide when transfer of a patient to a hospital is necessary and document in writing the conditions warranting the decision.

R432-550-17. Nursing Services.

(1) The birthing center shall provide nursing care services to meet the needs of the patients served.

(2) Licensed nursing service personnel shall plan and deliver nursing care as defined in written facility policy and in accordance with Title 58, Chapters 31 and 44; and R156-31 and R156-44; and other applicable laws and rules.

(3) The administrator shall employ sufficient licensed and auxiliary nursing staff to meet the total nursing needs of the patients.

R432-550-18. Equipment and Supplies.

(1) The administrator shall provide necessary equipment in good working order to meet the patient's needs.

(2) The type and amount of equipment shall be indicated in facility policy and approved by the clinical director.

(3) An emergency cart or tray equipped to allow completion of emergency procedures defined by facility policy shall be readily available.

(a) The facility shall safely store the emergency cart or tray in a designated area that is accessible to authorized personnel.

(b) The facility shall maintain a written log of all upkeep of the emergency cart or tray.

(4) The inventory of supplies shall be sufficient to care for the number of patients registered for care.

(5) Properly maintained equipment and supplies for the maternal patient and the newborn shall include at least the following:

(a) furnishings suitable for labor, birth and recovery;

(b) oxygen with flow meters and masks or equivalent;

(c) mechanical suction and bulb suction;

(d) resuscitation equipment to include resuscitation bags, laryngoscopes, endotracheal tubes and oral airways;

(e) firm surfaces suitable for use in resuscitating patients;

(f) emergency medications, intravenous fluids and related supplies and equipment;

(g) fetal monitoring equipment, minimally to include a fetoscope or doptone;

(h) equipment to monitor and maintain the optimum body temperature of the newborn;

(i) a clock indicating hours, minutes and seconds;

(j) sterile suturing equipment and supplies;

(k) adjustable examination light;

(l) infant scale;

(m) a telephone or equivalent two-way communication device capable of reaching other facilities or emergency agencies;

(n) a delivery log for recording birth data.

R432-550-19. Pharmacy Service.

(1) The administrator shall provide documentation that facility pharmacy services comply with R156-17, Board of Pharmacy Rules; Section 58-17, Pharmacy Practice Act; Section 58-37, Controlled Substances Act; and with other applicable state and federal laws, rules and regulations.

(2) Licensed personnel shall prescribe order and administer medication in accordance with applicable professional practice acts, pharmacy and controlled substances laws.

R432-550-20. Anesthesia Services.

(1) Organization.

The birthing center shall provide facilities and equipment for the provision of anesthesia services commensurate with the obstetric procedures planned for the facility.

(2) Policies and Procedures.

(a) The clinical director shall ensure the safety of anesthesia services administered to patients by clinical staff through written policies and protocols approved by the

clinical staff for anesthetic agents, delivery of anesthesia and potential hazards of anesthesia.

(b) Protocols for administration of anesthesia by a certified nurse-midwife shall be in accordance with R156-44-2 and R156-44-601.

(c) A clinical staff member shall monitor patients who receive anesthesia or analgesics.

R432-550-21. Laboratory and Radiology Services.

(1) General Requirements.

(a) The birthing center shall provide direct or contract laboratory, radiology and associated services according to facility policy and to meet the needs of patients.

(b) Laboratory and radiology reports or results shall be reported promptly to the attending clinical staff member and documented in the patient's medical record.

(2) Laboratory Services.

(a) Laboratory services shall be provided by a CLIA approved laboratory which meets requirements of R432-100-26.

(b) In-house laboratory facilities shall meet the requirements for laboratories in the construction portion of this rule.

(3) Radiology Services.

Radiology services shall comply with applicable sections of R313-12 Radiation Control and R432-100-24.

R432-550-22. Medical Records.

(1) Organization.

(a) Medical records shall be complete, accurately documented and systematically organized to facilitate retrieval and compilation of information.

(b) An employee designated by the administrator shall be responsible and accountable for the processing of medical records.

(2) Retention and Storage.

(a) The medical record and its contents shall be safeguarded from loss, defacement, tampering, fires and floods.

(b) Medical records shall be protected against access by unauthorized individuals.

(c) Medical records shall be retained for at least five years after the last date of patient care. Records of minors, including records of newborn infants, shall be retained for three years after the minor reaches legal age under Utah law, but in no case less than five years.

(3) Confidentiality and Release of Information.

(a) Medical record information shall be confidential.

(b) The birthing center may disclose medical record information only to authorized persons in accordance with federal, state and local laws.

(c) The birthing center shall obtain consent from the patient before releasing client information identifying the client, including photographs, unless release is otherwise allowed or required by law.

(4) Content of Medical Records.

(a) The birthing center shall maintain an individual medical record for each patient which shall include but is not limited to written documentation of the following:

(i) admission record with demographic information and patient identification data;

(ii) history and physical examination which shall be up-to-date upon the patient's admission;

(iii) written and signed informed consent;

(iv) orders by a clinical staff member;

(v) record of assessments, plan of care and services provided;

(vi) record of medications and treatments administered;

(vii) laboratory and radiology reports;

(viii) discharge summary for mother and newborn to include a note of condition, instructions given and referral as appropriate.

(b) In addition to the requirements for medical records specified in R432-550-22(4)(a), obstetrical records shall include the following:

(i) prenatal care record containing at least prenatal blood serology, Rh factor determination, past obstetrical history and physical examination and documentation of fetal status;

(ii) monitoring of progress in labor with assessment of maternal and newborn reaction to the process of labor;

(iii) fetal monitoring record;

(iv) labor and delivery record, including type of delivery, record of anesthesia and operative procedures if any;

(v) record of administration of Rh immune globulin;

(vi) documentation that the patient is informed of the statement of patient rights.

(c) In addition to the requirements for medical records specified in R432-550-22(4)(a), records of newborn infants shall include the following:

(i) date and hour of birth, birth weight and length, period of gestation, sex and condition of infant on delivery including Apgar scores and resuscitative measures;

(ii) mother's name or unique identification;

(iii) record of ophthalmic prophylaxis;

(iv) identification number of the screening kit used to screen for metabolic diseases, documentation that metabolic screening was done and the genetic screening, PKU or other metabolic disorders report.

R432-550-23. Housekeeping Services.

(1) Direction.

The facility shall provide adequate housekeeping services to maintain a clean and sanitary environment.

(2) Policies and Procedures.

The facility shall develop and implement written housekeeping policies and procedures.

R432-550-24. Laundry Services.

The facility shall provide clean linens as required for patient care.

(1) Policies and Procedures.

The facility shall develop and implement written policies and procedures for storage and processing of clean and soiled linen.

(2) Clean Linen.

(a) Clean linen shall be stored, handled and transported to prevent contamination.

(b) Linens shall be maintained in good repair and shall not be threadbare.

(3) Soiled Linen.

Soiled linen shall be handled, transported, stored and processed in a manner to prevent both leakage and the spread of infection.

R432-550-25. Maintenance, Physical Environment, and Safety.

(1) The facility shall provide adequate maintenance service to ensure that facility equipment and grounds are maintained in a clean and sanitary condition and in good repair.

(2) The facility shall develop and implement a written maintenance program which shall include a preventive maintenance schedule for major equipment and physical plant systems.

R432-550-26. General Maintenance.

(1) The facility shall maintain facility buildings, fixtures, equipment and spaces in operable condition.

(2) The facility shall provide a safe, clean and sanitary environment.

(3) The facility shall conduct a pest-control program that ensures the facility is free from vermin.

(4) Direct or contract pest-control programs shall comply with Title 14, Chapter 4.

(5) Documentation shall be maintained for Department review.

R432-550-27. Waste Processing Service.

Facilities and equipment shall be provided for the sanitary storage and treatment or disposal of all categories of waste, including hazardous and infectious wastes if applicable, using techniques acceptable to the Department of Environmental Quality, and the local health department having jurisdiction.

R432-550-28. Lighting.

The facility shall provide adequate and comfortable lighting to meet the needs of patients and personnel.

R432-550-29. Limitations of Services.

(1) Birthing center maternal patients shall be limited to women initially determined to be at low maternity risk and evaluated regularly throughout pregnancy to ensure they remain at low risk for a poor pregnancy outcome.

(2) Birthing center policy shall establish a written risk assessment system to assess the individual risk for each maternal patient.

(3) A clinical staff member shall perform and document a risk assessment for each maternal patient, which shall include evaluating the maternal patient for the criteria in R432-550-22(4) and facility policy.

(4) In order to be given care in a birth center a patient shall exhibit no evidence of the following:

(a) severe anemia or blood dyscrasia;

(b) insulin dependent diabetes mellitus;

(c) symptomatic cardiovascular disease, including active thrombophlebitis;

(d) compromised renal function;

(e) substance abuse;

(f) pregnancy-induced hypertension to include moderate to severe hypertension, preeclampsia and toxemia;

(g) known or suspected active herpes genitalis;

(h) viral infections during pregnancy known to adversely affect fetal well-being;

(i) previous caesarean section, major uterine wall surgery or obstetrical complications likely to recur;

(j) multiple gestation;

(k) pre-term labor (36 weeks or less) or post-term gestation (43 weeks or greater);

(l) prolonged rupture of membranes;

(m) intrauterine growth retardation or macrosomia;

(n) suspected serious congenital anomaly;

(o) fetal presentation other than vertex;

(p) oligohydramnios, polyhydramnios or chorioamnionitis;

(q) abruptio placenta or placenta previa;

(r) fetal distress which will be likely to adversely affect the infant in labor or at birth, including moderate to heavy meconium stained amniotic fluid;

(s) need for anesthesia or analgesia other than those used in a setting where anesthesia and analgesia are limited in accordance with the facility's written protocols;

(t) a desire for transfer from birthing center care;

(u) any condition identified intrapartum or postpartum which will be likely to adversely affect the health of the maternal patient or infant and will require management in a general hospital.

KEY: health facilities

March 3, 1995	**26-21-5**
Notice of Continuation December 15, 1997	**26-21-16**

R432. Health, Health Systems Improvement, Health Facility Licensure.

R432-600. Abortion Clinic Rule.

R432-600-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-600-2. Purpose.

The purpose of this rule is to promote the public health and welfare through the establishment and enforcement of licensure standards. This rule sets standards for the operation and maintenance of abortion clinics for providing safe and effective facilities and services.

R432-600-3. Time for Compliance.

All facilities governed by these rules shall be in full compliance at the time of licensure.

R432-600-4. Licensure.

(1) A license is required to operate an abortion clinic.

(2) Documentation that the licensee and facility are members in good standing with the National Abortion

Federation is required for licensure.

R432-600-5. Construction.

(1) See R432-4-1 through R432-4-24 General Construction Requirements.

(2) Each facility shall conform to the functional, space, and equipment specifications of U. S. Department of Health and Human Services, Guidelines for Construction and Equipment of Hospital and Medical Facilities, 1992-93 edition, including Appendix A, specifically, Chapter 9, Outpatient Facilities, sections 9.1 and 9.2. Modifications or deletion of space and functional requirements may be made with Departmental written approval.

(3) Treatment rooms shall be a minimum of 110 square feet exclusive of vestibules or cabinets.

R432-600-6. Organization.

(1) Each clinic shall be operated by a licensee. If the licensee is other than a single individual, there shall be an organized functioning governing body to assure accountability.

(2) The licensee shall be responsible for the organization, management, operation, and control of the facility.

(3) Responsibilities shall include at least the following:

(a) Comply with all applicable federal, state and local laws, rules and requirements;

(b) Adopt and institute by-laws, protocols, policies and procedures relative to the operation of the clinic;

(c) Appoint, in writing, a qualified administrator to be responsible for the implementation of facility bylaws, policies and procedures, and for the overall management of the facility;

(d) Appoint, in writing, a qualified medical director to be responsible for clinical services;

(e) Establish a quality assurance committee in conjunction with the medical staff;

(f) Secure contracts for services not provided directly by the clinic;

(g) Receive and respond to the annual licensure inspection report by the Department;

(h) Notify the Department in writing the name of a new administrator within five days of a change of administrator.

(i) Compile statistics on the distribution of the informed consent material as required in Section 76-7-305.5(4).

R432-600-7. Clinic Protocols, Policies, and Procedures.

Clear, explicit written protocols, criteria, policies and procedures in accordance with Section 76-7-3, shall be established by the licensee with consultation of the medical director and the administrator in the following areas:

(1) Patient eligibility criteria;

(2) Physician competency criteria;

(3) Informed consent;

(4) Abortion procedure protocols to include;

(a) Clinic policy must indicate a limit on the number of weeks within the second trimester of pregnancy during which abortions can be safely performed in the clinic.

(b) If an abortion is performed when an unborn child is sufficiently developed to have any reasonable possibility of survival outside its mother's womb, the medical procedure used must be that which, in the best medical judgement of the physician, will give the unborn child the best chance of survival. (Refer to Section 76-7-307.)

(5) Pre and post counseling;

(6) Clinic operational functions;

(7) Patient care and patient rights policies;

(8) A quality assurance committee;

(9) Ongoing relevant training program for all clinic personnel;

(10) Emergency and disaster plans;

(11) Fire evacuation plans.

R432-600-8. Administrator.

(1) Each facility shall designate, in writing, an administrator who shall have sufficient freedom from other responsibilities to be on the premises of the clinic a sufficient number of hours in the business day to permit attention to the management and administration of the facility.

(2) The administrator shall designate a person to act as administrator in his absence. This person shall have sufficient power, authority, and freedom to act in the best interests of patient safety and well-being. It is not the intent to permit a de facto administrator to supplant or replace the designated facility administrator.

(3) The administrator shall be 21 years of age or older.

(4) The administrator shall be experienced in administration and supervision of personnel, and shall be knowledgeable about the medical aspects of abortions to interpret and be conversant in medical protocols.

(5) The administrator's responsibilities shall be included in a written job description.

(6) Responsibilities shall include at least the following:

(a) Develop and implement facility policies and procedures;

(b) Maintain an adequate number of qualified and competent staff to meet the needs of clinic patients;

(c) Develop clear and complete job descriptions for each position;

(d) Implement recommendations made by the quality assurance committee;

(e) Notify the Department promptly in the event of the death of a patient;

(f) Notify appropriate authorities when a serious communicable disease is diagnosed;

(g) File a fetal death certificate as required in Section 26-2-14, for each fetal death of 20 weeks gestation or more calculated from the date the last normal menstrual period began to date of delivery;

(h) Review all incident and accident reports and take appropriate action.

R432-600-9. Medical Director.

(1) The licensee of the abortion clinic shall retain, by formal agreement, a physician to serve as medical director.

(2) The medical director shall meet the following qualifications:

(a) Be currently licensed to practice medicine in Utah;

(b) Have sufficient training and expertise in abortion procedures to enable him to supervise the scope of service offered by the clinic;

(c) Be a diplomate of the American Board of Obstetrics and Gynecology or the American Board of Surgery; or submit evidence to the Department that other training and experience will qualify him for admission to an examination by either board; or

(d) Be certified by the American College of Osteopathic Obstetricians and Gynecologists or the American Board of Osteopathic Surgeons; or submit evidence to the Department that his training and experience qualifies him for admission to an examination by the College or Board;

(e) Be a member in good standing with the National Abortion Federation.

(3) The medical director shall have overall responsibility for the administration of medication and treatment delivered in the facility. Applicable laws relating to abortions, professional licensure acts and clinic protocols shall govern both medical staff and employee performance.

(4) The medical director shall be responsible for at least the following:

(a) To develop and review facility protocols;

(b) To establish competency criteria for staff physicians and personnel, including training in abortion procedures and abortion counseling;

(c) To supervise the performance of the medical staff;

(d) To serve as a member of the clinic's quality assurance committee;

(e) To act as consultant to the director of nursing;

(f) Ensure that a physician's report is filed as required in Section 76-7-313, for each abortion performed.

R432-600-10. Director of Nursing.

(1) Each clinic shall employ and designate in writing a director of nursing who will be responsible for the organization and functioning of the nursing staff and related service.

(2) The director of nursing shall be a registered nurse who has academic or post graduate training acceptable to the medical director.

(3) The director of nursing in consultation with the medical director shall plan and direct the delivery of nursing care by nursing staff.

R432-600-11. Health Surveillance.

(1) The Facility shall establish a personnel health program through written personnel health policies and procedures which shall protect the health and safety of personnel and clients commensurate with the service offered.

(2) An employee placement health evaluation to include at least a health inventory shall be completed when an employee is hired.

(3) The health inventory shall obtain at least the employee's history of the following:

(a) conditions that predispose the employee to acquiring or transmitting infectious diseases;

(b) condition which may prevent the employee from performing certain assigned duties satisfactorily;

(4) Employee health screening and immunization components of personnel health programs shall be developed in accordance with R386-704. Communicable Disease Rules;

(5) Employee skin testing by the Mantoux Method and follow up for tuberculosis shall be done in accordance with R386-702-5, Special Measures for control of Tuberculosis;

(a) Skin testing must be conducted on each employee annually and after suspect exposure to a resident with active tuberculosis.

(b) Skin testing shall be exempted for all employees with known positive reaction to skin tests.

(6) All infections and communicable diseases reportable by law shall be reported by the facility to the local health department in accordance with R386-702-2.

R432-600-12. Personnel.

(1) The Administrator shall employ a sufficient number of professional and support staff who are competent to perform their respective duties, services and functions.

(a) All staff shall be licensed, certified or registered as required by the Utah Department of Commerce.

(b) Copies shall be maintained for Department review that all licenses, registration and certificates are current.

(c) Failure to ensure that all personnel are licensed, certified or registered may result in sanctions to the facility license.

(2) There shall be planned, documented, in-service training program held regularly for all facility personnel.

(3) The training program shall address all clinic protocols and policies.

(4) All clinic personnel shall have access to the facility's policies and procedures manuals and other information necessary to effectively perform assigned duties and carry out responsibilities.

R432-600-13. Contracts.

(1) The licensee shall make arrangements for professional and other required services not provided directly by the facility. If the facility contracts for services, there shall be a signed, dated agreement that details all services provided.

(2) The contract shall include:

(a) The effective and expiration dates;

(b) A description of goods or services to be provided;

(c) Copy of the professional license, if applicable.

R432-600-14. Emergency Transfer Agreements.

(1) The licensee shall maintain a written transfer agreement with one or more full-service JCAHO-accredited hospitals located within an overall travel time of 15 minutes or less from the clinic.

(2) The transfer agreement shall include provisions for:

(a) Hospital admitting privileges for the clinic medical director or the attending physician;

(b) Transfer of information needed for proper care and treatment of individual transferred;

(c) Security and accountability of the personal effects of the individual transferred.

R432-600-15. Quality Assurance.

(1) The administrator, in conjunction with the medical staff, shall establish a quality assurance committee and program. This committee shall review regularly clinic operations, protocols, policies and procedures, incident reports, infection control, patient care policies and safety.

(2) The committee shall include a representative from the clinic administration, a physician, and a nurse.

(3) The committee shall meet at least quarterly and keep minutes of the proceedings. The minutes shall be available for review by the Department.

(4) The committee shall initiate action to resolve identified quality assurance problems by filing a written report of findings and recommendations with the licensee.

R432-600-16. Emergency and Disaster.

(1) Each facility has the responsibility to assure the safety and well-being of patients in the event of an emergency or disaster. An emergency or disaster may include but is not limited interruption of public utilities, explosion, fire, earthquake, bomb threat, flood, windstorm, epidemic, and injury.

(2) The administrator shall be in charge of facility operations during any significant emergency. If not on the premises, he should make every reasonable effort to get to the facility to relieve subordinates and take charge during the emergency.

(3) The licensee and the administrator shall be responsible for the development of a plan, coordinated with state and local emergency or disaster authorities, to respond to emergencies and disasters.

(a) This plan shall be in writing and shall be distributed or made available to all facility staff to assure prompt and efficient implementation.

(b) The plan shall be reviewed and updated at least annually by the administrator and the licensee.

(4) The names and telephone numbers of clinic staff, emergency medical personnel, and emergency service systems shall be posted.

(5) Emergency Plan.

The facility's emergency plan shall address the following:

(a) Evacuation of occupants to a safe place within the facility or to another location;

(b) Delivery of emergency care and services to facility occupants when staff is reduced by an emergency;

(c) The person or persons with decision-making authority for fiscal, medical, and personnel management;

(d) An inventory of available personnel, equipment, and supplies and instructions on how to acquire additional assistance;

(e) Assignment of personnel to specific tasks during an emergency;

(f) Names and telephone numbers of on-call physicians and staff at each nurses' station;

(g) Documentation of emergency events.

(6) Fire Emergency.

(a) The licensee and administrator shall develop a written fire emergency and evacuation plan in consultation with qualified fire safety personnel.

(b) The evacuation plan shall identify evacuation routes, location of fire alarm boxes, fire extinguishers, and emergency telephone numbers of the local fire department and shall be posted throughout the facility.

(c) The written fire emergency plan shall include fire-containment procedures and how to use the facility alarm systems and signals.

(d) Fire drills shall be held at least quarterly--one drill per shift per quarter. The actual evacuation of patients during a drill is optional.

R432-600-17. Patients' Rights.

(1) The clinic shall provide informed consent material (see Section 76-7-305.5) to any patient or potential patient upon her request.

(2) Written policies regarding the rights of patients shall be made available to the patient, public, and the Department upon request.

(3) Each patient admitted to the facility shall have the following rights:

(a) To be fully informed, prior to or at the time of admission and during stay, of these rights and of all facility rules that pertain to the patient;

(b) To be fully informed, prior to or at the time of admission and during stay, of services available in the facility and of any charges for which the patient may be liable;

(c) To refuse to participate in experimental research;

(d) To refuse treatment and to be informed of the medical consequences of such refusal;

(e) To be assured confidential treatment of personal and medical records and to approve or refuse release to any individual outside the facility, except in the case of transfer to another health facility, or as required by law or third party payment contract;

(f) To be treated with consideration, respect, and full recognition of personal dignity and individuality, including privacy in treatment and in care for personal needs.

R432-600-18. General Patient Care Policies.

(1) Each patient shall be treated as an individual with dignity and respect.

(2) Each clinic shall develop and implement patient care policies to be reviewed annually by the director of nursing.

(a) Patient care policies shall be developed and revised through patient-care conferences with all professionals involved in patient care.

(b) Admission and discharge policies shall be included in general patient care policies.

(3) The facility shall have a policy to notify next of kin in the event of serious injury to, or death of, the patient.

(4) Each patient shall be under the care of a physician who is a member of the clinic staff.

R432-600-19. Nursing Services.

(1) Each facility shall provide nursing services commensurate with the needs of the patients served.

(2) All non-medical patient services shall be under the general direction of the director of nursing, except as specifically exempted by facility policy.

(3) Nursing service personnel shall assist the physician, plan and deliver nursing care, treatments, and procedures commensurate with the patient's needs and clinic protocols.

(4) All nursing personnel shall maintain a current Utah nursing license.

(5) The facility shall provide adequate equipment in good working order to meet the needs of patients.

(a) Disposable and single-use items shall be properly disposed after use.

(b) The type and amount of equipment shall be identified in clinic policy and approved by the medical director.

R432-600-20. Medication and Treatments.

Documentation of medications and treatments shall comply with generally accepted professional practice and clinic policy.

R432-600-21. Pharmacy Service.

(1) There shall be written policies and procedures, approved by the medical director and administrator, to govern the acquisition, storage, and disposal of medications.

(2) There shall be provision for the supply of necessary drugs and biologicals on a prompt and timely basis.

(3) The clinic shall obtain reference material containing monographs on all drugs used in the facility. The drug monographs shall include generic and brand names, available strengths, dosage forms, indications and side effects, and other pharmacological data.

(4) All medications, solutions, and prescription items shall be kept in a secure controlled storage area, convenient to the nurses station and separate from non-medicine items.

(5) A accessible emergency drug supply shall be maintained in the facility.

(a) Specific drugs and dosages to be included in the emergency drug supply shall be approved by the medical director.

(b) Contents of the emergency drug supply shall be listed on the outside of the container.

(c) The use and regular inventory of the contents shall be documented by nursing staff.

(6) Medications stored at room temperature shall be maintained within 59 degrees - 80 degrees F (15 degrees to 30 degrees C). Refrigerated medications shall be maintained within 36 degrees - 46 degrees F (2 degrees to 8 degrees C).

(7) Medications and other items that require refrigeration shall be stored securely and segregated from food items.

R432-600-22. Laboratory and Radiology Services.

(1) The facility shall make provisions, as appropriate, for Laboratory and Radiology services.

(2) There shall be a valid order, documented in the patients medical record, from a physician or a person licensed to prescribe such services.

(3) Services shall be performed by a qualified licensed provider.

(4) If the facility provides its own laboratory service, these services shall comply with R432-100-26 in the General Hospital Facility Rules.

(5) If the facility provides its own radiology services, these shall comply with R432-100-29.

(6) If laboratory and radiology services are not provided directly, provision shall be made for such services. Reports or results shall be reported promptly to the attending physician and documented in the patient's medical record.

R432-600-23. Anesthesia Services.

Anesthesia services provided in the clinic shall comply with the General Hospital Rules R432-100-24.

R432-600-24. Medical Records.

(1) Medical records shall be complete, accurately documented, and systematically organized to facilitate storage and retrieval. There shall be written policies and procedures to accomplish these purposes.

(2) A permanent individual medical record shall be maintained for each patient.

(3) All entries shall be permanent (typed or handwritten legibly in ink) and capable of being photocopied. Entries must be authenticated including date, name or identified initials, and title of the person making the entry.

(4) Records shall be kept for all patients admitted or accepted for treatment and care. Records shall be kept current and shall conform to good medical and professional practice based on the service provided to each patient.

(5) All records of discharged patients shall be completed and filed as soon as possible or within 30 days of discharge.

(6) Each patient's medical record shall include the following:

(a) An admission record (face sheet) including the patient's name; age; date of admission; name, address, and telephone number of physician and responsible person;

(b) Reports of physical examinations, laboratory tests and X-rays prescribed and completed, including ultrasound reports;

(c) Signed and dated physician orders for drugs and treatments;

(d) Signed and dated nurse's notes regarding the care of the patient. The notes shall include vital signs, medications, treatments and other pertinent information;

(e) Discharge summary which contains a brief narrative of conditions and diagnoses of the patient and final disposition;

(f) The pathologist's report of human tissue removed during an abortion;

(g) All information indicated in Section 76-7-313.

(7) Medical records shall be retained for at least seven years after the last date of patient care. Records of minors shall be retained until the minor reaches age 18 or the age of majority plus an additional two years. In no case shall the record be retained less than seven years.

(8) All patient records shall be retained within the clinic upon change of ownership.

(9) Provision shall be made for filing, safe storage, security, and easy accessibility of medical records.

(10) Medical record information shall be confidential. There shall be written procedures for the use and removal of

medical records and the release of patient information.

(a) Information may be disclosed only to authorized persons in accordance with federal and state laws, and clinic policy.

(b) Requests for information which may identify the patient (including photographs) shall require the written consent of the patient.

R432-600-25. Housekeeping Services.

(1) There shall be adequate housekeeping services to maintain a clean, sanitary, and healthful environment in the facility.

(2) The housekeeping service shall meet all the requirements of this section.

(3) Written housekeeping policies and procedures shall be developed and implemented by each facility, and reviewed and updated as necessary.

(4) The facility shall employ housekeeping staff to maintain both the exterior and interior of the facility in a safe, clean, orderly manner.

(5) Housekeeping equipment shall be for institutional use and properly maintained.

(6) Cleaning solutions for floors shall be prepared in proper strengths according to the manufacturer's instructions and be checked to insure that the proper germicidal concentrations are maintained.

(7) There shall be sufficient number of noncombustible trash containers. Lids shall be provided where appropriate.

(8) Storage areas containing cleaning agents, bleaches, insecticides, or poisonous, dangerous, or flammable materials, shall be safeguarded. Toilet rooms shall not be used as storage places.

R432-600-26. Laundry Services.

(1) Each facility shall have provisions for storage and processing of clean and soiled linen as required for patient care.

(2) Processing may be done within the facility, in a separate building or in a commercial or shared laundry.

(3) Each facility shall develop and implement policies and procedures relevant to operation of the laundry which shall be reviewed and updated annually.

(4) Clean Linen.

(a) Clean linen shall be stored, handled, and transported in a manner to prevent contamination.

(b) Clean linen shall be stored in clean ventilated closets, rooms, or alcoves used only for that purpose.

(c) Clean linen shall be covered if stored in alcoves and transported through the facility.

(d) Clean linen from a commercial laundry shall be delivered to a designated clean area in a manner that prevents contamination.

(e) Linens shall be maintained in good repair.

(f) A supply of clean washcloths and towels shall be provided and available to staff to meet the care needs of patients.

(5) Soiled Linen.

(a) Soiled linen shall be handled, stored and processed in a manner that will prevent the spread of infections.

(b) Soiled linen shall be sorted in a separate room by methods affording protection from contamination, according to facility policy and applicable rules.

(c) Soiled linen shall be stored and transported in a closed container which prevents airborne contamination of corridors, areas occupied by patients, and precludes cross contamination of clean linens.

(d) Laundry chutes shall be maintained in a clean sanitary state.

R432-600-27. Maintenance Services.

(1) There shall be adequate maintenance service to ensure that the facility, equipment, and grounds are maintained in a clean and sanitary condition and in good repair at all times for the safety and well-being of patients, staff, and visitors.

(2) The administrator shall employ a person qualified by experience and training to be in charge of facility maintenance.

(3) The facility shall develop and implement a written maintenance program, including preventive maintenance, to ensure continued operation and sanitary practices throughout the facility.

(4) All buildings, fixtures, equipment and spaces shall be maintained in operable conditions.

(5) A pest control program shall be conducted to ensure the facility is free from vermin and rodents by a licensed pest control contractor or an employee certified in pest control procedures.

(6) Equipment used in the clinic shall be approved by Underwriter's Laboratory and meet all applicable Utah Occupational Safety and Health Act requirements in effect at the time of purchase.

(7) Electrical systems including appliances, cords, equipment, call lights, and switches shall be maintained to guarantee safe functioning and compliance with the National Electrical Code.

(8) Heating and cooling systems shall be inspected annually to guarantee safe operation. Documentation of these inspection reports shall be maintained for Department review.

(9) There shall be regular inspections, to clean or replace all filters installed in heating, air conditioning, and ventilation systems, to maintain the systems in operating condition.

R432-600-28. Emergency Electric Service.

(1) The clinic shall make provision for emergency electrical power to provide lighting and power to critical areas essential for patient safety in the event of an interruption of normal electrical power service.

(2) The method utilized for emergency electrical power is subject to Departmental review and approval.

(3) There shall be provision for emergency exit lighting according to NFPA 101.

(4) Flashlights shall be available for emergency use by staff.

(5) All emergency electrical power systems shall be maintained in operating condition and tested as follows:

(a) Emergency generators shall be tested every 14-days,

and run under load for 20 minutes every month.

(b) Transfer switches and battery operated equipment shall be tested every 14-days.

(6) A written record of inspection, performance, test period, and repair of the emergency electrical system shall be maintained on the premises for review.

R432-600-29. Storage and Disposal of Solid Wastes.

Facilities and equipment shall be provided for the sanitary storage and treatment or disposal of all categories of waste, including hazardous and infectious wastes if applicable, using techniques acceptable to the Department of Environmental Quality, and the local health department having jurisdiction.

R432-600-30. Oxygen.

If oxygen is utilized:

(1) Provision shall be made for safe handling and storage of oxygen according to the National Fire Protection Association 101 manual.

(2) Facility personnel shall not transfer gas from one cylinder to another.

(3) Piped oxygen system shall be tested in accordance with NFPA 56F and 56K.

(4) And a written report shall be filed as follows:

(a) Upon completion of initial installation;

(b) Whenever changes are made to a system;

(c) Whenever the integrity of the system has been breached.

R432-600-31. Lighting.

(1) Sodium and mercury vapor lights may not be used inside the facility, but may be utilized as a source of exterior lighting.

(2) At least 30 foot-candles of light shall illuminate reading, patient care (bed level) and working areas in patient treatment areas and not less than 20 foot-candles of light shall be provided in the rest of the room.

(3) All accessible storeroom, stairway, ramp, exit and entrance areas shall be illuminated by at least 20 foot-candles of light at floor level.

(4) All corridors shall be illuminated with a minimum of 20 foot-candles of light at floor level.

(5) Other areas shall be provided with the following minimum foot-candles of light at working surfaces:

(a) Operating rooms 50 Foot-candles

(b) Medication preparation areas 50 foot-candles

(c) Charting areas 50 foot-candles

(d) Reading rooms 50 foot-candles

(e) Laundry areas 20 foot-candles

(f) Bath and shower rooms 20 foot-candles

R432-600-32. Water Supply.

(1) Plumbing and drainage facilities shall be maintained in compliance with Utah Plumbing Code.

(2) Backflow prevention devices shall be maintained in operating condition and tested when required by the Utah Plumbing Code and Utah Public Drinking Water Regulations.

(3) Hot water temperature controls shall automatically regulate temperatures of hot water delivered to plumbing fixtures used by patients. The facility shall endeavor to maintain hot water delivered to patient care areas at temperature between 105 degrees and 115 degree F.

(4) There shall be grab bars at each toilet, bathtub, and shower used by patients.

(5) Toilet, hand washing facilities, shall be maintained in operating condition and in the number and types specified in construction requirements.

R432-600-33. Smoking Policy.

The smoking policy shall comply with the "Utah Clean Air Act", Title 26, Chapter 38, and Section 31-4.4 of the Life Safety Code, 1991.

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R432. Health, Health Systems Improvement, Health Facility Licensure.
R432-650. End Stage Renal Disease Facility Rules.
R432-650-1. Legal Authority.

The State Department of Health, by and through the Health Facility Committee, does hereby adopt and promulgate the following standards and rules governing health care facilities or agencies required under and by virtue or authority vested in it by the Utah State Legislature under Title 26, Chapter 21.

R432-650-2. Purpose.

The purpose of this rule is to promote the public health and welfare through the establishment and enforcement of licensure standards. This rule sets standards for the operation and maintenance for End Stage Renal Disease facilities in order to provide safe and effective services.

R432-650-3. Compliance.

All facilities governed by these rules shall be in full compliance with these rules by February 1, 1994.

R432-650-4. Definitions.

See common definitions R432-1-3.

R432-650-5. Licensure.

License Required. See R432-2 and R432-3.

R432-650-6. Patient Care Services.

The ESRD facility shall comply with the conditions of participation set forth in the Code of Federal Regulations, Title 42, Part 405, Subpart U. which is adopted by reference.

R432-650-7. Personnel.

Staff Health Surveillance.

(1) The facility shall establish a personnel health program through written personnel health policies and procedures which shall protect the health and safety of

personnel and patients commensurate with the services offered.

(2) An employee placement health evaluation to include at least a health inventory shall be completed when an employee is hired.

(3) The health inventory shall obtain the employee's history of the following:

(a) conditions that predispose the employee to acquiring or transmitting infectious diseases;

(b) conditions which may prevent the employee from performing certain assigned duties satisfactorily.

(3) Employee health screening and immunization components of personnel health programs shall be developed in accordance with R386-702, Code of Communicable Disease Rules.

(4) Employee skin testing and follow-up for tuberculosis shall be done in accordance with R386-702-5, Special Measures for the Control of Tuberculosis. Skin testing shall be exempted for all employees with known positive reaction to skin tests.

(5) The facility shall establish a policy and procedure for the health examination of all facility personnel and shall prohibit employees with a communicable disease or open skin lesions, or weeping dermatitis from direct contact with patients, patient care items, if direct contact may result in the transmission of the infection or the disease.

(6) All personnel shall have a test for Hepatitis within two weeks of employment and quarterly thereafter. Persons receiving a successful vaccination for hepatitis B shall not be required to undergo further testing.

(7) The facility shall comply with the Occupational Safety and Health Administration Bloodborne Pathogen Standard.

R432-650-8. Required Staffing.

(1) A minimum of two staff persons, one of whom shall be a Registered Nurse, trained in dialysis procedures and facility emergency procedures shall be on duty in the facility at all times a patient is being dialyzed.

(2) The facility shall be staffed by licensed nurses or dialysis technicians at the minimum ratios set forth in Table 1.

TABLE 1
Minimum Staffing Ratios

Patient Orientation and Treatment Process	Minimum Ratio of Direct Care Staff to Patients
Start of Training	1:1
Training Progression	1:2
Stable	1:5

R432-650-9. Patient Care Plan.

(1) A short-term care plan shall be developed and implemented by the professional team with the patient's consent within one month of beginning treatment.

(2) A long-term care plan shall be developed and implemented by the professional team with the patient's participation within three months of beginning treatment.

R432-650-10. Emergency Equipment.

(1) The facility shall have available on-site an emergency kit. The kit's contents shall be determined by the Medical Director.

(2) An emergency supply of oxygen shall be available on-site.

R432-650-11. Drug Storage.

(1) Medications and similar items that require refrigeration shall be stored securely and segregated from food items.

(2) The facility shall maintain appropriate temperatures for the storage of medications.

(a) Medications stored at room temperature shall be maintained within 59-80 degrees F (15-30 degrees C).

(b) Refrigerated medications shall be maintained within 36-46 degrees F (2-8 degrees C).

(3) Medication shall be kept in the original container and shall not be transferred to other containers.

R432-650-12. Medical Records.

(1) Provision shall be made for the filing, safe storage, and easy accessibility of medical records.

(a) The record and its contents shall be safeguarded from loss, defacement, tampering, fires, and floods.

(b) Records shall be protected against access by unauthorized individuals.

(2) Medical records shall be retained for at least seven years after the last date of patient care. Records of minors shall be retained until the minor reaches the age of majority plus an additional two years. In no case shall the record be retained less than seven years.

(3) All patient records shall be retained within the facility upon change of ownership.

R432-650-13. Water Quality.

(1) Water used for dialysis purposes shall comply with quality standards established by the Association for the Advancement of Medical Instrumentation (AAMI) as approved by the American National Standards Institute in May 1982.

(2) For in-center water systems, bacteriologic quality analysis shall be conducted at least monthly by a State certified laboratory.

(3) For home systems, bacteriological quality analysis shall be conducted at least monthly using an approved home testing methodology.

(a) An alternate schedule of testing may be developed by the attending physician.

(b) The alternate schedule shall be specified in writing.

(4) When reverse osmosis or deionization devices are used for in-center or home systems, chemical quality analysis shall be conducted once every 12 months by a State certified laboratory.

(5) When no treatment is used, or when a method other than deionization, reverse osmosis, or a comparable system is used, chemical quality analysis shall be conducted at least once every three months and at times of expected high levels of contamination by a State certified laboratory.

(6) All water quality test results shall be maintained at the facility for review. In the case of home dialysis, test results shall become part of the patient record maintained by the dialysis facility.

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R432. Health, Health Systems Improvement, Health Facility Licensure.
R432-700. Home Health Agency Rule.
R432-700-1. Authority.
This rule is adopted pursuant to Title 26, Chapter 21.

R432-700-2. Purpose.
The purpose of this rule is to promote the public health and welfare through the establishment and enforcement of licensure standards. This rule sets standards for the operation of home health agencies.

R432-700-3. Compliance.
All home health agencies shall comply with these rules and their own policies and procedures.

R432-700-4. Definitions.
(1) See common definitions rule R432-1-3.
(2) Special definitions:
(a) "Branch Office" means a location from which a home health agency provides services within a portion of the total geographic area served by the parent agency. The branch office is a part of the parent home health agency and shares administration and services.
(b) "Parent Home Health Agency" means the agency that has administrative control of branch offices.

R432-700-5. Categories of Home Health Agencies.
Home health agencies include institutionally based home care programs, freestanding public and proprietary home health agencies, and any subdivision of an organization, public agency, hospital, or nursing home licensed to provide intermittent part-time services or full-time private duty services to patients in their place of residences.

R432-700-6. Services Provided by a Home Health Agency.
(1) A home health agency shall provide services to patients in their place of residence, or in special circumstances, the place of employment.
(2) Services shall be directed and supervised by a licensed practitioner. These services may help avoid premature or inappropriate institutionalization.
(3) Professional and supportive personnel shall be responsible to the agency for any of the following services which they may perform:
(a) Provision of skilled services authorized by a physician;
(b) Nursing services assessed, provided, or supervised by registered nurses;
(c) Other related health services approved by a licensed practitioner;
(4) Hospice Services may be provided.
(a) See R432-750-5 for eligibility requirements.
(b) Home health agencies are not required to obtain a Hospice license, but shall comply with the following requirements:
(i) If, during the care planning process for a terminally ill patient, bereavement services, clergy services, hospice counseling services, or volunteer services are determined to be appropriate under a hospice program of care, the facility shall provide the identified services in accordance with the applicable requirements of R432-750;
(ii) Facility staff responsible for delivering the identified service shall be properly oriented and trained in the hospice concept and philosophy of care and the proper performance of assigned duties.

R432-700-7. Licensure Required.
(1) These provisions do not apply to a single individual providing professional services under the authority granted by his professional license or registration.
(2) See R432-2.

R432-700-8. Governing Body and Policies.
(1) The home health agency shall be organized under a governing body that assumes full legal responsibility for the conduct of the agency.
(2) The administrative structure of the agency must be shown by an organization chart.
(3) The governing body shall assume responsibility to:
(a) Comply with all federal regulations, state rules, and local laws;
(b) Adopt policies and procedures which describe functions or services of the home health agency and protect patient rights;
(c) Adopt a statement that there is no discrimination because of race, color, sex, religion, ancestry, or national origin (Sections 13-7-1 through 4);
(d) Develop and implement bylaws which shall include at least:
(i) A statement of purpose;
(ii) A statement of qualifications for membership and methods to select members of the governing board;
(iii) A provision for the establishment, selection, and term of office for committee members and officers;
(iv) A description of functions and duties of the governing body, officers, and committees;
(v) A statement of the authority and responsibility delegated to the administrator;
(vi) A policy statement relating to conflict of interest of members of the governing body or employees who may influence agency decisions;
(vii) Meet as stated in bylaws, at least annually;
(viii) Appoint by name and in writing a qualified administrator who is responsible for the agency's overall functions.
(4) Notify the licensing agency the name of a new

administrator in writing no later than five days after hire.

(5) Review the written annual evaluation report from the administrator and make recommendations as necessary. Documentation of this review shall be available to the Department.

(6) Make provision for resources and equipment to provide a safe working environment for personnel.

(7) Establish a system of financial management and accountability.

R432-700-9. Administrator.

(1) The administrator designated by the governing body shall be responsible for the overall management of the agency.

(2) The administrator shall have at least one year of managerial or supervisory experience.

(3) The administrator shall designate in writing a qualified person who shall act in his absence. The designated person shall have sufficient power, authority, and freedom to act in the best interests of patient safety and well-being.

(4) The administrator or designee shall be available during the agency's hours of operation.

(5) Responsibilities.

The administrator shall have the responsibility to:

(a) Complete, submit, and file all records and reports required by the Department;

(b) Review agency policies and procedures at least annually and revise as necessary and document the date of review;

(c) Implement agency policies and procedures;

(d) Organize and coordinate functions of the agency by delegating duties and establishing a formal means of staff accountability;

(e) Appoint a physician or registered nurse, or health care professional to provide general supervision, coordination, and direction for professional services of the agency;

(f) Appoint a registered nurse to be the director of nursing services;

(g) Appoint the members and their terms of membership in the interdisciplinary quality assurance committee;

(h) Appoint other committees as deemed necessary, describe committee functions and duties, and make provision for selection, term of office, and responsibilities of committee members;

(i) Designate a person responsible for maintaining a clinical record system on all patients;

(j) Maintain current written designations or letters of appointment in the agency;

(k) Employ or contract with competent personnel whose qualifications are commensurate with job responsibilities and authority, and who have the appropriate license or certificate of completion;

(l) Develop job descriptions that delineate functional responsibilities and authority;

(m) Develop a staff communication system that coordinates implementation of plans of treatment, utilizes services or resources to meet patient needs, and promotes an orderly flow of information within the organization;

(n) Provide staff orientation as well as continuing education (staff development) in applicable policies, rules, regulations, and resource materials;

(o) Secure contracts for services not directly provided by the home health agency;

(p) Implement a program of budgeting and accounting;

(q) Establish a billing system which itemizes services provided and charges submitted to the payment source.

R432-700-10. Personnel.

(1) The administrator shall employ qualified personnel who are competent to perform their respective duties, services, and functions.

(2) The agency shall develop written policies and procedures that address at least the following:

(a) Job descriptions, qualifications, validation of licensure or certificates of completion for each position held;

(b) Orientation for direct and contract employees;

(c) Criteria for, and frequency of, performance evaluations;

(d) Work schedules; method and period of payment; fringe benefits such as sick leave, vacation, insurance, etc.;

(e) Frequency and documentation of in-service training;

(f) Contents of personnel files.

(3) Each employee shall be licensed, certified or registered as required by the Utah Department of Commerce, Division of Occupational and Professional Licensing.

(4) Failure to ensure that all staff are licensed, certified or registered may result in sanctions to the agency license.

(5) Copies shall be maintained for Department review that all staff have a current license, certificate, or registration. New employees shall have 45 days to present the original document.

(6) An annual in-service shall be documented that staff have been trained in the reporting requirements for suspected abuse, neglect and exploitation.

R432-700-11. Health Surveillance.

(1) The Facility shall establish a personnel health program through written personnel health policies and procedures which shall protect the health and safety of personnel and clients commensurate with the service offered.

(2) An employee placement health evaluation to include at least a health inventory shall be completed when an employee is hired.

(3) The health inventory shall obtain at least the employee's history of the following:

(a) conditions that predispose the employee to acquiring or transmitting infectious diseases;

(b) condition which may prevent the employee from performing certain assigned duties satisfactorily.

(4) Employee health screening and immunization components of personnel health programs shall be developed in accordance with R386-704, Communicable Disease Rules.

(5) Employee skin testing by the Mantoux Method and follow up for tuberculosis shall be done in accordance with R386-702-5, Special Measures for Control of Tuberculosis.

(a) Skin testing must be conducted on each employee annually and after suspect exposure to a resident with active tuberculosis.

(b) Skin testing shall be exempted for all employees with known positive reaction to skin tests.

(6) All infections and communicable diseases reportable by law shall be reported by the facility to the local health department in accordance with R386-702-2.

R432-700-12. Orientation.

(1) There shall be documentation that all employees and contract personnel are oriented to the agency and the job for which they are hired.

(2) Orientation shall include but is not limited to:

(a) The functions of agency employees and the relationships between various positions or services;

(b) Job descriptions;

(c) Duties for which persons are trained, hold a registration, certificate, or are licensed;

(d) Ethics, confidentiality, and patients' rights;

(e) Information about other community agencies including emergency medical services;

(f) Opportunities for continuing education appropriate to the patient population served;

(g) Reporting requirements for suspected abuse, neglect or exploitation.

R432-700-13. Contracts.

(1) The administrator shall secure written contract or agreement from other providers, or independent contractors, who provide patient services through the home health agency.

(2) The contract shall be available for review by the Department.

(3) The contract shall include:

(a) The effective and expiration dates;

(b) A description of goods or services to be provided;

(c) Copy of the professional license.

R432-700-14. Acceptance Criteria.

(1) The agency shall develop written acceptance criteria and shall make these policies available to the public upon request.

(2) Patients shall be accepted for treatment if the patient's needs can be met by the agency in the patient's place of residence. The agency shall base the acceptance determination on an assessment using the following criteria:

(a) The patient needs skilled nursing services, to determine whether a service is skilled, the following criteria shall apply:

(i) the complexity of prescribed services can be safely or effectively performed only by, or under the close supervision of, technical or professional personnel.

(ii) care is needed to prevent, to the extent possible, deterioration of the condition or to sustain current capacities of a patient, such as one with terminal cancer.

(iii) special medical complications necessitate service performance or close supervision by technical or professional persons, as in the care of a diabetic patient with impaired circulation, fragile skin, and a fractured leg in a cast.

(b) The patient needs therapy services or support services;

(c) The patient and family request care at home;

(d) The physical facilities in the patient's place of residence can be adapted to provide safe environment for care.

R432-700-15. Termination of Services Policies.

(1) The agency may discharge a patient under any of the following circumstances:

(a) A licensed practitioner signs a discharge statement for termination of services;

(b) Treatment objectives are met;

(c) The patient's status changes, which makes treatment objectives unattainable, and new treatment objectives are not an alternative;

(d) The family situation changes and affects the delivery of services;

(e) The patient or family is uncooperative in efforts to attain treatment objectives;

(f) The patient moves from the geographic area served by the agency;

(g) The physician fails to renew orders as required by the rules for skilled nursing or therapy services or, the patient changes physician's and the agency cannot obtain orders for continuation of services from the new physician;

(h) The patient's payment sources are exhausted and the agency is fiscally unable to provide free or part-cost care;

(i) The agency discontinues a particular service or terminates all services;

(j) The agency can no longer provide quality care in the place for residence;

(k) The patient or family requests agency services to be discontinued;

(l) The patient dies.

(2) The person who is assigned to supervise and coordinate care for a particular patient must complete a discharge summary when services to the patient are terminated.

R432-700-16. Patients' Rights.

(1) Written patients' rights shall be established and made available to the patient, guardian, next of kin, sponsoring agency, representative payee, and the public.

(2) Agency policy may determine how patients' rights information is distributed.

(3) The agency shall insure that each patient receiving care has the following rights:

(a) To be fully informed of these rights and all rules governing patient conduct, as evidenced by documentation in the clinical record;

(b) To be fully informed of services and related charges for which the patient or a private insurer may be responsible, and to be informed of all changes in charges;

(c) To be fully informed of the patient's health condition, unless medically contraindicated and documented in the clinical record;

(d) To be afforded the opportunity to participate in the planning of home health services, including referral to health care institutions or other agencies, and to refuse to participate in experimental research;

(e) To refuse treatment to the extent permitted by law

and to be informed of the medical consequences if treatment is refused;

(f) To be assured confidential treatment of personal and medical records, and to approve or refuse their release to any individual outside the agency, except in the case of transfer to another agency or health facility, or as required by law or third-party payment contract;

(g) To be treated with consideration, respect, and full recognition of dignity and individuality, including privacy in treatment and in care for personal needs;

(h) To be assured the patient and the family or significant others will be taught about required services, so the patient can develop or regain self-care skills and the family or others can understand and help the patient;

(i) To be assured that personnel who provide care demonstrate competency through education and experience to carry out the services for which they are responsible;

(j) To receive proper identification from the individual providing home health services.

R432-700-17. Physician's Orders.

(1) Physician's orders shall be incorporated into the plan of care.

(2) Physician's orders may include:

(a) Diet and nutritional requirements;

(b) Medications;

(c) Frequency and type of service;

(d) Treatments;

(e) Medical equipment and supplies;

(f) Prognosis.

(3) A physician shall authorize the following services:

(a) Skilled Nurses Services;

(b) Services related to a medical diagnosis and provided by non-licensed personnel.

R432-700-18. Patient Records.

(1) The agency shall develop and implement record keeping policies and procedures that address use of patient records by authorized staff, content, confidentiality, retention, and storage.

(2) Records shall be organized in a uniform medical record format.

(3) The agency shall maintain an identification system to facilitate location of each patient's current or closed record.

(4) An accurate, up-to-date record must be maintained for every patient receiving service through the home health agency.

(5) Each person who has patient contact or provides a service in the patient's place of residence must enter a clinical note of that contact or service in the patient's record.

(6) All entries shall be dated and authenticated with the signature, or identifiable initials, and title of the person making the entry.

(7) Services provided by the agency and outcomes of these services must be documented in the individual patient record.

(8) Record Content.

Each patient's record shall contain at least the following information:

(a) Identification data including patient's name, address, age, date of birth, name and address of nearest relative or responsible person, name and telephone number of physician with primary responsibility for patient care, and if applicable, the name and telephone number of the person or family member who, in addition to agency staff, provides care in the place of residence;

(b) Diagnosis;

(c) A written plan of care;

(d) A signed and dated patient assessment which includes strengths and problems of the patient and family;

(e) Pertinent medical and surgical history;

(f) Reasons for referral to home health agency;

(g) A list of medications and treatments;

(h) Allergies or reactions to drugs or other substances;

(i) Statement of the suitability of the patient's place of residence for the provision of health care services;

(j) Signed and dated clinical notes for each patient contact or home visit including services provided, a description of patient condition and significant changes, such as:

(i) Objective signs of illness, disorders, body malfunction;

(ii) Subjective information from the patient and family;

(iii) General physical condition;

(iv) General emotional condition;

(v) Positive or negative physical and emotional responses to treatments and services;

(vi) General behavior;

(vii) General appearance.

(k) Documentation of telephone consultation or case conferences with other individuals providing services;

(l) Clinical summaries or other documents obtained when necessary for promoting continuity of care, especially when a patient receives care elsewhere--such as a hospital, ambulatory surgical center, nursing home, physician or consultant's office or other home health agency;

(m) A written Termination of Services summary which describes:

(i) The care or services provided;

(ii) The course of care and services;

(iii) The reason for discharge;

(iv) The status of the patient at time of discharge;

(v) The name of the agency or facility if the patient was referred or transferred.

R432-700-19. Confidentiality and Release of Information.

(1) The agency must develop and implement policies and procedures to safeguard patient records against loss, destruction, or unauthorized use.

(2) There shall be written procedures for the use and removal of medical records. The release of information, including photographs, shall require the written consent of the patient.

(3) Patient records shall be confidential. Information may be disclosed only to authorized persons in accordance with federal regulations, state rules, and local laws.

(4) Authorized representatives of the Department shall be allowed to review records to determine compliance with

licensure rules and standards.

(5) When a patient is referred to another agency or facility, the home health agency may release information only with the written consent of the patient.

(6) Provision shall be made for filing, safe storage, and easy accessibility of medical records.

R432-700-20. Quality Assurance.

(1) The quality, appropriateness, and scope of services rendered shall be reviewed and evaluated at least annually by the governing body to determine overall effectiveness in meeting agency objectives.

(2) The administrator shall conduct an annual evaluation of the agency's overall program and submit a written report of the findings to the governing body.

(3) The agency shall demonstrate concern for cost of care by evaluation of the following:

(a) Relevance of health care services;

(b) Appropriateness of treatment frequency;

(c) Use of less expensive, but still effective, resources whenever possible;

(d) Use of ancillary services consistent with patient needs.

(4) An interdisciplinary quality assurance committee shall evaluate patient services on at least a quarterly basis. A written report of findings from each meeting shall be submitted to the administrator and shall be available in the agency.

(a) Each member of the quality assurance committee shall be appointed by the administrator for a given term of membership.

(b) The quality assurance committee shall have a minimum of three members who represent at least three different licensed or certified health care professions.

(5) The methodology for evaluation shall include but is not limited to:

(a) Review and evaluation of active and closed patient records to assure that established policies and procedures are being followed. Agency policy and procedure will determine the methods for selecting and reviewing a representative sample of records. Examples of methods of selection could either be a given percentage for both active and closed records, or a given number of records for each category of service provided during the review period;

(b) Review and evaluation of coordination of services through documentation of written reports, telephone consultation, or case conferences;

(c) Review and evaluation of plans of treatment for content, frequency of updates, and whether clinical notes correspond to goals written in the plan of care.

R432-700-21. Nursing Services.

(1) Nursing services provided through a home health agency shall be under the supervision of a director of nursing services.

(2) Nursing services shall be provided by or under the supervision of a registered nurse and according to the plan of care.

(3) When an agency provides or contracts for services, the service shall be provided according to the plan of care and supervised by designated, qualified personnel.

(4) Nursing staff shall observe, report, and record written clinical notes.

(5) Nursing services should recognize and use opportunities to teach health concepts to the patient and family.

(6) All registered nurses or licensed practical nurses employed by, or on contract with, the agency shall have a valid license from the Utah Department of Commerce, Title 58, Chapter 31.

(7) Licensed nurses shall have the following responsibilities:

(a) Administer prescribed medications and treatments according to law and as permitted within the scope of the individual's license;

(b) Perform nursing care according to the needs of the patient and as indicated in the written plan of care;

(c) Inform the physician and other personnel of changes in the patient's condition and needs;

(d) Write clinical notes in the individual patient record for each visit or contact;

(e) Teach self-care techniques to the patient or family, or both;

(f) Develop plans of care;

(g) Participate in in-service programs.

(8) Director of Nursing Services.

The director of nursing services shall be responsible for and shall be accountable for the following functions:

(a) Designate a registered nurse to act as director of nursing services during his absence;

(b) Assume responsibility for the quality of nursing services provided by the agency;

(c) Develop nursing service policies and procedures that must be reviewed annually and revised as necessary;

(d) Establish work schedules for nursing personnel according to patient needs;

(e) Assist in development of job descriptions for nursing personnel;

(f) Complete performance evaluations for nursing personnel according to agency policy;

(g) Direct in-service programs for all nursing personnel.

(9) Registered Nurses.

In addition to the general responsibilities, a registered nurse shall have the following responsibilities:

(a) Make the initial nursing evaluation visit;

(b) Re-evaluate nursing needs based on the patient's status and condition;

(c) Initiate the plan of care and make necessary revisions;

(d) Provide services which require specialized nursing skill;

(e) Initiate appropriate preventive and rehabilitative nursing procedures;

(f) Make staff assignments based on specific patient needs, family capabilities, staff training and experience, and degree of supervision needed;

(g) Assist in coordinating all services provided;

(h) Prepare termination of services statements;

(i) Supervise and consult with licensed practical nurses as necessary;

(j) Provide written instructions for personal care aides and home health aides to ensure provision of required services written in the plan of care;

(k) Supervise aides in the patient's home as necessary, and be readily available for consultation by telephone;

(l) Make supervisory visits with or without the aide's presence as follows:

(i) Initial assessment;

(ii) Every two weeks to patients who receive skilled services;

(iii) Every month to patients who require long-term maintenance services;

(iv) Every other month but not to exceed six-month intervals to persons who need personal care services;

(v) Any time there is a question of change in the patient's condition.

(10) Licensed Practical Nurses.

In addition to the general responsibilities described in R432-700-22, the licensed practical nurse shall have the following responsibilities:

(a) Work under the supervision of a registered nurse;

(b) Observe, record, and report to the immediate supervisor the general physical or mental condition of the patient;

(c) Assist the registered nurse in performing specialized procedures;

(d) Assist in development of the plan of care.

R432-700-22. Non-Licensed Personnel.

(1) Non-licensed personnel include home health aides, and personal care aides. Services they may provide shall be based on patient need, staff training and experience, and the degree and type of supervision required.

(2) Non-licensed personnel shall be at least 18 years old and shall have the following qualifications:

(a) Have the ability to read, understand and carry out written and verbal instructions, write simple clinical notes, and record messages;

(b) Have received a certificate of completion for the employment position;

(i) The curriculum or the comparable challenge exam shall be offered under the auspices of the Utah Board of Education.

(ii) If the employee does not have the certificate of completion for the position at the time of employment, completion of the course of study or challenge exam shall occur within six months of the date of hire.

(3) Non-licensed personnel shall have the following job responsibilities:

(a) Work under supervision of a registered nurse to provide either direct or contract services approved in the plan of care;

(b) Receive written instructions from the registered nurse supervisor or licensed therapists;

(c) Provide information to the health team and help identify the patient's strengths and weaknesses in the plan of care;

(d) Write clinical notes in individual patient records for each visit or contact.

R432-700-23. Home Health Aides.

The home health aide shall have the following responsibilities:

(1) Provide only those services written in the plan of care and received as written instructions from the registered nurse supervisor. If the service is an extension of therapy, the instructions shall be written by the licensed therapist;

(2) Perform normal household services essential to health care at home;

(3) Make occupied or unoccupied beds;

(4) The home health aide may supervise the patient's self-administration of medication by:

(a) Reminding the patient it is time to take medications;

(b) Opening the bottle cap;

(c) Reading the medication label to patient;

(d) Checking the self-administered dosage against the label of the container;

(e) Reassuring the patient that he is taking the correct dose;

(f) Observing the patient taking his medication.

(5) Perform simple diagnostic activities;

(6) Perform activities of daily living as written in plan of care;

(7) Give nail care as described in the plan of care;

(8) Observe and record food and fluid intake when ordered;

(9) Change dry dressings according to written instructions from the supervisor;

(10) Administer emergency first aid;

(11) Provide escort and transportation to doctor's appointments and elsewhere as part of patient-care services;

(12) Provide social interaction and reassurance to the patient and family in accordance with the plan of care;

(13) Write clinical notes in individual patient records.

R432-700-24. Personal Care Aides.

Personal care aides shall have the following responsibilities:

(1) Receive written instructions from the supervisor;

(2) Perform only the tasks and duties ordered by a registered nurse, avoid providing services which the patient or family can perform independently;

(3) May remind the person to take medication, and may observe the person who is able to self-administer medication;

(4) Make unoccupied beds;

(5) Perform household services essential to health care at home;

(6) Provide minimal assistance with activities of daily living;

(7) Give nail care as written in the plan of care;

(8) Provide meal service including serving special diets, meal planning, preparation, feeding if necessary, and clean-up;

(9) Assist person with ambulation by providing arm support for independent transfers and walking, or assisting the person to go to the bathroom;

(10) Assist ambulatory persons by reminding the person to go to the toilet, assisting the person to use a urinal or commode, assisting the person to go to the toilet;

(11) Take proper measures for patient safety and comfort;

(12) Administer emergency first aid;

(13) Provide escort and transportation; to assist the patient with independent living skills;

(14) Provide social interaction and reassure the patient and family;

(15) Document observations and treatment in the clinical notes in individual records.

R432-700-25. Plan of Care.

(1) A plan of care shall be established and documented in the patient's record to describe any direct or contract services, care, or treatment provided by the home health agency.

(2) A plan of care shall be developed and signed by a licensed health care professional.

(3) The plan of care shall be developed with consultation, as needed, from other agency staff or contract personnel.

(4) Modifications or additions to the initial plan of care shall be made as necessary.

(5) Each plan of care shall be reviewed and approved by the licensed health care professional as the patient's condition warrants, at intervals not to exceed 63 days.

(6) For patients receiving skilled services, the written plan of care shall be approved by a physician at intervals not to exceed 63 days.

(7) The person who is assigned to supervise and coordinate care for a patient shall have the primary responsibility to notify the attending physician and other agency staff of any significant changes in the patient's status.

(8) All care plans and notifications shall be made part of the patient's record.

(9) The plan of care, usually developed in accordance with the referring physician's orders, shall include:

(a) Name of the patient;

(b) Diagnoses (required for patients receiving skilled services);

(c) Treatment goals stated in measurable terms;

(d) Services to be provided, at what intervals, and by whom;

(e) Needed medical equipment and supplies;

(f) Medications to be administered by designated, licensed agency personnel;

(g) Supervision of self-administered medication;

(h) Diet or nutritional requirements;

(i) Necessary safety measures;

(j) Instructions, if any, to patient and/or family;

(k) Date plan was initiated and dates of subsequent review.

R432-700-26. Medication and Treatment.

(1) Medications or skilled treatments shall be administered only by licensed personnel to comply with signed orders from a person lawfully authorized to give the order. This order may be given over the telephone but shall be subsequently signed by the person giving the order within 31 days.

(2) All telephone orders shall be received and verified only by licensed personnel lawfully authorized to accept the order. Telephone orders shall be recorded in the patient's record.

(3) If medications are administered by agency personnel, the orders and subsequent changes in orders, shall be signed by the physician and included in the patient's record.

(4) Orders for therapy services shall include the procedures to be used, the frequency of therapy, and the duration of therapy.

(5) Orders for skilled services shall be reviewed or renewed by the attending physician at intervals not to exceed 63 days. Physician's signature and date shall be evidence of this review or renewal.

R432-700-27. Therapy Services.

(1) Physical, occupational, speech, and nutrition therapy services offered by the agency, as either direct or contract services, shall be provided by, or under the supervision of, a licensed or certified therapist in accordance with the plan of care under Title 58.

(2) The qualified therapist shall have the following responsibilities:

(a) Provide treatment as ordered and approved by the attending physician;

(b) Evaluate the home environment and make recommendations;

(c) Develop the plan of care for therapy;

(d) Observe and report findings about the patient's condition to the attending physician and other agency staff, and document information in the patient's record;

(e) Advise, consult, and instruct when necessary, other agency personnel and family about the patient's therapy program;

(f) Provide written instructions for the home health aide to promote extension of therapy services;

(g) Supervise other agency personnel when appropriate;

(h) Participate in in-service programs.

R432-700-28. Medical Supplies and Equipment.

The agency shall develop and follow written policies and procedures which describe:

(1) Agency provision of or use of durable medical equipment, and disposable and semi-disposable medical supplies;

(2) Categories of medical supplies and equipment available through the home health agency;

(3) Charges and reimbursement for medical supplies and equipment;

(4) Processes for billing medical supplies and equipment to the patient, insurance carrier, or other payment source.

R432-700-29. Emergency and After-Hours Care.

Emergency and after-hours care shall be described in

written policies and procedures and made available to the patient and family.

R432-700-30. Social Services.

(1) When medical social services are provided, they shall be provided by a certified social worker (CSW) or by a social service worker (SSW) supervised by a certified social worker, in accordance with the plan of care.

(2) The social worker shall be responsible to:

(a) Assist team members in understanding significant social and emotional factors related to health problems;

(b) Participate in the development of the plan of care;

(c) Prepare clinical notes according to rules and agency policy;

(d) Utilize community resources;

(e) Participate in in-service programs.

KEY: health facilities
March 3, 1995 **26-21-5**
Notice of Continuation December 15, 1997 **26-21-2.1**

R432. Health, Health Systems Improvement, Health Facility Licensure.
R432-750. Hospice Rule.
R432-750-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-750-2. Purpose.

A hospice program provides support and care for persons with a limited life expectancy so that they might live as fully and comfortably as possible.

(1) A hospice program recognizes dying as a normal process whether or not resulting from disease or injury.

(2) A hospice service neither hastens nor postpones death.

(3) A hospice program exists in the hope and belief that, through appropriate care and the promotion of a caring community sensitive to their needs, patients and families may be free to attain a degree of mental and spiritual preparation for death that is satisfactory to them.

(4) The hospice program is a health care agency or facility which offers palliative and supportive services providing physical, psychological, social and spiritual care for dying persons and their families.

(5) Services are provided by an interdisciplinary team of professionals and volunteers.

(6) Hospice services are available in both the home and an inpatient setting.

R432-750-3. Time for Compliance.

All hospice agencies shall be licensed and in full compliance with these rules by March 1, 1995.

R432-750-4. Definitions.

(1) See common definitions rule R432-1-3.

(2) Special definitions:

(a) "Appropriate" means especially suitable or compatible; fitting.

(b) "Bereavement" means the period of time, usually occurring within the first year after the loss, during which a person or group of people experiences, responds emotionally to, and adjusts to the loss by death of another person.

(c) "Care" means to perceive and respond to the needs of another.

(d) "Clergy" means an individual who has received a degree from an accredited theological school and has fulfilled appropriate denominational seminary requirements; or an individual who, by ordination and authorization from the individual's denomination, has been approved to function in a pastoral capacity. The clergy member must have experience in pastoral duties and be capable of providing for hospice patients' spiritual needs.

(e) "Continuum" means the uninterrupted provision of services appropriate to the needs of the patient and family; these services are planned, coordinated, and made available by the hospice program.

(f) "Family" means a group of individuals living under one roof and under one head; a group of persons of common ancestry; a group of individuals having a personal commitment one to the another.

(g) "Grief" means the response to loss that often occurs in stages of varying length. Stages are differentiated by changes in feeling, thought, and behavior.

(h) "Hospice" means a program of care for the terminally ill and their families which occurs in a home or in a health facility and which provides medical, palliative, psychological, spiritual, and supportive care and treatment.

(i) "Hospice Director" means a person who is appointed in writing by the governing body of the hospice organization and who shall be accountable and responsible for implementing the policies and programs approved by the governing body.

(j) "Palliative Treatment" means treatment and comfort measures directed toward relief of symptoms, controlling pain and focusing on the special needs of the patient and family as they experience the stress of the dying process, rather than treatment aimed at intervention for the purpose of cure or prolongation of life.

(k) "Primary Care Giver" means the family member or other person designated by the family who assumes the overall responsibility for the care of the patient in the home.

(l) "Special Services" means those services not represented on the interdisciplinary team that may be valuable for specific patient and family needs, including but not limited to nurses, social workers, homemakers, home health aides, recreation therapists, occupational therapists, respiratory therapists, pharmacists, dieticians, lawyers, certified public accountants, funeral directors, musical therapists, art therapists, speech therapists, physical therapists, and counselors.

(m) "Terminal Illness" means a state of disease characterized by a progressive deterioration with impairment of function and survival limited in time from several days to a few months.

(n) "Unit of Care" means the individual to receive hospice services; since the term "unit" means a single, whole

thing, hospice defines the patient and family to be the single whole, regardless of the degree of harmony or integration of the parts within that whole.

(o) "Volunteer" means an individual, professional or nonprofessional, who has received appropriate orientation and training consistent with acceptable standards of hospice philosophy and practice; one who contributes time and talent to the hospice program without economic remuneration.

R432-750-5. Licensure.

(1) Categories of Hospice Programs and Services

Hospice agencies shall include institutionally based hospice programs, freestanding public and proprietary hospice agencies, and any subdivision of an organization, public agency, hospital, or nursing home licensed to provide hospice services.

(2) Licensure Requirements, see R432-2.

R432-750-6. Eligibility.

(1) These provisions apply to a program advertising or presenting to be a hospice or hospice program of care, as defined in Section 26-21-4, which provides, directly or by contract, one or more of the following services to the terminally ill:

(a) medical care;

(b) skilled nursing care as defined in R432-150;

(c) home health aide care as defined in R432-700-23;

(d) personal care as defined in R432-700-24.

(2) A facility or agency licensed under these rules must provide all services defined in R432-750.

(3) These provisions do not apply to:

(a) A single individual providing professional services under the authority granted by his professional license, certification or registration;

(b) an organized program or volunteer community group providing emotional, social, respite, grieving, bereavement, or other support services, other than health care services, to the terminally ill.

(c) Health care facilities, authorized by another license category to offer the services defined herein, are not required to obtain a Hospice license, but shall comply with the following requirements:

(i) if, during the care planning process for a terminally ill patient, bereavement services, clergy services, hospice counseling services, or volunteer services are determined to be appropriate under a hospice program of care, the facility shall provide the identified services in accordance with the applicable requirements of R432-750-14.

(ii) facility staff responsible for delivering the identified service shall be properly oriented and trained in the hospice concept and philosophy of care and the proper performance of assigned duties.

R432-750-7. Governing Body and Administration.

(1) Organization.

(a) The hospice agency shall be organized under a governing body that assumes full legal responsibility for the conduct of the agency.

(b) The administrative structure of the agency must be shown by an organization chart.

(2) Responsibilities.

The governing body shall assume responsibility to:

(a) comply with all federal regulations, state rules, and local laws;

(b) adopt policies and procedures which describe functions or services of the hospice and protect patient rights;

(c) adopt a statement that there will be no discrimination because of race, color, sex, religion, ancestry, or national origin (Sections 13-7-1 through 4);

(d) develop and implement bylaws which shall include at least:

(i) a statement of purpose;

(ii) a statement of qualifications for membership and methods to select members of the governing board;

(iii) a provision for the establishment, selection, and term of office for committee members and officers;

(iv) a description of functions and duties of the governing body officers and committees;

(v) a statement of the authority and responsibility delegated to the hospice director;

(vi) a policy statement relating to conflict of interest of members of the governing body or employees who may influence agency decisions;

(e) meet at least annually, or more frequently as stated in the bylaws;

(f) appoint by name and in writing a qualified hospice director who is responsible for the agency's overall functions. The written designation must be available for review in the agency;

(g) notify the licensing agency in writing no later than five days after a change in the hospice director, identifying the name of the new hospice director and the effective date of the change;

(h) review the written annual evaluation report from the Hospice Director (see R432-750-13(1)) and make recommendations as necessary. Documentation of this review shall be available to the Department;

(i) make provision for resources and equipment to provide a safe working environment for personnel;

(j) establish a system of financial management and accountability.

(3) Hospice Director Responsibilities.

(a) The hospice director designated by the governing body shall be responsible for the overall management of the agency.

(b) The hospice director shall designate in writing the name and title of a qualified person who shall act as hospice director in the temporary absence of the hospice director. This designee shall have sufficient power, authority, and freedom to act in the best interests of patient safety and well-being.

(c) The hospice director or designee shall be available during the agency's hours of operation.

(d) The hospice director also has the responsibility to:

(i) complete, submit, and file all records and reports required by the Department;

(ii) review agency policies and procedures at least annually and recommend necessary changes to the governing

body. The date of review shall be documented;

(iii) implement agency policies and procedures;

(iv) organize and coordinate functions of the agency by delegating duties and establishing a formal means of staff accountability;

(v) appoint by name and in writing a physician or registered nurse to provide general supervision, coordination, and direction for professional services of the agency;

(vi) appoint by name and in writing a registered nurse to be the director of nursing services;

(vii) appoint by name and in writing the members and their terms of membership in the interdisciplinary quality assurance committee;

(viii) appoint other committees as deemed necessary, describe committee functions and duties, and make provision for selection, term of office, and responsibilities of committee members;

(ix) designate by name and in writing a person responsible for maintaining a clinical record system on all patients;

(x) maintain current written designations or letters of appointment in the agency;

(xi) employ or contract with competent personnel whose qualifications are commensurate with job responsibilities and authority, and who have the appropriate license or certificate of completion;

(xii) develop job descriptions that delineate functional responsibilities and authority;

(xiii) develop a staff communication system that coordinates interdisciplinary team services, coordinates implementation of plans of treatment, utilizes services or resources to meet patient needs, and promotes an orderly flow of information within the organization;

(xiv) provide staff orientation as well as in-service training and continuing education (staff development) in applicable policies, rules, regulations, and resource materials;

(xv) secure contracts for services not directly provided by the hospice;

(xvi) implement a program of budgeting and accounting;

(xvii) establish, when appropriate, a billing system which itemizes services provided and charges submitted to the payment source;

(xviii) conduct an annual evaluation of the agency's overall function and submit a written report of the findings to the governing body.

R432-750-8. Personnel.

The hospice director shall maintain qualified personnel who are competent to perform their respective duties, services, and functions.

(1) Policies.

The agency shall develop written policies and procedures that address at least the following:

(a) job descriptions, qualifications, and validation of licensure or certificates of completion as appropriate for the position held;

(b) orientation for direct and contract employees, and volunteers;

(c) criteria for, and frequency of, performance evaluations;

(d) work schedules; method and period of payment; fringe benefits such as sick leave, vacation, and insurance;

(e) frequency and documentation of in-service training;

(f) contents of personnel files of employed and volunteer staff.

(2) Each employee shall be registered, certified or licensed as required by the Utah Department of Commerce.

(a) Each employee shall provide a copy of the license, certification or registration within 45 days of hire. A copy shall be maintained for Department review.

(b) Failure to ensure that personnel are licensed, certified or registered may result in sanctions to the agency license.

(3) Health Surveillance.

(a) The agency shall establish a policy and procedure for health screening of all agency personnel to identify any situation which would prevent the employee or volunteer from performing assigned duties in a satisfactory manner.

(b) This screening shall be performed within the first two weeks of employment and as necessary there after.

(c) See R432-150-26(6).

(4) Orientation, In-Service Training, and Continuing Education

(a) There shall be documentation that all employees, volunteers, and contract personnel are oriented to the agency and the job for which they are hired.

(b) Orientation shall include but is not limited to:

(i) the hospice concept and philosophy of care;

(ii) the functions of agency employees and the relationships between various positions or services;

(iii) job descriptions;

(iv) duties for which persons are trained, hold certificates, or are licensed;

(v) ethics, confidentiality, and patients' rights;

(vi) information about other community agencies including emergency medical services;

(vii) opportunities for continuing education appropriate to the patient population served;

(viii) policies related to volunteer documentation, charting, hours and emergencies;

(ix) reporting requirements when observing or suspecting abuse, neglect and exploitation.

(c) In-service training and continuing education shall be provided and documented on a regular basis, based on recognized need.

(i) Members of the team have access to in-service training and continuing education appropriate to their responsibilities and to the maintenance of skills necessary for the care of the patient and family.

(ii) The programs should include the introduction and review of effective physical and psychosocial assessment and symptom management.

(d) All personnel will be trained in the appropriate Centers for Disease Control (CDC) infectious disease protocols.

(5) Coordination of Activities.

The interdisciplinary team is coordinated by a licensed health care provider under the direction of the hospice

director. The coordinator:

(a) annually reviews and makes recommendations where appropriate of agency policies covering admissions and discharge, medical supervision, care plans, clinical records and personnel qualifications;

(b) assures that on-going assessments of the patient and family needs and implementation of the interdisciplinary team care plans are accomplished;

(c) is responsible for scheduling adequate quality and quantity of all levels of hospice care;

(d) assures that the team meets regularly to develop and maintain appropriate plans of care and to determine which staff will be assigned to each case.

(6) Staff Support.

Interdisciplinary team members must have access to necessary emotional support. The hospice program will provide access to individual and group support for interdisciplinary team members.

R432-750-9. Contracts and Agreements.

(1) General Requirements.

(a) The hospice director shall secure a written contract or agreement from each provider, or independent contractor, who provides patient services through the agency.

(b) The contract or agreement shall be available for review by the Department.

(2) Contract Provisions.

The contract shall include:

(a) the effective and expiration dates of the contract;

(b) a description of goods or services provided by the contractor to the agency;

(c) provision for financial terms of the contract, including methods to determine charges, reimbursement, and the responsibility of contract personnel in the billing procedure;

(d) the method of supervision of contract personnel and the manner in which services will be controlled, coordinated, and evaluated by the agency;

(e) a statement that contract personnel shall perform according to agency policies and procedures, and shall conform to standards required by laws, rules, or regulations;

(f) a description of the contractor's role in the development of plans of treatment, and how to keep agency staff informed about the patient's needs or condition;

(g) a provision to terminate the contract;

(h) a photocopy of the professional license of contract personnel, if applicable.

R432-750-10. Acceptance and Termination.

(1) The agency shall develop written acceptance and termination policies and shall make these policies available to the public upon request.

(2) The hospice shall make available to the public, upon request, information regarding the various services provided by the hospice and the cost of the services.

(3) Acceptance Criteria.

A patient will be accepted for treatment if there is reasonable expectation that the patient's needs can be met by the agency regardless of ability to pay for the services. The following items shall be considered in the decision to provide hospice services:

(a) The patient, family and attending physician agree that hospice or palliative care is appropriate and request it.

(i) There shall be a signed, completed informed consent document from the patient and a family member or other primary care person as appropriate, requesting hospice services.

(ii) If no primary care person is available, an evaluation by the agency regarding patient eligibility for hospice care must be accomplished.

(b) Hospice care shall be ordered by a physician.

(c) Personnel, arrangements for equipment, and resources to provide services required by the patient shall be available.

(d) An evaluation by the agency concerning the attitudes of the patient and family toward receiving hospice care at home.

(e) The hospice agency makes a determination that the patient's place of residence is adaptable and safe for the provision of hospice services.

(4) Termination Criteria.

(a) The agency may terminate a patient under any of the following circumstances:

(i) A physician signs a discharge statement for termination of services except when the patient dies.

(ii) Treatment objectives are attained or the patient's status changes, which makes treatment objectives unattainable, and new treatment objectives are not an alternative.

(iii) The family situation changes and affects the delivery of services.

(iv) The patient or family is uncooperative in efforts to attain treatment objectives.

(v) The patient moves from the geographic area served by the agency.

(vi) The physician fails to renew orders or the patient changes his physician and the agency cannot obtain orders for continuation of services from the new physician.

(vii) The agency can no longer provide quality care in the existing environment.

(viii) The patient or family requests that agency services be discontinued.

(b) Upon transfer from a home program to an in-patient unit, or the reverse, the plan of care shall be forwarded to the receiving program.

R432-750-11. Patients' Rights.

(1) Policies and Procedures.

(a) Written patients' rights shall be established and made available to the patient, responsible party, next of kin, sponsoring agency, representative payee, and the public.

(b) Agency policy may determine how patients' rights information is distributed.

(2) Statement of Patients' Rights.

The agency shall insure that each patient receiving care has the following rights:

(a) to receive information on patient's rights and responsibilities;

(b) to receive information on services for which the patient or a third party payor may be responsible for and to receive information on all changes in charges;

(c) to be informed of personal health conditions, unless medically contraindicated, and to be afforded the opportunity to participate in the planning of the hospice services, including referral to health care institutions or other agencies and to refuse to participate in experimental research;

(d) to refuse treatment to the extent permitted by law and to be informed of the medical consequences of such if refused;

(e) to be assured confidential treatment of personal and medical records and to approve the release of records to any individual outside the agency;

(f) to be treated with consideration, respect, and full recognition of dignity and individuality, including privacy in treatment and in care for personal needs;

(g) to receive and be taught about the hospice services required in order to assist in the course of treatment;

(h) to be assured the personnel who provide care are qualified through education and experience to carry out the services for which they are responsible;

(i) to receive proper identification by the individual providing hospice services;

(j) to permit the patient the right to discontinue hospice care at any time he or she chooses.

R432-750-12. Patient Records.

(1) General Provisions.

The Director shall develop and implement record keeping policies and procedures that address the use of patient records by authorized staff, content, confidentiality, retention, and storage.

(a) Records shall be organized in a uniform medical record format.

(b) The agency shall maintain an identification system to facilitate location of each patient's current or closed record.

(c) An accurate, up-to-date record shall be maintained for every patient receiving service through the hospice.

(d) Each hospice health care provider who has patient contact or provides a service shall insure that a clinical note entry of that contact or service is made in the patient's record.

(e) All entries shall be dated and authenticated with the signature and title of the person making the entry.

(f) Services provided by the agency and outcomes of these services must be documented in the individual patient record.

(2) Physician Orders.

Physician's orders shall be incorporated into the plan of treatment. Orders shall be renewed at three month intervals, as evidenced by the date and physician's signature.

(3) Content of Records.

(a) Each patient's record shall contain at least the following information:

(i) identification data including patient's name, address, age, date of birth, name and address of nearest relative or responsible person, name and telephone number of physician with primary responsibility for patient care, and if applicable, the name and telephone number of the person or family member who, in addition to agency staff, provides care in the place of residence;

(ii) diagnosis;

(iii) a written plan of treatment;

(iv) a patient assessment which includes strengths and problems of the patient and family. The assessment shall be dated and signed by the person who provides the service and include:

(A) a written patient and family assessment,

(B) a description of the patient's functional limitations and activities permitted,

(C) a physical assessment noting chronic or acute pain and other physical symptoms and their management,

(D) a psychosocial assessment of the patient and family, noting their understanding of the illness and prognosis;

(E) pertinent medical and surgical history;

(F) a written and signed informed consent for the patient and family member or other primary care person, as appropriate, to receive hospice services;

(G) orders by the attending physician for hospice services;

(H) medications and treatments as applicable;

(I) a written summary report of hospice services provided, which shall be sent to the patient's primary physician at least every 90 days and shall become part of the patient's and family record as applicable.

(b) The person who is assigned to supervise and coordinate care for a particular patient must complete a discharge summary upon discharge from the hospice program or when services to the patient are terminated. As a minimum the summary shall include:

(i) a summary of the care or services provided;

(ii) the reason for discharge;

(iii) the status of the patient at the time of discharge;

(iv) the name of the facility or agency if the patient has been referred or transferred.

(4) Confidentiality and Release of Information

Clinical record information shall be safeguarded against loss, destruction, and unauthorized use.

(a) Written procedures shall govern the use and removal of records and conditions for release of patient information.

(b) A written consent is required for the release of patient/client information and photographing of recorded information.

(c) Policies and procedures shall be implemented to safeguard patient records against loss, destruction and unauthorized use.

(d) When a patient is transferred to another facility or agency, a copy of the record or abstract shall be sent to that service agency.

(5) Retention and Storage.

(a) Provision shall be made for filing, safe storage, and easy accessibility of medical records.

(b) Patient records shall be retained for at least seven years after the last date of patient care.

(c) All patient records shall be retained within the agency upon change of ownership.

R432-750-13. Quality Assurance.

(1) The quality, appropriateness, and scope of services rendered shall be reviewed and evaluated at least annually by the governing body to determine overall effectiveness in meeting agency objectives.

(2) The hospice director shall conduct an annual evaluation of the agency's overall program and submit a written report of the findings to the governing body.

(3) An interdisciplinary quality assurance committee shall evaluate patient services on at least a quarterly basis. A written report of findings from each meeting shall be submitted to the hospice director and shall be available in the agency.

(a) Each member of the quality assurance committee shall be appointed by the hospice director for a given term of membership (see R432-750-7(3)(d)(vii).

(b) The quality assurance committee shall have a minimum of three members who represent at least three different licensed health care professions.

R432-750-14. Hospice Services.

(1) Unit of Care.

In a hospice the unit of care includes the patient and the patient's family. The patient and family (or other primary care person) participate in the development and implementation of the interdisciplinary care plan according to their ability.

(2) Continuity of Care.

Hospice care includes responding to the needs of the patient and family whenever they arise. Written policies and procedures include:

(a) a procedure for accepting referrals in accordance with the provisions of R432-750-10;

(b) a procedure for initial assessment and development of the interdisciplinary care plan;

(c) provision for and documentation that the interdisciplinary team meets regularly to evaluate care and includes inpatient and in-home care staff;

(d) provision for the care plan to be available to team members for in-home and inpatient services;

(e) appropriate transfer of care from hospice in-home care to hospice inpatient care and vice-versa where available;

(f) provision for a clearly defined integrated administrative structure between in-home care and inpatient services;

(g) coordination of care plan between in-home hospice and inpatient hospice care.

(3) Interdisciplinary Team Services.

(a) Hospice care is provided by an interdisciplinary team which includes at least the following members: patient and patient's family or primary care giver where possible, physician, nurse, social worker, volunteer, and clergy.

(b) Ancillary staff are added to the team when appropriate.

(c) The team meets regularly to develop and maintain an appropriate plan of care.

(4) Interdisciplinary Care Plan.

(a) A care plan shall be established and incorporated in the patient's record for hospice interdisciplinary services.

(b) A care plan for hospice service shall be approved and signed by the attending physician.

(c) The care plan developed by the interdisciplinary team shall cover pertinent information, including:

(i) name of patient;

(ii) all pertinent diagnoses;

(iii) short and long-term objectives and goals of treatment, expressed in objective, measurable terms;

(iv) pain and symptom management;

(v) functional limitations of the patient;

(vi) psychosocial status of patient and family;

(vii) activities permitted;

(viii) nutritional requirements;

(ix) medical supplies and equipment;

(x) any safety measures to protect patient against injury;

(xi) instructions to patient and family;

(xii) discharge or referral plan;

(xiii) written plan for bereavement follow-up;

(xiv) services to be provided, at what intervals and by whom;

(xv) date plan was initiated and dates of subsequent review.

(d) Each care plan shall be reviewed and approved by the attending physician as frequently as the patient's condition warrants.

(e) The professional person responsible for any specific treatment shall notify the attending physician and other professional persons and responsible agency staff of significant changes in the patient's condition.

(f) All treatment plans and notifications to the attending physician shall be made part of the patient's health record.

(g) The hospice shall develop a list of procedures which are not to be performed in the patient's residence.

(5) Orders for Medication and Treatment.

(a) No medication or treatment may be given by hospice nurses except on the signed order of a person lawfully authorized to give such an order.

(b) When medications will be given by hospice personnel, initial orders and subsequent changes in orders for the administration of drugs shall be signed by the person lawfully authorized to give such orders and incorporated in the patient's record maintained by the program.

(c) All telephone orders shall be received by licensed personnel.

(i) Telephone orders shall be recorded immediately in the patient's health record.

(ii) Telephone orders shall be countersigned by the initiator within 15 days of the date of issue.

(d) Orders for therapy services shall include the specific procedures to be used and the frequency and duration.

(e) All orders shall be reviewed by the attending physician at three month intervals as evidenced by the physician's signature and date.

(f) Medications and treatments shall be administered as prescribed and shall be recorded in the patient's record.

(g) Only those hospice employees licensed to do so shall administer medications to patients.

R432-750-15. Physician Services.

(1) Each patient accepted for Hospice Services shall have an attending physician who is currently licensed by the

Utah Department of Commerce.

(2) Each attending physician shall provide the following orders:

(a) approval for hospice care;

(b) admitting diagnosis and prognosis;

(c) current medical findings;

(d) medications and treatment orders;

(e) pertinent orders regarding the patient's terminal condition.

(3) Hospice Medical Director.

The medical director must be a physician who is currently licensed in the State of Utah and who, on the basis of training, experience and interest, is knowledgeable about the psychosocial and medical aspects of hospice care. The responsibilities of the medical director include:

(a) consulting with attending physicians, as requested, regarding pain and symptom management;

(b) acting as a medical resource to the interdisciplinary team;

(c) coordinating effort with each attending physician to provide care in the event the attending physician is unable to retain responsibility for patient care;

(d) acting as medical liaison with physicians in the communities.

R432-750-16. Nursing Services.

(1) Nursing services shall be provided by or under the direction of a registered nurse.

(2) Registered nursing personnel shall perform the following:

(a) making the initial nursing evaluation visit;

(b) re-evaluating the patient's nursing needs as required;

(c) initiating the plan of care and necessary revisions;

(d) providing directly or under arrangement skilled nursing care;

(e) assigning, supervising and teaching other nursing personnel and primary care person;

(f) assisting in coordinating all services provided;

(g) informing the physician and other personnel of changes in the patient's condition and needs;

(h) preparing clinical progress notes;

(i) participating in in-service training programs.

R432-750-17. Professional Counseling Services.

(1) The facility shall provide for professional counseling services necessary to meet the needs of clients.

(2) The licensee shall insure all persons providing professional counseling services are either licensed, registered, or certified in accordance with Title 58, Chapter 60.

R432-750-18. Clergy Services.

(1) Hospice spiritual services are provided by a qualified hospice staff person and through a working relationship with local clergy or spiritual counselors.

(2) These services include the following:

(a) spiritual counseling consistent with patient and family belief systems;

(b) communication with and support of appropriate clergy or spiritual counselors in the community;

(c) consultation and education to patients and families and interdisciplinary team members as requested.

R432-750-19. Volunteer Services.

Hospice volunteers provide a variety of services as defined by the policies of each program and under supervision of a designated and qualified hospice staff member.

(1) Duties and responsibilities of volunteers are defined by the hospice program.

(2) Volunteers must receive appropriate orientation and training which include the following:

(a) the hospice concept and philosophy of care;

(b) the hospice program's services;

(c) the physiological and psychological aspects of terminal disease;

(d) family dynamics, coping mechanisms and psychosocial issues surrounding the terminal disease, death and bereavement;

(e) general communication skills.

(3) Records must be kept regarding activities provided by volunteers.

R432-750-20. Bereavement Services.

(1) General Provisions.

Bereavement services shall address the family needs following the death of the patient. Services are available, as needed, to survivors for at least one year.

(2) Supervision.

Supervision of bereavement services shall be provided by a person possessing at least a degree or documented training in a field that addresses psychosocial needs, and a demonstrated ability in case work, counseling, and bereavement services.

(3) Bereavement Staff Training.

(a) There shall be evidence of a bereavement training program for all volunteers and staff who deliver bereavement services.

(b) Bereavement services shall include the following:

(i) survivor contact, as needed, following a patient's death;

(ii) an interchange of information between the team members regarding bereavement activities;

(iii) a process for the assessment of possible pathological grief reactions and, as appropriate, referral for intervention.

R432-750-21. Other Services.

(1) Other services may become necessary for the management of a hospice patient.

(2) These include the services of licensed or certified individuals, when licensing or certification is applicable in Utah, for physical therapy, occupational therapy, speech therapy, nutritional therapy, and home health or nurse aides.

(a) If provided directly or through contract, documentation must show that treatments are provided under order of the attending physician and that the clinical records are completed according to agency policy.

(b) If referred out, documentation in the records must show the services that the patient is receiving, the source or provider, and the results obtained.

R432-750-22. Freestanding Inpatient Facilities.

In addition to the requirements outlined in the previous sections of R432-750, freestanding hospice facilities shall meet the Construction and Physical Environment requirements of R432-4, R432-5 and R432-12 depending on facility size and type of patient admitted.

KEY: health facilities
March 3, 1995 **26-21-5**
Notice of Continuation December 15, 1997 **26-21-6**

R432. Health, Health Systems Improvement, Health Facility Licensure.
R432-950. Mammography Quality Assurance.
R432-950-1. Authority.

This rule is adopted pursuant to Section 26-21a-203.

R432-950-2. Compliance.

Facilities shall be in full compliance with R432-950 and 42 U.S.C. 263b, the Mammography Quality Standards Act of 1992.

R432-950-3. Definitions.

(1) "Diagnostic mammography" means performing a mammogram on a woman suspected of having breast cancer.

(2) "Facility" means a hospital, outpatient department, clinic, radiology practice, or mobile unit, an office of a physician, or other facility that conducts breast cancer screening or diagnosis, including any or all of the following: operation of equipment to produce a mammogram, processing of film, initial interpretation of the mammogram, and the viewing conditions for that interpretation.

(3) "Image quality" means the overall clarity and detail of an x-ray including spatial resolution or resolving power, sharpness, and contrast.

(4) "Mammogram" means a radiographic image of the breast.

(5) "Mammogram unit" means an x-ray system designed specifically for breast imaging, providing optimum imaging geometry, a device for breast compression, and low dose exposure that can produce reproducible images of high quality.

(6) "Mammography" means radiography of the breast to diagnose breast cancer.

(7) "Phantom" means an artificial test object simulating the average composition of, and various structures within, the breast.

(8) "Screening mammography" means a standard readable two-view per breast low dose radiographic examination to detect unsuspected breast cancer using specifically designed equipment dedicated for mammography.

(9) "Quality assurance" means a program designed to achieve the desired degree or grade of care including evaluation and educational components to identify and correct problems in interpreting and obtaining mammogram.

(10) "Quality control" means the process of testing and maintaining the highest possible standards of equipment performance and acquisition of radiographic images.

R432-950-4. Facility Quality Assurance.

(1) The facility shall conduct a quality assurance program to assure the operation and the services provided are in accordance with R432-950.

(2) The facility shall correct identified deficiencies to produce desired results.

(3) The facility shall evaluate the corrections required for a systems change to update the quality assurance plan.

R432-950-5. Compliance with State and Local Rules.

(1) A supplier of mammography services shall comply with all applicable Federal, State, and local laws and regulations pertaining to radiological services and mammography services.

(2) The facility shall maintain documentation showing that it complies with all applicable state and local laws and rules pertaining to radiological and mammography services. This includes the following:

(a) Certification of the facility;

(b) Licensure or certification of the personnel;

(c) Documentation that the facility has been approved by the American College of Radiology (ACR).

R432-950-6. Facility Oversight.

(1) The facility is responsible for the overall quality of the mammography conducted.

(2) The facility shall have available, either on staff or through arrangement, sufficient qualified staff to meet patients' needs relating to mammography. Sufficient staff includes the following:

(a) A designated physician supervisor who meets the requirements for qualified physicians specified by the Utah Department of Commerce;

(b) A medical physicist who is certified by the American Board of Radiology in Radiological Physics or Diagnostic Radiological Physics, or who meets the requirements specified by the Department of Environmental Quality;

(c) One or more radiologic technologists who meet the requirements specified by the Utah Department of Commerce pursuant to Section 26-21a-203.

R432-950-7. Physician, Physicist and Radiologic Technologist Standards.

(1) A physician interpreting mammograms or supervising mammography, or both, shall provide documentation to the Department upon request showing he meets minimum qualifications specified by the Utah Department of Commerce and the Mammography Quality Standards Act. A qualified physician shall interpret the results of all mammograms. Diagnostic mammography shall be done under the direct on-site supervision of a qualified physician.

(2) A radiologic technologist shall meet the following

requirements and the facility shall provide documentation to the Department upon request showing the radiologic technologist:

(a) Meets minimum qualifications specified by the Utah Department of Commerce and the Mammography Quality Standards Act;

(b) Obtains on-the-job training in mammography under the supervision of a qualified physician, or the supervising radiologic technologist, or both;

(c) Is competent in breast positioning and compression as determined from critiques by a qualified physician of mammogram films taken by the radiologic technologist;

(d) Is knowledgeable in facility policies concerning technical factors, radiation safety, radiation protection, and quality control as evaluated by the radiologic technologist's supervisor;

(e) Receives continuous supervision and feedback on image quality from the interpreting or supervising physician.

(3) A medical physicist must:

(a) be certified in an acceptable specialty by one of the bodies approved by the FDA to certify medical physicists;

(b) be licensed or approved by a State to conduct evaluations of mammography equipment as required by State law; or

(c) for those medical physicists associated with facilities that apply for accreditation before October 27, 1997, who meet training and experience requirements of Mammography Quality Standards Act and its implementing regulations.

R432-950-8. Personnel Requirements.

(1) The facility shall document that new staff orientation and ongoing in-service training is based on current written facility policies and procedures.

(2) Personnel shall have access to the facility's written policies and procedures when on duty.

(3) The facility shall implement a standardized orientation program for each employment position including the time for completing training.

(4) A written in-service training program shall identify the topics and frequency of training including an annual review of facility policies and procedures.

(5) The facility shall maintain personnel records documenting that each employee is qualified and competent to perform respective duties and responsibilities by means of appropriate licensure or certification, experience, orientation, ongoing in-service training, and continuing education.

(6) The facility shall retain personnel records for terminated employees for a minimum of four years following the final date of termination.

R432-950-9. Equipment Standards.

(1) Mammogram units shall be designed specifically for mammography and shall have a compression device and the capability for placement of a grid.

(2) The facility shall maintain current written policies and procedures for operating equipment.

(3) Prior to initiating operation of a mammogram unit it shall be registered with the Utah Department of Environmental Quality.

R432-950-10. Safety Standards.

(1) The facility shall maintain documentation that the mammogram unit is safe and that proper radiation safety practices are being followed.

(2) The facility shall maintain documentation that employees have been trained on safety standards for radiation.

(3) The facility shall maintain procedure manuals and logs for equipment quality control.

(4) The facility shall maintain documentation that the quality control program complies with ACR quality control manuals for mammography or the equivalent.

(a) Equivalent programs shall include a quality control program for equipment, mammogram unit performance, and film processors, approved by the Utah Department of Environmental Quality.

(b) Equivalent programs shall contain stated objectives achieved by procedures comparable to objectives and procedures in the American College of Radiology Quality Control Manuals for Mammography.

(3) Accreditation by the American College of Radiology Mammography Program documents compliance with mammogram unit quality control requirements in R432-950-10(1).

R432-950-11. Technical Specifications for Mammography.

(1) The facility shall have available a phantom for use in the facility's ongoing quality control program.

(2) The facility shall evaluate image quality at least monthly using a phantom that produces measurements satisfactory to the supervising physician.

(3) The facility's evaluation of clinical images shall include the following:

(a) Positioning;

(b) Compression;

(c) Exposure level;

(d) Resolution;

(e) Contrast;

(f) Noise;

(g) Exam Identification;

(h) Artifacts.

R432-950-12. Physician Supervisor Responsibility.

(1) A physician supervisor is responsible for general oversight of the quality control program of the facility. Oversight responsibilities include:

(a) Annual review of the policy and procedure manual;

(b) Verification that the equipment and facility personnel meet applicable federal, state and local licensure and registration requirements;

(c) Verification that equipment is performing properly;

(d) Verification that safe operating procedures are used to protect facility personnel and patients;

(e) Verification that all other requirements of R432-950 are being met.

(2) The physician shall document annually that he provides oversight for the quality control of the mammography service.

R432-950-13. Mammography Records.

(1) A medical record shall be maintained for each patient on whom screening or diagnostic mammography is performed.

(a) Provision shall be made for the filing, safe storage and accessibility of medical records.

(b) Records shall be protected against loss, defacement, tampering, fires, and floods.

(c) Records shall be protected against access by unauthorized individuals.

(d) All records shall be readily available upon the request of:

(i) The attending physician,

(ii) Authorized representatives of the Department for determining compliance with licensure rules;

(iii) Any other person authorized by written consent.

(e) The facility shall establish a system to assure that the patient's mammogram is accessible for clinical follow-up when requested.

(i) A copy of the mammogram and other appropriate information shall be sent to the requesting party responsible for subsequent medical care of the patient no later that 14 working days from the request for information.

(ii) Medical information may be released only upon the written consent of the patient of her legal representative.

(2) The facility shall attempt to obtain a prior mammogram for each patient if the prior mammogram is necessary for the physician to properly interpret the current exam.

(3) The interpreting physician shall prepare and sign a written report of his interpretation of the results of the screening mammogram.

(a) The written report shall include a description of detected abnormalities and recommendations for subsequent follow-up studies.

(b) The interpreting physician shall render the report as soon as reasonably possible.

(c) The interpreting physician or his designee shall document and communicate the results of the report to the referring physician or his designated representative by telephone, by certified mail, or in such a manner that receipt of the report is assured.

(d) The interpreting physician or his designee shall notify self-referred patients, that is, patients who have no referring physician, of the results of the screening study in writing and in lay language.

(4) The interpreting physician or his designee shall document and communicate the results of all diagnostic reports in the high probability category with suspicion of breast cancer to the referring physician or his designated representative by telephone, by certified mail, or in such a manner that receipt of the report is assured.

(5) The physician shall document and communicate in person in lay language, by certified mail, or in such a manner that receipt of the diagnostic report is assured to all self-referred patients within the high probability category with a suspicion of breast cancer. The report shall indicate whether the patient needs to consult with a physician.

(a) The interpreting physician or his designee shall attempt to make a follow-up contact with the patient to determine whether she has consulted a physician for follow-up care.

(b) The interpreting physician or his designee shall document in the patient's medical record attempts to communicate the results to the patient.

(6) The facility shall retain the original and subsequent mammograms for a period of at least five years from the date of the procedure.

R432-950-14. Education.

(1) A patient has the right to be treated with dignity and afforded privacy during the examination.

(2) The facility shall establish an education system to ensure that the patient understands:

(a) The purpose of the mammogram and how it is used to screen for breast cancer;

(b) The process required to obtain the mammogram;

(c) The importance of the screening mammography to her ongoing health.

R432-950-15. Collecting and Reporting Data.

(1) The facility shall establish a system for collecting and periodic reporting of mammography examinations and clinical follow-up as provided below:

(a) Clinical follow-up data shall include the follow-up on the disposition of positive mammographic findings, and the correlation of the surgical biopsy results with mammogram reports.

(b) The facility shall maintain records correlating the positive mammographic findings to biopsies done and the number of cancers detected.

(c) The facility shall report the results of the outcomes annually to the Department or its designated agent, on forms furnished by the Department. The report shall include as a minimum:

(i) The number of individuals receiving screening mammograms;

(ii) Total number of patients recommended for biopsy based on a screening mammogram;

(iii) Total number of patients diagnosed with breast cancer based on a screening mammogram;

(iv) The number and names of individuals with positive mammographic findings lost to follow-up.

(2) The Department or its designated agent shall provide each reporting facility, on a schedule determined by the Department, summary statistical reports which permit each facility to compare its results to statewide and other comparative statistics.

R432-950-16. State Certification.

(1) No facility, person or governmental unit acting severally or jointly with any other person, may establish, conduct or maintain a mammography unit without first obtaining a state certificate from the Department.

(2) An applicant for state certification shall file a Request for Agency Action/Certification Application with the Utah Department of Health on forms furnished by the Department.

(3) Each facility shall comply with all zoning, building and licensing laws, rules and ordinances and codes of the city and county in which the facility is located. The applicant shall submit the following to the Department:

(a) Verification of participation and quality control by the American College of Radiology for monitoring mammography services in the facility;

(b) Verification of licensure or certification of required personnel;

(c) Fees established by the Utah State Legislature pursuant to Section 63-38-3.

(4) The Department shall render a decision on the initial certification within 60 days of receipt of a completed application packet or within 6 months of date that the first component of an application packet was received.

(a) Upon verification of compliance with state certification requirements, the Department shall issue a provisional certificate.

(b) The Department shall issue a notice of agency decision under the procedures for informal adjudicative proceedings denying a state certification if the applicant is not in compliance with the applicable laws or rules. The notice shall state the reasons for denial.

(5) Certificate Contents and Provisions. The state certificate shall include the name of the mammography facility, owner, supervising physician, address, issue and expiration dates of the state certificate and the certificate number.

(b) The state certificate may be issued only to the owner and for the premises described in the application and shall not be assignable or transferable.

(c) Each state certificate is the property of the Department and shall be returned within five days if the certification is suspended, revoked, or if the operation of the facility is discontinued.

(d) The state certificate shall be prominently displayed where it can be easily viewed by the public.

(6) Certification periods shall be for 12 months, and expire at midnight 12 months from the date of issuance.

(a) A request for renewal and applicable fees shall be filed with the Department 15 days before the state certificate expires.

(b) Failure to make a timely renewal shall result in assessment of late fees as established by the Utah State Legislature pursuant to Section 68-38-3.

(7) The owner shall submit a Request for Agency Action/Application to amend or modify state certification status at least 30-days before any of the following proposed or anticipated changes occur:

(a) Change in the name of the facility;

(b) Change in the supervising physician;

(c) Change in the owner of the facility.

(8) The owner who wants to cease operation shall complete the following:

(a) Notify the patients within 30 days before the effective date of closure.

(b) Make adequate provision for the safekeeping of records and notify the department where those records will be stored.

(c) Return the state certificate to the Department within five days after the facility ceases operation.

(9) The Department may issue a provisional state certificate to a facility as an initial certification and may issue a provisional state certification to a facility that does not fully comply with the requirements for a standard certification but has made acceptable progress towards meeting the requirements.

(a) In granting a provisional state certification, the Department must be assured that the lack of full compliance does not harm the health, safety, and welfare of the patients.

(b) A provisional state certificate is nonrenewable and shall be issued for no more than 6 months.

R432-950-17. Inspections.

Upon presentation of proper identification, authorized representatives of the Department shall be allowed to enter a facility at any reasonable time without a warrant and be permitted to review records including medical records, when it is determined by the Department to be necessary to ascertain compliance with state law and rules promulgated under Section 26-21a-205.

(1) Each facility may be inspected by the Department or its designee to determine compliance with minimum standards and the applicable rules.

(2) Upon receipt of the survey results of the ACR, the facility shall submit copies of the certificate and the survey report and recommendations.

(3) The accreditation documents are open to the public.

(4) The Department may conduct periodic validation inspections of facilities accredited by the ACR for the purpose of determining compliance with state requirements.

R432-950-18. Enforcement and Appeal Process.

Whenever the Department has reason to believe that the facility is in violation of Section 26-21a-203 or any of the rules adopted pursuant to Title 26, Chapter 21, the Department shall issue a written Statement of Findings/Plan of Correction to the certified facility.

KEY: health facilities, mammography
October 19, 1995 **26-21a-203**
Notice of Continuation December 15, 1997

R436. Health, Vital Records and Health Statistics.
R436-1. Duties of the Department of Health.
R436-1-1. Definitions.

(1) Terms used in this rule are defined in Section 26-2-2.

(2) In addition, "Information for medical and health use only," means all of the information in the lower portion of the birth certificate and the similar information on the fetal death certificate; and the date and sex of the birth, death or fetal death.

R436-1-2. Forms.

All forms, certificates, and reports used in the system of vital statistics are the property of the Utah Department of Health, hereinafter referred to as "Department" and are subject to its rules and regulations. Only forms furnished by the State Registrar of Vital Statistics, hereinafter referred to as "State Registrar," shall be used in the reporting of vital statistics or in making copies thereof. These forms shall be used only for official purposes.

R436-1-3. Requirements for Preparation of Certificates.

All certificates and records relating to vital statistics must be prepared on a typewriter or other word processing equipment with a black ribbon or printed legibly in black, unfading ink. All required signatures shall be entered in black, unfading ink. Unless otherwise directed by the State Registrar, no certificate shall be complete and acceptable for registration that:

(a) does not have the certifier's name typed or printed legibly under his signature;

(b) does not supply all items of information called for, or satisfactorily account for their omission;

(c) contains alterations or erasures that would be apparent on certified copies or would not be as permanent as the record itself;

(d) does not contain handwritten signatures as required;

(e) is marked "copy" or "duplicate;"

(f) is a carbon copy;

(g) is prepared on an improper form;

(h) contains inconsistent data;

(i) contains an indefinite cause of death which denotes only symptoms of disease or conditions resulting from disease;

(j) is not prepared in conformity with rules or instructions issued by the Department.

R436-1-4. Designation of Additional Offices.

(1) Full-time local health officers may be designated by the Department to serve as the local registrar of vital statistics for the area they serve as health officer. They shall carry out their required duties without payment of any additional fee. For areas of the state not served by a full-time local health officer, the Department, acting through the State Registrar, shall designate an individual to serve as local registrar.

(2) The State Registrar shall delegate such duties and responsibilities to the local registrars as is deemed necessary to insure the efficient operation of the system of vital statistics. These may include the following:

(a) The receipt and processing of birth, death, and spontaneous fetal death records. This includes the receipt of these records from the person responsible for filing the record, checking it for accuracy and completeness, making a local copy, and forwarding the original to the State Registrar at least once a week.

(b) Issuance of certified copies of birth, death, and fetal death certificates after receiving written authorization from the State Registrar. Certified copies shall be issued only from the following documents:

(i) the original certificate;

(ii) a facsimile copy or other electronically transferred copy from the State Registrar;

(iii) the local registrar's copy of the original certificate.

All forms and procedures used to issue the copies shall be provided or approved by the State Registrar.

(c) Issuance of burial-transit and disinterment permits and other designated forms as prescribed by regulation or direction of the State Registrar.

(d) Acting as the agent of the State Registrar in their designated area and providing assistance to physicians, hospitals, funeral directors, and others in matters related to the system of vital statistics.

(3) The State Registrar, with the approval of the Department, shall determine the responsibilities and duties of each office independently.

R436-1-5. Name of Child.

A newborn child's name should be recorded on the birth certificate as determined by its' parents. If the parents disagree on the child's name and they have never married each other or are separated or divorced, the custodial parent shall determine the child's name. If the parents are married to each other and cannot agree on the child's name, it may be left blank on the birth certificate and added later by an Affidavit to Amend a Record or by court order.

KEY: vital statistics, standards, appointment to office, custody of children
1993 **26-2-3**
Notice of Continuation December 10, 1997 **26-2-4**

R436. Health, Vital Records and Health Statistics.
R436-2. Infants of Unknown Parentage; Foundling Registration.
R436-2-1.

The report for an infant of unknown parentage shall be registered on a foundling certificate of live birth and shall, unless more definitive information is available:

(a) Show the date and place of finding.

(b) Show the signature and title of the custodian in lieu of the attendant during delivery.

If the child is identified and a certificate of birth is found or obtained, the foundling certificate shall be placed in a sealed file and shall not be open to inspection, except on the order of a court.

KEY: vital statistics, custody of children
1989 **26-2-6**
Notice of Continuation December 10, 1997

R436. Health, Vital Records and Health Statistics.
R436-3. Amendment of Vital Records.
R436-3-1. Definitions.

For purposes of this rule "putative father" means the man the birth mother specifies as the birth father.

R436-3-2. Correction of Minor Errors on Birth Certificates.

Amendment of obvious errors, transposition of letters in words of common knowledge, or omissions may be made by the Registrar while the original certificate is still in the local office, based on personal observation, query, or upon the request of a person with a direct and tangible interest in the certificate as defined in R436-13-1(1). When such additions or minor amendments are made by the Registrar, a notation as to the source of the information, together with the date the change was made and the initials of the authorized agent making the change, shall be made on the certificate in such a way as not to become a part of any certification issued. The certificate shall not be marked "Amended." After the certificate is registered and the original has been transmitted to the State Registrar and processing completed, all corrections must be made by amendment.

R436-3-3. Amendments to Correct Errors or Omissions.

(1) Whenever facts are not correctly stated in any certificate of birth, death or fetal death already registered, the person asserting that the error exists may make an affidavit under oath on the form prescribed by the State Registrar stating the corrections necessary to make the record correct. Such corrections shall be supported by the affidavit of one other credible person having knowledge of the facts. Such certificate, as corrected, shall be filed with the state or local registrar.

(2) If the amendment relates to a certificate which has not been transmitted to the State Registrar, the local registrar shall review the amendment for adequacy for filing. If the local registrar finds reason to doubt the adequacy of the amendment it shall be referred to the State Registrar.

(3) If the amendment relates to a certificate which has been transmitted to the State Registrar, the amendment shall be transmitted to the State Registrar who shall review it for acceptance for registration. If the State Registrar has reason to doubt the adequacy of the amendment, one or more items of documentary evidence to support the alleged facts may be required. A Supplemental Name Report may be used to add a child's name to its birth certificate when this information was not given at the time the certificate was registered. This form must be signed by both parents.

(4) An amendment shall be filed with and become part of the record to which it pertains. The original certificate shall be marked "Amended, 1 of 2," or however many parts the amendment may require. Subsequent parts will be marked accordingly.

(5) When an amendment is accepted, the State Registrar shall transmit copies of the amendment to the local registrar in whose office a copy of the original record is on file.

R436-3-4. Amendment of Medical and Health Data.

(1) Whenever the originally furnished medical and health data of any record of death, fetal death, or live birth is modified by supplemental information the certifying physician or medical examiner having knowledge of this information, may certify, under penalty of perjury, the changes necessary to make the information correct. The cause of death information may also be amended by the physician who performs an autopsy on the deceased.

(2) This amendment shall be processed in the manner prescribed in Section R436-3-2 of these rules.

R436-3-5. Acknowledgement of Paternity by Natural Parents.

(1) If the mother was married at any time during the pregnancy, the name of the husband shall be entered on the certificate as the father of the child, unless:

(a) paternity has been determined otherwise by a district court of this state, or

(b) the mother and the mother's husband execute joint or separate affidavits attesting that the husband is not the father of the child. The signature of the mother and of the husband shall be individually notarized on affidavit form(s). In such event, information about the father shall be omitted from the certificate, or

(c) the mother executes an affidavit attesting that the husband is not the father and that the putative father is the father, and the putative father executes an affidavit attesting that he is the father, and the husband executes an affidavit attesting that he is not the father. Affidavits may be joint or individual or a combination thereof, and each signature shall be individually notarized. In such event, the putative father shall be shown as the father on the certificate.

(2) If the mother was not married at any time during the pregnancy, the name of the father shall not be entered on the certificate without a declaration of paternity signed by the mother and the putative father.

(3) In any case in which paternity of a child is determined by a district court of this state, the name of the father and surname of the child shall be added to the certificate of birth in accordance with the finding and order of the court. If the court order does not specifically change the surname of the child, the child's surname shall remain the name listed on the original birth certificate.

(4) If the father is not named on the certificate of birth, no other information about the father shall be entered on the certificate.

(5) The affidavit for the declaration of paternity referenced in this rule shall be on a form provided by the State Registrar. When completed prior to the registration of the birth certificate they will be filed with the original birth certificate. When completed after the birth certificate has been registered they should be transmitted to the State Registrar for filing.

KEY: vital statistics, amendments, fathers, mothers
1994 26-2-7
Notice of Continuation December 10, 1997 78-45a-7

R436. Health, Vital Records and Health Statistics.
R436-4. Delayed Registration of Birth.
R436-4-1. Registration - Ten Days to One Year.

(1) By authority of Subsection 26-2-8(1), certificates of birth filed after ten days, but within one year from the date of birth, shall be registered on the standard birth certificate in the manner prescribed in Section 26-2-5. Such certificate shall not be marked "Delayed."

(2) The State Registrar may require additional evidence in support of the facts of birth and an explanation of why the birth certificate was not filed within the required ten days.

R436-4-2. Delayed Birth Certificate Form.

All certificates registered one year or more after the date of birth are to be registered on a delayed birth certificate form prescribed by the State Registrar.

R436-4-3. Who May Request the Registration of and Sign a Delayed Birth Certificate.

(1) If the birth of any person born in this state is not recorded in this state, the registrant (if 18 or older), the registrant's parent(s) or guardian, next of kin, or person older than the registrant having personal knowledge of the facts of birth, may request the registration of a delayed birth certificate subject to these rules and instructions issued by the State Registrar.

(2) Each delayed birth certificate shall be signed and sworn to before an official authorized to administer oaths by the person whose birth is to be registered. The registrant must be 18 years of age or over and competent to swear to the accuracy of the facts stated therein. If not, the certificate shall be signed and sworn to by one of the following in the indicated order of priority:

(a) One of the parents of the registrant;

(b) The guardian of the registrant;

(c) A relative who is older than the registrant;

(d) Any person older than the registrant having personal knowledge of the facts of birth.

(3) A delayed birth certificate shall not be filed for deceased individuals when application is made more than seven years after the birth is alleged to have occurred.

R436-4-4. Facts to be Established for a Delayed Registration of Birth.

(1) The minimum facts which must be established by documentary evidence shall be the following:

(a) The full name of the person at the time of birth;

(b) The date and place of birth;

(c) The full maiden name of the mother;

(d) The full name of the father; except that if the mother was not married either at the time of conception or at any time during pregnancy, the name of the father shall not be entered on the delayed certificate except as provided in R436-3-4.

R436-4-5. Documentary Evidence - Requirements.

(1) To be acceptable for filing, the name of the registrant and the date and place of birth entered on a delayed birth certificate shall be supported by at least:

(a) Two pieces of documentary evidence, only one of which may be an affidavit of personal knowledge, if the record is filed in less than seven years after the date of birth;

(b) Three pieces of documentary evidence, only one of which may be an affidavit of personal knowledge, if the record is filed seven years or more after the date of birth.

(2) Facts of parentage shall be supported by at least one of the above documents, which is not an affidavit of personal knowledge.

R436-4-6. Documentary Evidence - Acceptability.

(1) Documents presented, such as census, hospital, church, and school records, must be from independent sources and shall be in the form of the original record or duly certified copy thereof or a signed statement from the custodian of the record or document. All documents submitted into evidence, other than an affidavit of personal knowledge, must have been established at least ten years prior to the date of application or must have been established prior to the applicant's tenth birthday. Applications for delayed registration more than seven years after the birth must have at least one document that was established within 15 years of the date of birth.

(2) To be acceptable, an affidavit of personal knowledge must be prepared by one or both parents, other relative, or any person older than the registrant who has knowledge of the facts, and must be signed before an official authorized to administer oaths.

R436-4-7. Abstraction of Documentary Evidence.

(1) The State Registrar shall abstract on the delayed birth certificate a description of each document submitted to support the facts shown on the delayed birth certificate. This description shall include:

(a) The title or description of the document;

(b) The name and relationship of the affiant, if the document is an affidavit of personal knowledge, or the custodian, if the document is an original or certified copy of a record or a signed statement from the custodian;

(c) The date the document being abstracted was originally filed;

(d) The information regarding the birth facts contained in the document.

(2) All documents submitted in support of the delayed birth registration shall be returned to the applicant after review.

R436-4-8. Certification by the State Registrar.

The State Registrar shall, by signature, certify:

(1) That no prior birth certificate is on file for the person whose birth is to be recorded;

(2) That the evidence submitted to establish the facts of birth has been reviewed;

(3) That the abstract of the evidence appearing on the delayed birth certificate accurately reflects the nature and

content of the documents submitted to establish the facts of the birth.

R436-4-9. Dismissal After One Year.

Applications for delayed certificates which are inactive for one year may be dismissed at the discretion of the State Registrar.

KEY: vital statistics, evidence
1993 26-2-8
Notice of Continuation December 10, 1997

R436. Health, Vital Records and Health Statistics.
R436-6. Delayed Registration of Birth or Death.
R436-6-1. Court Ordered Delayed Registration of Birth.

When there is evidence that a live birth has occurred, but no birth certificate is on file or a certified copy of the birth certificate cannot be obtained, interested persons may petition for a court order establishing the date, time and place of birth. The petition shall be filed with the clerk of the district court in the county:

(a) Where the birth is alleged to have occurred; or

(b) Where the person whose birth it is sought to establish usually resides.

Persons who were not born in Utah and are not residents of Utah shall not qualify for birth certificate registration under this rule.

Residents of Utah, born outside of Utah and petitioning to register their birth under this rule, shall provide the court evidence that no birth certificate is on file at the place where they were born or that they are unable to obtain a certified copy of their birth certificate from the place where they were born.

Foreign born children who are becoming residents of Utah through adoption proceedings, and who have no original birth certificate on file or are unable to obtain a certified copy of their birth certificate, may have a court order delayed birth certificate registered in Utah. A court order establishing the date, time, and place of birth, should be obtained prior to the court order of adoption. However, the court order of adoption may include the findings of fact regarding the date and place of birth to meet this requirement.

Delayed registrations of birth filed under this rule shall show the actual place of birth, to the extent known, on the birth certificate filed with the State Registrar. This delayed registration shall carry no presumption of United States citizenship.

R436-6-2. Court Ordered Delayed Registration of Death.

When there is evidence that a death has occurred, but no death certificate is on file or a certified copy of the death certificate cannot be obtained, interested persons may petition for a court order establishing the fact, time, and place of death. The petition shall be filed with the clerk of the district court in the county:

(a) Where the death is alleged to have occurred; or

(b) Where the deceased usually resided at the date of the alleged death.

A death alleged to have occurred outside of Utah to a non-resident of Utah shall not qualify for death certificate registration under this rule.

KEY: vital statistics, court records, birth
1989 26-2-15
Notice of Continuation December 10, 1997

R436. Health, Vital Records and Health Statistics.
R436-7. Death Registration.
R436-7-1.

If all information necessary to complete a death certificate is not available within the time prescribed for filing of the certificate, the funeral director shall file the certificate completed with all information that is available. In all cases, the medical certification must be signed by the person responsible for such certification. If the cause of death is unknown, undetermined or pending investigation, the cause of death shall be shown as such on the certificate. Final disposition of the deceased shall not be made until authorized by the attending physician or the medical examiner. An amendment providing the information missing from the original certificate shall be filed with the State Registrar as soon as possible, but in all cases within 30 days after the date of the death.

KEY: vital statistics, death, funeral industries
1989 26-2-13
Notice of Continuation December 10, 1997

R436. Health, Vital Records and Health Statistics.
R436-8. Authorization for Final Disposition of Deceased Persons.
R436-8-1. Removal of Body.

Before removing a dead body or fetus from the place of death, the funeral director or person acting as such shall:

(a) Obtain permission from the next of kin or the custodian of the remains to remove the body or fetus from the place of death, and obtain assurance from the attending physician that death is from natural causes, and that the physician will assume responsibility for certifying to the cause of death or fetal death.

(b) Determine whether or not the medical examiner has been notified, if the death comes within his jurisdiction. If the medical examiner has not been notified or if that fact is unknown, make the notification and obtain authorization to remove the body.

(c) When the dead body or fetus is being removed from the hospital or other place of death by the next of kin or other person acting as the funeral director, the hospital or other custodian of the body shall not release the body until they are presented with a burial-transit permit issued by the appropriate local registrar or the state registrar.

R436-8-2. Transportation of Dead Bodies.

Any body shipped by common carrier must be embalmed by a licensed embalmer in a manner approved by the State Board of Embalming. The body must be placed in either (a) a sound casket enclosed in a strong outside shipping case, or (b) a metal container specifically designed for this purpose. If the body cannot be embalmed or is in a state of decomposition, it may be shipped only after enclosure in any air-tight metal casket encased in a strong outside shipping case, or in a sound casket encased in an air-tight metal, or metal-lined shipping case. When any body is to be transported by common carrier, the burial-transit permit shall be attached to the shipping case.

Any body transported by means other than a common carrier must be encased in a container (such as a plastic bag) which ensures against seepage of fluid and the escape of odors. However, bodies transported by a licensed funeral director in a vehicle used for such purpose need not be so encased.

If a dead body is to be transported by means other than a common carrier and for a purpose other than preparation or storage, the burial-transit permit shall be attached to the container in which the body is enclosed or in the possession of the person transporting the body.

R436-8-3. Preservation of Bodies.

No human body may be held in any place or be in transit more than 24 hours after death and pending final disposition, unless either maintained at a temperature of not more than 40 degrees F. or embalmed by a licensed embalmer in a manner approved by the State Board of Embalming, or by the embalmer licensed to practice in the state where the death occurred.

R436-8-4. Authorization for Disinterment and Re-interment.

An authorization for disinterment and re-interment of a dead body shall be issued by the local registrar of the district where the body is interred or by the State Registrar, upon receipt of a written application signed by the next of kin and the person who is in charge of the disinterment, or upon receipt of an order of a court of competent jurisdiction directing such disinterment. If the next of kin are in disagreement regarding the disinterment, the State Registrar may require a court order before issuing the disinterment permit.

Upon the relocation of a cemetery, the State Registrar or local registrar may issue a single disinterment permit to allow for mass disinterment of all bodies located in the cemetery. Prior to the issuance of this permit, the registrar must receive written agreement that insofar as possible, the remains of each body will be identified and the place of disinterment and re-interment will be specified and provided to the sexton of the cemetery where re-interment occurs.

A dead body properly prepared by an embalmer and deposited in a receiving vault shall not be considered a disinterment when removed from the vault for final disposition.

KEY: vital statistics, permits, funeral industries

1989 26-2-16
Notice of Continuation December 10, 1997 26-2-17

R436. Health, Vital Records and Health Statistics.
R436-9. Persons and Institutions Required to Keep Monthly Listings of Vital Statistics Events.
R436-9-1.

Hospitals, birthing centers, and maternity homes shall prepare a monthly listing of all births that occurred in their facilities. This listing shall include the date of birth, the parents' names, the sex of the child and the name of the medical attendant. The aforementioned facilities shall also gather and keep in their files all the information needed to complete the birth certificates for these deliveries. Hospitals are also required to include on the listing all induced abortions (names not required) occurring in their facility.

Hospitals and nursing homes shall prepare a monthly listing of all the deaths and fetal deaths that occurred in their institutions. The listing should include date of death, name of the deceased, age, name of the medical attendant, name of the funeral director or the person acting as such.

Funeral directors shall keep a listing of all deaths for which they conducted a funeral or provided a casket. The funeral director's listing shall include the county where the death occurred in addition to the required identifying information. Sextons or other persons in charge of cemeteries shall prepare a listing of all burials and other dispositions in their cemeteries. The listing should include the date of death, name of the deceased, age, county where death occurred, and name of the funeral director or the person in charge of the burial.

The above listings shall be prepared in triplicate on forms provided by the State Registrar. One copy is to be sent to the State Registrar, one to the local registrar of the area where the facility is located, and the third is to be kept by the agency which prepared it.

These reports are to be mailed by the tenth of the month following the month of occurrence.

KEY: vital statistics, health facilities, funeral industries
1989 26-2-16
Notice of Continuation December 10, 1997 26-2-18
26-2-23

R436. Health, Vital Records and Health Statistics.
R436-10. Birth and Death Certificates.
R436-10-1. Registration and Transmittal of Certificates by Local Registrars to the State Registrar.

(1) Local registrars shall take appropriate action to be sure that all births and deaths that occur in their registration area are registered. Local registrars may only register vital statistics certificates for events which occur in their respective areas. In reviewing the certificates for these events prior to registration, the registrar shall check the certificates for completeness and accuracy. All appropriate items on the

certificates should be completed in accordance to the item by item instructions issued by the State Registrar. To insure accuracy, cross-checks between items shall be made. The originators of certificates which are incomplete or inaccurate should be contacted and queried, in order to obtain the needed information.

(2) Registrars should check the certificates they receive against the monthly listings of hospitals, nursing homes, funeral directors, and sextons to verify that all vital statistics certificates are registered.

(3) Certificates acceptable for registration should have the date received and the registrar's signature entered in the appropriate places. Deputy local registrars, at the discretion of the local registrar, may use a signature stamp of the local registrar's signature. Stamped signatures should be initialed by the deputy applying the facsimile signature.

(4) After being signed and dated, certificates shall be assigned a local number. The local number is comprised of two elements: a numerical county indicator and a number for the event. Births and deaths (including fetal deaths) have their own numbering series. Each series begins anew at the start of each calendar year. However, certificates for events which occurred in a previous calendar year should be numbered in sequential order with the other events for the year in which they occurred.

(5) The local registrar shall then make a copy of the certificate for the local files and send the original certificate to the State Registrar. The certificates should be filed according to event (i.e., births and deaths, including fetal deaths) and according to year of occurrence. These files are confidential. All vital statistics records shall be kept in a secure place available only to authorized personnel.

(6) Original certificates shall be transmitted to the State Registrar within ten days of their receipt by the local registrar.

KEY: vital statistics, local government, standards
1989 **26-2-19**
Notice of Continuation December 10, 1997

R436. Health, Vital Records and Health Statistics.
R436-11. Local Registrars.
R436-11-1. Registration Fees Paid to Local Registrars.

The Department shall pay to each local registrar a fee of $0.50 for each certificate registered and transmitted to the State Registrar. This fee shall only be paid to local registrars who are appointed by the Department and who are not authorized to issue certified copies.

KEY: vital statistics, local government, fees
1993 **26-2-3(8)**
Notice of Continuation December 10, 1997 **26-2-20**
26A-1-110

R436. Health, Vital Records and Health Statistics.
R436-12. Certified Copies of Vital Statistics Records.
R436-12-1. Qualifications for Local Registrars to Issue Certified Copies of Vital Statistics Records.

In addition to compliance with pertinent state statutes, standards for vital statistics registration and certification in local health departments are as follows:

(1) The full-time health director shall designate a specific position to have the responsibility of Deputy Local Registrar of Births and Deaths.

(2) The Deputy Local Registrar shall have adequate staff to provide necessary services in county offices during all working hours of the Department.

(3) Adequate office space shall be provided to house the required staff and necessary files or books of certificates.

(4) All registered certificates or copies thereof shall be in files or in other appropriate facilities so as to maintain the physical and legal integrity and the confidentiality of the certificates.

(5) Arrangements shall be made for the receipt of death certificates and issuance of burial permits 365 days a year.

(6) The original birth and death certificates shall be transmitted to the State Registrar on a regular basis. This shall not exceed ten days from the date of receipt by the local registrar.

(7) Birth and death certificates may be accepted by assistant deputy local registrars in county offices and burial permits may be issued by them. However, hospitals will routinely submit their birth certificates to the Deputy Local Registrar at the headquarters office of the local health department. Original birth and death certificates will be transmitted daily from each county office to the headquarters office and no copies will remain on file in the county office unless they have been authorized by the State Registrar to issue certified copies of birth and death certificates.

(8) Before a local registrar shall be authorized to issue certified copies of birth and death certificates as provided in Section 26-2-21, a written procedure shall be prepared and approved by the State Registrar. In addition, the local registrar shall demonstrate the availability of the following capabilities:

(a) An indexing procedure that provides for timely and accurate certificate retrieval.

(b) Photographic reproducing equipment that will provide a permanent copy of the certificate, using forms approved by the State Registrar.

(c) An accounting system that will provide for the collection, deposit, and reporting of all fees received for vital statistics transactions.

(d) Capability to amend or delete certificates from the local files when so notified by the State Registrar.

(e) Adequate staff and facilities so that the confidentiality of the vital statistics certificates is maintained and certified copies are issued only to persons who meet the criteria provided in Section 26-2-22.

KEY: vital statistics, local government, standards
1989 **26-2-21**
Notice of Continuation December 10, 1997

R436. Health, Vital Records and Health Statistics.
R436-13. Disclosure of Records.
R436-13-1. Integrity of Vital Records.

To protect the integrity of vital records:

(1) The State Registrar and other custodians of vital records shall not permit inspection of, or disclose information contained in vital statistics records, or copy or issue a copy of all or part of any such record, unless the applicant has a direct and tangible interest in such record. In addition to the definition of direct, tangible, and legitimate interest as defined in Section 26-2-22, those who may or may not have a direct and tangible interest are as follows:

(a) The registrant, a member of the immediate family, the guardian, or a designated legal representative shall be considered to have a direct and tangible interest. Others may demonstrate a direct and tangible interest when information is needed for determination or protection of a personal or property right.

(b) The term "legal representative" shall include an attorney, physician, funeral director, or other authorized agent acting in behalf of the registrant or family.

(c) The natural parents of adopted children, when neither has custody, shall not be considered to have a direct and tangible interest.

(d) Commercial firms or agencies requesting listings of names and addresses shall not be considered to have a direct and tangible interest.

(2) The State Registrar or the local custodian may provide copies of certificates or disclose data from vital statistics records to federal, state, county, or municipal agencies of government requesting such data in the conduct of their official duties. Certificate copies or individual identifiable information may not be given by the receiving government agency to other agencies or individuals, or used for purposes not authorized at the time of the request.

(3) The State Registrar or local custodian shall not issue a certified copy of a record until a signed application has been received from the applicant. In emergencies, telephone requests may be accepted with documentation as to the identity of the person making the telephone request. Whenever it is determined necessary to establish an applicant's right to information from a vital record, the State Registrar or local custodian may also require identification of the applicant or a sworn statement.

(4) Nothing in this rule shall be construed to permit disclosure of information contained in the "Information for Medical and Health Use Only" section of the birth and fetal death certificates or the "Information for Statistical Purposes Only" section of the Certificate of Marriage or Certificate of Divorce, Dissolution of Marriage, or Annulment unless specifically authorized by the State Registrar for statistical or research purposes or if authorized by a court of competent jurisdiction.

KEY: vital statistics, copying processes, standards
1993 **26-2-22**
Notice of Continuation December 10, 1997

R436. Health, Vital Records and Health Statistics.
R436-14. Copies of Data From Vital Records.
R436-14-1.

(a) Full or short form certified copies of vital records may be made by mechanical, electronic, or other duplicative processes.

(b) Each certified copy issued shall be certified as a true copy by the officer in whose custody the record is entrusted and shall include the date issued, the name of the issuing officer, the registrar's signature or an authorized facsimile thereof, and the seal of the issuing office. Local registrars shall issue certified copies only on forms approved by the State Registrar. Local registrars may issue certified copies using the seal of the State of Utah when authorized by the State Registrar.

(c) Verification of the facts contained in a vital record may be furnished by the State Registrar to any federal, state, county, or municipal government agency or to any other agency representing the interest of the registrant, subject to the limitations as indicated in (a) above. Such verifications shall be on forms prescribed and furnished by the State Registrar or on forms furnished by the requesting agency and acceptable to the State Registrar; or, the State Registrar may authorize the verification in other ways when it shall prove in the best interests of the State. Such verifications may only be used for the official purposes of the requesting agency.

(d) When the State Registrar finds evidence that a certificate was registered through misrepresentation or fraud, the State Registrar shall have authority to withhold the issuance of a certified copy of such certificate until a court determination of the facts has been made.

KEY: vital statistics, copy process
1989 **26-2-26**
Notice of Continuation December 10, 1997

R436. Health, Vital Records and Health Statistics.
R436-15. Fees.
R436-15-1. Fees for Copies and Searches.

(1) No request for a vital statistics record shall be searched and certified copy issued until the required fee is received, unless specific approval has been obtained from the State Registrar or is otherwise provided for by statute or rule.

(2) The vital statistics fee schedule shall be approved by the Utah legislature as part of the Department of Health's annual budget.

KEY: vital statistics, fees
1989 **26-1-6**
Notice of Continuation December 10, 1997

R436. Health, Vital Records and Health Statistics.
R436-16. Violation of Rules.
R436-16-1. Penalties.

The penalties for violation of rules R436-1 through

R436-15 are provided in Sections 26-23-3 through 26-23-8.

KEY: vital statistics, penalties
1993 26-23-3 through 26-23-8
Notice of Continuation December 10, 1997

R436. Health, Health Care Resources, Vital Records and Health Statistics.
R436-17. Review and Approval of Research Requests.
R436-17-1. Purpose and Authority.

(1) This rule sets forth procedures for the review and approval of research requests received by the Bureau of Vital Records and Health Statistics.

(2) Authority for this rule is found in Sections 26-2-3 and 26-2-22.

R436-17-2. Definitions.

In addition to the definitions in Section 26-2-2, "Institutional Review Board" or "IRB" means a multi-disciplinary committee which reviews proposed research involving human subjects.

R436-17-3. Requests for Access to Records for Research.

(1) If the research does not involve the use of any personal identifying information from the vital records, the State Registrar shall provide the researcher with the requested statistical information upon receipt of the written request and payment of the associated costs.

(2) If the research involves the use of personal identifying information, the request must be in writing and must be signed by the researcher. In addition:

(a) The request must outline the research protocol to be used.

(b) If the research involves a follow-back or follow-up study, the request must describe who is to be contacted, how, by whom, and what questions will be asked. If a survey is planned, a copy of the survey must be submitted. Approval by an Institutional Review Board must be included with the request.

(c) If the research involves linking data files, the variables to be used to determine the match must be identified.

(d) The researcher and all persons who may have access to the identifying information in the vital records shall sign a Researcher's Confidentiality Agreement, which is available from the Bureau of Vital Records and Health Statistics.

(e) The researcher may not use or allow other persons to use the vital records information for any purpose other than the approved research.

(f) The State Registrar shall review all research requests upon receipt at which time one of the following outcomes may occur:

(i) The request is approved and the researcher is notified in writing of the approval and of the associated costs.

(ii) The request is given tentative approval and the researcher:

(A) is notified in writing of the approval and associated costs;

(B) discusses and resolves technical concerns identified by the State Registrar. (iii) The request is not approved and the researcher is:

(A) notified in writing the reasons for the disapproval;

(B) notified of the areas of concern with the request;

(C) allowed to address the areas of concern and resubmit the request.

(D) notified that the decision to deny may be appealed to the Executive Director of the Department of Health.

R436-17-4. Approval by Institutional Review Board.

(1) The State Registrar may require approval by an Institutional Review Board before authorizing a researcher access to the vital records.

(2) The IRB shall deny a research proposal if:

(a) it violates any federal or state law;

(b) the risks to the subjects outweighs the benefits to them or society;

(c) unnecessary risks are created;

(d) selection of subjects is inequitable;

(e) procedures for obtaining and documenting informed consent are inadequate;

(f) payment or other offered inducements are likely to influence subjects' judgment;

(g) the study is poorly or improperly designed such that meaningful conclusions cannot be derived.

R436-17-5. Confidentiality Requirements.

Researchers shall abide by the confidentiality requirements specified in the Researcher's Confidentiality Agreement. Failure to observe the confidentiality requirements shall result in the loss of privilege to access vital records for research purposes and may also result in civil court action pursuant to Section 26-23-5. Vital records information may only be used for the designated research and must be destroyed at the conclusion of the study, or returned to the State Registrar. If the researcher destroys the vital records the State Registrar shall be informed in writing. The information may not be used for other research unless authorized by the State Registrar.

KEY: vital statistics, research
1993 26-2-3
Notice of Continuation December 10, 1997 26-2-22

R495. Human Services, Administration.
R495-861. Requirements for Local Discretionary Social Services Block Grant Funds.
R495-861-1. Requirements for Local Discretionary Social Services Block Grant Funds.

A. Social Services Block Grant funds allocated to local governments by the Legislature are contracted to either counties or associations of government. These funds must be used to provide services to eligible persons as described in the Utah State Social Services Block Grant Plan. The following agencies receive local discretionary social services block grant funds: Bear River Association of Governments, Weber/Morgan Counties, Davis County, Salt Lake County, Tooele County, Mountainlands Association of Governments, Six County Association of Governments, Five County Association of Governments, Uintah Basin Association of Governments, Southeastern Utah Association of Governments, and San Juan County.

B. Social Services Block Grant funds shall be allocated to local governments based on the following formula:

1. Each area with less than 15,000 population will receive a base of $54,000.00.

2. Each area with less than 150,000 population will receive a base of $34,000.00.

3. The remainder of the money will be allocated based on the percentage each areas' population is of the state population.

C. Each local government shall be required to provide a 25 percent match for Discretionary Social Services Block Grant funds.

KEY: social services, match requirement*
1991 **62A-1-114**
Notice of Continuation December 30, 1997

R501. Human Services, Administration, Administrative Services, Licensing.
R501-2. Core Standards.
R501-2-1. Definition.

Core Standards are the license requirements for Human Service Programs, as listed in R501-2-14. Where there is duplication of review by another oversight agency, the Office of Licensing, hereinafter referred to as Office, shall accept that documentation as proof of compliance.

R501-2-2. Program Administration.

A. The program shall have a written statement of purpose to include the following:

1. program philosophy,
2. description of long and short term goals, Social detoxification programs need not separate into short and long term goals, this is not applicable to Child Placing Adoption Agencies,
3. description of the services provided,
4. the population to be served,
5. fee policy,
6. participation of consumers in activities unrelated to treatment plans, and
7. program policies and procedures at time of initial licensing.

B. Copies of the above statements shall be available at all times to the Office upon request. General program information shall be available to the public.

C. The program shall have a written quality assurance plan. Implementation of the plan shall be documented.

D. The program shall have clearly stated guidelines and appropriate administrative procedures, to include the following:

1. program management,
2. maintenance of complete, accurate and accessible records, and
3. record retention.

E. The governing body, program operators, management, employees, consultants, volunteers, and interns shall read, understand, follow and sign a copy of the current Department of Human Services Provider Code of Conduct.

F. The program shall comply with State and Federal laws regarding abuse reporting in accordance with Sections 62A-4a-403 and 62A-3-302, and shall post copies of these laws in a conspicuous place within the facility.

G. All programs which serve minors or vulnerable adults shall submit identifying information for background screening for all staff.

H. The program shall comply with all applicable National Interstate Compact Laws.

I. A licensed substance abuse treatment program shall complete the Uniform Facility Data Set Survey annually. Substance abuse treatment programs shall also comply with Confidentiality of Alcohol and Drug abuse Patient Records, 42 CFR Part 2.

J. The program's license shall be posted in a conspicuous place on the premises. The program shall post Civil Rights and Americans With Disabilities Act, referred to as ADA, notices as applicable.

K. The program shall not handle the major personal business affairs of a consumer, without request in writing by the consumer and legal representative.

R501-2-3. Governance.

A. The program shall have a governing body which is responsible and has authority over the policies, training and monitoring of staff and consumer activities for all phases of the program. Their responsibilities shall include the following:

1. to ensure program policy and procedures compliance,
2. to ensure continual compliance with relevant local, state and federal requirements,
3. to notify the Office within 30 days of changes in program administration and purpose, according to R501-2-2.
4. to ensure that the program is fiscally and operationally sound,
5. to ensure that the program has adequate staffing as identified on the organizational chart,
6. to ensure that the program has general liability insurance, professional liability insurance as appropriate, vehicle insurance for transport of consumers, and fire insurance, and
7. for programs serving youth, the program director or designee shall meet with the Superintendent or designee of the local school district at the time of initial licensure, and then again each year as the programs renews it's license to complete the necessary student forms including youth education forms.

B. The governing body shall be:

1. a Board of Directors in a non-profit organization; or
2. commissioners or appointed officials of a governmental unit; or
3. Board of Directors or individual owner or owners of a for-profit organization, and
4. for Child Placing Adoption Agencies, a Board of Directors. The Board members shall not be owners, employees, or paid consultants of the agency.

C. The program shall have a list of members of the governing body, indicating name, address and term of membership.

D. The program shall have an organization chart which identifies operating units of the program and their inter-relationships. The chart shall define lines of authority and responsibility for all program staff.

E. When the governing body is composed of more than one person, the governing body shall establish written by-laws, and shall hold formal meetings at least twice a year, Child Placing Agencies must meet at least quarterly, maintain written minutes, which shall be available for review by the Office, to include the following:

1. attendance,
2. date,
3. agenda items, and
4. actions.

R501-2-4. Statutory Authority.

A. A publicly operated program shall document the statutory basis for existence.

B. A privately operated program shall document its ownership and incorporation.

R501-2-5. Record Keeping.

The program shall have, if available and appropriate, a written record for each consumer to include the following:

A. demographic information to include medicaid number,

B. biographical information,

C. pertinent background information, including the following;

1. personal history, including social, emotional, psychological and physical development,

2. legal status,

3. emergency contact with name, address and telephone number, and

4. photo,

D. health records of a consumer including the following:

1. immunizations, not applicable to adult programs,

2. medication,

3. records of physical examinations, dental, and visual examinations, and

4. other pertinent health records and information,

E. signed consent form,

F. copy of consumer's individual treatment or service plan,

G. a summary of family visits and contacts, and

H. a summary of attendance and leaves.

R501-2-6. Direct Service Management.

A. Direct service management, as described herein, is not applicable to social detoxification, residential support or child placing adoption agencies. The program shall have on file for public inspection a written eligibility policy and procedure, approved by a licensed clinical professional to include the following:

1. legal status according to State law,

2. age and sex of consumer,

3. consumer needs or problems best addressed by program,

4. program limitations, and

5. appropriate placement.

B. The program shall have a written admission policy and procedure to include the following:

1. appropriate intake process,

2. pre-placement requirements,

3. self-admission,

4. notification of legally responsible person, and

5. reason for refusal of admission, to include a written, signed statement.

C. Intake evaluation.

1. At the time of intake an assessment shall be conducted to evaluate health and family history, medical, social, psychological and, as appropriate, developmental, vocational and educational factors.

2. In emergency situations which necessitate immediate placement, the intake evaluation shall be completed within seven days of admission.

3. All methods used in evaluating a consumer shall consider age, cultural background, dominant language, and mode of communication.

D. A written agreement, developed with the consumer, and the responsible person if applicable, shall be completed, signed by all parties, and kept in the consumer's record, with copies available to involved persons. It shall include the following:

1. rules of program,

2. consumer and family expectations,

3. services to be provided and cost of service,

4. authorization to serve and to obtain emergency care for consumer,

5. arrangements regarding absenteeism, visits, vacation, mail, gifts, and telephone calls, when appropriate, and

6. sanctions and consequences.

E. Consumer treatment plan shall be individualized, as applicable.

1. A staff member shall be assigned to each consumer having responsibility and authority for development, implementation, and review of the plan.

2. The plan shall include the following:

a. findings of intake evaluation and assessment,

b. measurable long and short term goals and objectives,

1) goals or objectives clearly derived from assessment information,

2) goals or objectives stated in terms of specific observable changes in behavior, skills, attitudes or circumstances,

3) evidence that consumer input was integrated where appropriate in identifying goals and objectives, and

4) evidence of family involvement in treatment plan, unless clinically contraindicated,

c. specification of daily activities, services, and treatment, and

d. methods for evaluation,

3. Treatment plans:

a. Plans shall be developed within 30 days of admission by a treatment team and reviewed by a licensed clinical professional. Thereafter, treatment plans shall be reviewed by the licensed clinical professional as often as stated in the treatment plan. Plans for non-medicaid consumers shall be clinically reviewed within six months of admission and at least annually thereafter.

b. Where applicable, treatment or program plans shall be written to include the required components of Division of Services for People With Disabilities program plan.

4. All persons working directly with the consumer shall be appropriately informed of the individual treatment plan.

5. Reports on the progress of the consumer shall be available to the applicable Division, the consumer, or the legally responsible person.

6. Treatment record entries shall include the following:

a. identification of program,

b. date and duration of services provided,

c. description of service provided,

d. a description of consumer progress or lack of progress in the achievement of treatment goals or objectives as often as stated in the treatment plan, and

e. documentation of review of consumer's record to

include the following:

1) signature,

2) title,

3) date, and

4) reason for review.

7. Transfer and Discharge

a. A discharge plan shall identify resources available to consumer.

b. The plan shall be written so it can be understood by the consumer or responsible party.

c. Whenever possible the plan shall be developed with consumers participation, or responsible party if necessary. The plan shall include the following:

1) reason for discharge or transfer,

2) adequate discharge plan, including aftercare planning,

3) summary of services provided,

4) evaluation of achievement of treatment goals or objectives,

5) signature and title of staff preparing summary, and

6) date of discharge or transfer.

d. The program shall have a written policy concerning un-planned discharge.

8. Incident or Crisis Intervention records

a. The program shall have written procedures for the reporting and documentation of deaths of consumers, injuries, fights, or physical confrontations, situations requiring the use of passive physical restraints, suspected incidents of abuse or neglect, unusual incidents, and other situations or circumstances affecting the health, safety, or well-being of consumers.

b. Records shall include the following:

1) summary information,

2) date, time of emergency intervention,

3) action taken,

4) employees and management responsible and involved,

5) follow up information,

6) list of referrals,

7) signature and title of staff preparing report, and

8) records shall be signed by management staff.

c. The report shall be maintained in individual consumer records.

d. When an incident involves abuse or neglect of a consumer, or death of a consumer, a program shall:

1) prepare a preliminary written report within 24 hours of the incident, and

2) notify the Office, the legally responsible person, and the appropriate law enforcement authority.

F. Intensive Supervision and Tracking: For those programs providing intensive supervision services, a designated staff member shall provide services to the consumer as frequently as determined in the treatment plan or contract. A consumer's record shall document, in activity logs, the date, amount of time spent, and the specific activity provided to the consumer. If any one consumer has more than one staff assigned to provide intensive supervision, this action shall be justified in the consumer's record and cleared by the licensed clinical supervisor.

R501-2-7. Behavior Management.

A. Behavior management methods, as described herein, are not applicable to child placing adoption agencies. The program shall have on file for public inspection, a written policy and procedure for the methods of behavior management. These shall include the following:

1. definition of appropriate and inappropriate behaviors of consumers,

2. acceptable staff responses to inappropriate behaviors, and

3. consequences.

B. The policy shall be provided to all staff, and staff shall receive training relative to behavior management at least annually, or more often if needed.

C. No management person shall authorize or use, and no staff member shall use, any method designed to humiliate or frighten a consumer.

D. No management person shall authorize or use, and no staff member shall use nor permit the use of physical restraint with the exception of passive physical restraint. Passive physical restraint shall be used only as a temporary means of physical containment to protect the consumer, other persons, or property from harm. Passive physical restraint shall not be associated with punishment in any way.

E. Staff who shall be responsible for the design and supervision of the behavior management procedure shall be at least 21 years of age.

R501-2-8. Rights of Consumers.

A. The program shall have a written policy for consumer rights to include the following, numbers 10-13 do not apply to Child Placing Adoption Agencies:

1. privacy of information and privacy for both current and closed records,

2. reasons for involuntary termination and criteria for re-admission to the program,

3. freedom from potential harm or acts of violence to consumer or others,

4. consumer responsibilities, including household tasks, privileges, and rules of conduct,

5. service fees and other costs,

6. grievance and complaint procedures,

7. freedom from discrimination,

8. the right to be treated with dignity,

9. the right to communicate by telephone or in writing with family, attorney, physician, clergyman, and counselor or case manager except when contraindicated by professional or supervisory personnel,

10. a list of people whose visitation rights have been restricted through the courts,

11. the right to send and receive mail providing that security and general health and safety requirements are met,

12. defined smoking policy in accordance with the Utah Clean Air Act, and

13. statement of maximum sanctions and consequences, reviewed and approved by the Office.

B. The consumer shall be informed of this policy to his or her understanding verbally and in writing. A signed copy shall be maintained in the consumer record.

R501-2-9. Personnel Administration.

A. The program shall have written personnel policies and procedures to include the following:

1. employee grievances,
2. lines of authority,
3. orientation and on-going training,
4. performance appraisals,
5. rules of conduct, and
6. sexual and personal harassment.

B. The program shall have a director, appointed by the governing body, who shall be responsible for management of the program and facility. The director or a responsible staff member shall be available at all times during operation of program.

C. The program shall have a personnel file for each employee to include the following:

1. application for employment,
2. applicable credentials and certifications,
3. initial medical history if directed by the governing body,
4. tuberculin test if directed by the governing body,
5. food handler permit, where required,
6. training record,
7. annual performance evaluations,
8. I-9 Form completed,
9. comply with the provisions of R501-14 and R501-15 for background screening, and
10. signed copy of the current Department of Human Services Provider Code of Conduct.

D. Staff shall have access to his or her personnel file in accordance with State and Federal law.

E. The program shall follow a written staff to consumer ratio, which shall meet specific consumer and program needs. The staff to consumer ratio shall meet or exceed the requirements set forth in the applicable categorical rules as found in R501-3, R501-7, R501-8, R501-11, and R501-16.

F. The program shall employ or contract with trained or qualified staff to perform the following functions:

1. administrative,
2. fiscal,
3. clerical,
4. housekeeping, maintenance, and food service,
5. direct consumer service, and
6. supervisory.

G. The program shall have a written job description for each position, which includes a specific statement of duties and responsibilities and the minimum level of education, training and work experience required.

H. Treatment shall be provided or supervised by professional staff, whose qualifications are determined or approved by the governing body, in accordance with State law.

I. The governing body shall ensure that all staff are certified and licensed as legally required.

J. The program shall have access to a medical clinic or a physician licensed to practice medicine in the State of Utah.

K. Nursing services, when provided, shall be in accordance with technical skills defined in the Utah Nurse Practice Act.

L. The program shall provide interpreters for consumers; or refer consumers to appropriate resources as necessary to communicate with consumers whose primary language is not English.

M. The program shall retain the personnel file of an employee after termination of employment, in accordance with accepted personnel practices.

N. A program using volunteers, substitutes, or student interns, shall have a written plan to include the following:

1. direct supervision by a program staff,
2. orientation and training in the philosophy of the program, the needs of consumers, and methods of meeting those needs,
3. background screening,
4. a record maintained with demographic information, and
5. Signed copy of the current Department of Human Services Provider Code of Conduct.

O. Staff Training

1. Staff members shall be trained in all policies of the program, including the following:

a. orientation in philosophy, objectives, and services,
b. emergency procedures,
c. behavior management,
d. statutory responsibilities of the program, including rights for people with disabilities according to the Americans With Disabilities Act,
e. current program policy and procedures, and
f. other relevant subjects.

2. Staff shall have completed and remain current in a certified first aid and CPR program as required.
3. Staff shall have current food handlers permit as required.
4. Training shall be documented and maintained in individual personnel files.

R501-2-10. Infectious Disease.

The program shall have policies and procedures designed to prevent or control infectious and communicable diseases in the facility in accordance with local, state and federal health standards.

R501-2-11. Emergency Plans.

A. The program shall have a written plan of action for disaster and casualties to include the following:

1. designation of authority and staff assignments,
2. plan for evacuation,
3. transportation and relocation of consumers when necessary, and
4. supervision of consumers after evacuation or relocation.

B. The program shall inform consumers how to respond to fire warnings and other instructions for life safety.

C. The program shall have a written plan which personnel follows in medical emergencies and arrangements for medical care, including notification of consumer's physician and nearest relative or guardian.

D. Death, serious illness, or injury of a consumer or staff at the program shall be reported within 24 hours to a

guardian and to the Office.

R501-2-12. Safety.

A. Fire drills in non-outpatient programs, shall be conducted at least quarterly and documented. Notation of inadequate response shall be documented.

B. The program shall provide access to 24 hour telephone service. Telephone numbers for emergency assistance, i.e., 911 and poison control, shall be posted.

C. The program shall have an adequately supplied first aid kit in the facility.

D. Programs maintaining weapons at the facility shall assure that the weapons and ammunition are securely locked. Weapons kept at the facility and on the premises will be inaccessible to consumers at all times and rendered inoperable if possible.

R501-2-13. Transportation.

A. The program shall have written policy and procedures for transporting consumers.

B. In each program or staff vehicle, used to transport consumers, there shall be emergency information which includes at a minimum, the name, address and phone number of the program or an emergency telephone number.

C. The program shall have means, or make arrangement for, transportation in case of emergency.

D. Drivers of vehicles shall have a valid drivers license and follow safety requirements of the State.

E. Each vehicle shall be equipped with an adequately supplied first aid kit.

R501-2-14. Categorical Standards.

In addition to Core Standards, Categorical Standards are specific regulations which must be met for the following:

A. Comprehensive Mental Health Treatment Center,
B. Comprehensive Substance Abuse Program,
C. Child Placing Agencies,
D. Residential Treatment,
E. Day Treatment,
F. Outpatient Treatment,
G. Outpatient Domestic Violence Perpetrator Treatment,
H. Residential Support,
I. Social Detoxification,
J. Outdoor Youth Programs, and
K. Intermediate Secure Treatment Programs for Minors.

R501-2-15. Single Service Program Standards.

Core Standards of the Office do not apply to single service programs Single services program standards are the regulations which must be met for the following:

A. Driving Under the Influence, referred to as DUI, which standards are found in R544-4,

B. Adult Day Care, which standards are found in R501-13,

C. Adult Foster Care, which standards are found in R501-17, and

D. Child Foster Care, which standards are found in R501-12.

KEY: licensing, human services
December 2, 1997 62A-2-101 et seq.
Notice of Continuation September 2, 1997

R501. Human Services, Administration, Administrative Services, Licensing.
R501-3. Categorical Standards.
R501-3-1. Comprehensive Mental Health Center License.

A. Definition: Comprehensive mental health center means a community program which makes mental health services available to persons of all ages who are experiencing an emergency mental dysfunction in accordance with 62A-12-101-105, 301.

B. Purpose: The program provides at least the following continuum of categorical services: residential treatment, day treatment, outpatient treatment, and inpatient, which is licensed by the Utah State Department of Health.

C. The rules for these services are found in the subsequent rules of the Office of Licensing, hereinafter referred to as Office.

R501-3-2. Comprehensive Substance Abuse Program License.

A. Definition: Comprehensive substance abuse program means a community program operated by or under contract with a local substance abuse authority in accordance with 62A-8-101.

B. Purpose: The program provides at least the following continuum of categorical services; social detoxification, residential treatment, outpatient treatment, day treatment, and residential support.

C. The rules for these services are found in the subsequent rules for the Office.

R501-3-3. Residential Treatment Programs.

A. Definition: Residential treatment program means a 24-hour group living environment for four or more individuals unrelated to the owner or provider in accordance with 62A-2-101,17.

B. Purpose: The program offers room and board and provides for or arranges for the provision of specialized treatment, rehabilitation or habilitation services for persons with emotional, psychological, developmental, or behavioral dysfunctions, impairments, or chemical dependencies. In residential treatment, consumers are assisted in acquiring the social and behavioral skills necessary for living independently in the community in accordance with 62A-2-101, 17.

C. Administration

A current list of enrollment of all registered consumers shall be on-site at all times.

D. Staffing

1. The program shall have an employed manager who is responsible for the day to day resident supervision and operation of the facility. The responsibilities of the manager shall be clearly defined. Whenever the manager is absent there shall be a substitute available.

2. The program shall have a staff person trained, by a

certified instructor, in first aid and CPR on duty with the consumers at all times.

3. Programs which utilize students and volunteers, shall provide screening, training, and evaluation of volunteers. Volunteers shall be informed verbally and in writing of program objectives and scope of service.

4. Professional staff shall include the following individuals who have received training in the specific area listed below:

a. Mental Health

1) a licensed physician or consulting licensed physician,

2) a licensed psychologist, or consulting licensed psychologist,

3) a licensed mental health therapist,

4) a licensed advanced practice registered nurse-psychiatric mental health nurse specialist, or a consulting advanced practice registered nurse-psychiatric mental health nurse specialist, and

5) if unlicensed staff are used, they shall be supervised by a licensed clinical professional.

b. Substance Abuse

1) a licensed physician, or a consulting licensed physician,

2) a licensed psychologist or consulting licensed psychologist,

3) a licensed mental health therapist or consulting licensed, mental health therapist, and

4) a licensed substance abuse counselor or unlicensed staff who work with substance abusers shall be supervised by a licensed clinical professional.

c. Children and Youth

1) a licensed physician, or consulting licensed physician,

2) a licensed psychologist, or consulting licensed psychologist, and

3) a licensed mental health therapist or consulting licensed mental health therapist, to provide a minimum of one hour of service to the program per week per consumer enrolled.

4) A licensed medical practitioner, by written agreement, shall be available to provide, as needed, a minimum of one hour of service per week for every two consumers enrolled.

5) Other staff trained to work with emotionally and behaviorally disturbed, or conduct disordered children and youth shall be under the supervision of a licensed clinical professional.

6) A minimum of two staff on duty and, a staff ratio of no less than one staff to every four consumers shall exist at all times, except nighttime sleeping hours when staff may be reduced.

7) A mixed gender population shall have at least one male and one female staff on duty at all times.

d. Services for People With Disabilities, referred to as DSPD, shall have a staff person responsible for program supervision and operation of the facility. Staff person shall be adequately trained to provide the services and treatment stated in the consumer plan.

E. Direct Service

Treatment plans shall be reviewed and signed by the clinical supervisor, or other qualified individuals for DSPD services. Plans shall be reviewed and signed as noted in the treatment plan.

F. Physical Environment

1. The program shall provide written documentation of compliance with the following items as applicable:

a. local zoning ordinances,

b. local business license requirements,

c. local building codes,

d. local fire safety regulations,

e. local health codes, and

f. local approval from the appropriate government agency for new program services or increased consumer capacity.

2. Building and Grounds

a. The program shall ensure that the appearance and cleanliness of the building and grounds are maintained.

b. The program shall take reasonable measures to ensure a safe physical environment for consumers and staff.

G. Physical Facilities

1. Live-in staff shall have separate living space with a private bathroom.

2. The program shall have space to serve as an administrative office for records, secretarial work and bookkeeping.

3. Indoor space for free and informal activities of consumers shall be available.

4. Provision shall be made for consumer privacy.

5. Space shall be provided for private and group counseling sessions.

6. Sleeping Space

a. No more than four persons, or two for DSPD programs, shall be housed in a single bedroom.

b. A minimum of sixty square feet per consumer shall be provided in a multiple occupant bedroom. Storage space will not be counted.

c. A minimum eighty square feet per individual shall be provided in a single occupant bedroom. Storage space shall not be counted.

d. Sleeping areas shall have a source of natural light, and shall be ventilated by mechanical means or equipped with a screened window that opens.

e. Each bed, none of which shall be portable, shall be solidly constructed, and be provided with clean linens after each consumer stay and at least weekly.

f. Sleeping quarters serving male and female residents shall be structurally separated.

g. Consumers shall be allowed to decorate and personalize bedrooms with respect for other residents and property.

7. Bathrooms

a. The program shall have separate bathrooms for males and females. These shall be maintained in good operating order and in a clean and safe condition.

b. Bathrooms shall accommodate consumers with physical disabilities as required.

c. Each bathroom shall be properly equipped with toilet paper, towels, soap, and other items required for personal

hygiene.

d. Bathrooms shall be ventilated by mechanical means or equipped with a screened window that opens.

e. Bathrooms shall meet a minimum ratio of one toilet, one lavatory, one tub or shower for each six residents.

f. There shall be toilets and baths or showers which allow for individual privacy.

g. There shall be mirrors secured to the walls at convenient heights.

h. Bathrooms shall be located as to allow access without disturbing other residents during sleeping hours.

H. Equipment

1. Furniture and equipment shall be of sufficient quantity, variety, and quality to meet program and consumer needs.

2. All furniture and equipment shall be maintained in a clean and safe condition.

I. Laundry Service

1. Programs which permit individuals to do their own laundry shall provide equipment and supplies for washing, drying, and ironing.

2. Programs which provide for common laundry of linens and clothing, shall provide containers for soiled laundry separate from storage for clean linens and clothing.

3. Laundry appliances shall be maintained in a clean and safe condition.

J. Food Service

1. One staff shall be responsible for food service. If this person is not a professionally qualified dietitian, regularly scheduled consultation with a professionally qualified dietitian shall be obtained. Meals served shall be from dietitian approved menus.

2. The staff responsible for food service shall maintain a current list of consumers with special nutritional needs and record in the consumers service record information relating to special nutritional needs and provide for nutrition counseling where indicated.

3. The program shall establish and post kitchen rules and privileges according to consumer needs.

4. Consumers present in the facility for four or more consecutive hours shall be provided nutritious food.

5. Meals may be prepared at the facility or catered.

6. Kitchens shall have clean, operational equipment for the preparation, storage, serving, and clean up of all meals.

7. Adequate dining space shall be provided for consumers. The dining space shall be maintained in a clean and safe condition.

8. When meals are prepared by consumers there shall be a written policy to include the following:

a. rules of kitchen privileges,

b. menu planning and procedures,

c. nutritional and sanitation requirements, and

d. schedule of responsibilities.

K. Storage

1. The program shall have locked storage for medications.

2. The program shall have locked storage for hazardous chemicals and materials, according to the direction of the local fire authorities.

L. Medication

1. Prescriptive medication shall be provided as prescribed by a qualified person, according to the Medical Practices Act.

2. The program shall have designated qualified staff, who shall be responsible to:

a. administer medication,

b. supervise self-medication,

c. record medication, including time and dosage, according to prescription, and

d. record effects of medication.

M. Specialized Services for Substance Abuse

1. The program shall not admit anyone who is currently experiencing convulsions, in shock, delirium tremens, in a coma, or unconscious.

2. At a minimum the program shall document that direct service staff complete first aid and CPR training within six months of being hired. Training shall be updated as required by the certifying agency.

3. Before admission, consumers shall be tested for Tuberculosis. Both consumers and staff shall be tested annually or as directed by the local health requirements.

N. Specialized Services for Programs Serving Children and Youth

1. Provisions shall be available for adolescents to continue their education with a curriculum approved by the State Office of Education.

2. Programs which provide their own school shall be recognized by an educational accreditation organization, i.e., State Board of Education or the National School Accreditation Board.

3. its Individual, group, couple, and family counseling sessions or other appropriate treatment, including skills development, shall be conducted at least weekly, or more often if defined by the treatment plan. The consumer's record shall document the time and date of the service provided with signature of the counselor.

4. An accurate record shall be kept of all funds deposited and withdrawn with the residential facility for use by a consumer. Consumer purchases of over $20.00 per item, shall be substantiated by receipts signed by consumer and appropriate staff.

O. Specialized Services for Division of Services for People With Disabilities, referred to as DSPD

1. Rules governing the daily operation and activities of the facility shall be available to all consumers and visitors, and shall apply to family members, consumers, and staff that come into the facility.

2. The program shall have policy specifying the amount of time family or friends may stay as overnight guests.

3. All consumers in residential programs shall have an individual plan that addresses appropriate day treatment.

4. A monthly schedule of activities shall be shared with the consumer and available on request. Schedules shall be filed and maintained for review.

5. Record of income, earned, unearned, and consumer service fees, shall be maintained by the provider.

6. Residential facilities shall be located where school, church, recreation, and other community facilities are

available.

7. An accurate record shall be kept of all funds deposited with the residential facility for use by a consumer. This record shall contain a list of deposits and withdrawals. Consumer purchases of over $20.00, per item, shall be substantiated by receipts signed by consumer and professional staff. A record shall be kept of consumer petty cash funds.

8. The program, in conjunction with parent or guardian and the DSPD support coordinator, shall apply for unearned income benefits for which a consumer is entitled.

R501-3-4. Day Treatment Programs.

A. Definition: Day treatment program means specialized treatment for less than 24 hours a day, for four or more persons who are unrelated to the owner or provider.

B. Purpose: A day treatment program provides services to individuals who have emotional, psychological, developmental, physical, or behavioral dysfunctions, impairments, or chemical dependencies. Day treatment is provided in lieu of, or in coordination with, a more restrictive residential or inpatient environment or service in accordance with 62A-2-101,5.

C. Administration

A list of current consumers shall be available and on-site at all times.

D. Program

1. Day treatment activity plans shall be prepared to meet individual consumer needs. Daily activity plans may include behavioral training, community living skills, work activity, work adjustment, recreation, self-feeding, self-care, toilet training, social appropriateness, development of gross and fine motor skills, interpersonal adjustment, mobility training, self-sufficiency training, and to encourage optimal mental or physical function, speech, audiology, physical therapy, and psychological services, counseling, and socialization.

2. A daily activity or service schedule shall be designed and implemented.

3. While on-site, consumers shall be supervised as necessary and encouraged to participate in activities.

4. All consumers shall be afforded the same quality of care.

E. Staffing

1. The program shall have an employed manager who is responsible for the day to day supervision and operation of the facility. The responsibilities of the manager shall be clearly defined. Whenever the manager is absent, there shall be a substitute available.

2. The program shall have a staff person trained, by a certified instructor, in first aid and CPR on duty with the consumers at all times.

3. Staffing Ratios

a. The minimum ratio shall be one direct care staff to ten consumers. In DSPD programs, consumer ratios shall be determined by type of activity.

b. When 10% or more of the consumers are non-ambulatory, the ratio shall be one direct care staff to seven consumers.

4. Professional staff shall include the following individuals who have received training in the specific area listed below:

a. Mental Health

1) a licensed physician, or consulting licensed physician,

2) a licensed psychologist, or consulting licensed psychologist,

3) a licensed mental health therapist or consulting licensed mental health therapist, and

4) a licensed advanced practice registered nurse-psychiatric mental health nurse specialist, or a consulting licensed advanced practice registered nurse-psychiatric mental health nurse specialist.

5) If unlicensed staff are used they shall be supervised by a licensed clinical professional.

b. Substance Abuse

1) a licensed physician or consulting licensed physician,

2) a licensed psychologist or consulting licensed psychologist,

3) a licensed mental health therapist or consulting licensed mental health therapist, and

4) a licensed substance abuse counselor or unlicensed staff who work with substance abuses shall be supervised by a licensed clinical professional.

c. Children and Youth

1) a licensed physician, or consulting licensed physician,

2) a licensed psychologist, or consulting licensed psychologist,

3) a licensed mental health therapist or consulting licensed mental health therapist, to provide a minimum of one hour of service per week per consumer enrolled in the program, and

4) a licensed advanced practice registered nurse-psychiatric mental health nurse specialist, or consulting licensed advanced practice registered nurse-psychiatric mental health nurse specialist.

5) If unlicensed staff are used, they shall be trained to work with emotionally and behaviorally disturbed, or conduct disordered children and youth and shall be under the supervision of a licensed clinical professional.

d. Services for People With Disabilities

1) a staff person responsible for consumer supervision and operation of the facility, and

2) trained staff to provide the services and treatment stated in the consumer's plan.

F. Physical Environment

1. The program shall provide written documentation of compliance with the following:

a. local zoning ordinances,

b. local business license requirements,

c. local building codes,

d. local fire safety regulations,

e. local health codes, and

f. local approval from the appropriate government agency for new program services or increased consumer capacity.

2. Building and Grounds

a. The program shall have a minimum of fifty square feet of floor space per consumer designated specifically for

day treatment. Hallways, office, storage, kitchens, and bathrooms may not be included in computation.

b. Outdoor recreational space and compatible recreational equipment shall be available when necessary to meet treatment plans.

c. The program shall ensure that the appearance and cleanliness of the building and grounds are maintained.

d. The program shall take reasonable measures to ensure a safe physical environment for consumers and staff.

e. Furniture and equipment shall be of sufficient quantity, variety, and quality to meet program and consumer needs and shall be maintained in a clean and safe condition.

f. The program shall have locked storage for hazardous chemicals and materials, according to the direction of the local fire authorities.

G. Equipment

Equipment for work activities shall be kept in safe operating condition.

1. Power equipment shall be installed and maintained in accordance with the National Electrical Code.

2. When operating power equipment, the operator shall wear safe clothing and protective eye gear.

3. Rings and watches are not to be worn, and long hair shall be confined when operating power equipment.

4. Consumer exposure to hazardous materials shall be controlled as defined in Utah State Industrial Regulations.

H. Bathrooms

1. The program shall have one or more bathrooms each for males and females in accordance with current uniform building codes. They shall be maintained in good operating order and in a clean and safe condition.

2. Bathrooms shall accommodate consumers with physical disabilities as required.

3. Bathrooms shall be properly equipped with toilet paper, towels, soap, and other items required for personal hygiene.

4. Bathrooms shall be ventilated by mechanical means or equipped with a screened window that opens.

I. Food Service

1. One person shall be responsible for food service. If this person is not a professionally qualified dietitian, regularly scheduled consultation with a professionally qualified dietitian shall be obtained. Meals served shall be from dietitian approved menus.

2. The person responsible for food service shall maintain a current list of consumers with special nutritional needs and record in the consumers service record information relating to special nutritional needs and provide for nutrition counseling where indicated.

3. When meals are prepared by consumers, there shall be a written policy to include the following:

a. rules of kitchen privileges,

b. menu planning and procedures,

c. nutritional and sanitation requirements, and

d. schedule of responsibilities.

4. The program shall provide adequate storage and refrigeration for meals carried to the program by consumers.

5. Kitchens shall have clean, operational equipment for the preparation, storage, serving, and clean up of all meals.

6. Adequate dining space shall be provided for consumers. The dining space shall be maintained in a clean and safe condition.

J. Medication

1. Prescriptive medication shall be provided as prescribed by a qualified person according to the Medical Practices Act.

2. The program shall have locked storage for medication.

3. The program shall have written policy and procedure to include the following:

a. self administered medication,

b. storage,

c. control, and

d. release and disposal of drugs in accordance with federal and state regulations.

R501-3-5. Outpatient Treatment Programs.

A. Definition: Outpatient treatment program means individual, family, or group therapy or counseling designed to improve and enhance social or psychological functioning for those consumers whose physical and emotional status allows them to continue functioning in their usual living environment in accordance with 62A-2-101,15.

B. Purpose: Outpatient treatment shall serve consumers who require less structure than offered in day treatment or residential treatment programs. Consumers are provided treatment as often as determined and noted in the treatment plan.

C. Treatment Plan

1. Treatment plans shall be developed based on assessment and evaluation of consumer needs. The treatment may be consultive and may include medication management.

2. Treatment plans shall be reviewed and signed by a licensed clinical professional as frequently as determined in the treatment plan.

D. Professional staff shall include at least one of the following individuals who has received training in the specific area listed below:

1. Mental Health

a. a licensed physician, or

b. a licensed psychologist, or

c. a licensed mental health therapist, or

d. a licensed advanced practice registered nurse-psychiatric mental health nurse specialist.

e. If unlicensed staff are used, they shall not supervise clinical programs. Unlicensed staff shall be trained to work with psychiatric consumers and be supervised by a licensed clinical professional.

2. Substance Abuse

a. a licensed physician, or

b. a licensed psychologist, or

c. a licensed mental health therapist, or

d. a licensed advanced practice registered nurse-psychiatric mental health nurse specialist.

e. A licensed substance abuse counselor or unlicensed staff who work with substance abusers shall be supervised by a licensed clinical professional.

3. Children and Youth

a. a licensed psychiatrist, or

b. a licensed psychologist, or

c. a licensed mental health therapist, or

d. a licensed advanced practice registered nurse-psychiatric mental health nurse specialist.

e. If the following individuals are used they shall not supervise clinical programs: A person with a graduate degree in counseling, psychiatric nursing, marriage and family therapy, social work or psychology who is working toward a clinical license, and has been approved by the Division of Occupational and Professional Licensing for the appropriate supervision, or a second year graduate student training for one of the above degrees.

4. Domestic Violence

a. a licensed psychiatrist, or

b. a licensed psychologist, or

c. a licensed clinical social worker, or

d. a licensed marriage and family therapist, or

e. a licensed professional counselor, or

f. a licensed advanced practice registered nurse-psychiatric mental health nurse specialist, or

g. a person with a graduate degree in counseling, psychiatric nursing, marriage and family therapy, social work or psychology who is working toward a clinical license, and has been approved by the Division of Occupational and Professional Licensing for the appropriate supervision, or

h. a second year graduate student in training for one of the above degrees, or

i. a licensed social services worker with at least three years of continual, full time, related experience, when practicing under the direction and supervision of a licensed clinical professional.

j. Individuals from categories g.h. above shall not supervise clinical programs. Individuals in category i. above shall not supervise clinical programs, and may only co-facilitate group therapy sessions with a person qualified per paragraphs a. through f. above.

E. Direct Service

1. Counseling sessions, except for Domestic Violence:

Individual, group, couple, or family counseling sessions shall be provided to the consumer as frequently as determined in the treatment plan. In the consumer's record and in the progress notes, the date of the session and the provider shall be documented. Treatment sessions may be provided less frequently than once a month if approved by the clinical supervisor and justified in the consumer record.

2. Domestic violence treatment programs shall comply with generally accepted practices in the current domestic violence literature and the following requirements:

a. Maintain and document cooperative working relationships with domestic violence shelters, treatment programs, referring agencies, custodial parents when the consumer is a minor and local domestic violence coalitions. If the consumer is a perpetrator, contact with victims, current partner, and the criminal justice referring agencies is also required, as appropriate.

b. Treatment sessions for each perpetrator, not including orientation and assessment interviews, shall be provided for at least one hour per week for a minimum of sixteen weeks. Treatment sessions for children and victims shall offer a minimum of 10 sessions for each consumer not including intake or orientation.

c. Staff to Consumer Ratio:

1) The staff to consumer ratio in adult treatment groups shall be one to eight for a one hour long group or one to ten for an hour and a half long group. The maximum group size shall not exceed sixteen.

2) Child victim or child witness groups shall have a ratio of one staff to eight children when the consumers are under twelve years of age, and a one staff to ten children ratio when the consumers are twelve years of age or older.

d. When any consumer enters a treatment program the staff shall conduct an in-depth, face to face interview and assessment to determine the consumer's clinical profile and treatment needs. For perpetrator consumers, additional information shall be obtained from the police incident report, perpetrator's criminal history, prior treatment providers, and the victim. When appropriate, additional information for child consumers shall be obtained from parents, prior treatment providers, schools and Child Protective Services. When any of the above information cannot be obtained the reason shall be documented. The assessment shall include the following:

1) a profile of the frequency, severity and duration of the domestic violence behavior, which includes a summary of psychological violence,

2) documentation of any homicidal, suicidal ideation and intentions as well as abusive behavior toward children,

3) a clinical diagnosis and a referral for evaluation to determine the need for medication if indicated,

4) documentation of safety planning when the consumer is an adult victim, child victim, or child witness, and that they have contact with the perpetrator. For victims who choose not to become treatment consumers, safety planning shall be addressed when they are contacted, and

5) documentation that appropriate measures have been taken to protect children from harm.

e. Consumers deemed appropriate for a domestic violence treatment program shall have an individualized treatment plan, which addresses all relevant treatment issues. Consumers who are not deemed appropriate for domestic violence programs shall be referred to the appropriate resource, with the reasons for referral documented and notification given to the referring agency. Domestic violence counseling shall be provided when appropriate, concurrently with or after other necessary treatment.

f. Conjoint or group therapy sessions with victims and perpetrators together or with both co-perpetrators shall not be provided until a comprehensive assessment has been completed to determine that the violence has stopped and that conjoint treatment is appropriate. The perpetrator must complete a minimum of 12 domestic violence treatment sessions prior to implementing conjoint therapy.

g. A written procedure shall be implemented to facilitate the following in an efficient and timely manner:

1) entry of the court ordered defendant into treatment,

2) notification of consumer compliance, participation or completion,

3) disposition of non-compliant consumers,

4) notification of the recurrence of violence, and

5) notification of factors which may exacerbate an individual's potential for violence.

h. Comply with the "Duty to Warn," 78-14a-102.

i. Document specialized training in domestic violence assessment and treatment practices including 24 hours of pre-service training within the last two years and 16 hours of training annually thereafter for all individuals providing treatment services.

j. Clinical supervision for treatment staff who are not clinically licensed shall consist of a minimum of an hour a week to discuss clinical dynamics of cases.

F. Physical Environment

1. The program shall provide written documentation of compliance with the following:

a. local zoning ordinances,

b. local business license requirements,

c. local building codes,

d. local fire safety regulations, and

e. local health codes.

2. Building and Grounds

a. The program shall ensure that the appearance and cleanliness of the building and grounds are maintained.

b. The program shall take reasonable measures to ensure a safe physical environment for consumers and staff.

c. Space shall be provided for private and group counseling sessions.

3. Storage

The program shall have:

a. locked storage for medications, and

b. locked storage for hazardous chemicals and materials, according to the direction of the local fire authorities.

4. Equipment

a. Furniture and equipment shall be of sufficient quantity, variety, and quality to meet program and consumer plans.

b. All furniture and equipment shall be maintained in a clean and safe condition.

5. Bathrooms

a. Bathrooms shall accommodate physically disabled consumers.

b. Each bathroom shall be maintained in good operating order and be properly equipped with toilet paper, towels, and soap.

c. Bathrooms shall be ventilated by mechanical means or equipped with a screened window that opens.

R501-3-6. Residential Support Programs.

A. Definition: Residential Support means a 24-hour group living environment, providing room and board for four or more consumers unrelated to the owner or provider in accordance with 62A-2-101,16.

B. Purpose: A residential support service arranges for or provides the necessities of life as a protective service to individuals or families who are experiencing a dislocation or emergency which prevents them from providing these services for themselves or their families. Treatment is not a necessary component of residential support service, however treatment shall be made available on request.

C. Administration

1. The program shall ensure that consumers receive direct service from an assigned worker or other appropriate professional.

2. A list of current consumers shall be available and on-site at all times.

D. Staffing

1. The program shall have an employed manager responsible for the day to day resident supervision and operation of the facility. The responsibilities of the manager shall be clearly defined. Whenever the manager is absent there shall be a substitute to assume managerial responsibility as needed. With the exception of Domestic Violence Shelters, adult programs are not required to provide twenty four hour supervision.

2. The program shall make arrangement for medical backup with a medical clinic or physician licensed to practice medicine in the State of Utah.

3. During normal staff hours, the program shall have at least one person on duty who has completed and remains current in a certified first aid and CPR program.

4. Programs which utilize students and volunteers, shall provide screening, training, and evaluation of volunteers. Volunteers providing care in Domestic Violence Shelters, without paid staff present, shall have direct communication access to designated staff at all times. Volunteers shall be informed verbally and in writing of program objectives and scope of service.

E. Direct Service, this section supersedes core standards, Section R501-2-6

1. The program consumer records shall contain the following:

a. name address, telephone number, admission date, and personal information as required by the program,

b. emergency information with names, address, and telephone numbers,

c. a statement indicating that the resident meets the admission criteria,

d. description of presenting problems,

e. service plan and services provided, and referral arrangements as required by the program,

f. discharge date,

g. signature of person or persons, or designee providing services, and

h. crisis intervention and incident reports.

2. The program's consumer service plan shall offer and document as many life enhancement opportunities as are appropriate and reasonable.

3. Domestic Violence Shelter action plans shall include the following:

a. a review of danger and lethality with victim and discussion of the level of the victim's risk of safety.

b. a review of safety plan with the victim,

c. a review of the procedure for a protective order and referral to appropriate agency or clerk of the court authorized to issue the protective order, and

d. a review of supportive services to include, but not limited to medical, self sufficiency, day care, legal, financial,

and housing assistance. The program shall facilitate connecting services to those resources as requested. Appropriate referrals shall be made, when indicated, and documented in the consumer record for victim treatment, psychiatric consultation, drug and alcohol treatment, or other allied services.

e. Domestic Violence Shelter staff completing action plans shall have at least a Bachelor's Degree in Behavioral Sciences.

F. Physical Environment

The program shall provide written documentation of compliance with the following:

1. local zoning ordinances,
2. local business license requirements,
3. local building codes,
4. local fire safety regulations,
5. local health codes, and
6. local approval from the appropriate government agency for new program services or increased consumer capacity.

G. Building and Grounds

1. The program shall ensure that the appearance and cleanliness of the building and grounds are maintained.

2. The program shall take reasonable measures to ensure a safe physical environment for its consumers and staff.

3. Live-in staff shall have separate living space with a private bathroom.

4. The program shall have space to serve as an administrative office for records, secretarial work and bookkeeping.

5. Space shall be provided for private and group counseling sessions.

6. Bathrooms

a. There shall be separate bathrooms, including a toilet, lavatory, tub or shower, for males and females. These shall be maintained in good operating order and in a clean and safe condition.

b. Consumer to bathroom ratios shall be 10 to one.

c. Bathrooms shall accommodate consumers with physical disabilities, as required.

d. Each bathroom shall be maintained in good operating order and be equipped with toilet paper, towels, and soap.

e. There shall be mirrors secured to the walls at convenient heights.

f. Bathrooms shall be placed as to allow access without disturbing other residents during sleeping hours.

g. Bathrooms shall be ventilated by mechanical means or equipped with a screened window that opens.

h. Domestic Violence Shelters:

1) family members may share bathrooms, and

2) where bathrooms are shared by more than one family or by children over the age of eight, parents or program staff shall ensure that privacy is protected.

7. Sleeping Accommodations

a. A minimum of 60 square feet per consumer shall be provided in a multiple occupant bedroom and 80 square feet in a single occupant bedroom. Storage space shall not be counted.

b. Sleeping areas shall have a source of natural light, and shall be ventilated by mechanical means or equipped with a screened window that opens.

c. Each bed, none of which shall be portable, shall be solidly constructed and be provided with clean linens after each consumer stay and at least weekly.

d. Sleeping quarters serving male and female residents shall be structurally separated.

e. Consumers shall be allowed to decorate and personalize bedrooms with respect for other residents and property.

f. Domestic Violence Shelters, Family Support Centers and children's shelters, the following shall apply:

1) A minimum of 40 square feet per consumer shall be provided in a multiple occupant bedroom. Storage space shall not be counted. The use of one crib for children under two years of age shall not be counted in the square foot requirement as long as it does not inhibit access to and from the room.

2) Roll away and hide-a-beds may be used as long as the consumer square foot requirement is maintained.

3) Family members are allowed to share bedrooms. Where bedrooms are shared by more than one family, parents or program staff shall make appropriate arrangements to ensure privacy is protected.

8. Equipment

a. Furniture and equipment shall be of sufficient quantity, variety, and quality to meet program and consumer needs.

b. All furniture and equipment shall be maintained in a clean and safe condition.

9. Storage

a. The program shall have locked storage for medications.

b. The program shall have locked storage for hazardous chemicals and materials, according to the direction of the local fire authorities.

c. Any weapons brought into the facility shall be secured in a locked storage area or removed from the premises.

10. Laundry Service

a. Programs which permit consumers to do their own laundry shall provide equipment and supplies for washing, drying, and ironing.

b. Programs which provide for common laundry of linens and clothing, shall provide containers for soiled laundry separate from storage for clean linens and clothing.

c. Laundry appliances shall be maintained in good operating order and in a clean and safe condition.

11. Food Service

a. One staff shall be responsible for food service. If this person is not a professionally qualified dietitian, regularly scheduled consultation with a professionally qualified dietitian shall be obtained. Meals served shall be from dietitian approved menus.

b. The staff responsible for food service shall maintain a current list of consumers with special nutritional needs and record in the consumer's service record information relating to special nutritional needs and provide for nutritional counseling where indicated.

c. The program shall establish and post kitchen rules and privileges according to consumer needs.

d. Consumers present in the facility for four or more consecutive hours shall be provided nutritious food.

e. Meals may be prepared at the facility or catered.

f. Kitchens shall have clean, safe operational equipment for the preparation, storage, serving, and clean up of all meals.

g. Adequate dining space shall be provided for consumers. The dining space shall be maintained in a clean and safe condition.

h. When meals are prepared by consumers, there shall be a written policy to include the following:

1) rules of kitchen privileges,

2) menu planning and procedures,

3) nutritional and sanitation requirements, and

4) schedule of responsibilities.

H. Specialized Services for Substance Abuse

1. The program shall not admit anyone who is currently experiencing convulsions, in shock, delirium tremens, in a coma or unconscious.

2. Before admission, consumers shall be tested for Tuberculosis. Both consumers and staff shall be tested annually or as directed by the local health requirements.

I. Specialized Services for Programs Serving Children

1. The program shall provide clean and safe age appropriate toys for children.

2. The program shall provide an outdoor play area enclosed with a five foot safety fence.

3. Only custodial parents, legal guardian, or persons designated in writing, are allowed to remove any child from the program.

4. The program shall provide adequate staff to supervise children at all times.

J. Specialized Services for Domestic Violence Shelters

1. The program shall provide clean and safe age appropriate toys for children.

2. The program shall provide an outdoor play area enclosed with a five foot safety fence.

3. The program shall provide and document the following information both verbally and in writing to the consumer: Shelter rules, reason for termination, and confidentiality issues.

4. Parents are responsible for supervising their children while at the shelter. If parents are required to be away from the shelter or involved in shelter activities without their children, they shall arrange for appropriate child care services.

KEY: licensing, human services
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R501. Human Services, Administration, Administrative Services, Licensing.
R501-7. Rules for Child Placing Agencies.
R501-7-1. Requirements for Organizations and Administration of Child Placing Agencies.

A. Definition

Child Placing means receiving, accepting, or providing custody or care for any child under 18 years of age, temporarily or permanently in accordance with 62A-2-101.

B. Purpose

The purpose of a Child Placing Agency is to place the child permanently in a home for adoption or temporarily in a foster home placement.

C. Administration

1. In addition to the following rules, all Child Placing Agencies will comply with R501-2, Core Standards.

2. Multiple-Service Agency: When services for birth parents are provided in the same agency that provides adoption services, it is necessary to ensure that full consideration is given to the needs of birth parents, as well as to those of the child. Moreover, the agency shall advertise to the public that it does provide services for birth parents who are not considering adoption, refer to R501-7-3.

3. Recruitment of Adoptive Families: The agency shall have a written plan for recruiting families for all children for whom the agency is seeking adoptive families.

4. Legal Responsibility for Child: The agency shall be legally responsible for the well-being of the child following relinquishment of the child until the adoption is finalized, or unless the court places legal responsibility with another party. If the child cannot be adopted, the agency shall continue to be legally responsible for the child, i.e., for making referrals to the appropriate service for continuing care until the agency is discharged.

5. Legal and Other Documents: The agency shall have available and keep in a confidential file all pertinent legal and other documents as available and appropriate, including but not limited to the following:

a. birth records,

b. baptismal certificates,

c. an original of the transfer of parental rights or relinquishment,

d. decree of termination of parental rights,

e. copies of divorce papers,

f. death certificates of adoptive family members or birth parents,

g. affidavits in cases where a husband is not the father of the child,

h. statement of the birth parents to release information to mutually agreed upon individuals, or waiver of confidentiality,

i. statements of birth and adoptive parents regarding their agreement to exchange information and the conditions, if any, pursuant to contact following placement and legal adoption, and

j. copy of the order of adoption.

6. Minimum Qualifications of Staff: The Executive Director and other staff of the agency shall meet the standards listed below. Department of Human Services Offices staff will be required to meet the personnel and administrative standards as set by State Personnel Policy.

7. Executive Director:

a. The Board of a private agency shall select the Executive Director and delegate to the Executive Director the responsibility for administration of the agency within the

general policies of the Board.

b. The Executive Director of a licensed child-placing agency shall be graduated from an accredited four-year college or university, have a master's degree in social work and shall be licensed in accordance with 58-60-204,105 and 58-60-404,405 as a clinical social worker, certified social worker, or professional counselor. In agencies where the Executive Director does not have the appropriate professional license, there shall be a staff member with the appropriate licensure designated as Social Services Director for the agency.

c. In addition, staff identified shall have had two years of full-time paid professional employment in services to children, in a social service setting; one of which must have been in a supervisory or administrative capacity.

8. Casework Supervisor: If an agency has six or more professional staff besides the Executive Director, provisions shall be made for a certified social worker or professional counselor to supervise the additional staff. The certified social worker or professional counselor must have at least one year of full-time paid professional experience in social work. In general, the ratio shall not exceed one certified social worker or professional counselor to eight caseworkers.

9. Social Service Worker: All service workers shall be licensed to practice social work under the laws of the State of Utah.

10. Workloads: The agency shall establish full time workload standards for staff, taking into consideration average time for satisfactory completion of intake; assessment and preparation of adoptive applicants; and post placement and post legal adoptive services to the birth, adoptive parents and adoptive persons. Under no circumstance shall the workload for social work staff working with children under the age of five exceed 20 active cases; for staff working with prospective adoptive parents prior to approval of the family exceed 30 active cases; for staff working with prospective adoptive parents, following approval exceed 60 active cases; for staff working with birth parents exceed 25 active cases; and for staff working with older or special needs children exceed 15 active cases.

11. Staff Development: The agency shall provide opportunities for staff to enhance professional growth through supervision, in-service training and educational leave. The agency shall maintain current adoption literature.

12. Ethical Conduct: A child placing agency shall operate in an ethical manner, including the following:

a. Its governing body, voluntary board, staff and consultants are not favored in applying for or receiving the services of the agency.

b. It receives no payment or other considerations for the referral of any applicant or client.

c. It provides no payment or other considerations to any services provider or other organization or individual for any referral of any applicant for the agency's services.

d. It prohibits the directed referral, or steering, of its applicants, clients, and their families to any private practice in which it's staff or consultants may be engaged.

e. It maintains a record of the ownership of all its properties and of all financial transactions it enters into with respect to such properties.

f. The members of the governing body of a private or public agency have no direct or indirect financial interest in the assets or leases of the agency; any member who individually or as part of business or professional firm is involved in the business transactions or current professional services of the agency shall disclose this relationship and shall not participate in any vote taken in respect to such transactions or services.

13. Case Records: The agency shall maintain a case record of each child accepted for care, of the family, and of each adoptive applicant, from the time of the application for service through the completed legal adoption and termination of the agency's service. As a minimum, the record shall contain the following information:

a. application and reason for service,

b. social study,

c. problems and service of the client to these services,

d. progress report, at least quarterly, to include the following,

1) services provided,

2) response of the client to these services, and

3) results,

e. closure, a brief summary of what was accomplished and reason for closure, and

f. dates, places and other pertinent information.

g. Adoptive parents, adoptees, and birth parents shall be encouraged to provide updated information to be added to the file at any time prior to and following finalization proceedings. This updated information may include medical, psychological and social information.

h. Case records shall be continuous records of adjustment, interaction, relationships, physical and mental conditions, growth and development. All records and information shall be confidential.

14. Record Retention: At the completion of the adoption all records pertaining to the adoption must be retained.

15. Confidentiality of Records: All adoption records shall be treated as confidential and be retained in a locked, metal file, accessible to designated personnel only. No formation shall be shared with any person without the appropriate consent forms.

16. Location and Housing: The agency shall be located in an area convenient to the clients it expects to serve. It shall be housed in a setting that is attractive, well maintained and comfortable.

17. Office Space: The facility shall maintain offices to meet the needs of clients being served.

18. Resources: The agency shall have financial resources to support the services offered.

19. Payment of Fees: The agency may charge birth parents and adoptive parents for cost of services provided. However, under no circumstance shall the provision of services to birth parents be contingent upon the ability to pay. A signed fee schedule shall be on file indicating cost of each service. Fees may be charged according to a sliding scale, based upon ability to pay in relation to income or can be set at a uniform amount with a provision in agency policy for

reducing or waiving the fee when indicated.

20. Itemization of Expenditures:

An itemization of all allowable expenditures on behalf of birth parents shall be on file. The itemization shall be signed by birth parents and adoptive applicant. If any cost appears to be greater than the ordinary or usual costs, the agency must show that the expenditure was fit and appropriate. The agency may pay reasonable costs for the following:

a. legal services related to the adoption,

b. medical services related to pregnancy, birth, and post-natal care for the birth mother and medical care for the child,

c. emergency health related services for the birth mother needed to protect the health and well-being of the fetus,

d. housing, including utilities and basic telephone service,

e. necessary transportation, including gasoline or public transportation,

f. purchase of food, necessary household supplies, and personal hygiene or grooming products,

g. clothing for the birth mother, and

h. necessary mental health services for the birth mother during the pre and post-natal period.

i. For other expenses the agency must show that the expenditure was fit and appropriate for the birth parents beyond six weeks postpartum.

21. Itemization of Fees for Adoption:

An itemization of all adoption related expenses shall be filed with the court prior to the final decree of adoption.

22. Statistics: The agency shall maintain accurate statistics on persons served, applications, and dispositions as a minimum.

23. Indian Child Welfare Act: An agency which serves Indian children must have standards and procedures which also conform to the Indian Child Welfare Act, refer to pl 95-600.

R501-7-2. Services for Foster Care Program.

An agency's foster care program must meet the following requirements:

A. Best Interests of Child: Foster family care is provided for and in behalf of the child under a plan that includes services for the child, the child's family, and supervision of, and support services for the foster family.

B. Foster Care Staff: Staff who prepare home studies, make assessments, develop plans or provide counseling or related services, must be licensed to practice social work under the laws of the State of Utah.

C. Permanent Plans: Staff must work actively in coordinating services for children, their families, and foster families to return children to their own homes or to achieve permanent arrangements for their care. The agency must maintain written records which meet requirements of P.L. 96-2-72, including a plan for the child's permanent placement within 60 days of placement.

D. Intake Services: The agency must have a formal procedure for intake, including establishing the permanent plan for each child in care.

E. Requirements for Foster Parent Selection, or Certification Approval: The following are minimum requirements:

1. Foster parents shall have the experience or the personal characteristics and temperament suited to working with children placed in their homes and providing them with care, protection, and the relationship and experiences that foster normal development.

2. Foster parents shall be trained to provide for the individual needs of the children placed in their homes.

3. Foster parents shall respect the religious and cultural practices of the child. The prospective foster parents' capacity to meet a particular child's psychological needs as they relate to the child's religious and cultural background is one of a number of factors that may be assessed in identifying that the foster care placement is in the best interests of the child. The selection and approval of foster parents will be done incompliance with the Multiethnic Placement Act of 1994, pl 103-302, referred to as MEPA.

4. Foster parents shall understand and abide by the requirements that information be kept confidential.

5. Foster parents' ideas about and methods of discipline shall take into account the child's age, intelligence, emotional make-up, and past experiences.

6. No type of corporal punishment, infliction of bodily pain or discomfort, deprivation of meals, or degrading or humiliating punishment shall ever be used under any circumstances. Deprivation of privileges may be a useful technique, but children must not be deprived of essentials, such as food, rest, etc., or visits from parents.

7. Provisions of R501-14 and R501-15 shall be met.

8. Foster parents are required to have a medical clearance, such as a reference letter from a physician, and a physical examination if this seems indicated, before children are placed with them, and as often thereafter, as necessary to ensure that they have no medical condition that impairs their ability to care for children.

9. Foster parents shall complete a minimum of six hours of training annually. The training shall orient them to the agency's policies for foster care; familiarize them with the accepted practices for, and problems expected in family foster care; and improve their parenting skills, particularly with respect to the differences they may encounter in rearing children not their own. The training may be provided by the agency or by other educational or social agencies in the community.

F. Number of Children in a Home:

1. No more than two infants shall reside in a foster home, including children of the foster parents.

2. No more than two non-ambulatory children, including infants, shall reside in a family home.

3. No more than four foster children shall be placed in any one home. The only exception to this would be the placement of siblings.

4. A foster family in which there are infants shall have no more than six children, including the children of the foster parents under 18 years old.

G. Requirements for Child Placing Agency Foster Home Approval:

1. Foster families shall be approved or certified by the agency. The agency must maintain written records of annual

home approval. The approval process shall include a home study evaluation, as outlined in R501-7-5.C., and a training plan.

2. The agency must have a procedure to revoke or deny home approval.

3. The agency must have a procedure for a foster parent to apply for a waiver of requirements.

4. The agency must have a written agreement with the foster parents which includes the expectations and responsibilities of the agency, staff, foster parents, the services to be provided, the financial arrangements for children placed in the home, the authority foster parents can exercise on children placed in the home, actions which require staff authorization.

H. Payments: The agency must have a written policy stating to the amount and schedule of payment to foster parents for cost of care and services. If no payment is made the agency shall have a written agreement stating the reasons.

I. Requirements for Placement: The first consideration in placing a child in care shall be the welfare of the child. In determining where a child is placed the agency shall consider proximity to the child's home, placement in the least restrictive setting possible, the ability of the parents to visit; however, the welfare of the child shall override any of these considerations.

J. Foster Care Services: The foster care services provided by an agency shall include:

1. Planning, with participation of the child's parents, for care and services to meet the child's individual needs.

2. Planning with parents, and with participation of the child where feasible, for stability and permanence in the care of the child. This must include a plan for the parental visits with the child.

3. Providing services to help the child's parents reestablish parental care, maintain parental rights, or where in the best interest of the child, terminate parental rights.

4. Providing a suitable foster family home for the child and planning, with foster parents in behalf of the child, for the child's supervision, education, health, recreation, and other needs and services. Placement of any child should consider the child's age, behavior, sex, the composition of the foster family, and skills of the foster parents.

5. Obtaining, coordinating, and supervising, with the ongoing participation of the foster parents, any needed medical, remedial, or other specialized services or resources.

6. Providing ongoing supervision of foster parents to ensure the quality of the care they provide.

K. Termination of Supervision: Only when custody is terminated by a court order can supervision of a child be terminated, unless one of the following conditions is met.

1. The child has been returned to his own home and has remained there for a period sufficient to indicate he or she has satisfactorily adjusted herein.

2. The child has been legally adopted.

3. The child reaches the age of 18, unless the Juvenile Court retains jurisdiction up to age 21.

4. Responsibility for services is transferred to another agency of recognized standing.

R501-7-3. Services for Birth Parents.

A. To ensure that adoption is a suitable plan for the child, and that the interests of children, birth parents, and adoptive parents are protected, comprehensive services must be made available for birth parents, both married and single.

B. Comprehensive services or referral for services, for birth parents shall be provided not as part of an adoption service, but as a separate service geared to the needs of birth parents, including those who are not considering adoption.

C. Support in Planning for the Child:

1. Birth parents shall be supported in making a decision for their child, based on complete and accurate information and without undue delay, including two face-to-face counseling sessions prior to relinquishment.

2. Birth parents shall be informed of their legal rights, obligations, and responsibilities during face-to-face counseling sessions; they should also receive support in considering what their decision will mean to them and to their child.

3. A birth mother shall wait at least 24 hours after the birth of her child before she may give legal consent to the adoption of her child.

4. Birth parents shall be treated with respect, consideration, fairness, and given full recognition of personal dignity and individuality. Birth parents shall be assisted in consideration and determination of whether they want to disclose their identity, or hear about or from the child directly or indirectly in the future.

D. Agencies cannot guarantee confidentiality in any adoption, nor can the agency guarantee any arrangements for contact and exchanges of information between birth parents and adoptive parents. Birth parents and adoptive parents shall be so advised.

E. Social Services to Birth Parents After Termination or Transfer of Parental Rights: Services shall be available to birth parents after their rights and responsibilities are terminated, as well as after the adoption is finalized. The following services shall be provided to birth parents:

1. Help with the relinquishment process and immediate plans for their own lives.

2. A process where newly learned medical or genetic information that is important to the adopted child, birth parents, or adoptive family can be exchanged.

3. Providing non-identifying information on the potential adoptive family, such as age, physical characteristics, educational achievement, family constellation, profession, nationality, health, other non-identifying information, and reason for adopting.

4. Information shall be shared regarding Utah's Mutual Consent Voluntary Adoption Registry.

F. Agency Records: Birth parents shall sign documents of services received during counseling and relinquishment.

G. Determination of Religion in Which the Child is to be Reared:

1. The agency's policies regarding the consideration of religion in the selection of adoptive families shall be made clear to birth parents.

2. Children who have already established some identification with a particular religious faith of their own

shall have the right to have such identification respected in any adoptive placement. Efforts shall be made to place the child within that religious faith. This information shall be documented.

3. Agencies under religious auspices may choose to establish policies and practices that are consistent with their particular religious faith.

H. Involuntary termination of Parental Rights: The agency shall have the responsibility to initiate termination of parental rights proceedings consistent with the applicable Utah statutes.

I. Relinquishment of Parental Rights for Adoption: Counseling shall be provided to the birth parents who are planning to place their child for adoption so the decision can be made as early as possible. In the case of parents who voluntarily relinquish their parental rights to an authorized child welfare agency, proper legal procedures for the termination of parental rights should be ensured.

J. Emotional Readiness to Relinquish Parental Rights: Documents indicating parental willingness to place the child for adoption shall be signed in accordance with the parents' emotional readiness to make the definitive decision, and not in accordance with the immediate needs of an adoptive family.

K. Duration of Parental Responsibility: Parental legal responsibility shall end when an authorized child welfare agency accepts the relinquishment of parental rights and the parental rights are terminated.

L. Establishment of Paternity: Legal paternity proceedings shall not be required as a condition for adoption services.

R501-7-4. Services for Children.

A. Assessment of Children: When it has been determined that adoption is the best plan for a child, an assessment shall be made within 30 days to obtain information to assist in the placement process.

1. Determine whether the child's needs can best be met in adoptive placement, and if so, what kind of adoptive family should be selected for the child.

2. The evaluation shall be used to assist prospective adoptive families to make their decision about the child and birth family.

3. Provide the child with needed information concerning the birth family when appropriate.

B. Developmental History: A developmental history of the child that is as complete as possible, shall be obtained from the birth parent. If the child has been in an out-of-home placement prior to being placed in an adoptive home, information obtained from caseworker observation, pediatrician, foster parents, and if indicated, from nurses, psychologists, and other consultants shall be included. The developmental history shall include the following:

1. birth and health history,

2. early development, particularly indications of the way the child has taken to like, i.e., locomotor development, feeding experiences, temperament, etc.,

3. the child's adaptation to previous living experiences and situations,

4. the child's experience prior to adoptive placement, particularly maternal attitudes during the pregnancy and early infancy, continuity of care and affection, foster placements, and separation experiences,

5. determination of the child's cultural and ethnic background and its impact on values and morals, and

6. language skills, including second language capabilities and other talents and interests.

C. Medical Examination: A medical examination by a qualified physician shall be conducted to determine the state of the child's health, and any known or potentially significant factors that may interfere with normal development or may signal any potential medical problems. At a minimum, the following shall be documented and shared with parents prior to placement:

1. Evaluation of the infant that includes a correlation and interpretation of all available information, such as, genetic, laboratory, etc.

2. Medical care and immunizations.

3. The nature and degree of any existing handicap, complete information about the type of handicap and the concomitant treatment and support programs that should be provided to the child and adoptive parents, extra costs of medical care that can be anticipated, and plans to subsidize the health care, if so indicated.

D. Psychological Testing: Psychological testing for children should be used selectively and as a tool for observation and diagnosis of current developments, if warranted.

E. Family History: Information should be obtained from the birth parents about their family backgrounds to:

1. Determine whether there are any significant hereditary factors or pathology, including illnesses of the birth mother or father, that may affect the child's development.

2. Assist the adoptive parents and, eventually, the child to understand the family situation, the reasons for adoption, and the birth family histories.

3. Decide, in the case of older children who have lived with their birth families, which characteristics should be given consideration in selecting and preparing for a new family.

F. Evaluation of Children: An interdisciplinary approach based upon the needs of the child is to be used in the selection process either by asking other professionals to submit written recommendations or by inviting them to participate as a member of the placement committee.

G. Timing of Adoptive Placement: Infants under the age of two should be placed with their adoptive families at the earliest time possible after being freed for adoption and directly upon release from the hospital in the case of newborns.

H. Placement of Children Over Five Years of Age: When placing children over the age of five, care shall be taken to ensure that an adequate assessment of their needs is made, that they and the adoptive family are prepared for the placement, and a plan is developed to ensure that the needed services are provided after placement.

I. Temporary Care Before Placement for Adoption: A

child that has been freed for adoption and is awaiting placement with an adoptive family shall be placed in a foster home where his or her needs can be met and which can assist in preparing the child for placement in a prospective adoptive home Children awaiting adoptive placement shall only be placed in group or residential treatment programs when the needs are such that they can only be met in such a setting.

J. Responsibility for a Different Permanency Plan: Children that have been accepted for adoptive placement will have a permanency treatment plan developed with a goal of adoptive placement and finalization, and objectives that focus on assisting the family and child during the transition phase to ensure that ongoing services required are obtained.

K. Supervisory Visits: After a child has been placed in the adoptive home, a social worker shall supervise the placement until finalization to assist with the transition and assist the family in obtaining any needed services. At a minimum, three supervisory visits shall be made so the agency can have sufficient information to make a recommendation regarding finalization.

L. Listing with the Adoption Exchanges: Agencies having a child available for adoption who has not been placed within 60 days of being freed, shall document all efforts to screen the child with other Child Placing Agencies and list the child with inter-state Adoption Exchanges to help find an appropriate placement.

M. Preparation of the Child for Placement: Sufficient time and planning must be provided according to the needs of the child. The child should be helped to accept the adoptive placement and should be protected insofar as possible from emotional disturbances associated with sudden separation from a known situation.

1. The child who is old enough to comprehend and take some responsibility should have a part in the decision that adoption is the best plan. The child must know that his or her own parents cannot continue to provide care and must accept separation from them in order to become a part of another family.

2. Before meeting with the adoptive parents, the child should know that placement is under consideration. Should the adoptive family decide not to proceed with placement, the worker will help the child to understand the situation in a manner that will minimize any damage to the child.

3. The child should have the opportunity to become acquainted with the new parents gradually. A series of short visits to the adoptive home before placement can be particularly helpful. Such visits should not take place until after adoptive parents have expressed interest in adopting the child.

4. The number and place of visits with adoptive parents, and the time of placement should be determined by the age and the particular needs of the child and the family.

N. Retention of Records: In an effort to prepare for possible requests for information pertinent to a significant medical or hereditary concern on the part of the adoptive family or adult adoptee, the agency shall maintain in the file, medical, historical and developmental information and records about the child and the birth parents, received prior to finalization.

R501-7-5. Services to Adoptive Parents.

A. Services for Adoptive Parents:

1. Discussion of birth parent's rights, including legal rights of the putative father. Provisions shall be made for accessibility to non-identifying information on the child's birth family. Information shall be made available about Utah's Mutual Consent Voluntary Adoption Registry through the Utah Bureau of Vital Records.

2. Individual and group social work counseling shall be provided to help the adoptive parent evaluate and develop their capacities to meet the needs of the children added to the family. This support should continue into the post-placement period when it is necessary and deemed appropriate. If an agency cannot provide this preparation and support, they are responsible for offering another support for the family.

3. Assistance in the selection of a child whose needs the adoptive parents will be able to meet.

4. Preparation of both the child and family for the placement of the child in the home, including discussion and approval of a subsidy when appropriate.

5. If an agency places a child for adoption, that agency is responsible for the supervision of the placement and continued support to the child and family. The agency shall assist with finalization.

B. Basis for Selection of Adoptive Parents:

1. The agency must have a written process for approval of adoptive homes. The pre-adoptive evaluation shall include a series of interviews with the adoptive applicants in the office and at home. If the family has children or other individuals living in the home, they shall be part of the pre and post adoption evaluation and application process. The applicants shall supply names of at least three non-related references. The applicants must be informed, in writing, as to the acceptance or the denial of their application. This notice must be given in a timely manner with the agency's appeal process.

2. The agency shall select applicants who are able to:

a. provide the continuity of a caring relationship,

b. provide non-identifying or open linkages to the child's birth family if and when appropriate,

c. be informed and sensitive to ethnic, religious, cultural, and racial heritage, and

d. demonstrate an ability to understand the needs of a child at various developmental states.

3. Agencies shall assess each applicant from the perspective of what would be in the best interest of a child.

4. No single factor should be decisive in and of itself.

C. Criteria of Capacity for Adoptive Parenthood, Contents of Home Study Evaluation or Pre-Adoptive Evaluation Eligibility:

1. Assessment of adoptive applicants should be designed to provide the best indication of an applicant's capacity for adoptive parenthood; total personality functioning; emotional maturity; quality of spousal relationship, when applicable; capacity to parent children; attitude toward childlessness and readiness to adopt; and reasons for adoption.

2. The agency must have written standards for approval of adoptive families. These standards must include the

following items plus other aspects of lifestyle and behavior which reflect the ability to protect, nurture, and care for the child. Agencies shall provide adoptive applicants with a realistic description of their services and procedures.

a. Residence: Adoptive applicants shall reside either within the area that the agency can serve directly, or in an area where the agency can procure services through another agency with acceptable standards.

b. Age: Chronological age alone should not be the determining factor for the selection of adoptive applicants. Utah statutes require that the adoptive parents be at least ten years older than the child placed for adoption. Physical condition and life expectancy of the applicants should be taken into consideration to protect the child against a repeated, foreseeable loss of parents through death or incapacitating illness. Also, it is important for applicants to be physically and emotionally capable of meeting the needs of the children as they grow and develop.

c. Marital Status: When applicants are married, husband and wife shall maintain a residence together and the relationship shall be of sufficient duration to give evidence of its stability. Single parents shall be considered in accordance with their ability to meet the needs of available children.

d. Health of Applicant: A medical history and recent physical examination shall be required as evidence that the applicants have reasonable health and life expectancy, and that the applicants have the physical and emotional ability to fulfill the responsibilities of parenthood.

e. Family Income: Adoptive applicant income shall be sufficient in order to provide financial stability and security for a child. Income alone shall not be the determining factor for the selection of adoptive applicants.

f. Housing: Housing and neighborhood shall provide space and living conditions necessary for health, safety, emotional well-being, and self-respect of the family and the adoptive child. Strict space requirements should not be a deterrent to placement if relationships in the family are satisfactory.

g. Religion: Lack of religious affiliation or of a religious faith should not be a bar to consideration of any applicant to meet the specific needs of a child.

h. Applicant Abilities: Consideration shall be given to the ability of the applicant to meet the specific needs of the individual child.

i. Working Parents: Applicants who work outside the home shall not be excluded from consideration as adoptive parents. Consideration shall be given to a plan to provide security and responsible child care adequate to the individual child's needs.

j. Provisions of R501-14 and R501-15 shall be met.

D. Use of Committee in Placement: The final decision to approve a family for the placement of a child should be the responsibility of the professional staff. The decision shall be made by more than one person. The applicants shall be informed in writing of the decision of the committee. If the agency disapproves the applicants for placement, the applicants are entitled tp be informed of this in person and to be given the reasons for the agency decision. They are also entitled to the opportunity to appeal the decision and should be informed of this process in writing. The agency shall maintain a written record of any appeals.

R501-7-6. Services During and After Adoption Placement.

A. Selection of Adoptive Family for Specific Child:

1. The selection of the adoptive family for a specific child shall be made through the use of a multi-disciplinary committee as needed and the final decision shall be based on the family's and the child's suitability for each other. Suitability is determined by the family's ability to meet the individual needs of the child and the capacity of the child to benefit from the family.

2. Consideration for the wishes of the birth parents, the adoptive parents, and the adoptee, when applicable. shall be a part of the selection process.

3. The decision of the committee shall be in writing, signed by all members of the committee, and filed in the case record.

B. Information to Adoptive Parents:

1. Agency adoption fees shall be discussed with the adoptive family prior to starting the application process. A flat fee may be charged for processing application materials, which is not refundable, regardless of whether the family is accepted or not, and an itemized account of the charges shall be made available to the family. Placement fees shall also be discussed with the family prior to applying along with payment schedules, and these fees shall reflect a reasonable cost based on the expenses incurred by the agency.

2. Adoptive parents shall be provided information about the children they adopt and their birth parents, when available, that will help them to:

a. Understand their child, including talents, special needs or problems.

b. Decide whether or not they can accept the child.

c. Feel comfortable about the birth parents and the reasons for placement.

d. Understand their child's heredity, maturation process, and developmental issues related to adoption.

e. Talk to their child about their biological origins.

3. Adoptive parents shall be given full disclosure of information about the birth parents and child with the exception of information deemed by law to be identifying. The information to be shared shall include the following:

a. developmental and behavioral history,

b. level of current development,

c. personality and temperament traits,

d. medical information,

e. ethnic background,

f. cultural hereditary conditions,

g. prior placement history,

h. information about the birth parents that would be helpful for the child to know while growing up, such as physical descriptions, special abilities, and personality traits.

i. Agency staff shall be prepared to review with the adoptive family the above information and to help them relate it to present day and placement consideration for their family.

5. When a Child Placing Agency has a child who requires an adoption subsidy, the agency shall coordinate with the state agency to establish the subsidy. Subsidies shall

be paid by the state agency based on state policy. The Child Placing Agency shall discuss the subsidy with the family.

C. Pre and Post Placement Services: The Child Placing Agency shall provide continuing support and help to the child and his or her adoptive family as needed during the time after placement both before and following the legal adoption. These services shall be recorded and include:

1. The agency shall inform the adoptive family, prior to placement, of the available services, so that the family shall view the services as a source of help and security.

2. The agency has a protective function when the child's custody remains with the agency during the placement prior to finalization, and is responsible for determining that the child's adjustment and development is satisfactory and that the family is able to cope with any difficulties. This may be accomplished through direct services and, when necessary, referring to specialized services.

3. The agency shall provide assistance to the family in helping their child, friends, family members, extended family members, neighbors, schools, etc., understand the adoption process. This shall be accomplished through individual interviews, family counseling services, selected literature, and consultation.

4. The agency shall provide services to the adoptive family that will assist them in understanding their own feelings, the adjustments of adding a child to their family, understanding the complicated feelings of the child, the specialized services that their child may need in the home and out of the home. This shall be accomplished through individual sessions and family support groups.

5. The frequency of home visits, office contacts, telephone calls, and other contacts shall depend on whether the child is an infant, an older child, or a child with medical or other difficulties, and whether the adoptive parents are faced with unanticipated problems. Early placement visits shall convey the agency's support and readiness to help. A contact soon after placement is essential in building the relationship and shall take place within two weeks of placement. A minimum of three supervisory visits shall take place before finalization, with at least two visits in the home.

6. The length of time between placement and finalization shall be determined by Utah State Law. Finalization shall not take place until the family and the agency have determined that they are ready. The post-placement period, however, shall not go on indefinitely. In each case, a plan shall be made for the time likely to be needed, with an outer limit set.

7. The agency shall consider removal of children before legal adoption only if circumstances impair their security in the family or jeopardize their physical and emotional development. These circumstances might include incompatibility, mental illness, seriously incapacitating illness, or the death of one of the adoptive parents, separation of adoptive parents, abuse, neglect, or rejection of the child, lack of attachment to the child, an unanticipated physical or mental problem of the child, or request by the adopting parents for the removal of the child.

8. The agency shall offer supportive services to maintain the family and document this support. Services may include the following:

a. respite care for the child,

b. counseling services, and

c. family and adoption committee review of placement and planning.

D. Post Adoption Services: Adoption services shall be made available to birth and adoptive parents and adopted persons after the legal adoption. These services shall respond to matters related to the adoption, and will include the following:

1. Information, counseling services within the agency or referral to proper resources for counseling, crisis intervention, respite care, and specialized support groups.

2. Adoptees shall be offered post-legal adoption services that assist them in exploring their attitudes toward themselves as adopted persons.

3. Within the relevant statutes, child welfare agencies shall assist adopted persons who have reached the age of majority in their search for information about, or their wish to establish contact with birth parents, siblings, or other members of their birth family, provided that these persons are willing.

R501-7-7. Adoption and the Community.

A. Adoptions in Relation to Community Child Welfare Programs: Private and public agencies shall:

1. List waiting children with local and regional exchanges.

2. Be active in interpreting child welfare programs and adoption services to assure widest utilization by persons needing the services, and to ensure realistic understanding of services by the public.

3. Participate in any joint inter-agency planning and coordination to maximize programs so that birth parents and adoptive applicants will have freedom of choice and equal opportunity to apply for services, regardless of racial, ethnic, religious group, or ability to pay a fee.

B. Expansion of Adoption Services:

1. Adoption agencies shall have in place methods to serve children awaiting for adoption, particularly those hard to place children for whom there are limited resources as follows:

a. Public information about programs so that persons needing services will know where to obtain the services.

b. Access to adoption subsidies for families accepting hard to place children.

c. An adequate number of adoptive families for hard to place children.

d. Services available after placement and legal adoption.

2. Adoption agencies shall have in place a method to determine unmet placement needs and a plan to recruit adoptive families when needs are identified.

3. Recruitment efforts shall involve adoptive parents and include use of persons of similar ethnic or racial groups as the children requiring families, as well as coordination with ethnic and cultural minority groups, religious, and other civic groups as needed.

C. Legal Protection Required for Adoption Services: Adoption agency mission statements, policies, and procedures

shall assure that the following legal protections are met:

1. The best interests of the child are paramount.

2. Parental rights and responsibilities are safeguarded.

3. Children are not deprived unnecessarily of either birth parents or a permanent family.

4. Legal responsibility for the child will be clearly established at all times.

5. Children will not be placed in unsuitable families or families detrimental to the child's growth and development.

D. Transfer of Parental Rights:

1. Adoption agency policies and procedures shall assure an orderly adoption process for the following:

a. The legal separation of the child from birth parents.

b. Transfer of custody and guardianship of the child.

c. Consent to a specific adoption.

d. Final transfer of parental rights and duties to the adoptive parents.

2. Agencies shall follow Utah State Statutes regarding the relinquishment of children, termination of parental rights, placement, and finalization procedures.

3. Legal risk adoptions shall be made only when:

a. The child's best interests are served.

b. Adoption is clearly the goal.

c. Termination is likely and able to be obtained in a reasonable time period.

d. Adoptive parents have given written consent, indicating that they are fully informed of the risks involved.

R501-7-8. Interstate or Out-of-Country Adoptions.

A. For interstate placements, adoption agencies shall comply with requirements of the Interstate Compact for Placement of Children.

B. Prior to an adoption or placement with a family out of the state, the agency shall complete a plan with the other agency which defines financial and social services responsibilities.

C. International adoption agencies shall abide by all applicable Federal, State, and Immigration laws and regulations, and shall document that:

1. The child is legally freed for adoption in the country of origin.

2. Information was provided about the physical or mental health of the orphan or abandoned child.

3. Referral information was given to the adopting parents about naturalization proceedings.

4. The country of origin was provided all follow-up information as that country requires prior to final adoption.

5. Agencies which place children in inter-country adoptions shall ensure that the following legal processes occur properly:

a. consent to adoption and transfer of parental rights,

b. legal responsibility for the child in the new country,

c. validity of the adoption in the country of origin, if they are adopted in that country, and

d. application to adopt or re-adopt the child or children in the United States, as applicable.

D. The same standards shall apply to home studies for out-of-country children as for all adoption services.

E. International Adoption Agencies shall do the following:

1. Provide all applicants with policies governing refunds when adoption services that have been promised are not rendered or when there is a disruption of services that may nullify an adoption.

2. Notify adoptive applicants within five working days whenever it receives information that a foreign country is suspending its adoption program.

3. Verify the credentials and qualifications of agents in foreign countries working in their behalf on adoption matters.

4. Disclose data to adoptive applicants on their rates of successful adoptions and requests.

KEY: licensing, human services, child placing
December 2, 1997 62A-2
Notice of Continuation September 2, 1997

R501. Human Services, Administration, Administrative Services, Licensing.
R501-11. Categorical Standards.
R501-11-1. Social Detoxification Programs.

A. Definition

Social Detoxification Program means a short-term non-medical treatment service for individuals unrelated to the owner or provider in accordance with 62A-2-101,19.

B. Purpose

The program offers room, board and specialized rehabilitation services to persons who are in an intoxicated state. In social detoxification, individuals are assisted in acquiring the sobriety and a drug free condition necessary for living in the community and places emphasis on helping the individual obtain further care after detoxification.

C. Administration

A current list of enrollment of all registered consumers shall be on-site at all times.

D. Staffing

1. Each program shall have an employed manager who is responsible for the day to day resident supervision and operation of the facility. The responsibilities of the manager shall be clearly defined. Whenever the manager is absent there shall be a substitute available.

2. Professional staff shall include at least one of the following individuals who have received training to work with substance abusers:

a. a licensed physician, or a consulting licensed physician, or

b. A licensed mental health therapist, or a consulting licensed mental health therapist, or

c. a licensed psychologist or consulting licensed psychologist, and

d. a licensed substance abuse counselor or unlicensed staff who work with substance abusers shall be supervised by a licensed clinical professional.

3. The program shall have a staff person trained, by a certified instructor, in first aid and CPR on duty with the consumers at all times.

E. Direct Service

Program service records shall contain the following:

1. name, address, telephone number and admission date,

2. emergency information with names, addresses and telephone number, of a preferred individual and next of kin, and

3. a statement indicating that the consumer meets the admission criteria.

F. Physical Facilities

1. Staff Quarters: A 24 hour live-in staff shall have separate living space with a private bathroom.

2. Administrative Space: Program shall have space to serve as an administrative office for records, secretarial work and bookkeeping.

3. Sleeping Accommodations

a. Large rooms may be utilized as dormitories.

b. A minimum of 50 square feet per consumer shall be provided in a multiple occupant bedroom. Storage space will not be counted.

c. A minimum of 70 square feet per individual shall be provided in a single occupant bedroom. Storage space will not be counted.

d. Sleeping areas shall have a source of natural light, and shall be ventilated by mechanical means or equipped with a screened window that opens.

e. Each bed, none of which shall be portable, shall be solidly constructed and be provided with clean linens after each consumer stay and at least weekly.

f. Sleeping quarters serving male and female residents shall be structurally separated.

4. Bathrooms

a. Bathrooms shall meet a minimum ratio of one toilet, one lavatory, one tub or shower for each eight residents. These shall be maintained in good operating order and in a clean and safe manner.

b. Toilets and baths or showers shall allow for individual privacy. They shall also accomodate consumers with physical disabilities, as required.

c. Bathroom mirrors shall be secured to the walls at convenient heights.

d. Each bathroom shall be properly equipped with toilet paper, towels, soap and other items required for personal hygiene.

e. Bathrooms shall be ventilated by mechanical means or equipped with a screened window that opens.

5. Laundry Service

Programs which provide for common laundry of linens and clothing, shall provide containers for soiled laundry separate from storage for clean linens and clothing. Laundry applicances shall be maintained in good operating order and in a clean and safe condition.

6. Food Service

a. One person shall be responsible for food service. If this person is not a professionally qualified dietician, annual consultation with a qualified dietitian shall be obtained.

b. The person responsible for food service shall maintain a current list of consumers with special nutritional needs, record in the consumers service record information relating to special nutritional needs, and provide nutrition counseling where indicated.

c. Kitchens shall have clean and safe operational equipment for the preparation, storage, serving and clean up of all meals.

7. Program shall maintain appropriate documentation of compliance with the following items as applicable:

a. local zoning ordinance,

b. local business license,

c. local building codes,

d. local fire safety regulations, and

e. local health codes.

8. The program shall take approproate measures to ensure a safe physical environment for consumers and staff.

G. Specialized Services

1. The program shall not admit those who are currently experiencing convulsions, in shock, delirium tremens, in a coma, or unconscious.

2. Program shall complete the clinical assessment in 72 hours after a consumer is admitted.

3. Consumers shall be tested for tuberculosis, and program staff shall be tested every six months.

4. Prespription medication shall be provided as prescribrd by a qualified person, according to the Medical Practices Act. Mecication shall be kept in a locked storage area. The program shall have a written policy and procedure to include the following:

a. self administered medication,

b. storage,

c. control, and

d. release and disposal of drugs in accordance with federal and state regulations.

KEY: licensing, human services, substance abuse*
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R501. Human Services, Administration, Administrative Services, Licensing.
R501-16. Intermediate Secure Treatment Programs for Minors.
R501-16-1. A. Definition.

Intermediate Secure Treatment Program means a 24-hour group living environment for four or more individuals unrelated to the owner or provider, in a facility designed to physically restrict minors' ability to leave the program at their own free will.

R501-16-2. B. Purpose.

The program offers room and board and provides for or arranges for the provision of specialized treatment, rehabilitation or habilitation services for children and youth. In residential treatment, each is assisted in acquiring the social and behavioral skills necessary for living in the community.

R501-16-3. C. Administration.

1. Records of enrollment of all registered consumers shall be on-site at all times.

2. The program shall document operational costs and revenue according to common and accepted accounting principles.

3. The program shall have fire, liability, and vehicle insurance.

4. The program shall have copies of any contracts or agreements with other service agencies or individuals providing services to the consumers of the program.

5. The program shall not handle the major personal business affairs of a consumer, without request in writing by the consumer and legal representative.

6. Providers receiving children and youth consumers into the program from outside the boundaries of the State of Utah shall initiate the Interstate Compact on the placement of children and youth prior to the placement.

R501-16-4. D. Staffing.

1. The program shall have an employed manager who is responsible for the day to day resident supervision and operation of the facility. The responsibilities of the manager shall be clearly defined. Whenever the manager is absent, there shall be a substitute to assume managerial responsibility, as needed.

2. The program shall have a staff person trained in first aid and CPR on duty in the residence, when residents are present, at all times.

3. Programs that utilize students and volunteers who work with consumers, shall provide training and evaluation of volunteers. Volunteers who work with consumers shall be informed verbally or in writing of program objectives and scope of service.

4. Programs shall comply with BCI/MIS clearance requirements.

5. Professional staff shall include the following who have received training in the specific area of care:

a. a licensed physician, or consulting licensed physician,

b. a licensed psychologist, or consulting licensed psychologist,

c. a licensed mental health therapist, and

1) programs with an enrollment of 20 to 39 consumers shall employ one or more licensed professional therapists to provide a minimum of 20 hours service per week,

2) programs with an enrollment of 40 to 59 consumers shall employ one or more licensed professional therapists to provide a minimum of 30 hours service per week, and

3) programs with an enrollment of 60 or more consumers shall employ one or more licensed professional therapists to provide a minimum of 40 hours service per week,

d. a licensed registered nurse, or a consulting licensed registered nurse,

1) programs with an enrollment of 20 to 39 consumers shall employ one or more registered nurses to provide a minimum of 20 hours service per week,

2) programs with an enrollment of 40 to 59 consumers shall employ one or more registered nurses to provide a minimum of 30 hours service per week, and

3) programs with an enrollment of 60 or more consumers shall employ one or more registered nurses to provide a minimum of 40 hours service per week.

6. Unlicensed staff who are trained to work with children and youth who are chemically dependant or emotionally disturbed or behaviorally disturbed or conduct disordered, shall work under the supervision of a licensed clinical professional.

7. The program shall have a minimum of two staff persons on duty. A staff ratio of no less than one staff to every five consumers shall exist at all times, except nighttime sleeping hours when staff may be reduced. Sensitivity to age range and other developmental factors shall be considered when determining staff ratios.

8. A program with a mixed gender population shall have at least one male and one female staff on duty at all times.

9. Unlicensed Direct Care Staff Training

a. Staff shall receive 20 hours of pre-service training and orientation before being responsible for the care of consumers that shall include at a minimum, the following topics:

1) crisis intervention,

2) facility policies and procedures,

3) rights and responsibilities of consumers and grievance proceedings,

4) passive restraint and security procedures, and

5) fire emergency procedures.

b. Staff shall receive 30 hours of additional training annually that shall include at a minimum, the following topics:

1) human relations and communication skills,

2) special needs of youth and families,

3) problem solving and guidance,

4) consumer rules and regulations,

5) documentation and legal requirements,

6) basic first aid,

7) safety in a secure setting, and

8) universal precautions for blood borne pathogens.

R501-16-5. E. Direct Service.

Treatment plans shall be reviewed and signed by the clinical supervisor as frequently as noted in the treatment plan.

R501-16-6. F. Physical Environment.

1. The program shall provide written documentation of compliance with:

a. local zoning ordinances,

b. local business license requirements,

c. local building codes, specific to an intermediate secure facility,

d. local fire safety regulations as required for an intermediate secure facility,

e. local and state health codes,

f. Section 504 of the Rehabilitative Act of 1973, if it is a federally funded program,

g. civil rights notification, and

h. the Americans With Disabilities Act,

2. The program shall provide written documentation of acknowledgment from the appropriate government agency for new program services or increased consumer capacity.

3. Building and Grounds

a. The program shall insure that the appearance and cleanliness of the building and grounds are maintained.

b. The program shall take reasonable measures to ensure a safe physical environment for consumers and staff.

c. The facility shall incorporate the use of fixtures, and furnishings that aid in preventing occurrence of suicide, such as: plexiglass or safety glass, recessed lighting or sealed light fixtures, non exposed fire sprinkler heads, pressure release robe hooks, etc.

d. Consumers are not to be locked in their sleeping rooms.

R501-16-7. G. Physical Facilities.

1. Live-in staff shall have separate living space with a private bathroom.

2. The program shall have space to serve as an administrative office for records, secretarial work and bookkeeping.

3. Indoor space for free and informal activities of consumers shall be available.

4. Provision shall be made for consumer privacy.

5. Space shall be provided for private and group counseling sessions.

6. Sleeping Space

a. No more than four persons shall be housed in a single bedroom.

b. A minimum of sixty square feet per consumer shall be provided in a multiple occupant bedroom. Storage space shall not be counted.

c. A minimum of eighty square feet per individual shall be provided in a single occupant bedroom. Storage space shall not be counted.

d. Sleeping areas shall have a source of natural light, and shall be ventilated by mechanical means or equipped with a screened window that opens.

e. Each bed shall be solidly constructed, no portable beds, and be provided with clean linens.

f. Sheets and pillow cases shall be changed and cleaned at least weekly.

g. Sleeping quarters serving male and female consumers shall be structurally separated.

h. Consumers shall be allowed to decorate and personalize bedrooms in accordance with individual treatment plans, with respect for other residents and property.

7. Bathrooms

a. The program shall have separate bathrooms for males and females. These shall be maintained in good operating order and in a clean and safe manner.

b. Bathrooms shall accommodate consumers with physical disabilities, as required.

c. Each consumer shall be supplied with toilet paper, towels, soap and other items required for personal hygiene.

d. Bathrooms shall be ventilated by mechanical means or equipped with a screened window that opens.

e. Bathrooms shall meet a minimum ratio of one toilet, one lavatory and one tub or shower for each six residents.

f. There shall be toilets and baths or showers that allow for individual privacy.

g. There shall be safety mirrors secured to the walls at convenient heights.

h. Bathrooms shall be located to allow access without disturbing other residents during sleeping hours.

8. There shall be indoor and outdoor space adequate to accommodate gross motor exercise and recreation.

R501-16-8. H. Equipment.

1. Furniture and equipment shall be of sufficient quantity, variety, and quality to meet program and consumer plans.

2. All furniture and equipment shall be maintained in a clean and safe manner.

R501-16-9. I. Laundry Service.

1. Programs that permit individuals to do their own laundry shall provide equipment and supplies.

2. Programs that provide for common laundry of linens and clothing shall provide containers for soiled laundry that are separate from clean linens and clothing.

3. Laundry appliances shall be maintained in a clean and safe condition.

R501-16-10. J. Food Service.

1. One person shall be responsible for food service. If this person is not a professionally qualified dietitian, regularly scheduled consultation with a professionally qualified dietitian shall be obtained. Meals served shall be from dietitian approved menus.

2. The person responsible for food service shall maintain a current list of consumers with special nutritional needs and record in the consumers service record information relating to special nutritional needs and provide for nutrition counseling where indicated.

3. The program shall establish and post kitchen rules and privileges according to consumer needs.

4. Consumers present in the facility for four or more consecutive hours shall be provided nutritious food.

5. Meals may be prepared at the facility or catered.

6. Kitchens shall have clean, operational equipment for the preparation, storage, serving, and clean up of all meals.

7. Adequate dining space shall be provided for consumers. The dining space shall be maintained in a clean and safe manner.

8. When meals are prepared by consumers there shall be a written policy to include:

a. rules of kitchen privileges,

b. menu planning and procedures,

c. nutritional and sanitation requirements, and

d. schedule of responsibilities.

R501-16-11. K. Storage.

1. The program shall have locked storage for medications.

2. The program shall have locked storage for toxic and hazardous chemicals and materials, according to the direction of the local fire and health authorities.

R501-16-12. L. Medication.

1. Prescriptive medication shall be provided as

prescribed by a licensed practitioner.

2. The program shall have designated qualified staff, who shall be responsible to:

a. administer medication, or

b. supervise self-medication,

c. record medication, including time and dosage, according to prescription, and

d. record effects of medication.

R501-16-13. M. Specialized Services.

1. The program shall not admit those who are currently experiencing convulsions, in shock, delirium tremens, being in a coma, or being unconscious.

2. Direct service staff shall complete first aid and CPR training within six months of being hired and receive updated CPR and first aid training as required by the certifying agency.

3. The program staff shall be tested for Tuberculosis (TB) annually and consumers shall be tested for TB before admission.

4. Provisions shall be made for children and youth to continue their education with a curriculum approved by the State Office of Education.

5. Programs that provide their own school shall be recognized by an educational accreditation organization, i.e., State Board of Education or the National School Accreditation Board.

6. The program Director or designee shall meet with the Superintendent or designee of the local school district at the time of initial licensure, and then again each year as the program renews its license to complete the necessary student forms including youth education forms.

7. Unless the individual treatment plan specifies otherwise, the following therapies shall be provided to each child or youth at a minimum:

a. one individual therapy session weekly,

b. one group therapy session weekly, and

c. one family or couple therapy session monthly.

8. Consumers record files shall have documentation of time and date of the session with the signature of the provider.

9. An accurate record shall be kept of all funds deposited and withdrawn with the residential facility for use by a consumer. Consumer purchases of over $20.00 per item, shall be substantiated by receipts signed by consumer and appropriate staff.

10. Daily program schedules shall include gross motor activities that provide the consumer with large muscle exercise.

11. The program shall provide for activity services to meet the physical, social, cultural, health, maintenance and rehabilitation needs of the consumer as defined in the treatment plan.

12. A recreational program offering a wide variety of activities suited to the interests and abilities of the consumers and leisure counseling as needed, shall also be provided daily.

13. Admissions and reviews of each consumer shall be done strictly in accordance with State Statutes, 62A-8-501 and 62A-12-282.1, as applicable. Support of the laws shall be maintained.

14. Health Facility Licensure Code R432-151-15. Special Treatment Procedures. Included is Section 1, Section 2, a. through c. and Section 3. through 4. for reference.

a. The program shall identify the behavioral interventions and special treatment procedures to be utilized and will provide justification and standards for use, and shall develop standards governing the use of these procedures consistent with consumer rights, and fire and health standards.

b. The program shall identify policies and procedures for the following:

1) use of seclusion and time out,

2) prescription and administration of drugs, and

3) use of involuntary medicine.

c. Use of painful stimuli is not allowed.

d. Indications for use of special treatment procedures shall be documented in consumers records.

KEY: licensing, human services, youth
December 2, 1997 **62A-4a-413**

R512. Human Services, Child and Family Services.
R512-1. Description of Division Services, Eligibility, and Service Access.
R512-1-1. Introduction.

A. Pursuant to Sections 62A-4a-103 and 62A-4a-105, the Division of Child and Family Services (DCFS) is authorized to provide programs and services which support the strengthening of family values, including services which preserve and enhance family life and relationships; protect children, youth, and families; and which advocate and defend family values established by public policy and advocacy and education.

B. Child Welfare Services shall be made available for children who are abused, neglected, exploited, abandoned; for those whose parents are unable to care for them; and for the assisting of youth who are ungovernable or who are runaways. Spouse abuse services shall be made available to assist victims who have been abused or threatened by their partners.

C. The Division shall provide protective services, services given in the family home, short-term temporary shelter care services, and out-of-home placement and adoption services. The "Best Interest of the Child" shall be the guiding principle used in making decisions for those served by the Division.

D. The programs administered by the Division of Child and Family Services have been established to help children remain with their families, to solve any appropriate problem in their homes, and, if that is not possible, to place them in substitute care for as short a time as possible. When the Division finds that return of a child to the family will never be possible, adoption or guardianship shall be sought to insure a permanent family for the child. The Spouse Abuse services shall provide comprehensive assistance to victims of abuse, their dependent children, and in some cases, to the abusive spouse or partner so that families can be restored to harmony or helped to develop new, more productive ways of life.

E. The Division shall provide its services through local offices situated throughout the state. These offices are listed in telephone directories under Utah State Department of Human Services, Division of Child and Family Services.

F. The State Division of Child and Family Services located in Salt Lake City shall operate as the central office to administer Child Welfare programs, which include: (1) program planning, (2) policy development, (3) training and consultation, (4) program financing, (5) administration of the Interstate Compact on Placement of Children and the Interstate Compact on Adoption and Medical Assistance, (6) legislative and federal liaison, and (7) information and referral.

R512-1-2. Prevention Services.

The Division will either provide for, or contract for, any of several child abuse and neglect prevention services. Most prevention services shall be provided and funded according to the requirements of Section 62A-4a-309, known as the Children's Trust Account legislation.

R512-1-3. Intervention Services.

A. Protective Services. Child abuse and neglect investigation and services shall be provided to eligible clients. All referrals received alleging child abuse and neglect will be investigated in accordance with the provisions of Section 62A-4a-409. The Division will determine whether or not a child has been abused or neglected, or is in danger thereof, and shall take necessary action to protect the child from potential danger. Temporary care of children in shelter homes may be provided when children cannot be returned home due to the likelihood of further abuse or neglect. The parents of a child in shelter care will be kept informed of the child's health and safety and will be involved in developing plans for themselves and their child. If parents desire to visit their child in shelter care, shelter staff will arrange, as appropriate, visits with the child at the location designated by shelter staff but not at the shelter home. Assessment and treatment services will be provided to victims of child sexual abuse and their families.

1. Access. Investigations will be conducted using all appropriate referrals of alleged child abuse or neglect.

2. Eligibility. A report of occurrence of child abuse or that a child is at risk thereof will constitute sufficient eligibility.

B. Youth Services. Short-term crisis counseling services and shelter to runaway, homeless, and ungovernable youth and their families, may be provided in order to stabilize the family.

1. Access. Any youth, family, or other agency can access services defined in this rule, as long as the child is determined to be homeless, or ungovernable, or a runaway.

2. Eligibility. Youth who are either homeless, ungovernable, or who have run away shall be eligible.

R512-1-4. Home-Based Services.

A. Services. The Division shall offer services to families whose children are in their own homes, yet who are at a risk of or who have suffered from abuse or neglect. Services will be voluntary or court ordered, and shall be intensive to avoid unnecessary placement of children in substitute care. These services shall include, but not be limited to: (1) homemaker, (2) child day care, (3) day treatment for preschool children, (4) treatment for children who have been sexually abused, (5) protective supervision, and (6) family preservation services.

1. Access. Only families referred by DCFS staff shall be provided these services.

2. Eligibility. A family must be determined to be in a state of crisis and children shall be at risk of abuse or neglect. Clients receiving treatment for preschool children and sexual abuse treatment may be required to pay a fee based on the family's ability to pay. Fees shall be calculated as a percentage of family income up to the total cost of the service. Clients receiving child care as a protective service shall not be assessed a fee; however, if the family is receiving child care and paying a fee prior to protective services, they will continue to pay day care fees.

B. Custody Studies. Upon an order of the District Court, the Division may engage in and complete child custody studies.

1. Access. Access shall be authorized by receipt of a District Court Order.

2. Eligibility. A District Court Order will provide eligibility. The parties to the action shall be assessed a fee based upon income. Fees shall be determined from the Department fee schedule #1 for low income families. A separate fee schedule shall provide for parents to pay up to the total cost of the study based upon income for families above 150% of the median income.

C. Family Violence. For victims of family violence and their minor children, shelter care facilities may be provided in order to protect the victim and the children from further violence. Short-term counseling may be provided to the family while in shelter, and treatment services shall be offered to the perpetrator of the abuse in order to stop the violence and maintain the family as a unit. Children of abused spouses eligible for Domestic Violence services may receive child care without a fee as part of the protective services provided to the family.

1. Access. The victim of family violence shall have access to the services listed above by requesting protection or by referral.

2. Eligibility. The only eligibility factor is that the victim shall have been abused by the spouse or some other member of the family. The perpetrator may be assessed, through court order, for the costs of the Division's providing these services.

R512-1-5. Out-of-Home Care Services.

A. Foster Care and Group Care. Child placement services may be provided when parents are unable to meet their children's needs within the family. The Division has authority to place a child when the state has been granted custody through a court order, or when a voluntary agreement has been signed by the parents, or when the child is from another state and is covered by the Interstate Compact for the Placement of Children. The intent of foster or group care is to insure a permanent home for each child. This may be achieved through a return to the home, or through adoption, emancipation, guardianship, or permanent foster care services. A Permanency Plan for each foster child, defining the goal and steps to be taken to achieve permanency, shall be formulated. Periodic reviews shall be held at least once every six months to assess progress achieved within the Permanency Plan, and to project a likely date for returning the youth to the family home or to another permanent home arrangement. A dispositional hearing shall be held every 18 months from date of placement to determine the future status of the child. Foster care shall be provided in licensed family homes. Group care shall be provided in licensed facilities which offer a more structured treatment environment than a family home. Foster homes are licensed in accordance with R501-12. Residential Treatment Programs, also known as group homes, are licensed in accordance with R501-2 and R501-3-3.

1. Access. Referrals can be made from Protective Services or from Juvenile Court and other agencies. Parents can request placement services by contacting the local DFS Office. Referrals for foster or group care may be screened to determine whether placement is the best option. In most cases, services which are intended to prevent placement must be first provided, before foster or group care will be considered by the Division.

2. Eligibility. Temporary child custody must be given to the State by court order, or by voluntary agreement, and most parents shall be obligated to pay support while their child is in foster care. Youth can be served in foster or group care until age 18, or until age 21 when ordered by the court.

B. Independent Living. Services may be given to older teenage foster children to teach self-sufficiency skills in order to increase their ability to be self-reliant in the future. Some who do not return to living with their parents upon leaving foster care will be allowed to live on their own. All foster children age 16 and older shall be required to be working toward at least one objective in developing independent living skills in their Permanency Plans.

1. Access. Access shall be given only by a referral from the foster care worker.

2. Eligibility. Foster children who are at least 16 years old and who are in custody of the State shall be eligible.

C. Adoption. This service provides adoptive homes for children in custody of the State who are legally available because the birth parents have been permanently deprived of parental rights by court action, or who have voluntarily relinquished their children for adoption. The choice of an adoptive home is based on the best interests of the child. When the children placed for adoption are hard to place because of their special needs, a subsidy payment can be approved to enable adoptions by a family needing assistance in caring for the child. Independent adoption home studies shall be completed only by direct order of a District Court.

1. Access. Access is available only by a referral from foster care staff. Adults wishing to adopt a child may apply to their local DCFS Office for consideration. Receipt of applications can be suspended by a local office based on the number of approved homes waiting for a placement and the number of children available.

2. Eligibility. To be eligible, the child must be in custody of the State, be legally freed for adoption, and the Division must determine that adoption is the best Permanency option for the child. Persons approved to be adoptive parents must meet certain standards before approval. Application and placement fees may be charged, or may be waived for families adopting a hard- to-place child. Fees, based on a sliding fee schedule, shall be charged for home studies sent to the U.S. Immigration Service and for completed Independent Adoption Home Studies. Authorization of subsidies for hard-to-place children shall be determined by the Division which shall assess the resources of the adoptive family to meet the child's need for maintenance or treatment.

D. Provider Services. Persons applying to be foster or emergency care parents shall be given information and a home study will be completed. For those approved as meeting program standards, basic training will be provided, as well as any additional training which may be required for some types of care. Annual reapproval is required.

1. Access. Persons interested in becoming foster parents or who wish to provide emergency care, such as shelter care, may apply to their local DCFS Office.

2. Eligibility. Any adult may apply for consideration. Persons approved to be providers must meet certain standards of the Division before approval is granted.

R512-1-6. Collection of Fees.

The regional office staff shall collect any assessed fees for services. Failure of a family to pay the assessed fee may result in the termination of the service and a referral to the Office of Recovery Services for collection. For hardship situations, a fee reduction can be considered by the Director of the Division. An appeal of any decision may be made according to the provisions of R503-5.

R512-1-7. Civil Rights and Due Process.

The Division shall comply with the Department of Human Services policy of Civil Rights. The Division seeks to provide equal opportunity and to insure due process in all actions taken pursuant to these rules. Consumers have the right to be notified about decisions made about their eligibility for any service which is requested and received through the Division of Child and Family Services, and to request a hearing if they disagree with any decision. Notice of a decision shall be sent by the Division when an application for service or a service payment is denied, or if a service is reduced or terminated. Consumers must make a request for any hearings regarding services and decisions specified in this rule in writing.

KEY: social services, child welfare, domestic violence, eligibility*
1992 62A-4a-105
Notice of Continuation December 15, 1997

R512. Human Services, Child and Family Services.
R512-20. Protective Payee for Recipients of Cash Assistance from the Department of Workforce Services.
R512-20-1. Reason to Set Up a Payee.

The Division of Child and Family Services (DCFS) Regional Director, as authorized by 45 CFR 234.60 (1994), shall designate protective payees and request the eligibility worker to make protective payments directly to other individuals when consumers have demonstrated an inability to manage funds; have not used financial assistance in their best interest; or are physically or mentally incapable of expending their grant money in accordance with acceptable standards as evidenced through an evaluation by the DCFS worker.

R512-20-2. Assessment of Payee Request.

DCFS staff will be responsible to assess the request and the need for protective payments. The Supervisor shall review the facts and the conclusions in the decision to use a protective payee, and initial and date.

R512-20-3. List of Payees.

DCFS staff will develop a list of protective payees who are willing to participate in a protective payee plan with DCFS and the consumer. DCFS staff may act as payee if this is the best plan to protect the consumer.

R512-20-4. Criteria for Using Protective Payments for Recipients of Cash Assistance from the Department of Workforce Services.

The DCFS record shall contain all facts upon which the need for protective payments is decided. The following should be used as a guideline to situations which may require protective payment.

1. Observation, by the DCFS worker, of family problems in money management.
2. Observation by any social worker from a community agency.
3. Complaints by neighbors and relatives about the consumer's inability to manage money.
4. Failure of the client to assume any responsibility for legitimate debts and contractual obligations.
5. Use of assistance funds for sole benefit of adult payee without regard for the needs of the children.
6. Diagnosed alcoholism.
7. Improperly clothed children and inadequate family diet in comparison to comparable consumer families.
8. Complaints by:
a. Law enforcement officials.
b. Public Health officials.
c. Schools and teachers.
d. Church and civic groups.
e. Members of the household, including the children.
f. Relatives not in the household.
g. Other social service agencies.
h. Neighbors.
i. Other Department of Human Services staff.
9. A medical determination of mental or physical inadequacies by a psychiatrist or physician.
10. A psychological evaluation by a licensed psychologist.
11. Other reports of gross conditions of physical or mental disability, including observation of extension paralysis, mental retardation, or continued disorientation.

R512-20-5. Payee Plan.

A DCFS worker should develop the best plan of protective payments for the family or individuals. The recipient must be involved in developing the plan and in choosing the payee.

R512-20-6. Selection of Protective Payee for Cash Assistance Recipients Unable to Manage Funds.

A. The protective payee must be a person who:
1. is interested in or concerned with the consumer's welfare;
2. is selected with the participation and consent of the consumer whenever possible;
3. is able to act for the consumer in receiving and managing the assistance grant; and
4. will perform as a protective payee without pay.

B. A protective payee cannot be selected if he is the consumer's landlord, grocer, or other vendor of goods and services that would be purchased by the consumer in normal

living.

C. An employee of the Department may act as payee if no other appropriate person is available.

D. The payee may not be the executive head of the agency administering public assistance; the person determining financial eligibility; special investigative or resource staff or staff handling fiscal processes.

R512-20-7. Setting Up Protective Payment.

A. The DCFS worker chooses payee and gains payee's agreement to act in this capacity. The decision of who should be payee must be made with input from the consumer if possible.

B. If there is no other suitable person available, the DCFS worker sets DCFS up as payee. This should be done with consumer's agreement if possible.

C. The DCFS worker, payee, and consumer discuss family's needs and make a budget.

D. The DCFS worker, payee, and consumer make a plan detailing the steps to be undertaken and accomplished by the consumer in order to terminate the protective payment.

E. A written explanation shall be placed in the DCFS record, explaining the reasons for the appointment of a protective payee, the steps taken in the selection of the appointed protective payee, the needs and budget of the family, and the plan to be followed to terminate protective payment.

F. The DCFS worker notifies the Department of Workforce Services (DWS) eligibility worker of the protective payment plan, and requests a protective payment status.

G. The DWS eligibility worker, after receiving the above information, will order the check in the name of the protective payee.

H. A Form 522, with a full explanation of the action being taken, must be sent to the consumer.

R512-20-8. Protective Payments Accounting Procedures for Non-DCFS Staff Payees.

A. Form 481-A-S, Protective Payee's Monthly Report, shall be forwarded monthly from the protective payee to the DCFS staff member. In the review, the DCFS worker shall ascertain if the protective payee is controlling the consumer's grant money wisely and in accordance with the service plan.

B. In some instances, a protective payee may be used for disbursing only part of the grant money and the balance is expended by the consumer. The disbursement must be made by check. When this situation occurs, the protective payee will account for only his expenditures on behalf of the consumer. The financial procedures do not permit the issuance of the grant in several checks and the DCFS worker must make the decision whether a protective payee needs to be appointed.

C. The worker is responsible for evaluating the progress toward the goals stated in the plan concerning money management, including monitoring, and auditing the expenditures made by the protective payee on behalf of the consumer.

D. All clients who are placed on a protective status plan will have the food stamps, medical ID card, re-evaluation form, and other DCFS documents sent to the address of the protective payee. It will be the responsibility of the protective payee, along with the worker, to see that these ID cards and authorization forms are given to the consumer.

E. If the entire amount of the grant is not spent, a savings account, like those for people with trust funds, must be set up. This money is to be accounted for as trust account savings and is to be used for family's special needs. These funds must be reported on eligibility reviews.

R512-20-9. Protective Payments Accounting Procedures for DCFS Staff Payees.

Protective payments for recipients of cash assistance from the Department of Workforce Services will be handled as they are for other protective payee cases.

R512-20-10. Review of Protective Payments.

A. The client will receive a monthly accounting of the expenditure of funds which can be in any form the region chooses.

B. If the family has money in a savings account, this must be accounted for.

C. At least every three months the DCFS worker and consumer review progress in the service plan and determine if the protective payment can be altered or terminated.

D. The decision to terminate protective payment must relate to the specific identified problems which led to the protective payment being set up and to the specific behavioral goals stated in the service plan.

E. It may be useful to gradually move from full protective payment to none, by gradually shifting fiscal responsibility to the consumer on a planned basis.

R512-20-11. Termination of Protective Payment.

A. When consumers can manage the grant, the DCFS worker must notify the DWS eligibility worker to end the protective payment.

B. A final accounting plus the total amount of money remaining must be given to the consumer.

C. The final case recording must clearly state the outcome of the protective payment service.

D. If the need for protective payment continues, or is likely to continue for more than two years, because the parent continues to be unable to use the grant for needs of the children despite social services, the DCFS worker must request that the court appoint a guardian.

E. When a legal guardian has been appointed by a court of law, protective payments shall be made to that guardian and the services of any other person serving as protective payee shall be terminated.

F. When the DCFS worker and consumer are in disagreement about the continuance of protective payments, the supervisor should review the case to determine whether they should continue.

KEY: income distribution, child abuse, child welfare
1987 62A-4a-105
Notice of Continuation December 15, 1997 45 CFR 234.60(1994)

R512. Human Services, Child and Family Services.
R512-32. Children with Reportable Communicable Diseases.
R512-32-1. Definitions.

A. "Communicable Disease" means any infectious condition reportable to the Utah Department of Health, pursuant to Section 26-6-3. These diseases are listed in the Code of Communicable Disease Rules (R386-702-2 and R386-702-3). In addition, for the purposes of this rule, human immunodeficiency virus (HIV) seropositivity will be considered a communicable disease. Non-reportable minor illnesses such as strep, flu, and colds are excluded from this definition.

B. "Provider" means a person authorized and licensed to supply the daily needs of children in the custody of the Division of Child and Family Services. (Other divisions of the Department, for example, the Division of Youth Corrections, shall function under separate communicable disease rules for those youth within their custody and jurisdiction.)

C. "UDHS" means the Utah Department of Human Services.

D. "DCFS" means the Division of Child and Family Services.

E. "UDOH" means the Utah Department of Health, Bureau of Epidemiology or Bureau of HIV/AIDS Prevention and Control.

F. "HIV Screening" means a laboratory test (Elisa Test) to detect evidence of infection with the HIV; the causative agent of acquired immunodeficiency syndrome (AIDS).

G. "HIV Seropositivity" means the presence in an individual, as detected by confirmatory laboratory testing (Western Blot Test), of an antibody or antigen to the HIV.

H. "High Risk Behaviors" means behaviors which may include injectable drug use, sharing intravenous needles and syringes, multiple sex partners, unprotected sex that increase the risks of contracting Hepatitis B, AIDS, HIV disease, and sexually transmitted diseases such as: gonorrhea, syphilis, chancroid, granuloma inguinale, chlamydial infections, pelvic inflammatory disease, and lymphogranuloma venereum.

I. "Children at Risk" means an infant or child born to parent(s) engaging in or who have a history of engaging in high risk behaviors, or a child or youth who has been sexually abused by a person who engages in or has a history of engaging in high risk behaviors.

J. "Contact" means an individual who has been exposed to a communicable disease through a known mode of transmission.

K. "Controlled" means a classification of information (medical, psychiatric, or psychological) under the Government Records Access and Management Act (GRAMA), Section 63-2-303.

Due to the GRAMA Act and state confidentiality laws, any documentation in the case record regarding HIV status or any other communicable disease information must be filed under the "Medical/ Assessment" section of the case record.

R512-32-2. Confidentiality.

In accordance with Section 26-6-27, records containing personal identifiers and information regarding communicable disease are confidential. Such information shall not be disclosed to any person (including UDHS personnel) who does not have a valid and objective need to know. Such persons who may have a valid and objective need to know may include: the Division of Child and Family Services administrators, program specialists, supervisor, and caseworker, the foster parent or provider, UDOH, the Guardian ad Litem, the Juvenile Court Judge, and persons providing psychological or medical treatment.

R512-32-3. Identification and Testing of Children with Communicable Disease.

A. Testing at Agency's Request.

1. Many medical or laboratory tests to detect communicable disease, including HIV screening, are not routinely performed as part of physical or medical examinations of children in the custody of DCFS. When DCFS has custody and guardianship of a child who may have a communicable disease, the State has the authority to obtain a medical evaluation to determine the child's communicable disease status.

2. If a foster parent or provider has a reasonable belief that a foster child or the foster child's parent may have a communicable disease, the foster parent or provider shall promptly discuss it with the caseworker.

3. If the caseworker has a reasonable belief that the child may have a communicable disease, the caseworker is required to contact UDOH promptly for consultation.

4. A "reasonable belief" includes the following: information received that may indicate the child or the child's parent may be at risk from engaging in or having a history of engaging in high risk behaviors as defined in R512-32-1(H), a child who may be at risk as defined in R512-32-1(I), or medical information received by the worker, foster parent or provider.

5. Communicable disease testing requires written, informed consent. If DCFS has custody and guardianship of a child, the State (DCFS) has the authority to provide written, informed consent for communicable disease testing. If a child under the custody and guardianship of DCFS refuses to be tested, the worker is required to contact UDOH and the Attorney General's office immediately upon hearing of the refusal.

6. When a parent of a child in the custody of DCFS is known or reports to be involved in high risk behaviors, the worker shall contact UDOH for consultation.

7. All contacts with UDOH shall be documented in the child's case record and filed under the "medical assessment" section of that record.

B. Testing at Minor's Request.

1. A minor may seek HIV testing without parental or UDHS consent. When the minor requests the test, the right to disclose test results belongs to the minor (Section 26-6-18). If the minor chooses to disclose the test results to UDHS, UDHS cannot disclose the test results to any other person, including the Guardian Ad Litem. Upon disclosure to UDHS

of a positive test result, the caseworker shall contact UDOH for consultation and follow up.

2. When a record of HIV testing is subpoenaed, the caseworker shall immediately contact the Attorney General's office or the DCFS program specialist or DCFS assistant director.

R512-32-4. Preparation for Placement in Foster or Out-of-Home Care.

Prior to placing a child with a communicable disease, or upon discovering a child has a communicable disease, the DCFS caseworker shall contact UDOH for consultation. After consultation with UDOH and prior to placing the child, the DCFS worker shall staff the case with their supervisor, assistant director, the provider (as defined in R512-32-1, Definitions), as well as the DCFS program specialist or DCFS assistant director to assess the health risk to the child, to the provider, and to any other persons in the home. After the consultation with the team, UDOH, the caseworker, and the provider shall define the precautions necessary to mitigate the health risk.

R512-32-5. Considerations Regarding Placement of a Child With a Communicable Disease.

A. A provider's decision to accept placement of a child with a communicable disease shall be made with sufficient knowledge of the specific risks involved, as well as any special accommodations or care requirements. Prior to making this decision, the caseworker shall refer the provider to UDOH for consultation on the nature of the disease, modes of transmission, appropriate infection control measures, special care requirements, and universal precautions.

B. If, after consultation, the provider accepts the placement, a Communicable Disease Information Acknowledgement form shall be signed by the provider and placed in his or her file, as well as the child's case record under the Medical Section.

C. If a minor is discovered to have a communicable disease after placement, the consultation and documentation described in R512-32-5(A) and R512-32-5(B) shall be accomplished without delay.

R512-32-6. Pick-Up Orders.

Pick-up orders filed with the Juvenile Court may state that the youth is engaging, or has a history of engaging, in high risk behaviors. The order or supplementary forms cannot include information that the child has or may have a communicable disease.

R512-32-7. Returning a Minor to the Parent's Custody.

A. If a minor in DCFS custody tests positive for the HIV disease and the minor is being returned home, UDOH shall be responsible for informing natural parents of the child's positive test. Both caseworker and UDOH shall coordinate the placement of the child back home. The caseworker shall assist the parents in planning for the child's care and medical follow up needs.

B. If a minor in DCFS custody tests positive for a communicable disease other than HIV disease and the minor is being returned home, the caseworker is responsible for informing the natural parents of the child's positive test and if needed, referring them to UDOH for consultation and appropriate medical resources.

R512-32-8. When a Minor in Custody Has Been Exposed to a Person Who Has Tested Positive.

When a minor in the custody of DCFS is identified by the Health Department as having been exposed to a person who has tested positive, UDOH shall contact the DCFS foster care specialist or assistant director who shall then contact the appropriate caseworker. The caseworker shall contact UDOH to arrange for the minor to be tested and counseled. The worker and provider will follow up on recommended medical treatment and other necessary services.

KEY: child welfare, foster care
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R512. Human Services, Child and Family Services.
R512-40. Adoptive Home Studies, Recruitment, Approval.
R512-40-2. Guidelines for Persons Applying for Adoptive Placement of Special Needs Child.

Adoptive homes will be approved following the provisions of R501-7-4-3. In addition, the following factors will be considered:

A. Adoptive applicants shall apply in the region where they reside.

B. Both couples and single individuals may be approved as prospective adoptive parents based upon their ability to provide for special needs children.

C. Applicants shall show commitment and stability in existing family relationships which would provide a base for an adoptive child.

D. The evaluation of the home shall include the strengths and weaknesses of the family. Recommendations shall be made as to the age and type of child who can best fit into the home to ensure the healthy development of the child.

E. During the supervision period of school-age child placements, the parent must be at home when the child returns home from school or approved arrangement for supervision must be made.

F. The following factors are critical in the success of adoptive placements and should be factors in approving adoptive applicants: commitment to adoption, ability to sustain long-term relationship, proper motivation and realistic expectations, emotional openness and flexibility, empathy, strong social support system and knowledge of resources, and stable marital relationship.

G. The following factors may significantly contribute to adoption disruption and should be considered in approving adoptive applicants: history of emotional or psychological problem or substance abuse, impulse control disorders, disruptive crisis filled lifestyles, criminal activity, serious problems in child rearing, unrealistic expectations of self and child, and marital difficulties and incompatibilities which

seriously compromise the ability to meet the needs of the child.

R512-40-4. Follow-Up Services.

A. A record of the approved home study shall be maintained in the Utah Social Services Delivery System (USSDS).

B. Any significant changes in the family's situation shall be documented by revisions or additions on an annual basis in the adoptive study, including revised medical reports, if needed.

C. At the end of a family's third year, as an approved prospective adoptive home, the agency shall notify the family that their home study will be closed unless the family reapplies for a new home study to be completed.

R512-40-5. Application by Staff of the Division of Child and Family Services (DCFS).

Staff members of DCFS may apply to adopt and may adopt children in State custody in the following manner:

1. The person applies in the region of residence.

2. The home study will be completed by staff of another region on a cooperative basis upon the request of the regional director.

3. Approval of placement of a child in a staff member's home will be by the region having custody of the child. If the prospective adoptive parent is from the same region as the child, the placing committee will consist of the child's worker, outside child welfare specialists, and the State Adoption Specialist. Supervision will be by the placing region, unless the child and prospective parent are from the same region, in which case, another region will provide supervision.

KEY: adoption
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R512. Human Services, Child and Family Services.
R512-42. Adoption by Relatives.
R512-42-1. Adoption by Relatives.

A relative who has a relationship with a child available for adoption may apply to adopt a particular child. The application and home study will be handled in accordance with Division of Child and Family Services, Adoption Policy.

KEY: adoption
1992 62A-4-108
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R512. Human Services, Child and Family Services.
R512-50. Fee Collection for Clients Served by Pre-School Day Treatment Contract.
R512-50-1. Fee Collection for Clients Served by Pre-School Day Treatment Contract.

A. It is the responsibility of the Regional Offices to collect fees from the parents or guardians receiving services funded by the Division.

B. The first and last month's fee will be pro-rated if the client receives less than a full month's service.

C. The fee shall be pro-rated when the Individual Program Plan stipulates that a client receive less than a full service, as defined in the contract.

D. After the first month of service, a parent or guardian is responsible to pay the entire assessed fee, regardless of the number of days the client attends. However, the fee collected shall not be in excess of the actual cost of the service. Only one fee for Title XX Services will be paid by the family even though they receive various services from several agencies. Generally, the first fee assessed will be collected. If there is a choice, the highest fee assessed will be collected.

E. In the event a request is made for a fee waiver, the following information should be submitted to the Director of the Division of Child and Family Services (DCFS) for approval with appeal to the DCFS Board:

1. Number in family and ages.

2. Verified net income.

3. Verified medical expenses.

4. Any other extenuating circumstances.

F. Regional Offices are not required to issue monthly statements.

G. Parents or guardians who claim to be financially unable to pay assessed fee may request waiver or reduction of the fee. The request shall be processed through the Regional Director to the Director of DCFS. The reasons for the request shall be in writing and shall include all supporting information.

H. Regions will use the following procedures if the parent or guardian fails to pay the fee:

1. Fee payments are due the first day of each month for the previous month's services.

2. If fee payment is not received by the 15th of the month, a notice is mailed to parent or guardian, informing them their case will be referred to the Office of Recovery Services (ORS) if they do not bring their fee current or make arrangements to bring the fee current within ten days.

3. If fee payment is 30 days past due, the case will be referred to ORS for collection. Service shall not be interrupted.

4. After closure, any remaining balance will be referred to ORS and the case will be closed in the Regional Office.

I. An appeal of any decision shall follow existing policy for Fair Hearings. If a parent or guardian is in process of making an appeal, services shall not be terminated.

KEY: social services, fees, eligibility*
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R523. Human Services, Mental Health.
R523-1. Policies and Procedures.
R523-1-1. Board of Mental Health Policies and Procedures.

Legal Authority.

The State Board of Mental Health is the program policy making body for the Division of Mental Health and for programs funded with state and federal monies. The Board has the authority and the responsibility to establish by rule procedures for developing its policies which seek input from local mental health authorities, consumers, providers, advocates, division staff and other interested parties (Section 62A-12-104). In order to ensure public input into the policy making procedure the Board will:

A. Convene an annual meeting, inviting local mental health authorities, consumers, providers, advocates and division staff to provide them an opportunity to comment and provide input on new policy or proposed changes in existing policy.

B. The Board shall include a time on the agenda at each regularly scheduled board meeting to entertain public comment on new policy or proposed changes in existing policy.

C. Public requests to revise existing policy or consider new policy shall be made in writing to the Board in care of the Division of Mental Health.

D. The Division shall prepare, for the Board's review, any comments they are in receipt of relative to public policy which will be addressed at a regularly scheduled board meeting.

E. The Board may direct the Division to follow-up on any unresolved issues raised as a result of policy review and report their findings at the next scheduled board meeting.

R523-1-2. State and Local Relationships.

A. Local Mental Health Authorities (LMHA) are the "service designees" of the State Division of Mental Health. As service designees, LMHAs receive all formula pass-through state and federal mental health funds to provide comprehensive mental health services as defined by state law. Local Mental Health Authorities are considered sole source providers for these services and are statutorily required to provide them (17A-3-602(3)).

B. When the Division of Mental Health requires other services outside the comprehensive range specified by law, it shall provide LMHAs the first opportunity to accept or reject the service contract. If the LMHA rejects the contract in writing or fails to meet the terms of the contract as determined by the Division, the Division may contract with any qualified provider, through a Request For Proposal (RFP) process. If an agency other than the LMHA receives a contract to provide a mandated service, the contracted service provider shall inform the LMHA that they have been awarded the contract and offer to coordinate the service with existing services provided by the LMHA (17A-3-602(3), 62A-12-104(2)(a)).

C. Local Mental Health Authorities must submit an annual local Mental Health Plan of Service to the Division of Mental Health for approval before each contract period. The Plan shall describe the intended use of state and federal contracted dollars.

D. The Division of Mental Health has the responsibility and authority to monitor LMHA contracts to see that they are in compliance with existing laws, policies, standards and rules. Each mental health catchment area shall be visited at least once annually to monitor compliance. The mental health center will be provided preliminary findings from the site review and an opportunity to comment. A written report will be sent to each LMHA describing the findings from the site visit.

R523-1-3. Program Standards.

A. The State Board of Mental Health, in compliance with law, adopts the policy that available state funds will be distributed on a 80% State, 20% local match basis to local mental health authorities which provide the continuum of care and meet the public policy priority adopted by the Board (17A-3-602(3)(i), 62A-1-107(6)). The Division of Mental Health will carry out this policy. A comprehensive mental health program includes:

1. Inpatient care and services (hospitalization)
2. Residential care and services
3. Day treatment and psycho-social rehabilitation
4. Outpatient care and services
5. Twenty-four hour crisis care and services
6. Outreach care and services
7. Follow-up care and services
8. Screening for referral services
9. Consultation, education and preventive services (case consultation, public education and information, etc.)
10. Case management.

B. Each local mental health authority shall be responsible for providing these services directly or contracting for these services.

C. The primary responsibility of the Division of Mental Health will be to insure the provision of services for those citizens who enter the mental health system directly as consumers and to work cooperatively with other agencies. Other public agencies such as Education, Corrections, Health and Social Services will have primary responsibility for arranging for or providing and paying for the mental health needs of citizens served by their agency when the required service directly benefits or is tied to their agency responsibility. The Division of Mental Health will clearly define items 1-9 above so that evaluation and implementation is feasible. These definitions will be approved by the State Board of Mental Health.

R523-1-4. Private Practice.

Private practice policies shall be determined by local community mental health authorities. These policies will be available in written form for State review.

R523-1-5. Fee for Service.

A. All consumers of community mental health centers within the state of Utah shall be charged the actual cost of services rendered to them by personnel of the centers.

B. There shall be a dual fee schedule approved by the State Board of Mental Health:

1. intensive services - uniform fee schedule as attached;
2. outpatient services - Local cost will be based on actual unit cost as determined by the center's annual study and in accordance with the minimum discount fee schedule attached.
3. the mental health center may waive the charging of a fee if they determine that the assessment of a fee would result in a financial hardship for the recipient of services.

C. Unless otherwise prohibited by law, all differences between the actual cost of services rendered and third-party payments shall be charged to the consumers receiving the service. These charges may not exceed the adjusted fee, if any, based on the above mentioned fee schedules.

D. Fee adjustments may be made following locally determined procedures. The procedures will be available in writing.

E. Except for emergency services, all consumers are to be informed of the actual cost of services to be received and of the adjusted fee, if any, before the commencement of services.

R523-1-6. Priorities for Treatment.

A. Mental health services provided through public funds (federal, state, and local match) will address current mental health priorities listed below. The State Division of Mental Health, in collaboration with the Utah Council of Mental Health Program, Inc.'s evaluation committee (SCHEDULE), will develop or approve procedures and forms for periodic needs assessments.

B. Immediacy of need and severity of the mental illness are the two primary variables considered in developing the following priorities of treatment. It is to be understood that emphasis upon certain under-served age groups may be given as appropriately demonstrated through needs studies.

1. Effective and responsive crisis intervention assessment, direct care, and referral program available to all citizens.
2. Provision of the least restrictive and most appropriate treatment and settings for:
a. severely mentally ill children, youth, and adults;
b. acutely mentally ill children, youth, and adults.
3. Provisions of services to emotionally disabled children, youth and aged citizens who are neither acutely nor severely mentally ill, but whose adjustment is critical for their future as well as for society in general.
4. Provision of services to emotionally disabled adults who are neither acutely nor severely mentally ill, but whose adjustment is critical to their personal quality of life as well as for society in general.
5. Provision of consultation, education and preventive mental health services targeted at high risk groups in particular.

R523-1-7. Collections Carryover.

A. Local center programs may carry collections forward from one fiscal year to another.

B. Centers receive two general types of revenues - appropriations and collections. These terms are defined as follows:
1. Appropriations:
a. State appropriated monies
b. Federal Block Grant dollars
c. County Match of at least 20%
2. Collections:
a. First and third party reimbursements
b. Any other source of income generated by the center.

R523-1-8. Consumers Rights.

A. Each local mental health center shall have a written statement reflecting consumers rights. General areas for consideration should be:
1. consumer involvement in treatment planning.
2. consumer involvement in selection of their primary therapist.
3. consumer access to their individual treatment records.
4. informed consent regarding medication
5. grievance procedures

B. This statement should also indicate the Center's commitment to always treat mental health consumers with dignity and individuality in a positive, supportive and empowering manner. This document is to be shared with the consumer at the time of intake and a signed copy made part of their individual file. The State Division of Mental Health shall periodically review this process to assure appropriate content within the rights statement and proper application of the intent of this policy.

R523-1-9. Statewide Program Evaluation, Research, and Statistics.

A. Responsibility for Statewide program evaluation, research, and statistics belongs to the Division of Mental Health. This responsibility includes data system leadership, coordination, implementation, and monitoring.

B. The Division of Mental Health shall develop and maintain, in collaboration with local mental health providers, a set of data system principles that address at least the following topics: standardization of data variables and definitions; variable integration across data sets; procedures for requesting data from MHOs; procedures for data review and dissemination; MHC participation in planning new statistical reports and requests; cost-effective and practical data collection procedures; confidentiality and data security; accuracy and data quality control; updating regular reports; and procedures for reviewing and updating the principles.

C. The Division of Mental Health, in collaboration with the local Mental Health Authorities and their providers, shall assess service effectiveness (outcomes) and efficiency (productivity) and report the results to the State Board of Mental Health in an annual report. This report or reports shall contain data results on effectiveness and efficiency for the previous year, and a plan for assessing these variables for the following year. Changes in procedures for data collection and analysis for the previous year, and changes in data system principles shall also be reported to the Board.

R523-1-10. Allocation of Utah State Hospital Bed Days to Local Mental Health Authorities.

All adult general psychiatric beds at the Utah State

Hospital for individuals who meet the requirements of 62A-12-209(2)(a); shall be provided to mental health catchment areas governed by a local mental health authority or association of local mental authorities; and shall provide for allocation of these beds based on:

A. the percentage of the state's population that is located within a mental health catchment area.

B. a differential to compensate for additional demand of state hospital beds in the urban areas of the state.

R523-1-11. Policies and Procedures Relating to Referrals, Admissions, and Transfers of Mental Health Consumers to the Utah State Hospital and Between Mental Health Center Catchment Areas.

A. All consumers shall be referred into the public mental health system through admission to the local comprehensive community mental health center. For purposes of this document, whenever center is used, it means a local comprehensive community mental health center or agency that provides treatment and services to residents of a designated geographic area, operated by or under contract with a local mental health authority, in compliance with state standards for local comprehensive community mental health centers.

B. In providing services to consumers from other catchment areas, including interstate transient consumers, the Center staff shall have the responsibility to assess the consumer's needs and to provide necessary emergency services consistent with the Center's current emergency procedures. Following such interventions, the Center staff shall assist the consumer in arranging for services from resources near the individual's place of residence.

C. A Center shall utilize the services of the Utah State Hospital (hereinafter referred to as Hospital) when evaluation by the Center staff and the Hospital staff determine such services to be the treatment of choice. In every instance, continuity of consumer care will be a joint responsibility between the Center staff and the Hospital. The Center shall (1) provide information upon transfer to the Hospital; (2) participate in planning for transfer out of the Hospital; and (3) provide appropriate supportive services to the consumer upon their return to the community.

D. The Hospital and the Centers are expected to provide services only within the state mental health systems' limited fiscal capacity.

E. All consumers referred to the Utah State Hospital will have been seen, evaluated, and admitted to the local public mental health center. Prior to the consumer admission to the hospital, the center must follow the procedures specified via the Bed Allocation Policy. If the Hospital has reached maximum bed capacity, referred consumer's shall be placed on the Hospital waiting list.

F. The Hospital, in consultation with the Centers, has the responsibility of prioritizing consumers ready for discharge. In the event of a consumer who is ready for discharge from the Hospital, but is from a different catchment area other than the referring center, the two centers will negotiate and coordinate services. Nevertheless, final discharge coordination remains the responsibility of the referring center. If a suitable placement cannot be achieved, the referring Center may appeal to the Chair of the Continuity of Care Committee for arbitration and resolution.

G. If a consumer arrives at the Hospital without having been referred by a Center, the Hospital shall contact the appropriate Center to insure appropriate disposition. Should an emergency admission occur to the Hospital, the Center shall visit the consumer within three working days to coordinate services.

H. Appropriate information pertaining to the consumer's evaluation, care, and treatment will follow the consumer to and from the Hospital.

I. Each Center will designate a Hospital liaison(s). The Hospital will designate a Center liaison(s) for each of its programs. All consumer transfers between a Center and the Hospital will be managed through the identified Center liaisons.

J. The emergency needs of transient consumers will be met by the Centers and will be consistent with the Centers' current emergency procedures. The Center providing emergency services will follow the appropriate procedures in coordinating the transfer of the consumer to his place of residence. Centers transferring transient consumers to the Hospital will comply with the consumer Continuity of Care procedures defined in this Policy.

K. The Center liaison shall meet at least monthly with Hospital staff to discuss the treatment progress of the consumer and jointly plan with Hospital staff around discharge procedures.

L. When it is agreed by the Hospital and the Center liaison that a consumer has received maximum hospital benefit, it will be the responsibility of the Center to find a satisfactory placement for the consumer within a 15-day period. Written documentation must be submitted to the Hospital when a satisfactory placement cannot be accomplished within 15 days.

M. When resources are available only outside the consumer's catchment area, it will be the responsibility of the original referring Center to negotiate arrangements for an appropriate placement. Within seven days, the receiving center will provide verbal or written acceptance or denial of the consumer transfer. The receiving Center shall accept the consumer on a 30-day trial basis. If during the 30-day trial period, the placement is determined unsuccessful, the initiating Center will assume responsibility for the consumer's care. However, after 30 days, if the consumer's placement is successful, the receiving Center will assume responsibility for the consumer's care; and the consumer becomes a resident of that Center.

N. When referrals involve the placement of consumers outside of a comprehensive community mental health center for time-limited treatment, the Center of origin remains responsible for the consumer's ongoing continuity of care. However, if the consumer wishes to reside in a new catchment area, the receiving center assumes responsibility for the consumer's ongoing continuity of care needs.

O. In the event that either the referring or receiving Center perceive that procedures have not been adhered to, the Center liaisons from the two catchment areas will discuss the

continuity of care concerns in an effort to bring about an acceptable resolution to both parties. If the liaisons cannot resolve their concerns, a written compliant may be submitted to the Chair of the Continuity of Care Committee for final arbitration.

P. For the purposes of admitting and discharging children and youth to and from the State Hospital, all continuity of care procedures defined in this Rule will be adhered to.

Q. In addition, the following procedures shall apply for children and youth:

1. The Center will document that less restrictive placement alternatives have been considered and are inadequate to meet the consumer's treatment needs.

2. The Center and the Hospital both agree that restrictive intermediate care at the Hospital is in the best interest in meeting the treatment needs of the consumer.

3. If an agency other than a local comprehensive community mental health center is seeking to admit a consumer to the hospital, both the referring agency and Center must agree at the time of referral to participate in the child's service plan. Within seven working days, the Center will notify the referring agency regard the status of the referral.

4. If there is a custodial agency other than the Division of Mental Health, the agency agrees at admission to the hospital to retain custody of the consumer.

R523-1-12. Program Standards.

Legal Authority.

The State Board of Mental Health has the power and the duty to establish by rule, minimum standards for community mental health programs (Section 62A-12-104).

A. Each Community Mental Health Center shall have a current license issued by the Office of Licensing, Department of Human Services.

B. Each Center shall have a comprehensive plan of service which shall be reviewed and updated at least annually to reflect changing needs. The plan shall:

1. Be consistent with the "Comprehensive Mental Health Plan For Services To The Seriously Mentally Ill",

2. Designate the projected use of state and federal contracted dollars,

3. Define the Center's priorities for service and the population to be served.

C. Each Center shall provide or arrange for the provision of services within the following continuum of care.

1. Inpatient care and services (hospitalization),
2. Residential care and services,
3. Day treatment and Psycho-social rehabilitation,
4. Outpatient care and services,
5. Twenty-four hour crisis care and services,
6. Outreach care and services,
7. Follow-up care and services,
8. Screening for referral services,
9. Consultation, education and preventive services,
10. Case management.

D. Each Center shall participate in a yearly on-site evaluation conducted by the Division.

E. The local mental health authority shall be responsible for monitoring and evaluating all subcontracts to ensure:

1. Services delivered to consumers commensurate with funds provided,

2. Progress is made toward accomplishing contract goals and objectives.

F. The local mental health authority shall conduct a minimum of one site visit per year with each subcontractor. There shall be a written report to document the review activities and findings, a copy of which will be made available to the Division.

R523-1-13. Mental Health Officer Certification.

Legal Authority.

A "Mental Health Officer" as an individual designated by the Division to interact with and transport persons to any mental health facility (62A-12-202(7)).

A. The Division shall certify that a mental health officer is qualified by training and experience in the recognition and identification of mental illness and in the safe, adequate transportation of the mentally ill to designated mental health facilities with the appropriate assistance of a peace officer. Certification will require at least two years of experience in a mental health related field in addition to successful completion of training provided by the Division.

B. Application for certification will be achieved by the applicant making a written request to the Division for their consideration. Upon receipt of a written application the Director will cause to occur a review and examination of the applicant's qualifications.

C. The applicant must meet the following minimum standards in order to be certified.

1. The applicant must be at least 21 years of age.

2. The applicant must be at least a high school graduate or have passed equivalent examination.

3. The applicant must be a resident of the State of Utah.

4. The applicant must be employed by a public mental health agency that routinely acts as an agent for the Division.

5. The applicant must possess a basic working knowledge of the most current Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association, to be determined by training, experience, and written examination.

6. The applicant must demonstrate a basic understanding of abnormal psychology and abnormal behavior, to be determined by training, experience, and written examination.

7. The applicant must demonstrate a fundamental understanding of the mental health law, to be determined by examination.

8. The applicant must demonstrate a working knowledge of safe and acceptable methods and techniques in transporting the mentally ill, to be determined by training, experience and written examination.

D. The Division Director will determine if experience and qualifications are satisfactory to meet the required standards. The Director will also determine if there are any training requirements that may be waived due to prior experience and training.

E. Upon satisfactory completion of the required experience and training the Director will certify the qualifications of the applicant, make record of such certification and issue a certificate to the applicant reflecting his status as a mental health officer and authorize the use of privileges and responsibilities as prescribed by law.

R523-1-14. Designated Examiners Certification.

Legal Authority.

A "Designated Examiner" is a licensed physician or other licensed mental health professional designated by the Division as specially qualified by training or experience in the diagnosis of mental or related illness (62A-12-202(2)).

A. The Division shall certify that a designated examiner is qualified by training and experience in the diagnosis of mental or related illness. Certification will require at least five years continual experience in the treatment of mental or related illness in addition to successful completion of training provided by the Division.

B. Application for certification will be achieved by the applicant making a written request to the Division for their consideration. Upon receipt of a written application the Director will cause to occur a review and examination of the applicants qualifications.

C. The applicant must meet the following minimum standards in order to be certified.

1. The applicant must be a licensed mental health professional.

2. The applicant must be a resident of the State of Utah.

3. The applicant must demonstrate a complete and thorough understanding of abnormal psychology and abnormal behavior, to be determined by training, experience and written examination.

4. The applicant must demonstrate a fundamental and working knowledge of the mental health law. In particular, the applicant must demonstrate a thorough understanding of the conditions which must be met to warrant involuntary commitment, to be determined by training, experience and written examination.

5. The applicant must be able to discriminate between abnormal behavior due to mental illness which poses a substantial likelihood of serious harm to self or others from those forms of abnormal behavior which do not represent such a threat. Such knowledge will be determined by experience, training and written examination.

6. The applicant must be able to demonstrate a general knowledge of the court process and the conduct of commitment hearings. The applicant must demonstrate an ability to provide the court with a thorough and complete oral and written evaluation that addresses the standards and questions set forth in the law, to be determined by experience, training and written and oral examination.

D. The Division Director will determine if experience and qualifications are satisfactory to meet the required standards. The Director will also determine if there are any training requirements that may be waived due to prior experience and training.

E. Upon satisfactory completion of the required experience and training, the Director will certify the qualifications of the applicant, make record of such certification and issue a certificate to the applicant reflecting his status as a designated examiner and authorize the use of privileges and responsibilities as prescribed by law.

R523-1-15. Funding Formula.

A. The Board shall establish by rule a formula for allocating funds to local mental health authorities through contracts (Section 62A-12-105).

B. The funding formula shall apply to state and federal funds appropriated by the legislature to the Division and is intended to contribute toward the equitable distribution of these funds to the state's local mental health authorities.

1. Appropriated funds will be distributed on a per capita basis, according to the most current population data available from the Office of Planning and Budget.

2. The funding formula will utilize a population density (rural) differential based upon the population of each county.

3. The population density differential is part of the base amount allocated to the local mental health authority and will be recalculated in successive years only when a documented need arises.

4. The local mental health authorities' "equalized base" is defined as the state and federal funds which were expended in budget year fy 89-90, and which were distributed according to (1) population density differential by county and (2) on a per capita basis.

5. State funds allocated for mental health services and distributed through the formula to local mental health authorities shall be matched by the local mental health authority by at least 20%.

6. New funds will be distributed on a per capita basis, according to the most current population data available from the Office of Planning and Budget. New funds will be added to each local authorities equalized base.

7. Decreases in state and federal revenues will be distributed on a per capita basis.

8. The formula does not apply to:

a. Funds that local mental health authorities receive from sources other than the Division.

b. Funds that local mental health authorities receive from the Division to operate a specific program within its jurisdiction that is available to all residents of the state.

c. Funds that local mental health authorities receive from the Division to meet a need that exists only within the jurisdiction of that local mental health authority.

d. Funds that local mental health authorities receive from the Division of research projects.

R523-1-16. Pediatric Bed Allocation at the Utah State Hospital.

Legal Authority.

This rule establishes the following formula to separately allocate to local mental health authorities, such pediatric beds as have been allocated for persons who meet the requirements of subsection 62A-12-209(2)(b), and pursuant to Section 62A-12-209.6. In addition to terms defined in this rule, other terms used herein are as defined in Section 62A-12-209-101, and Section 62A-12-202.

A. Pediatric beds at the Utah State Hospital are allocated to local mental health authorities based on the 0-18 age population of the state. The allocation shall be reviewed and adjusted as necessary every three years according to the population of persons under 18 years of age, using the most recent population estimates from the Governor's Office of Planning and Budget. Each local mental health authority shall receive not less than one bed under this formula.

B. As of July 1, 1996 beds are allocated according to the formula in the following table:

TABLE

Bear River Mental Health	5
Weber Mental Health	6
Davis Mental Health	8
Wasatch Mental Health	12
Valley Mental Health	31
Central Utah Mental Health	2
Four Corners Mental Health	1
Southwest Center	4
Uintah Basin Counseling	1
San Juan Mental Health	1
Statewide Emergency Bed	1

C. Monthly, a written report shall be issued by the Division through its Continuity of Care Committee as established to operationalize R523-1-11. This report shall detail allocation and utilization by child, adolescent male and adolescent female under each local mental health authority catchment area and will be disseminated to each local mental health center liaison. Review of the report shall be an agenda item at each of the Division's Pediatric Continuity of Care Meetings.

D. The pediatric bed allocation formula and process shall be reviewed at least annually and a written report submitted to the State Board of Mental Health by the Division. Changes or realignments shall be considered at that time.

E. All local mental health authority programs shall follow State Board of Mental Health Policy (Rule R523-1-11) relating to referrals, admissions, and transfers by mental health centers to the Utah State Hospital and between mental health center catchment areas.

F. In the event a local mental health authority requires a bed for a child or adolescent beyond the number allocated, a designated representative from that center may contact another local mental health center to negotiate utilization of one of that center's allocated beds. These negotiations shall be conducted by the two centers. A report of the final agreement for bed exchange shall be made as part of the agenda at the Division's next Pediatric Continuity of Care meeting.

G. In making decisions about the placement of child or youth, centers shall give first priority to the best interests of the child/youth. Allocation and use of the beds shall be monitored monthly by the division's Pediatric Continuity of Care Committee and reported to the board upon request.

R523-1-17. Medication Procedures for Children, Legal Authority.

The Division of Mental Health hereby establishes due process procedures for children prior to the administration of antipsychotic medication, pursuant to Section 62A-12-283.1(3)(a)(i).

A. This policy applies to persons under the age of 18 who are committed to the physical custody of a local mental health authority and/or committed to the legal custody of the Division of Mental Health.

B. Antipsychotic medication means any antipsychotic agent usually and customarily prescribed and administered in the chemical treatment of psychosis.

C. A legal custodian is one who has been appointed by the Juvenile Court and may include the Division of Child and Family Services, the Division of Youth Corrections, and the Division of Mental Health.

D. A legal guardian is one who is appointed by a testamentary appointment or by a court of law.

E. A person under the age of 18 may be treated with antipsychotic medication when, as provided in this section, any one or more of the following exist:

1. The child and parent/legal guardian/legal custodian give consent.

2. The child or the parent/legal guardian/legal custodian does not give consent, but a Neutral and Detached Fact Finder determines that antipsychotic medication is an appropriate treatment.

3. The medication is necessary in order to control the child's dangerous behavior and it is administered for an exigent circumstance according to this rule.

F. A local mental health authority has the obligation to provide a child and parent/legal guardian/legal custodian with the following information when recommending that the child be treated with antipsychotic medications:

1. The nature of the child's mental illness.

2. The recommended medication treatment, its purpose, the method of administration, and dosage recommendations.

3. The desired beneficial effects on the child's mental illness as a result of the recommended treatment.

4. The possible or probable mental health consequences to the child if recommended treatment is not administered.

5. The possible side effects, if any of the recommended treatment.

6. The ability of the staff to recognize any side effects which may actually occur and the possibility of ameliorating or abating those side effects.

7. The possible, if any, alternative treatments available and whether those treatments are advisable.

8. The right to give or withhold consent for the proposed medication treatment.

9. When informing a child and his/her parent/legal guardian/legal custodian that they have the right to withhold consent the staff must inform them that the mental health authority has the right to initiate a medication hearing and have a designated examiner determine whether the proposed treatment is necessary.

G. The child and parent/legal guardian/legal custodian shall then be afforded an opportunity to sign a consent form stating that they have received the information under subsection F of this section, and that they consent to the proposed medication treatment.

H. If either the child or parent/legal guardian/legal custodian refuses to give consent, the mental health authority may initiate a medication hearing in accordance with subsection J of this rule.

I. Antipsychotic medication may be administered under the following exigent circumstances:

1. A qualified physician has determined and certifies that he/she believes the child is likely to cause injury to him/herself or to others if not immediately treated. That certification shall be recorded in the Physician's Orders of the child's medical record and shall contain at least the following information:

a. A statement by the physician that he/she believes the child is likely to cause injury to himself/herself or others if not immediately restrained and provided medication treatment.

b. The basis for that belief (including a statement of the child's behaviors).

c. The medication administered.

d. The date and time the medication was begun.

J. Involuntary treatment in exigent circumstances may be continued for 48 hours, excluding Saturdays, Sundays, and legal holidays. At the expiration of that time period, the child shall not be involuntarily treated unless a Notice to Convene a Medication Hearing has been prepared and provided to the child pursuant to the provision of subsection K of this section.

K. If the child and/or parent/legal guardian/legal custodian refuse to give consent the treating staff may request a medication hearing be held to determine if medication treatment is appropriate.

1. The treating physician shall document in the child's medical record, the child's diagnosis, the recommended treatment, the possible side effects of such treatment, the desired benefit of such treatment, and the prognosis.

2. The treating staff shall complete a Request to Convene a Medication Hearing form and submit it to the Director/Designee of the local mental health authority who will contact a Neutral and Detached Fact Finder and set a date and time for the hearing. The child and parent/legal guardian/legal custodian shall be provided notice of the medication hearing and the hearing shall be set as soon as reasonably possible after a request has been made, but no sooner than 24 hours of notification being provided to the child and parent/legal guardian/legal custodian.

3. Prior to the hearing, the Neutral and Detached Fact Finder is provided documentation regarding the child's mental condition, including the child's medical records, physician's orders, diagnosis, nursing notes, and any other pertinent information.

L. Medication hearings shall be conducted by a Neutral and Detached Fact Finder, shall be heard where the child is currently being treated, and shall be conducted in an informal, non-adversarial manner as to not have a harmful effect upon the child.

1. The child has the right to attend the hearing, have an adult informant (parent/legal guardian/legal custodian/foster parent, etc.) present, and to ask pertinent questions. Other persons may attend the hearing if appropriate.

2. The Neutral and Detached Fact Finder shall begin each medication hearing by explaining the purpose and procedure of the hearing to the child, parent/legal guardian/legal custodian, and any other persons present.

3. The Neutral and Detached Fact Finder will review the child's current condition and recommended course of treatment.

4. The child, parent/legal guardian/legal custodian, and others present shall then be afforded an opportunity to comment on the issue of medication treatment.

5. Following the review of the case and hearing of comments, the Neutral and Detached Fact Finder shall render a decision.

6. If needed the Neutral and Detached Fact Finder may ask everyone to leave the room to allow him/her time to deliberate.

M. The Neutral and Detached Fact Finder may order medication treatment of a child if, after consideration of the record and deliberation, the Neutral and Detached Fact Finder finds that the following conditions exist:

1. The child has a mental illness; and

2. The child is gravely disabled and in need of medication treatment for the reason that he/she suffers from a mental illness such that he/she (a) is in danger of serious physical harm resulting from a failure to provide for his essential human needs of health or safety, or (b) manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over his/her actions and is not receiving such care as is essential for his/her health safety; and/or

3. Without medication treatment, the child poses a likelihood of serious harm to him/herself, others, or their property. Likelihood of serious harm means either (a) substantial risk that physical harm will be inflicted by an individual upon his/her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on one's own self, or (b) a substantial risk that physical harm will be inflicted by an individual upon another, as evidenced by behavior which has caused such harm or which placed another person or persons in reasonable fear of sustaining such harm, or (c) a substantial risk that physical harm will be inflicted by an individual upon the property of others, as evidenced by behavior which has caused substantial loss or damage to the property of others; and

4. The proposed medication treatment is in the medical best interest of the patient, taking into account the possible side effects as well as the potential benefits of the treatment; and

5. The proposed medication treatment is in accordance with prevailing standards of accepted medical practice.

N. The basis for the decision is supported by adequate documentation. The Neutral and Detached Fact Finder shall complete and sign a Medication Hearing form at the end of the hearing. A copy shall be provided to the child and/or parent/legal guardian/legal custodian.

O. A child and/or parent/legal guardian/legal custodian may appeal the decision of a Neutral and Detached Fact Finder according to the following process, by submitting a written appeal to the Director/Designee of the Local Mental Health Authority providing treatment to the child, within 24

hours (excluding Saturdays, Sundays, and legal holidays) of the initial hearing.

1. Upon receipt of the appeal, a panel consisting of two physicians and a non-physician licensed professional (RN, LCSW, PhD, etc.) shall be assigned to hear the appeal.

2. The panel shall review the available documentation and make a decision within 48 hours (excluding Saturdays, Sundays, and legal holidays) of the date of the appeal.

3. A written decision from the panel shall be provided to the child, the child's parent/legal guardian/legal custodian, the local mental health authority providing treatment to the child, and any other appropriate party.

P. In the event that a significant medication change is proposed, the child and/or parent/legal guardian/legal custodian shall be provided an opportunity to give consent in accordance to subsection F of this section. If the child and parent/legal guardian/legal custodian refuse to give consent, a medication hearing may be initiated in according with subsection K of this section.

Q. Medication treatment ordered pursuant to subsection P of this section may continue after the initial hearing according to the following process:

1. A Neutral and Detached Fact Finder shall review the case within 180 days of the initial hearing.

2. The Neutral and Detached Fact Finder shall review the medical record before rendering a decision to continue medication treatment.

3. The Neutral and Detached Fact Finder may order continued medication treatment if he/she finds the following conditions are met:

a. The child is still mentally ill; and

b. Absent continued medication treatment, the child will suffer severe and abnormal mental and emotional distress as indicated by recent past history, and will experience deterioration in his/her ability to function in the least restrictive environment, thereby making him/her a substantial danger to him/herself or others, and

c. The medication treatment is in the medical best interest of the patient, taking into account the possible side effects as well as the potential benefits of the treatment; and

d. The medication treatment is in accordance with prevailing standards of accepted medical practice.

4. If the neutral and Detached Fact Finder approves continued medication treatment, he/she shall complete a Review of Continued Medication form, which shall be placed in the child's medical record. A copy shall be provided to the child and/or parent/legal guardian/legal custodian.

5. At the end of 12 months, the case shall again be reviewed as outlined in this subsection (Q), and shall be reviewed every 6 months while the course of treatment is being administered.

R523-1-18. Psychosurgery and Electroshock Therapy Procedures for Children, Legal Authority.

By this rule, the Division of Mental Health establishes the following due process procedure for children prior to their being administered psychosurgery or electroshock therapy as provided by Section 62A-12-283.1(3)(a)(ii).

A. This policy applies to persons under the age of 18 who are committed to the physical custody of a local mental health authority and/or committed to the legal custody of the Division of Mental Health. The following terms are herein defined:

B. ECT means electroconvulsive therapy.

C. A Legal Custodian means a person who is appointed by the juvenile court. Such a person may have been selected from the Division of Child and Family Services, the Division of Youth Corrections, or the Division of Mental Health.

D. A Legal Guardian means a person who holds a testamentary appointment or is appointed by a court of law.

E. Psychosurgery means a neurosurgical intervention to modify the brain to reduce the symptoms of a severely ill psychiatric patient.

F. A local mental health authority has the obligation to provide a child and parent/legal guardian/legal custodian with the following information when recommending that the child be treated with ECT or Psychosurgery:

1. The nature of the child's mental illness;

2. The recommended ECT/Psychosurgery treatment, its purpose, the method of administration, and recommended length of time for treatment;

3. The desired beneficial effects on the child's mental illness as a result of the recommended treatment

4. The possible or probable mental health consequences to the child if recommended treatment is not administered

5. The possible side effects, if any, of the recommended treatment

6. The ability of the staff to recognize any side effects, should any actually occur, and the possibility of ameliorating or abating those side effects

7. The possible, if any, alternative treatments available and whether those treatments are advisable

8. The right to give or withhold consent for the proposed ECT/psychosurgery.

9. When informing a child and his/her parent/legal guardian/legal custodian they have the right to withhold consent, the local mental health authority must inform them that regardless of whether they give or withhold consent, a due process procedure will be conducted before two designated examiners to determine the appropriateness of such treatment.

G. The child and parent/legal guardian/legal custodian shall then be afforded an opportunity to sign a consent form stating that they have received the information listed in subsection E of this section, and that they consent or do not consent to the proposed treatment.

H. If the parent/legal guardian/legal custodian refuses to consent to ECT/psychosurgery, the local mental health authority shall consider a treatment team dispositional review to determine whether the child is appropriate for treatment through their services.

I. Regardless of whether the child or parent/legal guardian/legal custodian agrees or disagrees with the proposed ECT/psychosurgery, a due process procedure shall be conducted before the treatment can be administered.

J. A physician shall request ECT or psychosurgery for a child by completing a Request to Treat With ECT or Psychosurgery form and submitting to the Director/Designee

of the Local Mental Health Authority providing treatment.

K. Upon receipt of the request, the Director/Designee shall contact two Designated Examiners, one of which must be a physician, and set a date and time for an ECT/Psychosurgery Hearing.

L. The child and parent/legal guardian/legal custodian shall be provided notice of the hearing.

M. Prior to the hearing, the two designated examiners shall be provided documentation regarding the child's mental condition, including the child's medical records, physician's orders, diagnosis, nursing notes, and any other pertinent information. The attending physician shall document his/her proposed course of treatment and reason(s) justifying the proposal in the medical record.

N. ECT/psychosurgery hearings shall be conducted by two Designated Examiners, one of whom is a physician, Hearings shall be held where the child is currently being treated, and shall be conducted in an informal, non-adversarial manner as to not have a harmful effect upon the child.

1. The child has the right to attend the hearing, have an adult informant (parent/legal guardian/legal custodian/foster parent, etc.) present, and to ask pertinent questions.

2. If the child or others become disruptive during the hearing, the Designated Examiners may request that those persons be removed. The hearing shall continue in that person's absence.

3. The hearing shall begin with the child, parent/legal guardian/legal custodian, and any others being informed of the purpose and procedure of the hearing.

4. The record shall be reviewed by the Designated Examiners and the proposed treatment shall be discussed.

5. The child, parent/legal guardian/legal custodian, and others present shall be afforded an opportunity to comment on the issue of ECT or psychosurgery.

6. Following the review of the case and the hearing of comments, the Designated Examiners shall render a decision

7. If needed the Designated Examiners may ask everyone to leave the room to allow them time to deliberate.

O. The Designated Examiners may order ECT or psychosurgery if, after consideration of the record and deliberation, they both find that the following conditions exist:

1. The child has a mental illness as defined in the current edition of the Diagnostic and Statistical Manual of the American Psychiatric Association (DSM); and

2. The child is gravely disabled and in need of ECT or Psychosurgery for the reason that he/she suffers from a mental illness such that he/she (a) is in danger of serious physical harm resulting from a failure to provide for his essential human needs of health or safety, or (b) manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over his/her actions and is not receiving such care as is essential for his/her health safety; and/or

3. Without ECT or psychosurgery, the child poses a likelihood of serious harm to self, others, or property. Likelihood of serious harm means either (a) substantial risk that physical harm will be inflicted by an individual upon his/her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on one's own self, or (b) a substantial risk that physical harm will be inflicted by an individual upon another, as evidenced by behavior which has caused such harm or which has placed another person or persons in reasonable fear of sustaining such harm, or (c) a substantial risk that physical harm will be inflicted by an individual upon the property of others, as evidenced by behavior which has caused substantial loss or damage to the property of others; and

4. The proposed treatment is an appropriate and accepted method of treatment for the patient's mental condition; and

5. The proposed medication treatment is in accordance with prevailing standards of accepted medical practice.

P. The basis for the decision shall be supported by adequate documentation. The Designated Examiners shall complete and sign an ECT or Psychosurgery form at the end of the hearing. A copy of the decision shall be provided to the child and/or parent/legal guardian/legal custodian.

Q. The child and/or parent/legal guardian/legal custodian may request a second opinion of a decision to treat with ECT or psychosurgery by filing a Request for a Second Opinion form with the Clinical Director/designee of the Division of Mental Health within 24 hours (excluding Saturdays, Sundays, and legal holidays) of the initial hearing.

R. ECT or psychosurgery may be commenced within 48 hours of the decision by the Designated Examiners, if no request for a second opinion is made. If a request is made, treatment may be commenced as soon as the Clinical Director/designee physician renders his/her decision if he/she agrees with the decision.

S. Upon receipt of a Request, the Clinical Director/designee will review the record, consult with whomever he/she believes is necessary, and render a decision within 48 hours (excluding Saturdays, Sundays, and legal holidays) of receipt of the Request. The Clinical Director/designee shall sign a Second Opinion for Decision to Treat with ECT/Psychosurgery form which is placed in the child's record. A copy shall be provided to the child and the parent/legal guardian/legal custodian prior to the commencement of treatment.

T. If a child has been receiving ECT treatment and requires further treatment than that outlined in the original ECT plan, the procedures set forth in subsections F through S of this section shall be followed before initiating further treatment.

KEY: bed allocation, due process, contracts, fees
November 1, 1996 **62A-12-102**
Notice of Continuation December 17, 1997 **62A-12-104**
62A-12-209.6(2)
62A-12-283.1(3)(a)(i)
62A-12-283.1(3)(a)(ii)

R527. Human Services, Recovery Services.
R527-255. Change in Circumstances.
R527-255-1. Change in Circumstances.

1. If the change in circumstances is temporary, defined as less than 6 months in prospective duration, the current support order shall not be modified.

2. If the change in circumstances is more extended, defined as 6 to 12 months in prospective duration, the office has the discretion to determine whether the change is minimal such that the original order should not be adjusted, or significant enough to justify initiating proceedings to adjust the award pursuant to Sections 78-45-7.2 through 78-45-7.21.

3. If the change in circumstances is long term or permanent, defined as over 12 months in prospective duration, the office shall initiate proceedings to adjust the award pursuant to Sections 78-45-7.2 through 78-45-7.21.

KEY: child support
August 15, 1997 78-45-7 through 78-45-7.21
Notice of Continuation December 4, 1997 62A-11-320.5
62A-11-320.6

R527. Human Services, Recovery Services.
R527-257. Enforcing Child Support When the Obligor is Incarcerated.
R527-257-1. Enforcing Child Support When the Obligor is Incarcerated.

1. If at the time of assessment, the obligor is incarcerated in prison, jail, or in a halfway house and has income or assets:

a. If there is no order for support, the office shall establish a support order using the child support guidelines pursuant to Section 78-45-7.

b. If a court order for child support exists, the debt shall accrue as ordered.

2. The Office of Recovery Services caseworker shall review the obligor's circumstances with a Department of Corrections caseworker before taking steps to collect the child support.

KEY: administrative law, child support, halfway houses
1992 78-45-7
Notice of Continuation December 4, 1997 62A-11-320

R527. Human Services, Recovery Services.
R527-330. Posting Priority of Payments Received.
R527-330-1. Posting Priority of Payments Received.

The Office shall determine to which debt payments will be credited in instances where the obligor has more than one debt, and the obligor has not expressed his intention, and no payment arrangement has been made. The Office shall credit the payments to current support, meeting the current support obligations. If the current support obligations have been met, any balance shall be applied toward arrears owed by the obligor.

KEY: child support, debt, public assistance programs
1992 62A-11-107
Notice of Continuation December 4, 1997

R527. Human Services, Recovery Services.
R527-378. Garnishment of Social Security Benefits.
R527-378-1. Garnishment of Social Security Benefits.

If social security is the obligor's sole means of support, the garnishment or the notice to the Social Security Administration to withhold income shall be limited to 25 percent of the social security benefit amount.

KEY: child support, social security
1992 62A-11-107
Notice of Continuation December 4, 1997

R527. Human Services, Recovery Services.
R527-412. Intercept of Unemployment Compensation.
R527-412-1. Intercept of Unemployment Compensation.

1. Unemployment compensation shall be subject to income withholding if the case meets the criteria in R527-300. If for any reason the unemployment compensation is not subject to income withholding, the unemployment compensation may be subject to garnishment.

2. The obligor may volunteer but shall not be required to pay more than 50% of his gross Unemployment Compensation benefit, or the maximum amount permitted under Section 303(b), Consumer Credit Protection Act, 15 USC 1673(b). If the obligor volunteers to pay more than 50% of the Unemployment Compensation benefit or more than the maximum amount permitted under Section 303(d), Consumer Credit Protection Act, 15 USC 1673(b), that agreement shall be in writing.

KEY: child support, unemployment compensation
1992 35A-4-103(5)
Notice of Continuation December 4, 1997 62A-11-401

R527. Human Services, Recovery Services.
R527-550. Assessment.
R527-550-1. Foster Care.

1. ORS shall collect child support and entitlement benefits in behalf of children placed in foster care in accordance with Section 78-3a-49, 78-45-1 et seq., 62A-11-301 et seq., and Federal regulations 45 CFR 300 through 307.

2. The monthly support obligation will be assessed according to the child support guidelines enacted in Section 78-45-7.2 through 78-45-7.18. A child support collection in excess of the monthly cost of care, but not more than the monthly support obligation, will be distributed by ORS to the Division of Family Services for deposit in the child's trust. Collections plus third party payments during the month which exceed the monthly court ordered amount will be used to

reimburse the state for past payments made in behalf of the child by the Division of Family Services or IV-A agency.

3. Third party payments are defined as entitlement benefits, insurance benefits, trust funds benefits, and so forth.

4. If funds are collected in excess of the total accumulated cost of care ORS shall distribute the excess to the appropriate source.

R527-550-2. Youth Corrections.

1. ORS shall collect child support and entitlement benefits in behalf of children placed in the custody of the Division of Youth Corrections (DYC) in accordance with Section 78-3a-49, 78-45-1 et seq., 62A-11-301 et seq., and Federal regulations 45 CFR 300 through 307.

2. The monthly support obligation will be assessed according to the child support guidelines enacted in Section 78-45-7.2 through 78-45-7.18. A child support collection in excess of the monthly cost of care, but not more than the monthly support obligation, will be distributed by ORS to the Division of Youth Corrections (DYC) for deposit in the child's trust. Collections plus third party payments during the month which exceed the monthly court ordered amount will be used to reimburse the state for past payments made in behalf of the child by the Division of Youth Corrections.

3. The cost of care is computed by multiplying the Division of Youth Correction's contract rate (according to the annual DYC contract/rate listing) for a particular facility, group home, or service by the number of days of care or service hours provided by the contractor as reported on the Youth Corrections Placement History Screen.

4. Third party payments are defined as entitlement benefits, insurance benefits, trust fund benefits, and so forth.

5. If funds are collected in excess of the total accumulated cost of care ORS shall distribute the excess to the appropriate source.

R527-550-4. Public Assistance Overpayments/Retained Support.

A. Obligor not on Assistance.

1. The obligor shall be required to complete an income asset affidavit.

2. The total liability shall be reviewed with the obligor.

3. If the obligor has the ability s/he shall be encouraged to pay the total obligation in full.

4. If total payment is not possible, review the type of debt, the anticipated length of time to repay the debt, total income, assets and expenses of the obligor's household, and any anticipated changes in the household circumstances.

5. This information will be used to determine a monthly repayment amount. When feasible, the monthly repayment amount shall be no less than 10% of the household income and liquid resources.

B. Obligor on Assistance

1. Financial Overpayment

Payment may be made by grant recoupment.

The amount of the grant recoupment shall be determined in accordance with 45 CFR 233.20 (12 and 13).

2. Food Stamp Overpayment

Payment may be made by allotment reduction, coupons or offset in accordance with 7 CFR 273.18 (g)

The amount of the allotment reduction shall be determined in accordance with 7 CFR 273.18(g)(3)

ORS shall be responsible for reviewing all requests for Food Stamp retroactive benefits to determine if an offset is to be made. A determination of the amount due the recipient shall be made within five (5) days from the date the request is received by ORS.

3. Retained Support

Utah has received a waiver from Title IV-A to allow recipients with Retained Support obligations to make payments on the debt by voluntary vendor payment. The guidelines established to determine the amount of grant recoupment in 45 CFR 233.20 (12 and 13) shall be used to determine the amount of vendor payment when possible.

KEY: child support, foster care, social security, youth corrections*

February 22, 1996 **62A-7-124**
Notice of Continuation December 15, 1997 **62A-9-129**
62A-11-104
62A-11-111
62A-11-201
62A-11-301
78-3a-49
78-45-1
78-45-4.3

R527. Human Services, Recovery Services.

R527-928. Lost Checks.

R527-928-1. Responsibility for Collection and Investigation.

ORS shall be responsible for the collection and investigation of lost or stolen department checks.

R527-928-2. Cashing Department Issued Checks.

The Department of Human Services has specific policy concerning the replacement of department issued checks which have been reported as lost or stolen and on which a stop payment has been placed or where the check has been returned as a forged check to the financial institution or store.

A. The Department of Human Services will replace a department issued check for any bank or store if all of the following conditions have been met:

1. An employee of the bank or store personally observes the payee endorse the check. This includes the original payee and any third party to whom the payee may have made the check payable.

2. An employee examined a picture bearing governmental issued media presented by the payee and was satisfied that the person presenting the check is in fact the payee. Examples of acceptable identification are, a Utah Motor Vehicle Operator's License or a Utah Identification card. Identification must be obtained for all payees endorsing the check. The employee must note the source of the identification and the identification number on the check.

3. The employee who approves the cashing of the check

must make an identifying mark which will identify the employee in the event legal action is initiated at a later date.

4. The replacement check to the bank or store must be requested within 120 days of the request on the "Check Return Without Entry" notice or the date of notification of the stop payment.

B. If all of the actions listed above are not taken, the Department will be unable to replace the check with one exception. In some cases, public assistance recipients who do not have a picture identification will be identified at the public assistance office. The office will stamp the recipient's check with a guaranteed for payment stamp. In the unlikely event that a check with this stamp is returned with a stop payment, the check will be replaced by contacting the check fraud investigator.

KEY: public assistance programs, banks and banking, fraud

1994	**70A-3**
Notice of Continuation December 15, 1997	**62A-9-129**
	62A-9-130
	62A-11-104
	62A-11-128 to 134
	62A-11-201

R539. Human Services, Services for People with Disabilities.
R539-1. Eligibility.
R539-1-1. Eligibility for Services.

A. Policy.

The Division of Services for People with Disabilities will serve those persons who meet the definition of disabled in Section 62A-5-101.

1. Operational definition- Life Activity Limitations:

a. Self care- A person who requires assistance, training or supervision in toileting, dressing, grooming, or eating. A person who cannot independently complete practical living skills, including housekeeping, meal preparation, laundry.

b. Receptive and expressive language- A person who manifests impairments in this area will have no expressive communication or will speak in nonsensical phrases. Receptive impairments are noted when a person does not demonstrate understanding of requests or is unable to follow one-to-two step instructions.

c. Learning- A thorough, adequate, and valid psychological assessment of the person's degree of conceptual intelligence reflects a performance of approximately two standard deviations or more below the mean observed in a population of persons of a comparable background. This is commonly defined as an IQ of 70 or below on a standardized measure of intelligence.

d. Mobility- Persons with a mobility impairment that require the use of assistive devices (cane, walker, wheelchair) to be mobile. Cannot self evacuate independently from a building in less than three minutes.

e. Self direction- A person who is unable to provide informed consent for life issues without the assistance of a court appointed legal representative or guardian; or has been declared legally incompetent.

f. Capacity for independent living- A person who is unable to perform such tasks as locate and use a telephone, access community public transportation services, use a checking or savings account, complete applications and locate employment opportunities without supervision and assistance. A person who is a danger to self or others without supervision.

g. Economic self sufficiency- A person who receives Supplemental Security income, participates in a day program or holds an employment position less than 20 hours per week paid less than minimum wage. A person who is unable to pay monthly bills without assistance.

B. Procedures.

1. Individuals seeking services from the Division shall present, to the region worker, a Form 19 signed by a licensed physician or licensed psychologist. For children six years of age and younger, letters from two licensed or certified professionals stating the child is at serious risk of a disability which is likely to continue indefinitely and would benefit from Division services, will be accepted in lieu of the form 19.

2. For eligible individuals who are not covered by the waiver, a fee may be required.

R539-1-2. Eligibility for Home and Community-Based Waiver Services.

A. Policy.

Some people are further eligible for federally matched services (Home and Community-Based Services Waiver) who meet Division eligibility and, in addition, have mental retardation or a developmental disability which would require the level of care provided in an Intermediate Care Facility for the Mentally Retarded in accordance with R414-39.

R539-1-3. Personal Assistance Services Eligibility.

A. Policy.

1. Personal Assistance Services means services provided to an adult with physical disabilities which enable the person to live as independently as possible. These services may include assistance with bathing, dressing, transfers, and other personal care tasks.

2. Applicants for Personal Assistance Services are required to complete a written application and are screened by a review team. Applicants must be adults with physical disabilities who:

a. are 18 years of age or older;

b. have a physical disability resulting in a functional loss of two or more limbs to the extent that the assistance of another person is required to accomplish personal care;

c. are at risk of being placed, or are already in an institution;

d. require 15 or more hours per week of personal assistance services; and

e. demonstrate an ability to be self-directed and are capable of managing their personal affairs as well as supervising the person(s) hired to provide the necessary personal assistance.

B. Procedures.

1. An application for services is made directly to the State Division Office. The application form includes:

a. documentation of the extent of personal assistance services needed;

b. a physician's verification of the information provided on the application; and

c. documentation that a pending or "dependent" living situation can be alleviated by Personal Assistance Services.

2. If an applicant is currently enrolled in Division services, the Individual Plan team may assist in making an application for services.

3. Applicants shall be selected by a review team which shall consist of at least one person currently receiving Personal Assistance Services and representatives from organizations serving people with physical disabilities, including the Division. At least three team members must be present to determine eligibility. The review team may make appropriate referrals to alternative resources for those applicants who are not eligible for Personal Assistance Services.

4. Applicants for Personal Assistance Services who are deemed eligible by the review team shall be placed on a waiting list prioritized by the most distant application date first. As funding permits, the highest priority applicant on the waiting list shall be offered services. Applicants or those on the waiting list who feel their circumstances warrant priority

may petition the review team for consideration for higher placement on the waiting list. The review team will consider the priority request according to the criteria in R539-3-1, B-2.

5. Appeals for denial of services will be made according to R503-5 and R539-2-5.

KEY: disabled persons*, social services
March 18, 1996 62A-5-103
Notice of Continuation December 18, 1997

R539. Human Services, Services for People with Disabilities.
R539-2. Civil Rights.
R539-2-1. Individual Rights.

A. Policy.

1. Unless indicated otherwise by the interdisciplinary team and documented in the Individual Program Plan (IPP) record, the rights of each person receiving Division of Services for People with Disabilities (DSPD) services shall include the following:

a. The right to be treated at all times with courtesy, respect and dignity, and with full recognition of individuality;

b. The right to be treated equally as citizens under the law, including the guarantees of privileges afforded under the Constitution of the United States;

c. The right to live in an appropriate, safe, sanitary living environment that complies with local, state, and federal standards;

d. The right to food adequate for accepted standards of nutrition and maintenance of health and well being;

e. The right to practice the religion of choice or to abstain from such practice;

f. The right of timely access to appropriate medical or dental treatment;

g. The right to access supportive services including occupational therapy, physical therapy, speech therapy, behavior modification and psychology services, and other necessary services;

h. The right to receive appropriate care and treatment in the least intrusive manner;

i. The right to privacy, including both periods and places of privacy;

j. The right to communicate freely with persons of choice in any reasonable manner, including social interactions with members of either sex;

k. The right to pursue economic opportunities which promote and enhance economic independence;

l. The right to be free from physical, emotional, psychological, or sexual abuse, and to be free from inappropriate chemical or physical restraint;

m. The right to participate in all decision making which may affect the individual's life, including educational, economic, social, habilitation, and recreation;

n. The right to present grievances.

o. The right to choose among available options.

B. Procedures.

1. A written description of the rights and responsibilities of each individual and legal representative shall be provided and explained at the admission meeting.

2. The Individual Rights policy shall be reviewed with each individual and legal representative annually during the IPP meeting.

3. The provider agency shall ensure that grievance procedures are communicated to individuals, parents, and legal representatives at their IPP meetings. The purpose of the grievance mechanism is to provide a review for and to address allegations of recipient's rights violations.

4. Each individual with disabilities has the right to counsel. If the individual does not have counsel, the contractor will insure that the individual is referred to the Legal Center for People with Disabilities. The Legal Center for People with Disabilities is designated by the Governor to provide protection and advocacy services as enumerated in Public Law 100-146, Title II, Section 113, Developmental Disabilities and Bill of Rights Act, which include advice, investigation, monitoring, legal counseling and representation in administrative and legal proceedings, and information and referral for persons with disabilities.

5. DSPD, DSPD regions, and the Department of Health shall conduct periodic inspections and audits to ensure compliance to this policy.

R539-2-2. Human Subject Research.

A. Policy.

1. Human Subjects Research procedures are intended to ensure that the health, safety, and confidentiality of individuals in DSPD programs are protected within the context of research activities conducted by any individual or organization.

2. The Provider Human Rights Committee (PHRC) must approve any research conducted. The Division of Human Rights Committee (DHRC) shall review and approve research approved by the PHRC.

3. Any individual or organization wishing to conduct research must guarantee, in writing, that the health, safety, and confidentiality of those involved will be maintained.

B. Procedures.

Approved research will be submitted to the Department of Human Services (DHS) Research Committee by DHRC in the event its review is required.

R539-2-3. Human Rights Committee.

A. Policy.

A PHRC is designed to protect persons receiving services from mistreatment, neglect and abuse to ensure that persons may develop to their fullest potential and enjoy satisfying lives. The DHRC serves as a support and review body for recommendations made by PHRC.

B. Procedures.

1. All agencies funded by DSPD shall make available to each person receiving services, patterns and conditions of everyday life which are consistent with their needs and which reflect the full range of choices that are available to persons without disabilities.

2. PHRCs shall advise the program administrator on the use of procedural safeguards for the protection of individual

rights and will review all allegations of possible neglect, abuse or denial of rights by:

a. evaluating infringements of the legal and human rights of persons served. The PHRC will report to the Division of Family Services (DFS) possible abuse, neglect, or exploitation of minors for investigation.

b. reviewing the fatality report completed by the DHS, Office of Liability Management (OLM), the PHRC will review the circumstances surrounding any death which may occur to a program recipient.

c. participating in improving the quality of life of recipients by monitoring programs to suggest ways to improve privacy, access to personal belongings, use of personal funds, and that habilitation is appropriate to the chronological age of the person served.

d. ensuring that all behavioral development techniques shall emphasize a positive approach designed to result in the acquisition and maintenance of adaptive behaviors by reviewing the use of Level III and Level IV interventions (see R539-6-12(1)) used for behavior training or management.

(1) Level III- Moderately intrusive procedures which may include: overcorrection, food delay, satiation, physical guidance or manual restraint.

(2) Level IV- Highly intrusive procedures which may include: exclusionary time out, deprivation of sensory stimuli, noxious substances, forced relaxation, inhibiting devices, mechanical or chemical restraint.

3. PHRC membership shall be appointed by the program administrator.

4. PHRC shall have members who are knowledgeable about and who have experience in behavior management and developmental disabilities programs. Membership shall include a consumer and an advocate. DSPD representatives and purchase of service contractors shall not have voting privileges unless they are designated members of the Committee. The majority of the PHRC shall not be employees of the agency.

5. The PHRC decisions shall be reached by a majority vote of all the members.

6. The PHRC appeal process shall be established by PHRC.

7. The Director of DSPD will appoint a DHRC to lend support to PHRC who shall review PHRC's recommendations, the individual's behavior management program and will:

a. advise the Director on the use of administrative and procedural safeguards for evaluating infringements of legal and human rights.

b. review and approve Level IV interventions (see R539-6-12(1)) for behavior management.

c. serve as an appeal body to review all allegations of possible abuse, neglect, or denial of rights.

R539-2-4. Protective Payee Services.

A. Procedures.

1. DSPD staff will be responsible to assess the request for protective payee services and team recommendation for protective payee services.

2. The recipient must be involved in choosing the protective payee.

3. The protective payee voluntary agreement must include:

a. name and address of recipient,

b. effective date for the agreement,

c. a description of the income and resources to be managed, and

d. an end date or plan to reach termination of payee status.

4. If protective payee status continues or is likely to continue for more than two years and no progress is being made, the DSPD case manager may contact DSPD, who will contact the Attorney General's Office to screen the case prior to requesting a conservator.

R539-2-5. Notice and Hearings for Service Changes.

A. Policy.

In order to provide equal opportunity and to ensure due process, a person with a disability has the right to proper notice, to present grievances, or to resolve questions about eligibility through a hearing. An informal process should first be utilized by the person with disabilities and other interested parties, but the individual has the right to a hearing before the DHS hearing examiner if the action cannot be resolved informally at the Region or Division level.

B. Procedures.

1. All agency actions, as defined by the Administrative Procedures Act (Title 63, Chapter 46a), require that the DSPD region notify the applicant in writing.

2. If a person's services are being terminated, reduced, or changed by the interdisciplinary team, the person and legal representative must receive written notice. The notification must include:

a. an explanation of action taken,

b. the reason for the action,

c. a citation of the regulation supporting the action, and

d. a statement of the person's right to a hearing.

3. The individual or legal representative must request a review and hearing within ten working days of receiving the notice in order for services to be continued unchanged during the review and hearing process.

4. The DSPD region staff will:

a. explain the regulations on which the action is based and attempt to resolve the disagreement,

b. suggest the problem be discussed with the DSPD region supervisor and associate director. If the individual is not satisfied with the associate director, the individual may request a joint review by the division director and region director.

c. give the individual a Form 490 if the individual is not satisfied with the action after the regional director and division director meet with the individual, or if at any time the individual insists on a hearing.

5. If the individual requests a hearing from a Hearing Officer, the Hearing Officer shall, within two days, notify the regional director of the request, the name and address of the individual, and the reason for the request.

6. If a request for a hearing is pursued, the individual must comply with the DHS Rule (R497-100) and the Utah

Administrative Procedures Act (Sections 63-46b-5 through 22).

7. If a Home and Community-Based Waivered Services (HBCWS) recipient has a reduction in services, the recipient must be notified in writing. All requests for a hearing must be forwarded to the Division of Health Care Finance, Department of Health.

R539-2-6. Informed Consent.

A. Policy.

Written documentation is required which has been explained to the individual and legal representative to provide protection of the individual's rights when the individual is participating in treatment plans, financial arrangements, placement decisions, medical matters, involvement in research and making decisions about their significant life activities.

B. Procedures.

1. The interdisciplinary team must review the individual's ability to give informed consent. They may consult with a licensed psychologist or licensed physician to evaluate the individual's ability to provide informed consent.

2. Documentation of informed consent requires a signed, written consent that the individual or authorized representative have received an explanation of:

a. the purposes of the proposed treatment or life event,

b. the expected duration of the individual's participation,

c. a description of the procedures to be followed,

d. identification of any procedures which are experimental,

e. a description of any reasonable foreseeable risks, discomforts, or benefits to the individual,

f. a disclosure of appropriate alternative procedures or courses of treatment, if any, that might be advantageous, and

g. whom to contact for answers to pertinent questions about the individual's rights.

3. A witnessed oral consent by telephone from the individual or legal representative may be utilized until a formal written consent is obtained.

4. Nothing in this policy is intended to limit the authority of a physician to provide emergency medical care, to the extent the physician is permitted to do so under applicable federal, state, or local law.

KEY: social services, disabled persons*
1993 62A-5-103
Notice of Continuation December 18, 1997

R539. Human Services, Services for People with Disabilities.
R539-4. Quality Assurance.
R539-4-1. Quality Assurance Survey.

A. Policy.

The purpose of the Quality Assurance survey is to ensure that recipients of Division of Services for People with Disabilities funded programs are receiving services that support them in participating fully in community life and an enhanced quality of life.

B. Procedures.

1. The Quality Assurance team will survey quality of life outcomes for the identified individual by observation, interviews, and a review of records.

2. Deficiencies identified in the report require a provider to submit a plan of correction within 15 working days from the final survey report date. The Provider must respond to each identified deficiency, including proposed method of correction, task assignments, and supervision.

3. The Quality Assurance team leader will determine if the submitted plan of correction is acceptable and if not, notify the Provider by certified mail within ten working days of receipt. The Provider must submit a revised plan of correction within five working days. If a revised plan of correction is unsatisfactory, the Division and Regional Director may initiate sanctions.

4. A follow-up survey will be scheduled by Division staff within 60-90 days after receipt of the accepted plan of correction. The purpose of the follow-up is to:

a. determine and certify if the deficiencies have been corrected as specified in the plan of correction.

b. if deficiencies have not been corrected as specified, initiate corrective actions which include the following:

(1) provide additional time for the Provider to complete corrections.

(2) request a revised plan of correction to be submitted to the Division within five days, or

(3) recommend the Division and Regional Director initiate formal sanctions.

5. The Division and Regional Director may initiate sanctions by providing written notice of the action to be taken to the Provider in instances when:

a. Revised plan of corrections is unsatisfactory.

b. Imminent danger and health violations exist or other significant deficiencies are present.

c. The Provider has failed to implement an approved plan of correction.

6. A Provider who disagrees with the proposed sanctions may pursue an appeal through the Department of Human Services (R495-100).

R539-4-2. Volunteer Monitoring.

A. Policy.

Volunteer Monitoring is an integral part of the Division's Quality Assurance system. Volunteer monitors are interested individuals not otherwise paid to provide services. The goal of the Volunteer Monitoring Services Committee is to help children and adults with disabilities be assured of an enhanced quality of life. In order to accomplish this goal, the Volunteers conduct facility and program reviews. Corrective activities may be undertaken for problems identified by the Volunteer Monitoring Services Committee.

B. Procedures.

1. A Plan of Correction may be requested if the review indicates that the program is not in compliance with Division policy and procedures.

a. A written response is required within 20 days to correct any deficiencies and respond to concerns (see R539-4-1.B.2).

b. The Plan of Correction will be submitted to the Division and the Executive Committee of the Volunteer Monitoring Services Committee for review and follow-up. In addition, at the Division Director's request, the Division may conduct a Quality Assurance review (in accordance with R539-4-1).

R539-4-3. Residential Site.

A. Policy.

It is the policy of the Division that acquisition of residential sites for the purpose of providing services to people with disabilities should conform to state and local zoning requirements and shall not violate the Federal Fair Housing Law. The Division shall make a formal determination, where an individual history warrants, that the individual being considered for placement does not pose a direct threat to the health and safety of other individuals.

R539-4-4. Informal Quality Assurance Reconsideration Process.

A. Policy.

A Provider with the Division of Services for People with Disabilities is entitled to a review of any individual's quality assurance outcomes survey.

B. Procedures.

1. A provider of services may request informal reconsideration by submitting a written request to the Division Director of Quality Assurance within 15 working days of receipt of the outcomes survey report. The letter should include a description of the standards or items on the survey for which review is requested.

2. The informal reconsideration will be performed within ten working days of receipt of the request. The results of the reconsideration will be submitted in writing to the provider and the Division Director within ten working days of the completion of the informal reconsideration.

3. The provider may exercise any further formal appeals afforded them in contract or state policy.

R539-4-5. Contracts for Services.

A. Policy

The State Office will coordinate on behalf of the Regional Offices the review of contracts, the call for statewide proposals for services, promulgation of rates, and the development of the contract Objectives and Evaluations attachment. The Regions shall arrange for contracts with Providers on behalf of service recipients, shall establish and manage budgets for signed contracts, and shall conduct contract compliance monitoring activities. The State Office and Regional Offices shall collaborate on the resolution of problems occurring around contracting, which will include promoting an environment of fair competition among providers.

B. Procedures

1. A contract may be terminated immediately:

a. If the individuals served are in clear and imminent danger.

b. If a purchase of service provider cannot demonstrate proper licensing/certification.

2. A contract may be terminated without cause upon 30 days prior written notice under the following circumstances:

a. division funding inadequacies;

b. there is no further need for the contract.

3. A contract may be terminated with cause with a 30 day written notice for:

a. continued contractual violations;

b. continued violations of Department or Division policy;

c. mismanagement of personal, state, or federal funds;

d. failure to correct continuing deficiencies identified in quality assurance surveys;

e. and other situations where the Division determines it is in the best interest of the persons served.

4. Contractors may avail themselves of all remedies available for termination with cause under the provisions of the Utah State Procurement Code, Section 63-56-1.

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R539. Human Services, Services for People with Disabilities.
R539-5. Preparation and Maintenance of Client Records.
R539-5-1. Provider Records for Individuals.

A. Policy.

Each provider shall be required to maintain an individual record for each person receiving services. Each record will contain all information required by the Office of Licensing (OL), Division of Services for People with Disabilities (DSPD), DSPD Regional Office, and Medicaid Provider Manual for Home and Community-Based Services. All record information will be treated as confidential, locked and secured to protect the primary interests of the recipient.

B. Procedures.

1. Each individual record will contain the following demographic and program information, unless the competent recipient objects to the inclusion of any item:

a. Name, birth date, individual I.D. and Medicaid numbers (if applicable);

b. Photo of individual receiving services;

c. Name, address, and telephone number of the individual's guardian, or other emergency contact person, and instructions on how to contact that person;

d. Name and telephone number of the individual's primary care physician, and medical insurance, if any;

e. Health information to include, for example, prescribed medication(s), allergies, and chronic complaints;

f. Reports of physical and dental examinations, and records of illness, accidents, or injuries;

g. Reports of behavioral or other incidents involving the recipient;

h. Authorization for emergency medical treatment;

i. Administration of medication, first aid, and referrals to health care facility (if applicable);

j. A social history, psychological evaluation, and

documentation of eligibility for services;

k. Annual Individual Program Plan (IPP), including semi-annual review;

l. Admission and termination dates and documentation;

m. Monthly progress notes and supporting data collection sheets. Data collection sheets not maintained in the individual's record shall be available for review;

n. Documentation of persons reviewing an individual's record to include signature, title, date, and reason for examining the record. Provider staff shall have access to those portions of the record which directly relates to their work assignment;

o. Release of information forms when appropriate. DSPD approval must be obtained prior to release of records to anyone except the recipient of services and legal representative.

2. The purchase of service provider must develop and maintain written documentation for each Home and Community-Based Services Waiver for which billing is made, that includes at least the following:

a. Name of the recipient;

b. The specific services rendered;

c. The date and hours of attendance;

d. Who rendered the services;

e. The setting in which the services were rendered to include, for example, day treatment facility, recipient's home;

f. The relationship of the services to the treatment regimen described in the IPP;

g. Updates or description of the recipient's progress (semi-annual and annual reviews).

3. The provider will deliver the individual records to the DSPD regional office upon written request.

4. When the records contain information which would be classified as confidential or private, pursuant to 63-2-101 through 108, the Provider will observe the requirements of 63-2-202 in safeguarding and releasing information.

R539-5-2. Personal Funds Management.

A. Policy.

Each individual receiving services shall receive training, support, and opportunities to manage finances to the maximum extent possible. Acknowledging that individuals served in DSPD have income sources not originating with DSPD/DHS (including for example, SSI, SSA, employment income), the Division requires Providers to document the handling of the personal funds in a fashion that is least intrusive to the individual, and in a manner that is in keeping with the intent of the income source.

R539-5-3. Provider Policy and Records.

A. Policy.

Providers shall set up written policies which include a description of the program services to be offered, philosophy, objectives and the population to be served. The Provider will comply with the OL and DSPD policy and record requirements.

B. Procedures.

1. The Provider shall maintain service records which include the following information:

a. Name and address of the facility, and owner or sponsoring agency;

b. Agency or corporate organizational chart including names of consultants and employees;

c. Job descriptions for all personnel including volunteers with ongoing involvement;

d. Policy specifying the amount of time family or friends may stay as overnight guests;

e. Grievance procedures for individuals receiving services.

(1) A copy shall be given to each individual which will be read and explained to each individual and guardian, and shall be documented by a statement signed by the individual and guardian and maintained in the individual's record.

(2) Individuals receiving services shall be provided with the telephone number of the DSPD case manager and the 24-hour emergency number of the DSPD regional office at which the case manager works;

f. Financial policy regarding management of the finances of the individuals receiving services, room and board charges, and food stamps consistent with R539-5-2.A. The policy must ensure that all individual funds managed by the Provider are released at the time of discharge, or upon demand to the individual or legal guardian after outstanding bills are paid.

(1) The Provider shall have a written agreement signed by the recipient and legal representative which specifies in advance the fees, absenteeism, vacations, leave policy, extra costs charged for care and services, obligations concerning payment of such charges and the Provider's refund policy.

(2) Providers will assist individuals, receiving their services, in applying for unearned income benefits for which an individual may be entitled, including Food Stamp benefits.

(a) Food Stamp benefits shall be managed as per Office of Family Support (OFS) Regulations, and may be used to supplement food costs of the group home and supervised apartment services in which the recipient of food stamps resides;

(b) The receipt and disbursement of food stamps will be properly documented by the Provider.

(3) Where a parent or guardian is representative payee for an individual, the Provider shall receive all service fees from the payee.

(4) The Provider may act as representative payee for an individual receiving group home or supervised apartment services, if necessary and when requested in writing by the individual or the individual's guardian.

g. Civil Rights Policy, to include R539-2-1, R539-2-3, Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112), and the American with Disabilities Act of 1990 (P.L. 101-336);

h. Emergency procedures for injury, illness, and death of an individual receiving services, that are readily accessible in the facility. These procedures shall include instructions on when to notify the guardian, DSPD, and DSPD regional office;

i. Emergency procedures for fire and disaster including a plan for evacuation shall be posted at each facility.

(1) A training program covering these procedures for

individuals receiving services shall be developed, and conducted quarterly;

(2) Documentation of quarterly evacuation drills shall be maintained by the Provider;

j. R539-2-6 regarding abuse or neglect of individuals with disabilities. This policy shall be available in the facility. Each employee shall read and sign a statement indicating that the employee has read the policy. This statement must be maintained in the employee's personnel file;

k. Operating policies, procedures, and personnel practices.

2. The Provider shall orient the prospective service recipient regarding the Individual Program Plan (IPP) process and the involvement of the individual receiving services in that process;

3. Individuals who are sponsored by agencies or individuals other than DSPD shall receive the same level of service from the Provider as individuals who are sponsored by DSPD.

4. Each Provider shall maintain the following records where applicable.

a. A license stating the maximum number of individuals allowed to reside in the facility;

b. Documentation of compliance with zoning, life safety, health, and fire inspections as required for licensure, if appropriate;

c. Copies of any contracts or agreements with other service agencies or individuals in the community regularly providing services through the auspices of the Provider to the individuals receiving services in the program;

d. Records of operational costs and revenue according to accounting principles acceptable to the Department of Human Services;

e. Individual service documentation shall include: sponsorship of each individual, DSPD, and private; record of payments to the Division; and reimbursement requests (Forms 520, 1032). These records must be maintained for five years from the date of discharge;

f. Accurate records on each individual receiving services shall be maintained in locked files or otherwise secured. The records shall contain at least the items stated in R539-5-1.

g. A Provider who contracts with federal, state, county, city or other agencies to utilize facilities for which the Provider realizes a financial benefit shall ensure those benefits are used to benefit the individuals receiving services from the Provider. The provider shall maintain documentation of this in its administrative fiscal record.

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R539. Human Services, Services for People with Disabilities.
R539-6. Purchase of Service Provider Requirements.
R539-6-1. Personnel Requirements.

A. Policy.

The Provider shall ensure that trained program staff are responsible for the day-to-day supervision and operation of the program.

B. Procedures.

1. Each site shall have a direct program staff person responsible for the day-to-day supervision of individuals receiving services and the operation of the program. The responsibility of the direct program staff person shall be clearly defined. The Provider clearly defines supervisory responsibility during all hours of operation.

2. All direct program staff shall be at least 18 years of age.

3. The ratio of staff to recipient will be based upon the need of the individuals, and shall meet the minimum ratios identified in the contract for the program.

4. Students and volunteers may be used to augment, but not replace, regularly employed staff.

5. Each employee who works with children must undergo a Bureau of Criminal Investigation (BCI) screening in accordance with Section 62A-4-514. All persons living in the professional parent home over 18 must obtain fingerprints from their local law enforcement agency. (Section 62A-4-514.) Providers are encouraged to screen all employees working with Division of Services for People with Disabilities (DSPD) adults for a BCI check.

6. The Provider shall maintain personnel information on each employee.

a. Job descriptions and educational requirements will be maintained for each employed position.

b. Performance appraisals shall be conducted at least annually for all employees.

c. A health evaluation, including:

(1) The employee's statement of freedom from any communicable disease or other condition that might pose a health hazard to individuals receiving service.

(2) Within two weeks of employment all Direct Personnel shall be required to file a report that a negative TB screen for tuberculosis has been obtained, or a chest x-ray is negative if previous tuberculin test indicated positive results.

(3) If a staff member develops indications of a serious physical, emotional, or mental condition which could seriously jeopardize the well-being of any individual receiving services, or could prevent satisfactory performance of duties, that staff member shall be excluded from the program until the condition is resolved to the satisfaction of a licensed physician or other appropriate professional and until a written statement of such is presented and approval is given by the Provider.

7. All staff involved in food preparation shall have a current Food Handler's Permit obtained from the County Health Department.

R539-6-2. Personnel Respite.

A. Policy.

Respite Providers will ensure that all employees meet minimum criteria to ensure safety and services which offer the least disruption of the individual's life.

B. Procedures.

1. The Provider will interview each applicant and

request written references which shall be verified and filed on all staff hired.

2. A BCI screening is required for all applicants working with children. If respite care is to be provided in a Provider's home all persons over 18 living in the home must obtain fingerprints from their local law enforcement agency. (Section 62A-4-514.) All providers working with adult recipients are encouraged to obtain a BCI screening.

3. Respite providers shall be at least 18 years of age.

4. Respite Providers must provide the following information on all employees:

a. Name, address, and telephone number.

b. Training and experience in the area of developmental disabilities.

c. Physical problems that might limit their abilities to serve the specific kinds of disabilities.

d. Names, addresses, and telephone numbers for three non-family references.

R539-6-3. Training Requirements for Day and Residential Programs.

A. Policy.

In order to enhance the quality of services and to ensure reduced liability risk to the State and providers, all program staff in residential and day services shall receive training and demonstrate competency in the following areas. Specific training requirements under each area, if any, are listed in the Procedures section with the time-line in which that training is expected to occur. Specific requirements may vary according to the individuals served.

a. Division policies and procedures, philosophy, mission, and beliefs.

b. Provider policies, philosophy, and mission (R539-5-3, Provider Policy and Records).

c. Nutrition (R539-6-14, Nutrition Requirements).

d. Health (R539-6-10, Health/Medication Requirements).

e. Emergency procedures (as outlined in the provider's policy manual).

f. Behavior management (R539-6-12, Adaptive Behavior Development).

g. Crisis procedures (R539-6-13, Emergency Services Crisis Intervention).

h. Legal rights of individuals with disabilities (R539-2-1, Individual Rights, and R539-2-3, Human Rights Committee).

i. Abuse, neglect, and exploitation (R539-2-1, Individual Rights, and R539-6-8, Code of Conduct).

j. Department of Human Services Provider Code of Conduct (R539-6-8, Code of Conduct).

k. Confidentiality (R539-2-2, Human Subject Research).

l. Principles of community inclusion (R539-2-1, Individual Rights).

m. Americans with Disabilities Act (R539-2-1, Individual Rights).

n. Individual Program Plan development (R539-3-2, Individual Program Plan).

o. Disabling conditions.

p. Age appropriate recreation and leisure skills.

B. Procedures.

1. The provider will require all staff to pass a written examination, or by some other method, demonstrate competency. The measures shall be available for inspection by Division staff.

2. The provider will ensure that a pre-service manual is provided to all employees and that competency is demonstrated in the following areas prior to providing any direct services to people with disabilities:

a. Disabling conditions: Orientation to individuals receiving services in that specific location or work site.

b. Emergency procedures: Fire safety, as well as other disaster safety procedures.

c. Behavior management: General principles of behavior management.

d. Legal rights of persons with disabilities.

e. Confidentiality.

f. Abuse, exploitation and neglect.

g. The Department of Human Services Provider Code of Conduct.

h. Orientation to the provider's agency policies and mission.

i. Orientation to the Division's mission and beliefs.

3. Within the first 30 working days, the employee shall demonstrate competency in the following areas:

a. Emergency procedures: First aid (including the Heimlich Maneuver).

b. Health: Medication specific to the individuals receiving services, including self-medication administration and documentation. Illness symptom recognition specific to the individuals served.

c. Health: Prevention of communicable disease (Human Immunodeficiency Virus, Sexually Transmitted Diseases, Hepatitis, etc.).

d. Nutrition: Specific dietary issues of the individual's receiving services.

e. Behavior management: Behavioral intervention programs specific to the individuals receiving services.

4. Within the first six months, the employee shall demonstrate competency in the following areas:

a. Principles of community inclusion.

b. Health: Self-medication administration and identification of common medications; and Cardiopulmonary Resuscitation (CPR) Certification.

c. Provider agency policies, philosophy, and mission.

d. Division policies and procedures, philosophy, mission, and beliefs.

e. Individual Program Plan development: Teaching methods, data collection, and documentation.

f. Behavior management: The use of non-aversive techniques in behavioral crisis prevention and intervention. Mandt, Professional Assault Response Training, or other Division approved training programs will only be required of those employees working with individuals who are highly likely to become aggressive. Providers are encouraged to provide this training to their staff as appropriate and as determined necessary.

g. Individual rights: Human Rights committees policies and procedures.

h. Americans with Disabilities Act.

i. Age appropriate recreation and leisure skills.

j. Nutrition: Mealtime procedures and nutritional needs of individuals served.

k. Health: Exercise and weight control.

l. Orientation to individuals with mental retardation and developmental disabilities, as well as to the disabling conditions specific to the individuals served by the provider.

5. After the first year of employment a minimum of 12 hours of additional training per year related to services for individuals with disabilities is required and must include Cardiopulmonary Resuscitation and First Aid certification or recertification.

6. During the first month of employment the relief and substitute staff will meet the pre-service requirement (2 above). Additionally, during the next 12 months they will complete items 3 and 4 above. Relief and substitute staff are those which work 10 or less hours per week.

R539-6-4. Training Requirements for Family Support and Respite Care Provider Agencies.

A. Policy.

All persons contracted or employed under a provider agency to provide family support or respite services to individuals with disabilities or their families with Division funding, will meet the following criteria to ensure safety, quality, competency, and flexibility in the supports and services they provide:

1. All persons contracted or employed under a provider agency to provide family support or respite services shall receive training and demonstrate competency in the following areas related to serving the person with disabilities. Training may be waived by the provider agency if the person's education or experience meets this criterion and competency is demonstrated. Verification of such education or experience must be documented and maintained in the person's provider file. The person shall receive the following training prior to providing services and supports:

a. The Philosophy of the Division of Services for People with Disabilities, including the Division Mission Statement, and Keys to Successful Family Support.

b. The Philosophy of supporting the family (as opposed to supplanting the family) and how to maintain positive interactions with the family.

c. Emergency first aid, Emergency Policies and Procedures (as outlined in the provider's policy manual according to R539-5-3, Provider Policy and Records), Fire Safety (Persons providing respite services must have a written fire evacuation plan).

d. General principles of behavior management, as well as legal rights of persons with disabilities.

e. Confidentiality.

f. The Department of Human Services Provider Code of Conduct (R539-6-8, Code of Conduct), including what constitutes abuse, neglect, and exploitation.

g. A general review of the causes of developmental disabilities and the more common types of disabilities. Specific emphasis may be given to the types of disabilities the provider may encounter with selected individuals.

2. Persons providing direct services and supports must be knowledgeable about the disabilities, required support, and strengths of the individual(s) they are to serve.

This policy does not apply to persons hired directly by individuals with disabilities or their families to provide family support or respite services under the Purchase of Individual Family Support Agreement, form 945 (Parent Choice Model).

B. Procedures.

1. Each provider agency will have a written statement of operation and the following information in each person's file with whom they employ or contract to provide direct services and supports:

a. An application.

b. At least three references (with verification of those references by the provider agency).

c. Bureau of Criminal Identification release forms (if applicable) in accordance with R539-6-1, Personnel Requirements.

d. Child/Adult Abuse Screening forms in accordance with R539-6-1.

e. A copy of the person's drivers license and evidence of insurance coverage if they will be transporting the individual. The provider must also annually check the person's driving record.

f. A copy of the person's social security card.

g. The Department of Human Services Provider Code of Conduct signature sheet signed by the person providing direct services and supports.

h. Persons providing respite services in their own home will complete a self certification form annually and will be subject to a random sample audit.

2. Training shall be conducted by a person with professional experience (at least two years) and knowledge in providing services and supports to persons with developmental disabilities.

3. All persons contracted or employed under a provider agency to provide family support or respite services will maintain records for individuals served according to R539-5-1, Provider Records for Individuals.

R539-6-5. Provider Board.

A. Policy.

To ensure oversight of Division programs, each non-profit Provider serving more than six individuals and having contracts exceeding $35,000 shall have a board to assure a high quality of program standards, effective program administration, and continuing program development. For-profit agencies are excluded from this requirement, but shall authorize their Human Rights Committee (R539-2-3) program oversight responsibilities in order to assure the public trust in state funding of service.

B. Procedures.

1. The Provider shall have bylaws which dictate the size of the board, constitution of membership, terms of membership, and method of selecting officers and new board members. The Board of Directors for non-profit agencies shall establish bylaws consistent with the following:

a. The board membership reflects the range of community people with interest or background in the program

area. At least one member shall be a representative of the individuals served in the program.

b. Boards shall have term membership and shall rotate replacement of new members. Selection of officers and new members shall be made by a committee of the board and appointments made by a vote of the full board. Officers shall be elected annually.

c. To the extent they are not a majority of the membership or Board quorum, provider staff and/or their relatives may serve on the Board.

d. The Board of Directors for for-profit agencies shall comply with the Governing Body policy in the Department of Human Services' Rule (R501-2-3).

2. The Provider shall supply secretarial and staff support as requested by the board. The board agenda shall be established as a cooperative effort between the agency director or designee and the board chair.

3. The responsibilities of the Board shall include the following:

a. Meet with a frequency sufficient to carry out its responsibility, but not less than quarterly.

b. Review and up-date the bylaws outlining the power and responsibility of the board.

c. Review and approve all program policies, standards, budgets, and administrative practices, including employee job descriptions, hiring and firing practices, salary levels, and other personnel issues. They shall also review and make decisions on any unresolved employee grievances.

d. Non-profit boards shall conduct an annual review of the agency director's performance and submit a written appraisal to the director.

e. Review individual and parent grievances when not resolved by staff or administration. Issue recommendations to the agency director for resolution of the grievance.

f. Hold meetings with individuals and parent groups or conduct surveys as needed to determine program satisfaction.

g. Record minutes of meetings and document all actions taken by the board.

h. Perform other oversight responsibilities as the board sees fit in order to maintain the public trust in the state-funded service.

4. For non-profit agencies, either in the bylaws or agency policy, there shall be provision guarding against conflict of interest between a board member and the Provider organization. This does not rule out a business relationship with the Provider, but does require a disclosure of the interest and the limits or exclusions required for a member's participation in discussions and voting on the matters in which there are conflicts.

R539-6-6. Use of Volunteers.

A. Policy.

Purchase of Service Providers may use volunteers who have been trained to augment or deliver service designed for individuals with disabilities. Volunteers shall not replace minimum ratios for staff.

B. Procedures.

1. A volunteer will complete an application, including references, and have a screening interview. If the volunteer is to work with children with disabilities, they must be approved through a BCI check (Section 62A-4-514). Volunteers working with adults with disabilities are encouraged to be approved with a BCI check.

2. Providers will ensure that volunteers complete an orientation and training program which will include at a minimum:

a. Provider policies and procedures.

b. DSPD policies and procedures for reporting client abuse and client rights.

c. Confidential nature of information on individuals with disabilities.

d. Emergency procedures to follow when working with the individual.

e. Documentation of training and proficiency of the individual to carry out the assigned tasks.

f. Orientation to the individual with disabilities.

3. Providers will document the number of hours the volunteer works and provide supervision to comply with federal wage laws.

4. The Provider will have adequate insurance to protect both the volunteer and the individual with disabilities.

5. The legal guardian must provide written permission for the volunteer to take an individual from the program or overnight.

R539-6-7. Licensing and Certification.

A. Policy.

The purpose of licensing or certification is to authorize a public or private agency, or individual to provide services for DSPD. The license or certification designates that the program has the capacity to provide the service and indicates that the governing body of the program has demonstrated or has provided assurance that services shall be provided in accordance with DSPD and Office of Licensing (OL) rules.

B. Procedures.

1. A program and Provider will comply with licensing regulations regarding the application process and shall apply through the Department of Humans Services (DHS) Office of Licensing. Programs requiring licensing include day training, pre-vocational, large group-homes (four or more persons), supervised apartments (four or more persons), and foster care.

2. A program or Provider seeking certification shall apply through DSPD. Programs requiring certification include: small group homes (three or less persons), supervised apartments (three or less persons), living support and training, respite care, family support, supported employment, and socialization/recreation.

a. The certification application shall be completed by the provider and submitted to the DSPD contract administrator.

b. The on-site inspection certification shall be completed by the DSPD regions for out-of-home programs. The certification check-list for facility requirements is completed for all supervised apartments, small group-homes, out-of-home respite, and Professional Parent homes. (See R539-6-11)

c. Certificates shall be issued by DSPD to providers annually.

d. A self-certification form will be completed for family support programs, in-home respite and living support and training programs, supported employment, and socialization/recreation.

(1) Family support - Provider managed.

(a) Provider certifies to abide by the terms and conditions of the DSPD policies and procedures.

(b) Maintain documentation that training requirements are met for each employee.

(c) Written references shall be verified and filed for each employee.

(d) Medicaid application on file if required.

(2) Respite - In-home.

(a) Provider certifies to abide by the terms and conditions of the DSPD policies and procedures.

(b) Maintain documentation that training requirements are met for each employee.

(c) Written references shall be verified and filed for each employee.

(d) Medicaid application on file if required.

(3) Family support - Family managed.

(a) Application and references for an employee shall be on file.

(b) Maintain documentation that the family has selected the service provider.

(c) Family provides a statement which includes the following:

(i) The individual demonstrates competency to provide the service(s).

(ii) The individual will be trained by the parent(s) to provide the service(s).

(d) Medicaid application on file if required.

(4) Living Support and Training.

(a) Provider certifies to abide by the terms and conditions of the DSPD policies and procedures.

(b) Maintain documentation that training is implemented according to the IPP.

(c) Medicaid application on file if required.

(5) Supported Employment.

(a) Provider certifies to abide by the terms and conditions of the DSPD policies and procedures.

(b) Maintain documentation that training is implemented according to the IPP.

(c) Provider certifies that employer facilities will comply with Federal and State life safety requirements.

(d) Provisions of direct services in a facility requires providers to meet standards of physical accessibility.

(e) Medicaid application on file if required.

(6) Socialization/Recreation (State and Federal).

(a) Provider certifies to abide by health and safety requirements.

(b) Provision of direct services in a facility based program requires the provider to meet physical accessibility standards.

e. If the provider has a medicaid application and provider agreement on file they are not required for recertification.

3. A program or Provider seeking licensure or certification to provide direct service to children shall submit fingerprints and accompanying information to the DSPD region through the BCI check. Providers are encouraged to ensure that all employees working with adult recipients also complete the BCI screen.

4. Each program and Provider shall permit representatives of the Office or Agency to conduct on-site reviews, announced or unannounced, of the physical facility, program operation, individual records, and to interview staff and recipients to determine compliance.

R539-6-8. Code of Conduct.

A. Policy.

It is the policy of DSPD to have rules of conduct apply to any employee of any contracted service. The contractor must enforce and ensure that all employees sign and understand the Code of Conduct.

B. Procedures.

1. All employees will sign and state that they understand the code of conduct prior to beginning employment and annually review the statements to include at a minimum the following:

a. Use of alcoholic beverages, or controlled substances without medical prescription, by an employee while on the job, or being under the influence while on the job, is prohibited.

b. Cruel and abusing treatment is strictly prohibited, which includes mental as well as physical maltreatment. Employees are not allowed to strike recipients with any object, including their hands. When aversive procedures are recommended or prescribed, the Provider must have the procedure approved by the Provider Human Rights Committee and Division Human Rights Committee.

c. Recipient-employee sexual relationships are prohibited and will be reported to the Department officials as abuse.

d. Errors of omission and neglect in performing duties, as sleeping on duty, will be viewed as an overt abusive act.

e. Use of a recipient's resources for private or personal gain by an employee is prohibited.

f. No firearms are allowed in residential or day training facilities. Specialized foster homes, Professional Parents, and Respite providers must follow the licensing standards for Foster Care in regard to storage of firearms. (R501-12-9)

2. Employees that witness or are aware of a violation have the responsibility to report verbally such violations immediately to the appropriate authorities. Following this oral report, a written report should be given to the supervisor. If the employee witnessing the violation fails to report, the employee is subject to the same corrective action as applies to the offender.

3. All providers will comply with the DHS Code of Conduct. (R495-876)

R539-6-9. Facility Requirements.

A. Policy.

1. Residential facilities shall be maintained in a manner which is safe, attractive, and healthy for the individuals who reside in them. Each individual receiving services shall receive training, support, and opportunities to furnish and

maintain the home in which the individual resides, as determined by the IPP team. Each individual receiving services shall receive training, support, and opportunities to decorate and personalize the home or apartment in an age-appropriate manner, with respect shown to roommates and to property.

2. Policies regarding facilities do not apply to individuals receiving Living Support and Training (LST) services. However, the Provider shall provide training, support, and assistance as requested by the individual to enable the individual to have a healthy, safe, and pleasant residence.

B. Procedures.

1. Each facility shall be maintained in good condition with regard to:

a. Exterior of building in good repair. Well groomed and maintained lawn, shrubs, and trees (if appropriate).

b. Interior of building in good repair.

(1) Equipment and furnishings are sufficient, comfortable and in good repair.

(2) No more than two persons shall be housed in a single bedroom.

(a) Minimum of 60 feet per occupant is provided in a bedroom with two persons.

(b) Minimum of 100 square feet for one individual is provided.

(c) Sleeping areas shall have a source of natural light, and be ventilated by mechanical means or equipped with a screened window.

(d) Sleeping areas serving male and female persons shall be structurally separated.

(e) No adult shall share a room with a child without permission from the IPP team.

(f) Beds shall be solidly constructed.

(g) Each individual shall have a bed.

(h) There shall be sufficient storage place for the clothing and personal items for each person.

(3) Bathrooms shall meet a minimum ratio of one toilet, one lavatory, one tub or shower for every four individuals.

(a) Toilets and baths or showers shall allow for individual privacy.

(b) Mirrors shall be secured to the walls at a convenient height; other furnishings or equipment shall be appropriate to meet the individual's needs.

(c) Bathrooms shall be so placed as to allow access without disturbing other persons during sleeping hours.

(d) Toilet paper and towels shall be readily accessible.

(4) Window coverings shall assure privacy and shall be in good repair.

(5) Lighting in all rooms shall be adequate for individual needs.

(6) Coverings shall be placed on all electric outlets.

(7) Laundry facilities shall be conveniently located.

(8) Basic first aid kit shall be kept in accessible location.

(9) Fire extinguisher and smoke detector shall be in working order and shall be serviced regularly.

c. Facility shall be located in an area with access to stores, churches, recreation facilities, and public transportation (if available).

d. Potentially hazardous substances shall be stored in a safe and secure manner.

e. Group homes and supervised apartment programs shall have a pest control program, which includes a professional or equal inspection as needed to assure premises are kept free of rodents and other pests.

2. Facilities licensed by DHS/OL shall comply with any additional licensing standards.

R539-6-10. Health/Medication Requirements.

A. Policy.

Each individual receiving services shall receive training, support, and opportunities to seek and obtain routine and acute medical, dental, psychiatric, or other health-related services, as determined by the IPP team. The Provider shall have policies and procedures available to safeguard the health and well-being of individuals receiving services. Providers providing Living Support and Training services shall have policies and procedures for addressing the health and safety of individuals receiving services with regard to the right of self-determination on the part of individuals, and will have emergency procedures developed in the event an individual's life-style becomes health- or life-threatening.

B. Procedures.

1. The Provider for residential services shall assure that the following things are done:

a. Individuals will be assisted to identify a primary health care provider.

b. Individuals shall receive training and assistance to obtain annual dental and physical examinations.

c. Individuals who have prescribed medication will receive training and assistance to obtain and self-administer medications to the maximum extent possible, as determined by the IPP team.

2. The Provider shall develop policies to govern administration, handling, storage, disposal of medication, and supervision by program staff.

3. All medication taken by individuals receiving services shall be documented by staff as to frequency, dosage, and type of medication.

4. Any medication received and kept for an individual shall be locked.

5. Health care services shall be delivered by professionals licensed in the field for which they are providing services.

6. Children will have monthly weights and quarterly heights documented as requested by the primary care physician.

R539-6-11. Use of Psychotropic Medications.

A. Policy.

1. The purpose of this policy is to assure that the most effective, least intrusive treatment strategy shall be provided to individuals with disabilities to assist in coping, controlling, replacing, or modifying inappropriate behaviors.

2. Psychotropic medication for persons receiving services funded by DSPD shall be used primarily for the treatment of psychiatric symptoms. Behavior interventions shall be implemented prior to consideration of psychotropic

medication, except when the individual has a diagnosis of schizophrenia, major depressive disorder, bi-polar affective disorder, or obsessive compulsive disorder at which time behavior interventions may be initiated concurrently. Psychotropic medications for behavioral treatment shall be prescribed in consultation with a psychiatrist.

3. Psychotropic medications shall not be used as a form of punishment, in lieu of behavioral programming, as a convenience for staff, or in doses which exceed dosages manufacturers recommended.

4. The use of psychotropic medications shall require periodic review for effectiveness, monitoring for adverse reactions, and assurance of informed consent.

B. Procedures.

1. Each provider will be required to inform the Division Human Rights Committee (DHRC) annually of the recipients' names, psychiatric diagnoses or challenging behaviors, types of medications and dosages, and the review dates by prescribing physician, of individuals receiving psychiatric medication.

R539-6-12. Adaptive Behavior Development.

A. Policy.

1. All behavioral development techniques shall emphasize a positive approach with effective treatment alternatives designed to acquire and maintain adaptive behaviors. The primary purpose of behavior development techniques shall be to meet individual behavioral needs so that persons may develop to their fullest potential and enjoy satisfying lives.

2. All Providers must ensure that persons receiving behavioral training services have an opportunity to participate in their environment, to become engaged in meaningful activities, and to interact with peers, family, and staff when behavior development programs are utilized.

3. The use of the following procedures is prohibited:

a. Corporal punishment; examples: slapping, hitting, and pinching;

b. Demeaning speech to a person which ridicules or is abusive;

c. Seclusion, defined as locked confinement in a room;

d. Use of electric devices or other painful stimuli used to manage behavior; and

e. Denial or restriction of access to personal equipment or assistive technology, except where removal prevents injury to self, others, or property.

f. Meals shall not be withheld or denied contingent upon misbehaviors the individual might exhibit.

B. Procedures.

1. Interventions to address challenging behaviors are classified into three levels. The three levels are: Level 1- positive intervention procedures and withholding reinforcement; Level 2- mildly intrusive procedures; and Level 3- moderately and highly intrusive procedures. Behavioral development programs which utilize Level II and III interventions shall have prior approval from the PHRC, and Level III interventions shall also receive prior approval from the DHRC (see R539-2-3, Human Rights Committee).

2. The Adaptive Behavior Development policy is augmented by specific information found in the Division of Services for People with Disabilities Habilitation and Adaptive Behavior Guidelines and the By-Laws for the Division Human Rights Committee. The reader is referred to these two documents, available from the State or Regional DSPD office, for additional information and definitions.

3. Prior to the use and approval of any restrictive techniques, the prior use of non-restrictive procedures shall be documented. Level of interventions are defined to be:

a. Level I- Positive intervention procedures and withholding reinforcement which may include: teaching adaptive behaviors, positive reinforcement, reinforcement for alternative behavior, differential reinforcement, modeling, shaping, chaining, prompting, fading, graduated guidance, group reinforcement response contingency, token economy, environmental engineering, and extinction.

b. Level II- Mildly intrusive procedures which may include: response cost, exclusionary time out from reinforcement, satiation, application of mildly noxious stimuli, and overcorrection which is under verbal control and does not allow physical contact with the individual.

c. Level III-

(1) Moderately intrusive procedures which may include: overcorrection which requires physical contact to gain compliance, enforced compliance, forced relaxation, and manual restraint.

(2) Highly intrusive procedures which may include: isolationary time out, application of a highly noxious stimuli, deprivation of sensory stimuli, mechanical restraint, and psychotropic medications (see R539-6-11, Use of Psychotropic Medications).

NOTE: Refer to R539-6-13, Emergency Services Crisis Intervention for use of Levels II and III interventions in emergency situations.

4. Each provider agency shall develop written policies and procedures regarding behavioral programs which comply with DSPD guidelines regarding behavior programs. Written behavioral programs shall include:

a. Description of the specific target behaviors.

b. A functional analysis of the circumstances under which the behavior occurs;

(1) Relevant medical, ecological, and social factors which may contribute to the behavior.

(2) An investigation of environmental deficiencies.

(3) Program staff and medical staff consultation that states there is not a potential medical condition which may be contributing to the identified behavior.

c. Baseline data.

d. Behavioral objective written in measurable and observable terms.

e. Procedures for implementing the programs.

(1) Generalization.

(2) Maintenance.

(3) Emergency procedures.

(4) Reinforcement.

(5) Prompts.

(6) Corrective procedures.

(7) Rationale for aversives.

(a) Identification of review and approval.

(b) When and where intervention will occur.

f. Name and title of the person(s) responsible for supervising the program.

g. Data collection which measures progress toward the objective.

h. Dates for review and program revisions.

5. A request to the DSPD case manager shall be made for a legal representative if the interdisciplinary team recommends a behavioral intervention program and they feel the individual could not participate with informed consent.

6. A behavioral development plan shall address the inappropriate behaviors emphasizing a positive approach and within 30 days be included in the IPP.

7. Programs shall make a reasonable effort to include for example, external behavioral consultation, physical restraint, manual blocking, and environmental change, to ensure that recipients of services are prevented from self-injury.

8. At the request of the recipient or legal representative, the Utah Legal Center for People with Disabilities may be consulted to represent the desires of the recipient prior to the approval of the Level III intervention.

9. The written approved program shall be available to all staff involved in implementing or supervising the programs. All staff shall demonstrate competency prior to the implementation of the program.

R539-6-13. Emergency Services Crisis Intervention.

A. Policy.

1. The purpose of this policy is to outline procedures to prevent injury to individuals with disabilities, other people, and property destruction during a behavioral crisis in which an individual may be aggressive or assaultive.

2. Emergency behavioral control procedures shall not be employed as punishment, for the convenience of staff, or as a substitute for programming.

B. Procedures.

1. Behaviors which may require emergency interventions are those which constitute:

a. Danger to others: Physical violence toward others with sufficient force to cause bodily harm.

b. Danger to self: Self abuse of sufficient force to cause bodily harm.

c. Danger to property: Physical abuse or destruction of property.

d. Threatened abuse toward others, self, or property: may, with an evidence of past threats, result in any of the items listed in a-c.

2. Examples of emergency procedures are use of physical restraints, manual restraints, and exclusion.

3. The individual record shall document all periods of emergency behavior control, with justification and authorization for each period.

4. The PHRC shall review all uses of emergency control procedures (R539-2-3) quarterly. When emergency control procedures are used either in excess of five times in a 30 day period or a cumulative total in excess of 25 minutes in a 30 day period the procedure must be reviewed by the PHRC who may refer cases to the DHRC.

5. Within 24 hours after the use of an emergency procedure, the staff person who implemented the procedure shall report, in writing, to the designated individual program coordinator, or appropriate program supervisor, and guardian or authorized representative, the information required as follows:

a. Description of the intervention employed, including the beginning and ending times.

b. Why the procedure was judged necessary.

c. An assessment of the likelihood the behavior necessitating emergency intervention will reoccur.

6. Within 14 days of the date of the emergency intervention, the DSPD service coordinator case manager shall be notified by the provider agency using an incident report form.

7. Following the review of the report, the DSPD case manager shall determine whether to convene members of the interdisciplinary team.

8. DSPD sanctions the use of either the Professional Assault Response training (PART) or the Mandt System for Managing Non-Aggressive and Aggressive People. Other crisis management procedures require Division approval prior to implementation.

R539-6-14. Nutrition Requirements.

A. Policy.

Each individual receiving services shall receive training, support, and opportunities to plan, shop for, and prepare a variety of nutritious meals in a safe and sanitary manner, according to individual preference and special diet, as determined by the IPP team.

B. Procedures.

1. The Provider shall make assurances that individuals receiving services have nutritious meals.

2. Providers providing LST services shall develop policies and procedures regarding the nutrition of individuals receiving services and the right to self-determination of the individual.

3. The Provider shall develop emergency policies and procedures in the event the individual's life-style becomes health- or life-threatening.

4. Providers for group home and supervised apartment programs shall adhere to the following additional standards:

a. Menus will be planned to meet basic nutritional standards, special diets, food preferences, customs, and appetites of individuals receiving services.

b. Individuals receiving services shall have kitchen privileges.

c. Documentation of meals served shall be kept for six months.

5. The kitchen area shall be maintained in a safe and sanitary manner. All food and drink shall be safe for human consumption and prepared and served in a sanitary manner.

R539-6-15. Leisure and Recreation Requirements.

A. Policy.

Recreation and leisure activities shall involve the use of generic services available in the community, public transportation, and opportunities for interaction and integration with disabled and non-disabled peers. The

Provider shall provide training, support, assistance, and opportunities to each individual receiving services to plan and implement age-appropriate daily living, personal management, community access, and social and leisure activities.

B. Procedures.

1. Activities shall be identified as desired by the individual, shall be functional for the individual, and shall occur in the natural routine of daily living.

2. Activities shall accommodate any medical or physical considerations of the individual.

3. Activities for individuals receiving group home or supervised apartment services shall be implemented individually or in small groups (preferably three or less).

4. The Provider providing group home or supervised apartment services shall post a monthly schedule of individual and group activities in a manner which is easily accessible to individuals receiving services.

5. The Provider providing group home or supervised apartment services shall document individual and group participation in scheduled activities in the individual's record (see R539-5-1).

6. Examples of activities should include personal money management, shopping, access to community resources, use of public transportation, meal preparation, social skills, interpersonal relationships, communication, and sexuality training.

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R539. Human Services, Services for People with Disabilities.
R539-7. Home Based Services.
R539-7-1. Family Training and Assistance.

A. Policy.

Family Training and Assistance provides direct supports/services to families of people with disabilities so that the family can live as much like other families as possible, and enhance their ability to meet the many needs of their family member with a disability. The supports/services that a family receives shall be determined by the individual and family, based on their culture, values, preferences, and specific needs any given time.

B. Procedures.

1. Family Training and Assistance can involve any number or types of supports/services. These supports/services may address not only the needs of the person with a disability, but other family members as well. The main goals of Family Training and Assistance supports/services are:

a. To keep families together until the person with a disability chooses to live independently.

b. To allow the family to participate fully in the community.

c. To make a positive difference in the life of a person with a disability as well as the lives of all family members.

d. To minimize the need and cost of out-of-home placement.

2. Procedures may vary among Division regional offices, but will remain consistent with:

a. The region staff will determine the individual's eligibility according to R539-1-1, Eligibility for Services, and a region case manager will complete an assessment of supports/services needed by the individual and the family.

b. If the family has chosen:

(1) a provider agency, the case manager will ensure that the agency has a contract and is certified according to R539-6-7, Licensing and Certification, and R539-6-4, Training Requirements for Family Support and Respite Care Providers.

(2) a parent choice provider, the case manager will ensure that the form 945, Purchase of Individual Family Support Agreement, is signed and that any requested screening has been completed and that a provider file has been completed on each parent choice provider according to R539-6-7, Licensing and Certification.

R539-7-2. Respite Services.

A. Policy.

The Division of Services for People with Disabilities will contract to provide respite services for individuals with disabilities who are living in their family home, in Professional Parent homes, or are eligible individuals living in a foster care setting. The purpose of respite is to provide intermittent, time limited care to eligible individuals to enable parents and primary caretakers relief from the demands of parenting and living with a person with disabilities.

B. Procedures.

1. Respite care services should offer the least possible departure from the normal patterns of living, while still being effective in meeting the person's needs. Agency respite providers shall comply with R539-6-4, Training Requirements for Family Support and Respite Care Providers, and R539-6-7, Licensing and Certification. Respite services may be provided at an hourly or daily rate, and respite may be provided in-home or out-of-home.

a. The hourly rate is used when respite is provided up to no more than six hours/day.

b. The daily rate is used when respite is provided over six hours/day.

c. In-Home Respite Care services are provided in the home of the individual with a disability. Family members may or may not be at home during this time. Respite care providers are specially trained and skilled persons who come into a family's home to care for a family member with disabilities. The services provided shall depend entirely on the needs of the families and family members involved.

d. Out-of-Home Respite Care services are provided in the private home of the respite provider. In rare situations and upon approval of the Emergency Services Management Committee and the region office, care may be provided in a nursing facility or specialized facility designed to provide respite care.

2. The Provider will coordinate the delivery of respite services to be provided with the region case manager, family member or primary caretaker, and person with a disability.

3. The Provider will document and report to the region case manager the individual's response to the respite placement and will coordinate with any applicable Individual Family Support Plan outcomes.

4. The Provider will maintain documentation of injuries and accidents.

5. No more than two individuals with disabilities will be served by any respite provider at any one time, unless the region director has reviewed the Individual's Family Support Plan and has approved the provider to serve additional persons; however, the number of individuals with disabilities served by a respite provider at any one time shall never exceed four individuals.

R539-7-3. Educational Services.

A. Policy.

Educational services provide opportunities for Division eligible adults to obtain education instruction, individual tutoring, and the opportunity to participate in generic educational classes or seminars that will enhance their life and support them to learn and maintain the life skills necessary to succeed in an inclusive society.

B. Procedures.

1. The provider will have applicable credentials or license for providing the educational service desired.

2. The individual will have a statement of need for the educational service in his/her plan of care.

3. If the individual receives this service funded through the Home and Community-Based Waiver, then the individual shall have the following documentation in their individual file:

a. That this service is not otherwise available under a program funded under the Rehabilitation Act of 1973 or Public Law 94-142; and

b. That the individual has been deinstitutionalized from a nursing facility or intermediate care facility, at some prior time.

4. The provider will comply with Division and Department requirements for working with persons with disabilities.

R539-7-4. Personal Assistance Services.

A. Policy.

The Personal Assistance Services program provides adults with physical disabilities the maximum control to live as independently as possible in their choice of home, community and daily activities by providing funding to purchase assistant services. Personal Assistance Services are provided in the recipient's own home or apartment, or community.

B. Procedures.

1. Personal Assistance Services include all activities of daily living necessary to maintain well-being, personal appearance, comfort, safety and interactions within the community.

2. Each participant recruits and hires the person(s) to perform the needed attendant services.

3. The participant trains and supervises all activities performed by their employee(s) and has full responsibility for reimbursement, including payment of taxes.

4. The use of Personal Assistance Services Funds for any purpose other than to purchase or arrange for attendant services may result in suspension or discontinuation of Personal Assistance Services benefits.

5. Each participant will be reviewed annually by the Division specialist to determine satisfaction with existing services and to evaluate the continuing level of needed services.

6. Monthly benefit amounts shall be determined according to the number of hours of personal assistance provided through the Division not to exceed 84 hours per week unless approved by the Division Director.

R539-7-5. Child Care Services.

A. Policy.

The Division of Services for People with Disabilities may provide supplemental funding for child care for children with disabilities 12 years old and younger who are eligible for Division services and who are living with family; or funding for Latch key services-supervision to children with disabilities 13 years of age and older who are eligible for Division services, who are living with family, and whose parents are working or going to school. Latch Key services may be provided only when no other education or child care programs are available.

B. Procedures.

1. Child care providers shall meet the child care licensing or certification requirements in accordance with R539-6-7, Licensing and Certification.

2. Parents are responsible to ensure that the basic fee for child care is paid to the provider of services. Child care providers receiving supplemental child care must write a plan of care, indicating the additional services the child will receive, which will be added to the child's Individual Family Support Plan in accordance with the Division's Policy #302.1, Individual Family Support Plan.

3. Latch Key services shall be provided under contract between the region and child care providers at the approved Division rate. Latch Key providers must write a plan of care, indicating the services the child will receive, which will be added to the child's Individual Family Support Plan in accordance with Division Policy #302.1, Individual Family Support Plan.

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R539. Human Services, Services for People with Disabilities.
R539-8. Community-Based Services.
R539-8-1A. Day Training.

A. Policy.

The Division of Services for People with Disabilities shall provide habilitative services to Division eligible individuals who require training and support in the

acquisition of independent living skills. Day Training services are designed to prevent institutional placement and should include opportunities to enhance self-esteem, maximize independent functioning, facilitate skill development, increase utilization of community resources, and relieve isolation.

B. Procedures.

1. Individuals are referred to the service provider by the region case manager. Individuals shall be presented with all available service options and personal preference and choice shall be honored within resource constraints. Unmet service needs are documented on the waiting list and the case manager prioritizes referrals to the day training program using the waiting list in accordance with R539-3-1, Waiting List.

2. The provider will comply with:

a. The Home and Community Based Waiver (if applicable),

b. Division policies which apply,

c. General Department standards, and

d. Office of Licensing standards if site-based or Division Certification standards if non-site based.

e. All services must be provided by staff who meet Division provider qualification, and

f. Other standards identified in the contract.

3. The Purchase of Service Provider will develop a plan of services based on the individual's needs as identified through the individual assessment and planning process and agreed to at the Individual Plan meeting (See R539-3-2, The Individual Plan).

R539-8-1B. School Vacation Habilitation Services.

A. Policy.

School Vacation Habilitation services provides assistance with acquisition, retention, or improvement in self-direction, socialization, and adaptive skills which takes place during school vacation time and when no other education programs are available. Vacation services for children will focus on the individual attaining and maintaining his/her maximum functional level in self-direction, in addition may serve to reinforce acquisition of skills as defined in therapy or other settings.

B. Procedures.

1. Services may be furnished four to six hours per day.

2. Services must be provided in accordance with the recipient's plan of care.

3. The provider will comply with all standards and policies as outlined in the contract.

4. School Vacation Habilitation service is not available when programs funded by the Department of Education are available.

R539-8-2. Senior Habilitative Alternatives.

A. Policy.

DSPD shall provide Habilitative Alternatives to DSPD eligible individuals who are 55 years of age or older or who have chronic or acute medical conditions that significantly impede the individual's ability to participate in traditional day training programs. Services may also include transportation to enable an individual to attend a day training program. Habilitative Alternatives are designed to promote the ongoing development or skill maintenance for individuals who require alternatives to day training.

B. Procedures.

Individuals must be determined eligible for DSPD services. The need for Habilitative Alternatives is determined by the individual, and the Individual Support Plan/Individual Program Plan (ISP/IPP) team who develops a written plan of care. The case manager coordinates the services with the residential or day training provider. Placement is reviewed semi-annually.

R539-8-3. Supported Employment.

A. Policy.

1. The Division of Services for People with Disabilities will assist eligible individuals who want to work to obtain opportunities for competitive employment in an integrated setting with on-going support services. Supported Employment services are available for Division eligible individuals for whom:

a. Competitive employment has not traditionally occurred or has been interrupted or is intermittent as a result of disabilities;

b. Competitive employment at or above minimum wage would be unlikely;

c. Because of their disability, need ongoing support to perform in a competitive work setting beyond the time limited period in which the Division of Rehabilitation Services can provide services; and

d. Have the ability or potential to obtain and maintain employment with the provision of training and ongoing support.

B. Procedures.

1. Individuals served shall be referred to the provider by the region case manager from the waiting list or existing day services programs.

a. Individuals must be 22 years of age or older for Supported Employment services, unless waived by the Region Director.

b. Depending upon the availability of funding, an individual may be placed on a waiting list in accordance with R539-3-1, Waiting List.

c. If the individual receives this service funded through the Home and Community Based Waiver, then the individual shall have the following documentation in their individual file:

(1) That this service is not otherwise available under a program funded under the Rehabilitation Act of 1973 or Public Law 94-142 (form 58 will satisfy this requirement); and

(2) That the individual has been deinstitutionalized from a nursing facility or intermediate care facility, at some prior time.

d. The individual shall be referred to the Supported Employment program of their choice and services will be coordinated and funded by the rehabilitation counselor for a predetermined amount of time (determined by the rehabilitation counselor according to Division of Rehabilitation Services Policy) . Long-term funding from the

region or other community resource must be reasonably expected prior to the Division of Rehabilitation Services authorizing Supported Employment services.

e. After the initial predetermined amount of time under the Division of Rehabilitation Services, the coordination and funding of supported employment services shall be the responsibility of the region.

f. If an individual loses the supported employment job, the region is responsible to fund services to assist the individual to secure another job. Once the individual has secured another supported employment job, then additional funding for Supported Employment services may be available from the Division of Rehabilitation Services.

g. If Division of Rehabilitation Services funding is not available, and regional funding is available, an individual may be served entirely through the Division system. There must still be a reasonable expectation for long-term funding from the region.

2. The provider will comply with:

a. The Home and Community Based Services Waiver (if applicable).

b. Division policies and procedures which apply.

c. Office of Licensing standards and Division certification.

d. All services must be provided by staff that meet Division provider qualifications as specified in the contract.

e. Individuals shall have assurance that ongoing support is available as needed to assist them in placement, training and job maintenance.

f. The provider will have a policy for services during periods of unemployment (Refer to Vendor Guidelines for billable hours).

g. All other standards which are identified by the contract.

3. The provider provides program services that will meet the following minimum standards:

a. Individuals with disabilities shall be employed for a significant number of hours at a level which is optimal for them, in accordance with their capabilities and desires. This should be determined at the Individual Support Plan/Individual Plan meeting. The Division considers at least 20 hours per week the optimum minimum level for most individuals.

b. Individuals shall be compensated at minimum wage or better. If minimum wage is not feasible, compensation shall be at a commensurate wage based on individual productivity. Individuals shall be provided benefits by the employer which are comparable to workers who are not disabled.

c. Supported Employment is conducted in a variety of settings, particularly work sites in which persons without disabilities are employed. Individuals shall be encouraged to participate in work and non-work activities alongside individuals who are not disabled and who are not paid care givers.

d. There shall be no more than eight individuals with disabilities in any one enclave.

e. Satisfaction surveys shall be given to the individual, and if appropriate, family members and residential providers. Documentation is needed to show how the survey results are used to improve Supported Employment services.

f. Work shall be performed to the satisfaction of employers. Assistive technology shall be used to enhance productivity when appropriate (referral through the Division of Rehabilitation Services/Division of Services for People with Disabilities).

g. Jobs or contract employment shall be developed through the use of a written marketing plan.

h. An individual assessment of functional capacity shall be conducted within thirty (30) days of the referral to the program. To increase the individual performance on the job, program staff shall perform a systematic procedure to insure that the job is appropriate for the individual, that the individual has had input into the decision of employment, and that the most effective training and support techniques are utilized. Techniques should foster the use of natural supports; example: family, friends, or co-workers.

i. Supported Employment direct service staff and their immediate supervisors shall be trained in the standards and implementation procedures required for each individual's particular supported employment placement or job.

j. Contractors shall have the support of their Board of Directors to build strong supported employment services and maintain accounting and management practices which assure accountability and effective services.

R539-8-4. Transportation.

A. Policy.

Individuals receiving services shall be trained, assisted and provided opportunities to use generic transportation services available in their community. Whenever possible, public transportation, or transportation services without charge will be utilized. Whenever a Division Contracted Provider provides transportation as any part of a day or residential program, the Provider must comply with all State safety, licensure, inspection and training requirements.

B. Procedures.

1. All drivers shall have the appropriate license as specified in Utah Code Section 53-3-202 and any vehicle used must be insured, as required by Utah Code Sections 41-12a-401 through 41-12a-412.

2. All drivers shall have current First Aid training.

3. Written procedures for accidents and emergencies must be kept in the vehicle(s) at all times.

4. All drivers, staff, and volunteers shall be trained to implement specific techniques for safe transportation of individuals who have unique medical or physical considerations.

5. A signed consent form shall be obtained prior to transporting a child (ages 0 through 17). The consent form must be completed by the appropriate parent, guardian, or legal representative.

a. The signed form shall be maintained in the child's file.

b. Children three years of age and younger being transported shall be protected by using a child safety seat or an approved restraint device. Children over three years of age may be transported using only seat belts, unless their

developmental disability has caused them to be less than the average size of a three year old.

c. Any vehicle used for the transportation of children shall be provided with door locks. Doors are to be locked at all times while the vehicle is moving.

6. Contractor must have current licenses, safety inspections and State Department of Transportation safety requirements on all vehicles used to transport people.

7. All vehicles shall be reasonably accessible if persons have physical disabilities. Special lifts and other equipment must be in safe working order.

8. The provider shall do the following when transporting individuals:

a. No individual shall be permitted to remain unattended in the vehicle;

b. Persons shall remain seated while the vehicle is in motion;

c. Keys will be removed from the vehicle at all times when the driver is not in the driver's seat; and

d. All persons shall use seat belts; vehicles serving individuals who use wheelchairs must have locking mechanisms to immobilize wheelchairs during travel.

R539-8-5. Residential Services.

A. Policy.

The Division of Services for People with Disabilities will provide training, support, and opportunities for individuals with disabilities to reside as independently as possible in community settings which are typical of those in which persons without disabilities reside. Each individual who resides in a community residential living setting funded through the Division must also be enrolled in a day service or education program.

B. Procedures.

1. Providers shall maintain compliance with all requirements of the Department of Human Services, Office of Licensing standards as defined in the Home and Community Based Services Waiver Provider Manual, the Division Policy Manual, and the Department Manual.

2. Division staff shall complete an on-site certification review of a proposed facility prior to final selection. The Office of Licensing must license the facility prior to individuals moving in, if required.

3. The array of community residential living settings include but are not limited to group homes, supervised apartment settings, Supported Living services, and Professional Parent services.

a. A group home means a single residence (home) where four or more individuals reside. No more than eight individuals are allowed to reside in a single residence.

b. A supervised apartment means an apartment setting in which individuals with disabilities reside either alone, or with one or two roommates who may or may not have a disability. No more than three individuals are allowed to reside in a single supervised apartment.

c. Supported Living services are individually tailored to meet the desires and needs of the individuals who are receiving services in their own home or apartment. Supported Living services shall be developed to integrate individuals into services that are available to individuals in their community, rather than to set up a duplicate system of services (see R539-8-8, Supported Living).

d. Professional Parent services shall be provided in a private residence, not the individual's own home or apartment, for one or two Division eligible individuals. Trained staff and trained professional parents provide opportunities for the individuals to be as independent and self-sufficient as possible in a home setting (see R539-8-7, Professional Parent Services).

4. The level and method of supervision required by each individual receiving services (as determined by the Individual Plan team) determines the level and method of supervision provided by the Contractor in each setting.

5. An individual receiving Residential services must have a source of income (such as Supplemental Security Income) which will allow the individual to contribute toward expected living expenses.

R539-8-6. Extended Residential Habilitation.

A. Policy.

Extended Residential Habilitation shall be provided by the residential provider and is in lieu of traditional out of home programs (day services or school) when the individual's age, chronic or acute medical condition significantly impedes the individual's ability to participate in an out-of-home program.

B. Procedures.

1. DSPD eligible individuals, who are recipients of residential services and who are not enrolled in full day programs may be considered for this specialized service.

2. Recommendation for an Extended Residential Habilitation services shall require the consensus of the IPP team. Long-term goals and objectives are written to document that the service offers a therapeutic alternative to the formal environment.

3. The service shall be time-limited and is to be reviewed by the IPP team at a minimum, semi-annually.

4. The service shall be subject to approval from the Division based on the identification of individual's need and the fiscal limitations of the Regional budget.

R539-8-7. Professional Parent Services.

A. Policy.

All children receiving residential services funded by the Division of Services for People with Disabilities will receive services in a family-like setting and in accordance with the professional parent service model. The Division will contract with service providers to locate and train professional parents and support staff to provide residential services in a private home to one to two individuals with disabilities. Professional parent homes shall assist and provide opportunities for individuals with disabilities to be as independent and self-sufficient as possible in a family-like setting.

B. Procedures.

1. The contractor, in conjunction with region staff, shall explain to all recipients of services and legal representatives the service offered, program objectives, basic policies and entrance criteria.

2. A person will be eligible for professional parent services as long as the Individual Service Plan team determines the placement is in the individual's best interest.

3. The purchase of service contractor will comply with:

a. The Home and Community Based Waiver.

b. Division Policy Manual and standards which apply.

c. Office of Licensing standards, as applicable.

d. Staff providing services must meet the qualifications specified in the Division contract, as well as all other standards identified by the contract.

4. The home shall be adequately maintained to meet the Facility Requirements (R539-6-11).

5. Professional parents must conform with the following:

a. Professional parents must be at least 21 years of age.

b. Professional parents must meet all personnel and training requirements.

c. Professional parents and persons 18 years or older living in the home where services are provided to children must comply with R539-6-1, Personnel Requirements, in regards to Bureau of Criminal Identification screening (Utah Code Annotated Section 62A-4-514), and child and adult abuse screening (in accordance with R501-6-7). This requirement also applies to support staff not living in the home who work with children. Professional parents and persons 18 years or older living in the home where services are provided to adults with disabilities must also comply with R539-6-1, in regards to child and adult abuse screening (in accordance with R501-6-7). This requirement also applies to support staff not living in the home who work with adults with disabilities.

6. Support staff are professionals who are responsible for giving technical support and assistance to the professional parents in the day to day operation of the home. Support staff provide consultation, and hands on training for the individual as well as relief to the professional parent. Support staff must who are 16-17 years of age must be accompanied and supervised by an adult during training.

R539-8-8. Supported Living.

A. Policy.

Supported Living services shall be provided for individuals who reside in their own home or apartment who require support to live independently. Individuals who receive Supported Living services may live alone, with roommates, a spouse, or children. Services may also be provided to individuals living in a family member's home if the individual is 18 years of age or older and Supported Living services are being used to assist the individual to transition into independent living. Services may include supportive assistance, habilitative training, support services that allow individuals to participate in community activities of their choice, and any other specialized, generic, or natural supports needed to promote independence. Individuals receiving residential services in other community residential living settings are not eligible for this service.

B. Procedures.

1. Services and supports provided shall fall within one of the following two categories:

a. Habilitative Training-includes any training in independent living skills or community access skills.

b. Supportive Assistance-includes any type of assistance needed to support the individual to live as independently as possible.

2. The level of services provided to each individual will be determined by the Individual Plan team, and is expected to be flexible to meet the needs of the individual. The level of services may be reduced, maintained, or increased based upon changes in the individual's skills or changes in natural and generic supports. Changes in the level of service shall be determined by the Individual Plan team and documented on the Individual Plan as they occur.

3. An individual receiving Supported Living services must have a source of income which will allow the individual to meet expected living expenses.

4. The Provider shall develop policy and procedures that recognize self-determination and choice for individuals receiving services, which shall include the following guidelines:

a. In the event the individual's behavior threatens employment, residence, physical or mental health, or safety, the Provider shall first meet with the individual to resolve any concerns. If concerns still are not resolved, the Provider shall convene a meeting of the Individual Plan team to discuss the issue with the individual.

b. The individual shall be offered additional services, support, or supervision (as appropriate) to assist the individual to remedy the threatening situation.

c. The decision as to whether to accept the additional services, support, or supervision rests entirely with the individual. The Individual Plan team must respect the decision of the individual.

d. The Provider shall maintain documentation of each situation in which additional services, support, or supervision is offered to an individual; and documentation of the individual's decision. The Individual Plan team may be convened as often as necessary to ensure that the individual has adequate opportunities to receive additional services.

R539-8-9. Assistive Technology/Environmental Modifications.

A. Policy.

When an individual who is eligible for Division services requires assistive technology/environmental modifications, region staff coordinating services shall assist the person in exploring possible alternatives and funding to obtain the needed assistive technology/environmental modifications. If the person is eligible for services from more than one agency or organization, region staff shall meet with and ensure service coordination across agencies.

B. Procedures.

1. An Assistive Technology Device is any item, piece of equipment, or product system whether commercially produced, modified, or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities. Environmental modifications are any modifications needed to the individual's living and/or working environment to improve the person's functional

capabilities.

2. Region staff shall assist the individual in contacting agencies/organizations which provide assistive technology devices/environmental modifications and arranging for an assessment of the individual's needs. Assistive technology/environmental modifications funded by regions shall adhere to the following expenditure guidelines. The need for assistive technology/environmental modifications shall be documented in the Individual Plan and the total amount expended annually shall receive the following prior approval as well as adhere to the State Purchasing Policy:

a. Under $500.00, shall be approved by the region case manager.

b. $500.00 to $1999.00, shall be approved by the region supervisor.

c. $2000.00 to $4999.00, shall be approved by the region director.

d. $5000.00 and above, shall be approved by the Division director.

R539-8-10. Personal Emergency Response Systems.

A. Policy.

A Personal Emergency Response System is an electronic device which enables individuals at high risk, to secure help in the event of an emergency. Individuals eligible for this service are those eligible for Division services and, who live alone, live with others who are not able to respond to an emergency, or are alone for significant parts of the day and have no regular caretaker for extended periods of time.

B. Procedures.

1. Services must be provided through an authorized vendor who is on contract with the Division and licensed either as a Home Health Agency or by the Federal Communications Commission as an alarm system network.

2. Services must be listed on and provided in accordance with the individual's plan of care.

KEY: disabled persons*, social services
February 8, 1996 62A-5-103
Notice of Continuation December 18, 1997

R590. Insurance, Administration.
R590-131. Disability Coordination of Benefits Rule.
R590-131-1. Authority.

This rule is adopted and promulgated pursuant to Subsection 31A-2-201(3)(a) and Section 31A-22-619.

R590-131-2. Purpose.

The purpose of this rule is to:

A. permit, but not require, plans to include a coordination of benefits, or COB, provision;

B. establish an order of priority in which plans pay their claims;

C. provide the authority for the orderly transfer of information needed to pay claims promptly;

D. reduce duplication of benefits by permitting a reduction of the benefits paid by a plan when the plan, pursuant to this rule, does not have to pay its benefits first;

E. reduce claims payment delays; and

F. make all contracts that contain a COB provision consistent with this rule.

R590-131-3. Definitions.

A. Allowable Expense means:

1. The amount on which a plan would base its benefit payment for covered services in the absence of any other coverage.

2. When a plan provides benefits in the form of services, the reasonable cash value of each service will be considered as both an allowable expense and a benefit paid.

3. The difference between the cost of a private hospital room and the cost of a semi-private hospital room is not considered an allowable expense under the above definition unless the patient's stay in a private hospital room is medically necessary in terms of generally accepted medical practice.

4. When COB is restricted in its use to a specific coverage in a contract, for example, major medical or dental, the definition of allowable expense must include the corresponding expenses or services to which COB applies.

B. Claim. A request that benefits of a plan be provided or paid is a claim. The benefits claimed may be in the form of:

1. services (including supplies);

2. payment for all or a portion of the expenses incurred;

3. a combination of (1) and (2) above; or

4. an indemnification.

C. Coordination of Benefits or COB is the process of determining which of two or more disability insurance policies, or other policies specifically included in this rule, covering a loss or claim, will have the primary responsibility to pay the loss or claim, and also the manner and extent to which the other policies shall pay or contribute.

D. Hospital Indemnity Benefits. These are benefits not related to expenses incurred. The term does not include reimbursement-type benefits even if they are designed or administered to give the insured the right to elect indemnity-type benefits at the time of claim.

E. Plan. Plan means a form of coverage with which coordination is allowed. The definition of plan in the contract must state the types of coverage which will be considered in applying the COB provision of that contract.

1. Any definition that satisfies this Subsection, R590-131-3.E., may be used.

2. This rule uses the term plan. However, a contract may, instead, use "Program" or some other term.

3. Plan shall include:

a. individual, group, or HMO health insurance contracts providing hospital expense or medical surgical expense benefits, except those explicitly excluded under Subsection R590-131-3.E.4.;

b. group, group-type, and individual automobile "no-fault" medical payment contracts; and

c. Medicare or other governmental benefits, except as provided in Subsection R590-131-3.E.4.f. below. That part of the definition of plan may be limited to the hospital, medical, and surgical benefits of the governmental program.

4. Plan may not include:

a. hospital indemnity coverage;

b. disability income protection coverage;

c. accident only coverage;

d. specified disease or specified accident coverage;

e. nursing home and long-term care coverage;

f. a state plan under Medicaid, and may not include a law or plan when, by state or federal law, its benefits are in excess of those of any private insurance plan or other non-governmental plan; and

g. Medicare supplement policies.

F. Primary Plan. A primary plan is a plan whose benefits for a person's health care coverage must be determined without taking the existence of any other plan into consideration. There may be more than one primary plan, for example, two plans which have no order of benefit determination rules. A plan is a primary plan if either of the following conditions is true:

1. the plan has no order of benefit determination;

2. all plans which cover the person use the order of benefit determination provisions of this rule and under those requirements the plan determines its benefits first.

G. Secondary Plan. A secondary plan is one which is not a primary plan. A COBRA or state extension of benefits plan which covers a person as a former employee, a dependent of a former employee, or a former dependent of an employee is a secondary plan. If a person is covered by more than one secondary plan, the order of benefit determination rules of this rule decides the order in which their benefits are determined in relation to each other. The benefits of each secondary plan may take into consideration the benefits of the primary plan or plans and the benefits of any other plan, which, under the provisions of this rule, has its benefits determined before those of that secondary plan.

R590-131-4. Rules for Coordination of Benefits.

A. General Rules:

1. The primary plan must pay or provide its benefits as if the secondary plans or plan did not exist. A plan that does not include a coordination of benefits provision may not take the benefits of another plan into account when it determines its benefits.

2. A secondary plan may take the benefits of another

plan into account only when, under these rules, it is secondary to that other plan.

B. Determining Order of Benefits. Each plan determines its order of benefits using the first of the following rules which applies:

1. The benefits of the plan which covers the person as an employee, member or subscriber, that is, other than as a dependent, are determined before those of the plan which covers the person as a dependent.

2. Dependent Child/Parents Not Separated or Divorced. The rules for the order of benefits for a dependent child when the parents are not separated or divorced are as follows.

a. The benefits of the plan of the parent whose birthday falls earlier in the calendar year are determined before those of the plan of the parent whose birthday falls later in the year.

b. If both parents have the same birthday, the benefits of the plan which covered the parent longer are determined before those of the plan which covered the other parent for a shorter period of time.

c. If the other plan, R590-131-3.E.3.b., does not have the rule described in R590-131-4.B.1., .2 and .3, but instead has a rule based upon the gender of the parent, and if, as a result, the coordinating plans do not agree on the order of benefits, the rule based upon the gender of the parent will determine the order of benefits.

The word "birthday" refers only to month and day in a calendar year, not the year in which the person was born.

A contract which includes COB and which is issued or renewed, or which has an anniversary date on or after January 1, 1986 shall include the substance of the provisions in Subsections R590-131-4.B.1., .2, and .3 of this rule.

3. Dependent Child/Separated or Divorced Parents. If two or more plans cover a person as a dependent child of divorced or separated parents, benefits for the child are determined in this order:

a. first, the plan of the parent with custody of the child;

b. then, the plan of the spouse of the parent with custody of the child; and

c. finally, the plan of the parent not having custody of the child.

If the specific terms of a court decree state that one of the parents is responsible for the health care expenses of the child, and the entity obligated to pay or provide the benefits of the plan of that parent has actual knowledge of those terms, the benefits of that plan are determined first. The plan of the other parent shall be the secondary plan. This paragraph does not apply with respect to any claim determination period or Period or plan Year during which any benefits are actually paid or provided before the entity has that actual knowledge.

If the specific terms of the court decree state that the parents shall share joint custody, without stating that one of the parents is responsible for the health care expenses of the child, the order of benefit determination rules outlined in Subsection R590-131-4.B.2, Dependent Child/Parents Not Separated or Divorced, shall apply.

4. Active/Inactive Employee. The benefits of a plan which covers a person as an employee who is neither laid off nor retired, or as that employee's dependent are determined before those of a plan which covers that person as a laid off or retired employee, or as that employee's dependent. If the other plan does not have this rule, and if, as a result, the plans do not agree on the order of benefits, this provision is ignored.

5. Longer/Shorter Length of Coverage. If none of the above rules determines the order of benefits, the benefits of the plan which covered an employee, member or subscriber longer are determined before those of the plan which covered that person for the shorter term.

a. To determine the length of time a person has been covered under a plan, two plans shall be treated as one if the claimant was eligible under the second within 24 hours after the first ended.

b. The start of a new plan does not include:

i. a change in the amount or scope of a plan's benefits;

ii. a change in the entity which pays, provides or administers the plan's benefits; or

iii. a change from one type of plan to another, such as, from a single employer plan to that of a multiple employer plan.

c. The claimant's length of time covered under a plan is measured from the claimant's first date of coverage under that plan. If that date is not readily available, the date the claimant first became a member of the group shall be used as the date from which to determine the length of time the claimant's coverage under the present plan has been in force.

R590-131-5. Procedure to be Followed by Secondary Plan.

When it is determined, pursuant to Section R590-131-4 that the plan is a secondary plan, benefits may be reduced as follows:

A. when one of the plans has contracted for discounted provider fees, the secondary plan may limit payment to any copayments and deductibles owed by the insured after payment by the primary plan; or

B. if none of the plans has contracted for discounted provider fees, the secondary plan may reduce its benefits so that total benefits paid or provided by all plans for a covered service are not more than the highest allowable expense of any of the plans for that service.

C. nothing in this rule is intended to require a secondary plan to make payment for any service that is not covered as a benefit by the secondary plan.

R590-131-6. Miscellaneous Provisions.

A. Reasonable Cash Value of Services. A secondary plan which provides benefits in the form of services may recover the reasonable cash value of providing the services from the primary plan, to the extent that benefits for the services are covered by the primary plan and have not already been paid or provided by the primary plan. Nothing in this provision may be interpreted to require a plan to reimburse a covered person in cash for the value of services provided by a plan which provides benefits in the form of services.

B. Excess and Other Nonconforming Provisions.

1. No policy, or plan as defined by this rule, may contain a provision that its benefits are "excess" or "always secondary" to any other plan or policy.

2. A plan with order of benefit determination rules which comply with this rule, which is called a complying plan, may coordinate its benefits with a plan which is "excess" or "always secondary" or which uses order of benefit determination rules which are inconsistent with those contained in this rule, which is called a noncomplying plan, on the following basis:

a. if the complying plan is the primary plan, it shall pay or provide its benefits on a primary basis;

b. if the complying plan is the secondary plan, it shall pay or provide its benefits first, but the amount of the benefits payable shall be determined as if the complying plan were the secondary plan. In such a situation, such payment shall be the limit of the complying plan's liability; and

c. if the noncomplying plan does not provide the information needed by the complying plan to determine its benefits within a reasonable time after it is requested to do so, the complying plan shall assume that the benefits of the noncomplying plan are identical to its own, and shall pay its benefits accordingly. However, the complying plan shall adjust any payments it makes based on such assumption whenever information becomes available as to the actual benefits of the noncomplying plan.

3. If the noncomplying plan reduces its benefits so that the employee, subscriber, or member receives less in benefits than he or she would have received had the complying plan paid or provided its benefits as the secondary plan and the noncomplying plan paid or provided its benefits as the primary plan and governing state law allows the right of subrogation set forth below, then the complying plan shall advance to or on behalf of the employee, subscriber, or member an amount equal to such difference.

In no event may the complying plan advance more than the complying plan would have paid had it been the primary plan, less any amount it previously paid. In consideration of such advance, the complying plan shall be subrogated to all rights of the employee, subscriber, or member against the noncomplying plan.

C. Allowable Expense. A term such as "usual and customary," "usual and prevailing," or "reasonable and customary," may be substituted for the term "necessary, reasonable and customary." Terms such as "medical care" or "dental care" may be substituted for "health care" to describe the coverages to which the COB provisions apply.

D. Subrogation. The COB concept clearly differs from that of subrogation. Provisions for one may be included in health care benefits contracts without compelling the inclusion or exclusion of the other.

E. Right To Receive and Release Needed Information. Certain facts are needed to apply these COB rules. An insurer has the right to decide which facts it needs. It may get needed facts from or give them to any other organization or person. An insurer need not tell, or get the consent of, any person to do this. Each person claiming benefits under a plan shall give the insurer any facts it needs to pay the claim.

F. Facility of Payment. A payment made under another plan may include an amount which should have been paid under the plan. If it does, the insurer may pay that amount to the organization which made that payment. That amount will then be treated as though it were a benefit paid under the plan. The insurer will not have to pay that amount again. The term "payment made" includes providing benefits in the form of services, in which case "payment made" means reasonable cash value of the benefits provided in the form of services.

G. Right of Recovery. If the amount of the payments made by an insurer is more than it should have paid under the provisions of this rule, it may recover the excess from one or more of:

1. the persons it has paid or for whom it has paid;
2. insurance companies; or
3. other organizations.
4. The "amount of the payments made" includes the reasonable cash value of any benefits provided in the form of services.

H. A plan, whether primary or secondary, may not be required to pay a greater total benefit than would have been required had there been no other plan.

I. A plan may include in its contract a provision to the effect that when the covered person is required by Section 41-12a-301 to have insurance in effect, the plan may exclude charges for that covered person up to the minimum coverage required by Sections 31A-22-306 through 309 before calculating benefits payable, whether or not such coverage is in effect.

R590-131-7. Penalties.

Any insurer which fails to comply with the provisions of this rule shall be subject to the forfeiture and penalty provisions of Section 31A-2-308.

R590-131-8. Separability.

If any provision of this rule or the application of it to any person is for any reason held to be invalid, the remainder of the rule and the application of any provision to other persons or circumstances may not be affected.

R590-131-9. Existing Contracts.

A. This rule is applicable to group contract which provides health care benefits and is issued on or after the effective date.

B. Contracts issued prior to the effective date of this rule shall be brought into compliance with this rule on the next anniversary date of the contract if benefits or premiums are changed.

KEY: insurance law
April 1, 1995 **31A-2-201**
Notice of Continuation December 3, 1997 **31A-21-307**

R590. Insurance, Administration.
R590-141. Licensing Rule.
R590-141-1. Authority.

This rule is promulgated pursuant to Subsection 31A-2-201(3)(a) in which the commissioner is empowered to administer and enforce this title and to make rules to

implement the provisions of this title; Subsections 31A-23-216(3) and 31A-26-213(3), that authorize the commissioner to write a rule prescribing license renewal and reinstatement procedures for licensees under Chapters 23 and 26; and Section 31A-2-308, that provides for penalties for any person who violates any insurance statute or rule.

R590-141-2. Scope.

This rule applies to all individuals and organizations licensed under this chapter whose licenses have lapsed because of failure to renew, or whose licenses must be renewed.

R590-141-3. Rule.

A. An individual licensee who has failed to renew a license by the required date shall be entitled to reinstate that license by completing the requirements outlined below:

(1) If request for reinstatement is up to six months after the license expiration date:

(a) complete all continuing education requirements;

(b) pay all current and past due fees; and

(c) pay a penalty in the amount of the renewal fee.

(2) If request for reinstatement is between six months and one year after the license expiration date:

(a) complete all continuing education requirements;

(b) pay all current and past due fees; and

(c) pay a penalty in the amount of $50.

(3) If request for reinstatement is later than one year but prior to the second year following the license expiration date:

(a) complete all continuing education requirements;

(b) pay all current and past due fees; and

(c) take and successfully pass the proper agent licensing examination or, if exempt from licensing examination, pay a penalty in the amount of $75.

B. An individual who fails to reinstate a license that has been cancelled for nonrenewal within two years of the renewal date shall be required to apply for a license as if he/she were a new applicant.

C. An organization license under this chapter, that has been cancelled for nonrenewal, may only be reinstated within a period of two years from the license expiration date, provided that:

(1) all fees are paid current, including those that are past due; and

(2) a penalty in the amount of $50 is paid.

D. In the event an organization fails to renew or reinstate its license within the prescribed time, the name of the organization is not available for use for a period of three years from the date of license cancellation.

E. All appointments are terminated at the time of license cancellation. New appointments must be obtained by the agent or organization after the license has been reinstated.

R590-141-4. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, such invalidity may not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: insurance
March 8, 1996 **31A-2-201**
Notice of Continuation December 3, 1997 **31A-2-308**
31A-23-216

R590. Insurance, Administration.
R590-152. Medical Discount Programs Rule.
R590-152-1. Authority.

This rule is promulgated and adopted pursuant to Subsection 31A-1-103(3)(d) and Section 31A-2-201, Utah Code Annotated (U.C.A.).

R590-152-2. Purpose.

The purpose of this rule is to exempt providers of certain medical discount programs from regulation under Chapter 8 of Title 31A, U.C.A., and to define those so exempted.

R590-152-3. Definitions.

For the purposes of this rule, the following definition shall apply:

Medical Discount Program. A program established or operated by third persons which arranges for participating medical professionals to provide medical goods or services at a discount to a subscriber.

R590-152-4. Rule.

A. A medical discount program is a Limited Health Plan as defined under 31A-8-101(6)(a), U.C.A., and must comply with the requirements of Limited Health Plans unless otherwise exempted from regulation by this rule.

B. The commissioner, pursuant to 31A-1-103(3)(d), U.C.A., finds that medical discount programs, that operate in accordance with all of the provisions of this rule, do not require regulation of the Department of Insurance for the protection of the interest of the residents of this state and that it would otherwise be impracticable to require compliance with the provisions of Title 31A, U.C.A.

C. An exempt medical discount program, pursuant to 31A-4-106, U.C.A., may not make any payments to providers for participation in the program or for the services performed, capitation payments, signing fees, bonuses, or other forms of compensation other than referral of the program subscribers to the provider.

D. An exempt medical discount program may provide discount or free services through its contracted providers to its subscribers in exchange for a periodic payment to the program or as a benefit in connection with membership in a particular group.

E. An exempt medical discount program must:

(1) prominently state that the program is "Not Insurance" and that the program is a "Discount Program" in all contracts, booklets, advertising, and any presentations relating to the solicitation of the program;

(2) not use in its title, name or description, words usually associated with insurance, including but not limited

to, "insurance," "premium", or "coverage", and may not refer to its sales representatives as "agents"; and

(3) disclose that the program and the program administrators have no liability for the providing or guaranteeing service and should state that they have no liability for the quality of service rendered.

R590-152-5. Department Opinion.

Any program may request an opinion from the Utah Department of Insurance as to whether it complies with the provisions of this rule and would, therefore, be exempt from the requirements of the Utah Insurance Code.

R590-152-6. Severability.

If any provision of this rule or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of such provision to other persons or circumstances shall not be affected thereby.

KEY: insurance
1993 **31A-1-103**
Notice of Continuation December 5, 1997 **31A-2-201**

R590. Insurance, Administration.
R590-153. Unfair Inducements and Marketing Practices in Obtaining Title Insurance Business.
R590-153-1. Authority.

This rule replaces Rule R590-92. It is promulgated pursuant to Section 31A-2-201(3)(a), Utah Code in which the Commissioner is empowered to make rules to implement the Insurance Code, and pursuant to the specific authority of Section 31A-23-302(8), Utah Code which authorizes the Commissioner to define unfair methods of competition or any other unfair or deceptive act or practice in the business of insurance.

R590-153-2. Purpose.

The purpose of this rule is to identify certain practices which the commissioner finds provide unfair inducements for the placement of title insurance business and as such constitute unfair methods of competition.

R590-153-3. Scope.

This Rule applies to all title insurers, title insurance organizations and title insurance agents and all employees, representatives and any other party working for or on behalf of said entities whether as a full time or part time employee or as an independent contractor.

R590-153-4. Definitions.

For the purpose of this Rule the commissioner adopts the definitions as set forth in Section 31A-1-301, Utah Code and the following:

A. "Producer of title business" means any person engaged in a business, profession or occupation of:

(1) buying or selling interests in real property;

(2) making loans secured by interests in real property; and

(3) shall include but not be limited to real estate agents, real estate brokers, mortgage brokers, lending or financial institutions, builders, developers, subdividers, attorneys, consumers and the employees, agents, representatives, or solicitors of any of the foregoing.

B. "Discount" means the furnishing or offering to furnish title insurance, services constituting the business of title insurance or escrow services for a total charge less than the amounts set forth in the applicable rate schedules filed pursuant to Section 31A-19-203 or 31A-19-209, Utah Code.

C. "Trade Association" means a recognized association of persons, a majority of whom are producers of title insurance business or persons whose primary activity involves real property.

D. "Business meals" shall include drinks and tips.

R590-153-5. Unfair Methods of Competition, Acts and Practices.

The commissioner finds that providing or offering to provide any of the following benefits by parties identified in Section R590-153-3 to any producer of title insurance, either directly or indirectly, except as specifically allowed in Section 6 below, is a material and unfair inducement to obtaining title insurance business and constitutes an unfair method of competition in the business of title insurance prohibited under Section 31A-23-302:

A. The furnishing of a commitment to provide title insurance without charge or at a charge discounted from an applicable rate filing. The prima facie cost of producing a commitment to insure shall be 60% of the minimum rate filed by the insurance company in the absence of a cost supported rate filing either higher or lower.

B. The paying of any charges for the cancellation of an existing title insurance commitment issued by a competing organization, unless that commitment discloses a defect which gives rise to a claim on an existing policy.

C. Furnishing escrow services pursuant to Section 31A-23-307, Utah Code, for a charge less than the charge filed pursuant to Section 31A-19-209(5), Utah Code or the filing of charges for escrow services with the commissioner which are less than the actual cost of providing the services.

D. Waiving all or any part of established fees or charges for services which are not the subject of rates filed with the Commissioner.

E. Deferring or waiving any payment for insurance or services otherwise due and payable, including "holding for resale".

F. Furnishing services not reasonably related to a bona fide title insurance or escrow, settlement, or closing transaction. Examples (non exclusive): computer services, nonrelated delivery services, accounting assistance, legal counseling.

G. The paying for, furnishing, or waiving all or any part of the rent for space occupied by any producer of title insurance business.

H. Renting space from any producer of title business, regardless of the purpose, at a rate which is excessive when

compared with rents for comparable space in the same geographic area, or paying rent based in whole or in part on the volume of business generated by any producer of title insurance business.

I. Furnishing all or any part of the time or productive effort of any employee of the title insurance organization or insurer (i.e., secretary, clerk, messenger, escrow officer etc.) to any producer of title insurance business.

J. Paying for all or any part of the salary of an employee of any producer of title insurance business.

K. Paying, or offering to pay, either directly or indirectly, salary, commissions or any other consideration to any employee who is at the same time actively engaged as a real estate agent or broker or as a mortgage broker.

L. Paying for the fees or charges of a professional (e.g. an appraiser, surveyor, engineer, attorney, etc.) whose services are required by any producer of title insurance business to structure or complete a particular transaction.

M. Sponsoring, cosponsoring, subsidizing, contributing fees, prizes, gifts, food or otherwise providing anything of value for an activity, except as allowed under Subsection R590-153-6(F) of a producer of title insurance business. Activities include, but are not limited to: "open houses" at homes or property for sale, meetings, breakfasts, luncheons, dinners, conventions, installation ceremonies, celebrations, outings, cocktail parties, hospitality room functions, open house celebrations, dances, fishing trips, gambling trips, sporting events of all kinds, hunting trips or outings, golf or ski tournaments, artistic performances and outings in recreation areas or entertainment areas.

N. Sponsoring, subsidizing, supplying prizes or labor, except as allowed under R590-153-6(C), or otherwise providing things of value for promotional activities of producers of title insurance business. Title agents or insurers may attend activities of producers if there is no additional cost to the agent or insurer other than their own entry fees, registration fees, meals, etc., and provided that these fees are no greater than those charged to producers of title insurance business or others attending the function.

O. Providing gifts or anything of value to a producer of title insurance business in connection with social events such as birthdays, job promotions, etc. except as provided in R590-153-6(H). A letter or card in these instances will not be interpreted as providing a thing of value.

P. Providing either directly or indirectly, a compensating balance or deposit in a lending institution either for the express or implied purpose of influencing the placement or channeling of title insurance business by such lending institution. This does not preclude transactions with lending institutions which are in the normal course of business.

Q. Furnishing any part of a title organization's or insurer's facilities (e.g. conference rooms, meeting rooms, etc.) to a producer of title insurance business or trade association without receiving a fair rental charge comparable to other rental charges for facilities in the same geographic area.

R. Furnishing information packets, listing kits, "farm" packages or any other form of title evidence without first filing a specimen form copy with the commissioner and specifying a rate for which the form is available. The rate may not be less than the actual cost of producing the information and the material furnished.

S. Paying for any advertising on behalf of a producer of title insurance business.

T. Advertising jointly with a producer of title insurance business on subdivision or condominium project signs, or signs for the sale of a lot or lots in a subdivision or units in a condominium project. A title insurance organization may advertise independently that it has provided title insurance for a particular subdivision, condominium project etc., but may not indicate that all future title insurance will be written by that agency.

U. A direct or indirect benefit provided to a producer of title insurance which is not specified in Section 6 below, will be investigated by the insurance department for the purpose of determining whether it should be defined by the commissioner as an unfair inducement under Section 31A-23-302(8), Utah Code Annotated.

R590-153-6. Permitted Advertising and Business Entertainment.

A. A title organization, agent or insurer may furnish without charge a copy of any existing plat map, and tax information covering a specific parcel of real estate, (Tax identification number, assessed owner, assessed value of land and improvements and the latest tax amount) without additions or addenda or attachments which may be construed as reaching conclusions of the organization, insurer or agent regarding matters of marketable ownership or encumbrances.

B. Advertisements in official trade association publications are permissible as long as any organization or title insurer has an equal opportunity to advertise in the publication and at the standard rates other advertisers in the publication are charged. The advertisement must be purely self-promotional. No advertisement may be placed in a publication that is published or distributed by, or on behalf of a producer or group of producers of title insurance business.

C. A title organization, insurer or agent may donate time to serve on a trade association committee and may also serve as an officer for the trade association.

D. A title organization or insurer may have two self-promotional open houses per calendar year for each of its owned or occupied facilities, (including branch offices) (e.g. a Christmas party, an open house for remodeling of its facility, an open house for a new facility for the organization). The organization or insurer may not expend more than $10.00 per guest per open house. The open house may take place on or off the organization's or insurer's premises, but may not take place on the producer's premises.

E. A title organization or insurer may distribute self-promotional items having a value of $3 or less to producers of title insurance business, consumers and members of the general public. These self-promotional items shall be novelty gifts which are nonedible and may not be personalized or bear the name of the donee. Self-promotional items may only be distributed in the regular course of business. Self-promotional items may not be given to producers of title

insurance business or trade associations for redistribution by these entities.

F. A title organization or insurer may make expenditures for business meals or activities on behalf of any person, whether a producer of title insurance or not as a method of advertising if the expenditure meets all the following criteria:

(1) The agent representing the title organization or an employee of the insurer must be present during the business meal or activity.

(2) There is a substantial title insurance business discussion directly before, during or after the business meal or activity.

(3) The total cost of the business meal and the activity is not more than $50.00 per person, per day.

(4) No more than three individuals from an office of a producer of title insurance business may be provided a business meal or activity by an organization or insurer in a single day.

(5) The entire business meal or activity may take place on or off the organization's or insurer's premises, but may not take place on the producer's premises.

G. A title organization or insurer may conduct educational programs under the following conditions:

(1) The educational program shall address only title insurance, escrow or topics directly related thereto.

(2) The educational program must be of at least one hour duration.

(3) For each hour of education $10 or less per person may be expended, including the cost of meals and refreshments.

(4) No more than one such educational program may be conducted at the office of a producer of title insurance business per calendar quarter.

H. A title organization or insurer may acknowledge a wedding, birth or adoption of a child, or funeral of a producer of title insurance business or members of his/her immediate family with flowers or gifts not to exceed $25.00.

I. Any other advertising and/or business entertainment must be requested in writing and approved in advance and in writing by the commissioner.

R590-153-7. Penalties.

Subject to the provisions of the Utah Administrative Procedures Act, violators of this rule shall be subject to forfeitures, suspension or revocation of their insurance license or Certificate of Authority, and/or any other penalties or measures as are determined by the commissioner in accordance with law.

R590-153-8. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, such invalidity may not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: insurance
May 19, 1995 **31A-23-302**

Notice of Continuation December 15, 1997

R590. Insurance, Administration.
R590-174. Diskette Filing of Annual and Quarterly Statements.
R590-174-1. Authority.

This rule is promulgated pursuant to the general rulemaking authority granted the Commissioner by Utah Insurance Code Section 31A-2-201 and the specific authority granted by Section 31A-4-113.

R590-174-2. Scope.

This rule applies to all insurers licensed under Chapters 5, 7, 8, except limited health plans, and 14 of the Utah Insurance Code.

R590-174-3. Rule.

Insurers shall file diskette and hard copies of their annual and quarterly statements with the National Association of Insurance Commissioners. Annual filings shall be filed each year on or before March 1.

Quarterly filings:

1. for the period ending each March 31, shall be filed before May 16;

2. for the period ending each June 30 shall be filed before August 16;

3. for the period ending each September 30 shall be filed before November 16;

A quarterly filing is not required for the period ending December 31. The fourth quarter information shall be included in the annual statement filing. The Commissioner may exempt insurers that operate only in Utah from these requirements.

Annual statement diskette copies are required to contain the same information and be in the same format as the annual statement filings required by Rule R590-147. Quarterly statement diskette copies are required to contain the same information and be in the same format as the quarterly statement filings required by Rule R590-163.

R590-174-4. Severability.

If any provision of this rule or its application to any person or circumstance is, for any reason, held to be invalid, the remainder of this rule and its application to other persons or circumstances are not affected.

KEY: insurance law
January 1, 1998 **31A-4-113**

R590. Insurance, Administration.
R590-182. Risk Based Capital Instructions.
R590-182-1. Authority.

This rule is promulgated pursuant to the general rulemaking authority granted the commissioner by Section 31A-2-201 and the specific authority granted by Subsection

31A-17-601(6).

R590-182-2. Scope.

This rule applies to all life or disability insurers, as defined in Subsection 31A-17-601(3), and to all property and casualty insurers, as defined in Subsection 31A-17-601(4) required by Subsections 31A-17-602(1) or 31A-17-610(1)(a) to file risk based capital reports (RBC).

R590-182-3. Rule.

A. The "1997 NAIC Life Risk-Based Capital Report Including Overview and Instructions for companies as of December 31, 1997," shall be used by life or disability insurers in preparing and filing RBC reports.

B. The "1997 NAIC Property and Casualty Risk-Based Capital Report Including Overview and Instructions for Companies as of December 31, 1997," shall be used by property and casualty insurers in preparing and filing RBC reports.

R590-182-4. Severability.

If any provision of this rule or its application to any person or circumstance is, for any reason, held to be invalid, the remainder of this rule and its application to other persons or circumstances are not affected.

KEY: insurance
January 1, 1998 **31A-17-601(4)**

R590. Insurance, Administration.
R590-183. Title Plant Rule.
R590-183-1. Authority.

This rule is adopted pursuant to Section 31A-17-201(2)(j), which allows the commissioner to authorize qualified assets other than those enumerated in Subsections 31A-17-201(2)(a) through (i).

R590-183-2. Purpose and Scope.

A. The purpose of this rule is to permit title insurers to include title plants as qualified assets.

B. This rule applies only to title insurers authorized to transact business in Utah.

R590-183-3. Definitions.

For the purpose of this rule, the following definitions apply:

A. "Foreign title insurer" means any title insurer incorporated or organized under the laws of any other state of the United States, the District of Columbia, or any other jurisdiction of the United States.

B. "Alien title insurer" means any title insurer incorporated or organized under the laws of any foreign nation or any province or territory.

C. "Title insurer" means a company organized under the laws of this state for the purpose of transacting the business of title insurance and any foreign or alien title insurer licensed in this state to transact the business of title insurance.

D. "Title plant" means a set of records consisting of documents, maps, surveys or entries affecting title to real property or any interest in or encumbrance on the property, which have been filed or recorded in the jurisdiction for which the title plant is established or maintained.

E. "Qualified assets" are defined in Subsection 31A-17-201(2).

R590-183-4. Rule.

In determining the financial condition of title insurers authorized to conduct title insurance business in Utah, a title plant or plants in an amount equal to the lesser of the actual cost or the current fair market value shall be allowed as a qualified asset. The aggregate amount of the investment may not exceed the lesser of 20% of qualified assets or 40% of surplus as regards policyholders as shown on the most recent annual statement on file with the commissioner.

R590-183-5. Separability.

If any provision of this rule or its application to any person or circumstance is for any reason held to be invalid by a court of competent jurisdiction, the remainder of the rule and the application of this revision to other persons or circumstances may not be affected.

KEY: insurance
January 1, 1998 **31A-17-201**

R612. Labor Commission, Industrial Accidents.
R612-1. Workers' Compensation Rules - Procedures.
R612-1-1. Definitions.

A. "Commission" means the Labor Commission.

B. "Division" means the Division of Industrial Accidents within the Labor Commission.

C. "Applicant/Plaintiff" means an injured employee or his/her dependent(s) or any person seeking relief or claiming benefits under the Workers' Compensation and/or Occupational Disease and Disability Laws.

D. "Defendant" means an employer, insurance carrier, self-insurer, the Employers' Reinsurance Fund, and/or the Uninsured Employers' Fund.

E. "Administrative Law Judge" means a person duly designated by the Commission to hear and determine disputed or other cases under the provisions of Title 34A, Chapters 2 and 3, and of Title 63, Chapter 46b.

F. "Insurance Carrier" includes all insurance companies writing workers' compensation and occupational disease and disability insurance, the Workers' Compensation Fund, and self-insurers who are granted self-insuring privileges by the Commission. In all cases involving no insurance coverage by the employer, the term "Insurance Carrier" includes the employer.

G. "Medical Panel" means a panel appointed by an Administrative Law Judge pursuant to the standards set forth in Section 34A-2-601, which is responsible to make findings regarding disputed medical aspects of a compensation claim, and may make any additional findings, perform any tests, or make any inquiry as the Administrative Law Judge may require.

H. "Award" means the finding or decision of the Commission or Administrative Law Judge as to the amount of compensation or benefits due any injured employee or the dependent(s) of a deceased employee.

R612-1-2. Authority.

This rule is enacted under the authority of Section 34A-1-104.

R612-1-3. Official Forms.

A. "Employer's First Report of Injury - Form 122" - This form is used for reporting accidents, injuries, or occupational diseases as per Section 34A-2-407. This form must be filed within seven days of the occurrence of the alleged industrial accident or the employer's first knowledge or notification of the same. This form also serves as OSHA Form 101.

B. "Physician's Initial Report of Work Injury or Occupational Disease - Form 123" - This form is used by physicians and chiropractors to report their initial treatment of an injured employee.

C. "Restorative Services Authorization - Form 221" - This form is to be used by any medical provider billing under the restorative services section of the Commission's Relative Value Schedule. The medical provider shall file this form with the insurance carrier or self-insured employer and the division within ten days of the initial evaluation. After the initial filing, an updated Restorative Services Authorization form must be filed for approval or denial at least every six visits until a fixed state of recovery has been reached.

D. "Statement of Insurance Carrier or Self-Insurer with Respect to Payment of Benefits - Form 141" - This form is used for reporting the initial benefits paid to an injured employee. This form must be filed with or mailed to the division on the same date the first payment of compensation is mailed to the employee. A copy of this form must accompany the first payment.

E. "Employee Notification of Denial of Claim - Form 089" - This form is used by insurance carriers or self-insured employers to notify the claimant that their claim is denied and the reason(s) why the claim is being denied. An insurance carrier or self-insured employer shall complete its investigation within 45 days of receipt of the claim and shall commence the payment of benefits or notify the claimant and the division in writing that the claim is denied.

F. "Insurance Carriers/ Self-Insurer's Notice of Further Investigation of a Workers' Compensation Claim - Form 441" - This form is used by insurance carriers or self-insured employers to notify the claimant and the commission that further investigation is needed and the reasons for further investigation. This form or letter containing similar information is to be filed within 21 days of notification of claim that further investigation is needed.

G. "Statement of Insurance Carrier or Self-Insurer with Respect to Discontinuance of Benefits - Form 142" - This form is to be used by insurance carriers or self-insured employers to notify an employee of the discontinuance of weekly compensation benefits. The form must be mailed to the employee and filed with the division five days before the date compensation stops for any reason.

H. "Application for Hearing - Form 001" - Used by an applicant for instituting an industrial claim against an insurance carrier, self-insured employer, or uninsured employer. This form, obtainable from the division, must be filed and signed by the injured employee or his/her agent. All blanks must be completed to the best knowledge, belief, or information of the injured employee.

I. "Claim for Protection of Rights - Form 002" - Used by an injured employee for the sole purpose of protecting his/her rights even though a dispute does not exist. Copies are forwarded to all parties concerned. NOTE: THIS FORM DOES NOT NEED TO BE FILED WHEN ANY OTHER APPLICATION HAS BEEN FILED.

J. "Claim for Dependents' Benefits and/or Burial Benefits - Form 025" - This form is used by the dependent(s) of a deceased employee to seek benefits as a result of a fatal accident occurring in the course of employment.

1. This form must be filed before a hearing or an award is made, and pleadings will not be accepted in lieu thereof. If pleadings are submitted, the attorney so filing will be supplied the form for filing before any proceedings are initiated.

2. The filing of this form by the surviving spouse on behalf of the surviving spouse and the surviving spouse's dependent minor children is sufficient for all dependents.

3. Unless otherwise directed by an Administrative Law Judge, the following information shall be supplied before an Order or an Award is made:

(a) A certified copy of the marriage license and birth certificates of dependent minor children. If such evidence is not readily available, the Administrative Law Judge will determine the adequacy of substitute evidence.

(b) Adoption papers or other decrees of courts of record establishing legal responsibility for support of dependent children.

(c) If either the deceased employee or surviving spouse has been involved in divorce proceedings, copies of decrees and orders of the court should be supplied.

K. "Occupational Disease Claim of Employee - Form 026" - This form is used by an employee claiming benefits under the Utah Occupational Disease Act.

L. "Occupational Disease Claim of Dependent - Form 027" - This form is used by the dependent(s) of a deceased employee who died as a result of an occupational disease. All provisions of Section G above apply equally to this form.

M. "Insurance Company's and Self-Insurer's Final Report of Injury and Statement of Total Losses - Form 130" - This form is used by insurance carriers and self-insurers to report the total losses occurring in a claim for any benefits. This form must be filed with the division as soon as final settlement is made but in no event more than 30 days from such settlement. This form shall be filed for all losses including medical only, compensation, survivor benefits, or any combination of all so as to provide complete loss information for each claim.

N. "Dependents' Benefit Order - Form 151" - This form is used by the division in all accidental death cases where no issue of liability for the death or establishment of dependency is raised and only one household of dependents is involved. The carrier indicates acceptance of liability by completing the top half of the form and filing it with the division.

O. "Medical Information Authorization - Form 046" - This form is used to release the applicant's medical records to the Commission or the chairman of a medical panel appointed by an Administrative Law Judge.

P. "Application to Change Doctors - Form 102" - This form must be used by the employee pursuant to the provisions of Rule R612-2-9 as contained herein.

Q. "Employee's Notification of Intent to Leave Locality or State, and to Change Doctor or Hospital - Form 044" - As per Section 34A-2-604, this form is used by the employee and must be accompanied by the "Attending Physician's Statement - Form 043" before Commission approval can be granted. Otherwise, compensation may not be allowed.

R. "Attending Physician's Statement - Form 043" - This form must be completed by employee and his last attending physician in the state to establish the medical condition of the employee. It must be accompanied by Form 044.

S. "Compensation Agreement - Form 219" - This form is used by the parties to a workers' compensation claim to enter into an agreement as to a permanent partial impairment award, and must be submitted to the Division of Adjudication for approval.

T. "Application for Lump Sum or Advance Payment - Form 134" - This form is used by an employee to apply for a lump sum or advance payment for a permanent partial impairment award.

U. "Release to Return to Work - Form 110" - This form may be used to meet the requirements of Rule R612-2-3(D), as contained herein.

V. "Request for Copies From Claimant's File - Form 205" - This form is used to request copies from a claimant's file in the Commission with the appropriate authorized release.

W. Reemployment Program Forms

1. "Initial Assessment Report - Form 206" - This form is completed either by the self-insured employer, the workers' compensation insurance provider, or by a rehabilitation agency contracted by the employer/carrier. The report contains claimant demographics and insurance coverage details, and addresses the issue of need for vocational assistance.

2. "Request for Decision of Administrative Review - Form 207" - This form is completed when the employee wishes to contest the information/decision made by the carrier or rehabilitation agency.

3. "U.S.O.R. Rehabilitation Progress Report - Form 208A" - This form shall be requested from the Utah State Office of Rehabilitation at each stage of the reemployment process (eligibility determination, reemployment plan development/implementation and case closure) or at any interruption of the process. An Individualized Written Rehabilitation Program (USOR 5 IWRP) shall also be requested when a plan is developed. All other private rehabilitation providers shall submit a Form 206 for any plan progress, postponement, or interruption in the plan.

4. "Reemployment Plan - Form 209" - This form is used for either an original or amended work plan. The form contains the details and estimated costs in returning the injured worker to the work force.

5. "Reemployment Plan Closure Report - Form 210" - This form is submitted to the division upon completion of the reemployment plan. The closure report shall detail costs by category either by dollar amounts or time expended (only in the categories of evaluation and counseling). The report shall also contain all the details on the return to work.

6. "Application for Certification as a Reemployment Provider - Form 212" - This form is completed by rehabilitation providers who wish to be certified by the division. It contains provider demographics, Utah staff credentials, services/fees, and references.

7. "Administrative Review Determination - Form 213" - This form is used by the division to summarize the outcome of the administrative review.

X. "Medical Records - Copies - Form 302" - This form is used by a claimant to request a free copy of his/her medical records from a medical provider. This form must be signed by a staff member of the division.

Y. The division may approve change of any of the above forms upon public notice. Carriers may print these forms or approved versions.

R612-1-4. Discount.

Eight percent shall be used for any discounting or present value calculations. Lump sums ordered by the Commission or for any attorney fees paid in a single up-front

amount, or of any other sum being paid earlier than normally paid under a weekly benefit method shall be subject to the 8% discounting. The Commission shall create and make available a precise discount or present value table based on a 365 day year. For those instances where discount calculations are not routinely utilized or where the Commission's precise table is not available, the following table, which is a shortened version of the precise table, may be utilized by interpolating between the stated weeks and the related discount.

TABLE

Unaccrued Weeks	X	Weekly Benefit $	X	Cumulative Discount	=	Discount $
1				.001475		
10				.008076		
20				.015343		
30				.022538		
40				.029663		
50				.036719		
60				.043706		
70				.050626		
80				.057478		
90				.064264		
100				.070984		
110				.077639		
120				.084229		
130				.090756		
140				.097221		
150				.103623		
160				.109963		
170				.116243		
180				.122463		
190				.128623		
200				.134724		
210				.140767		
220				.146752		
230				.152680		
240				.158552		
250				.164368		
260				.170129		
270				.175835		
280				.181488		
290				.187087		
300				.192633		
312				.199219		

R612-1-5. Interest.

A. Interest must be paid on each benefit payment which comprises the award from the date that payment would have been due and payable at the rate of 8% per annum.

B. For the purpose of interest calculation, benefits shall become "due and payable" as follows:

1. Temporary total compensation shall be due and payable within 21 days of the date of the accident.

2. Permanent partial compensation shall be due and payable on the next day following the termination of a temporary total disability. However, where the condition is not fixed for rating purposes, the interest shall commence from the date the permanent partial impairment can be medically determined.

3. Permanent partial or permanent total disability compensation payable by the Employers' Reinsurance Fund or the Uninsured Employers' Fund shall be due and payable as soon as reasonably practical after an order is issued.

R612-1-6. Issuance of Checks.

A. Any entity issuing compensation checks or drafts must make those checks/drafts payable directly to the injured worker and must mail them directly to the last known mailing address of the injured worker, with the following exceptions:

1. If the employer provides full salary to the injured worker in return for the worker's compensation benefits, the check may be mailed to the worker at the place of employment;

2. If the employer coordinates other benefits with the worker's compensation benefits, the check may be mailed to the worker at the place of employment.

B. In no case may the check be made out to the employer.

C. Where attorney fees are involved, a separate check should be issued to the worker's attorney in the amount approved or ordered by the Commission, unless otherwise directed by the Commission. Payment of the worker's attorney by issuing a check payable to the worker and his attorney jointly constitutes a violation of this rule.

R612-1-7. Acceptance/Denial of a Claim.

A. Upon receiving a claim for workers' compensation benefits, the insurance carrier or self-insured employer shall promptly investigate the claim and begin payment of compensation within 21 days from the date of notification of a valid claim or the insurance carrier or self-insured employer shall send the claimant and the division written notice on a division form or letter containing similar information, within 21 days of notification, that further investigation is needed stating the reason(s) for further investigation. Each insurance carrier or self-insured employer shall complete its investigation within 45 days of receipt of the claim and shall commence the payment of benefits or notify the claimant and division in writing that the claim is denied and the reason(s) why the claim is being denied.

B. The payment of compensation shall be considered overdue if not paid within 21 days of a valid claim or within the 45 days of investigation unless denied.

C. Failure to make payment or to deny a claim within the 45 day time period without good cause shall result in a referral of the insurance company to the Insurance Department for appropriate disciplinary action and may be cause for revocation of the self-insurance certification for a self-insured employer. Good cause is defined as:

1. Failure by an employee claiming benefits to sign requested medical releases.

2. Injury or occupational disease did not occur within the scope of employment.

3. Medical information does not support the claim.

4. Claim was not filed within the statute of limitations.

5. Claimant is not an employee of the employer he/she is making a claim against.

6. Claimant has failed to cooperate in the investigation of the claim.

7. A pre-existing condition is the sole cause of the medical problem and not the claimed work-related injury or occupational disease.

8. Other - a very specific reason must be given.

D. If an insurance carrier or self-insured employer begins payment of benefits on an investigation basis so as to process the claim in a timely fashion, a later denial of benefits based on newly discovered information may be allowed.

R612-1-8. Insurance Carrier/Employer Liability.

A. This rule governs responsibility for payment of workers' compensation benefits for industrial accidents when:

1. The worker's ultimate entitlement to benefits is not in dispute; but

2. There is a dispute between self-insured employers and/or insurers regarding their respective liability for the injured worker's benefits arising out of separate industrial accidents which are compensable under Utah law.

B. In cases meeting the criteria of subsection A, the self-insured employer or insurer providing workers' compensation coverage for the most recent compensable injury shall advance workers' compensation benefits to the injured worker. The benefits advanced shall be limited to medical benefits and temporary total disability compensation. The benefits advanced shall be paid according to the entitlement in effect on the date of the earliest related injury.

1. The self-insured employer or insurance carrier advancing benefits shall notify the non-advancing party(s) within the time periods as specified in rule R612-1-7, that benefits are to be advanced pursuant to this rule.

2. The self-insured employers or insurers not advancing benefits, upon notification from the advancing party, shall notify the advancing party within 10 working days of any potential defenses or limitations of the non-advancing party(s) liability.

C. The parties are encouraged to settle liabilities pursuant to this rule, however, any party may file a request for agency action with the Commission for determination of liability for the workers' compensation benefits at issue.

D. The medical utilization decisions of the self-insured employer or insurer advancing benefits pursuant to this rule shall be presumed reasonable with respect to the issue of reimbursement.

R612-1-9. Compensation Agreements.

A. An applicant, insurance company, and/or employer may enter into a compensation agreement for the purpose of resolving a worker's compensation claim. Compensation agreements must be approved by the Commission. The compensation agreement must be that contained on Form 019 of the Commission forms and shall include the following information:

1. Signatures of the parties involved;

2. Form 122 - Employer's First Report of Injury;

3. Form 123 - Physician's Initial Report;

4. Doctor's report of impairment rating;

5. Form 141 - Payment of Benefits Statement.

B. Failure to provide any of the above documentation and forms shall result in the return of the compensation agreement to the carrier or self-insured employer without approval.

R612-1-10. Permanent Total Disability.

A. For claims arising from accident or disease prior to July 1, 1994, the Commission is required under Section 34A-2-413, to make a finding of total disability as measured by the substance of the sequential decision-making process of the Social Security Administration under Title 20 of the Code of Federal Regulations, amended April 1, 1993. The use of the term "substance of the sequential decision-making process" is deemed to confer some latitude on the Commission in exercising a degree of discretion in making its findings relative to permanent total disability. The Commission does not interpret the code section to eliminate the requirement that a finding by the Commission in permanent and total disability shall in all cases be tentative and not final until rehabilitation training and/or evaluation has been accomplished.

B. In the event that the Social Security Administration or its designee has made, or is in the process of making, a determination of disability under the foregoing process, the Commission may use this information in lieu of instituting the process on its own behalf.

C. In evaluating industrial claims in which the injured worker has qualified for Social Security disability benefits, the Commission will determine if a significant cause of the disability is the claimant's industrial accident or some other unrelated cause or causes.

D. To make a tentative finding of permanent total disability the Commission incorporates the rules of disability determination in 20 CFR 404.1520, amended April 1, 1993. The sequential decision making process referred to requires a series of questions and evaluations to be made in sequence. In short, these are:

1. Is the claimant engaged in a substantial gainful activity?

2. Does the claimant have a medically severe impairment?

3. Does the severe impairment meet or equal the duration requirement in 20 CFR 404.1509, amended April 1, 1993, and the listed impairments in 20 CFR Subpart P Appendix 1, amended April 1, 1993?

4. Does the impairment prevent the claimant from doing past relevant work?

5. Does the impairment prevent the claimant from doing any other work?

E. After a tentative finding of permanent total disability, the applicant shall be referred to the Utah State Office of Rehabilitation for evaluation and rehabilitation work-up. If the Utah State Office of Rehabilitation determines that the applicant is unable to do any other work because of his age, education, and previous work experience, and as a result of an industrial accident, there shall be a hearing to review the determination of the Utah State Office of Rehabilitation and any objections thereto, unless the parties waive the right to a hearing.

F. After a hearing, or waiver of the hearing by the parties, the Commission shall issue an order finding or denying permanent total disability based upon the preponderance of the evidence and with due consideration of the vocational factors in combination with the residual functional capacity which the commission incorporates as

published in 20 CFR 404 Subpart P Appendix 2, amended April 1, 1993.

R612-1-11. Burial Expenses.

Pursuant to Section 34A-2-418 if death results from an industrial injury or occupational disease, burial expenses in ordinary cases shall be paid by the employer or insurance carrier up to $4,000. Unusual cases may result in additional payment, either voluntarily by the employer or insurance carrier or through commission order.

KEY: workers' compensation, time, administrative procedure, filing deadlines
December 2, 1997 34A-2-101 et seq.
Notice of Continuation November 24, 1997 34A-3-101 et seq.
34A-1-104 et seq.
63-46b-1 et seq.

R612. Labor Commission, Industrial Accidents.
R612-2. Workers' Compensation Rules-Health Care Providers.
R612-2-1. Definitions.

A. All definitions in Rule R612-1 apply to this section.

B. "Medical Practitioner" - means any person trained in the healing arts and licensed by the State in which such person practices.

C. "Global Fee Cases" - are those flat fee cases where fees include pre-operative and follow-up or aftercare.

R612-2-2. Authority.

This rule is enacted under the authority of Section 34A-1-104.

R612-2-3. Filings.

A. Within one week following the initial examination of an industrial patient, physicians and chiropractors, shall file "Form 123 - Physicians' Initial Report" with the carrier/self-insured employer, employee, and the division. This form is to be completed in as much detail as feasible. Special care should be used to make sure that the employee's account of how the accident occurred is completely and accurately reported. All questions are to be answered or marked "N/A" if not applicable in each particular instance. All addresses must include city, state, and zip code. If modified employment in #29 is marked "yes," the remarks in #29 must reflect the particular restrictions or limitations that apply, whether as to activity or time per day or both. Estimated time loss must also be given in #29. If "Findings of Examination" (#17) do not correctly reflect the coding used in billing, a reduction of payment may be made to reflect the proper coding.

B. 1. Any medical provider billing under the restorative services section of the Labor Commission's Relative Value Schedule (RVS) shall file the Restorative Services Authorization (RSA) form with the insurance carrier or self-insured employer (payor) and the division within ten days of the initial evaluation.

2. Upon receipt of the provider's RSA form, the payor has ten days to respond, either authorizing a specified number of visits or denying the request. No more than eight visits may be incurred during the authorization process.

3. After the initial RSA form is filed with the payor and the division, an updated RSA form must be filed for approval or denial at least every six visits until a fixed state of recovery has been achieved as evidenced by either subjective or objective findings. If the medical provider has filed the RSA form per this rule, the payor is responsible for payment, unless compensability is denied by the payor. In the event the payor denies the entire compensability of a claim, the payor shall so notify the claimant, provider, and the division, after which the provider may then bill the claimant.

4. Any denial of payment for treatment must be based on a written medical opinion or medical information. The denial notification shall include a copy of the written medical opinion or information from which the denial was based. The payor is not liable for payment of treatment after the provider, claimant, and division have been notified in writing of the denial for authorization to pay for treatment. The claimant may then become responsible for payment.

5. Any dispute regarding authorization or denial for treatment will be determined from the date the division received the RSA form or notification of denial for payment of treatment.

6. The claimant may request a hearing before the Division of Adjudication to resolve compensability or treatment issues.

7. Subjective objective assessment plan/procedure (SOAP notes) or progress notes are to be sent to the payor in addition to the RSA form.

C. S.O.A.P. notes or progress reports of each visit are to be sent to the payor by all medical practitioners substantiating the care given, the need for further treatment, the date of the next treatment, the progress of the patient, and the expected return-to-work date. These reports must be sent with each bill for the examination and treatment given to receive payment. S.O.A.P. notes are not to be sent to the division unless specifically requested.

D. "Form 110 - Release to Return to Work" must be mailed by either the medical practitioner or carrier/employer to the employee and the division within five calendar days of release.

E. The carrier/employer may request medical reports in addition to regular progress reports. A charge may be made for such additional reports, which charge should accurately reflect the time and effort expended by the physician.

R612-2-4. Hospital or Surgery Pre-Authorization.

Any ambulatory surgery or impatient hospitalization other than a life or limb threatening admission, allegedly related to an industrial injury or occupational disease, shall require pre-authorization by the employer/insurance carrier. Within two working days of a telephone request for pre-authorization, the employer/carrier shall notify the physician and employee of approval or denial of the surgery or hospitalization, or that a medical examination or review is going to be obtained. The medical examination/review must

be conducted without undue delay which in most circumstances would be considered less than thirty days. If the request for pre-authorization is made in writing, the employer/carrier shall have four days from receipt of the request to notify the physician and employee. If the employee chooses to be hospitalized and/or to have the surgery prior to such pre-authorization or medical examination/review, the employee may be personally responsible for the bills incurred and may not be reimbursed for the time lost unless a determination is made in his/her favor.

R612-2-5. Regulation of Medical Practitioner Fees.

Pursuant to Section 34A-2-407:

A. The Labor Commission of Utah:

1. Establishes and regulatees fees and other charges for medical, surgical, nursing, physical and occupational therapy, mental health, chiropractic, naturopathic, and osteopathic services, or any other area of the healing arts as required for the treatment of an industrially injured employee.

2. Establishes the following conversion factors per unit of the Relative Value Schedule for medical treatment resulting from an industrial injury or occupational disease, effective July 3, 1995:

Anesthesiology $26.62
Medicine $1.30
Pathology and Laboratory $1.30
Radiology $1.35
Restorative Medicine $1.30
Surgery $16.90

3. Revises the codes and procedures within the Relative Value Schedule after analysis and study of the Medical Fee Advisory Committee recommendations. The Relative Value Schedule can be obtained from the division for a fee sufficient to recover costs of development, printing, and mailing.

4. Decides appropriate billing procedure codes when disputes arise between the medical practitioner and the employer or its insurance carrier. In no instance will the medical practitioner bill both the employer and the insurance carrier.

B. Employees cannot be billed for treatment of their industrial injuries or occupational diseases.

C. Discounting from the fees established by the Labor Commission is allowed only through specific contracts between a medical provider and a payor for treatment of industrial injured/ill patients.

D. Restocking fee 15%. Rule R612-2-15 covers the restocking fee.

E. Dental fees are not published. Rule R612-2-17 covers dental injuries.

F. Ambulance fees are not published. Rule R612-2-18 covers ambulance charges.

R612-2-6. Fees in Cases Requiring Unusual Treatment.

The scheduled fees are maximum fees except that fees higher than scheduled may be authorized by the Commission when extraordinary difficulties encountered by the physician justify increased charges and are documented by written reports.

R612-2-7. Insurance Carrier's Privilege to Examine.

The employer or the employer's insurance carrier or a self-insured employer shall have the privilege of medical examination of an injured employee at any reasonable time. A copy of the medical examination report shall be made available to the Commission at any time upon request of the Commission.

R612-2-8. Who May Attend Industrial Patients.

A. The employer has first choice of physicians; but if the employer fails or refuses to provide medical attention, the employee has the choice of physicians.

B. An employee of an employer with an approved medical program may procure the services of any qualified practitioner for emergency treatment if a physician employed in the program is not available for any reason.

R612-2-9. Changes of Doctors and Hospitals.

A. It shall be the responsibility of the insurance carrier or self-insured employer to notify each claimant of the change of doctor rules. Those rules are as follows:

1. If a company doctor, designated facility or PPO is named, the employee must first treat with that designated provider. The insurance carrier or self-insured employer shall be responsible for payment for the initial visit, less any health insurance copays and subject to any health insurance reimbursement, if the employee was directed to and treated by the employer's or insurance carrier's designated provider, and liability for the claim is denied and if the treating physician provided treatment in good faith and provided the insurance carrier or self-insured employer a report necessary to make a determination of liability. Diagnostic studies beyond plain x-rays would need prior approval unless the claimed industrial injury or occupational illness required emergency diagnosis and treatment.

2. The employee may make one change of doctor without requesting the permission of the carrier, so long as the carrier is promptly notified of the change by the employee.

(a) Physician referrals for treatment or consultation shall not be considered a change of doctor.

(b) Changes from emergency room facilities to private physicians, unless the emergency room is named as the "company doctor", shall not be considered a change of doctor. However, once private physician care has begun, emergency room visits are prohibited except in cases of:

(i) Private physician referral, or

(ii) Threat to life.

3. Regardless of prior changes, a change of doctor shall be automatically approved if the treating physician fails or refuses to rate permanent partial impairment.

B. Any changes beyond those listed above made without the permission of the carrier/self-insurer may be at the employee's own expense if:

1. The employee has received notification of rules, or

2. A denial of request is made.

C. An injured employee who knowingly continues care after denial of liability by the carrier may be individually responsible for payment. It shall be the burden of the carrier

to prove that the patient was aware of the denial.

D. It shall be the responsibility of the employee to make the proper filings with the division when changing locale and doctor. Those forms can be obtained from the division.

E. Except in special cases where simultaneous attendance by two or more medical care practitioners has been approved by the carrier/employer or the division, or specialized services are being provided the employee by another physician under the supervision and/or by the direct referral of the treating physician, the injured employee may be attended by only one practitioner and fees will not be paid to two practitioners for similar care during the same period of time.

F. The Commission has jurisdiction to decide liability for medical care allegedly related to an industrial accident.

R612-2-10. One Fee Only to be Paid in Global Fee Cases.

In a global fee case which is transferred from one doctor to another doctor, one fee only will be paid, apportioned at the discretion of the Commission. Adequate remuneration shall also be paid to the medical practitioner who renders first aid treatment where the circumstances of the case require such treatment.

R612-2-11. Surgical Assistants' Fees.

Fees, in accordance with the Commission's Relative Value Schedule, in addition to the global fee for surgical services, will be paid surgical assistants only when specifically authorized by the employer or insurance carrier involved, or in hospitals where interns and residents are not available and the complexity of the surgery makes a surgical assistant necessary.

R612-2-12. Separate Bills.

Separate bills must be presented by each surgeon, assistant, anesthetist, consultant, hospital, special nurse, or other medical practitioner within 30 days of treatment on a HCFA 1500 billing form so that payment can be made to the medical practitioner who rendered the service. All bills must contain the federal ID number of the person submitting the bill.

R612-2-13. Interest for Medical Services.

A. All hospital and medical bills must be paid promptly on an accepted liability claim. All bills which have been submitted properly on an accepted liability claim are due and payable within 45 days of being billed unless the bill or a portion of the bill is in dispute. Any portion of the bill not in dispute is payable within 45 days of the billing.

B. Per Section 34A-2-420, any award for medical treatment made by the Commission shall include interest at 8% per annum from the date of billing for the medical service.

R612-2-14. Hospital Fees Separate.

Fees covering hospital care shall be separate from those for professional services and shall not extend beyond the actual necessary hospital care. When it becomes evident that the patient needs no further hospital treatment, he/she must be discharged. All billings must be submitted on a UB92 form and be properly itemized and coded and shall include all appropriate documentation to support the billing. There shall not be a separate fee charged for the necessary documentation in billing for payment of hospital services. The documentation of hospital services shall include at a minimum the discharge summary. The insurance carrier may request further documentation if needed in order to determine liability for the bill.

R612-2-15. Charges for Ordinary Supplies, Materials, or Drugs.

Fees covering ordinary dressing materials or drugs used in treatment shall not be charged separately but shall be included in the amount allowed for office dressings or treatment.

R612-2-16. Charges for Special or Unusual Supplies, Materials, or Drugs.

Charges for special or unusual supplies, materials, or drugs not included as a normal and usual part of the service or procedure shall, upon receipt of an itemized and coded billing, be paid at cost plus 15% restocking fees.

R612-2-17. Fees for Unscheduled Procedures.

Fees for medical or surgical procedures not appearing in the Commission's current fee schedule publication are subject to the Commission's approval and should be submitted to the Commission when the physician and employer or insurance carrier do not agree on the value of the service. Such fees shall be in proportion as nearly as practicable to fees for similar services appearing in this schedule.

R612-2-18. Dental Injuries.

Where a worker sustains an accident in the course of his employment resulting in the loss of or injury to teeth, making dental work necessary, the injured worker shall consult a dental surgeon and receive such first aid as may be necessary to preserve, if possible, the normal function of the injured teeth. The dental surgeon shall then file with the insurance carrier a report setting forth the nature of the injury together with an estimate of the cost of restoration. The dental surgeon shall not proceed with the restoration until authority has been granted by the insurance carrier, provided, however, that if an employer maintains a medical staff or designates a company doctor, the employee shall first report to that medical staff or medical officer and be guided by directions then given. If the carrier refuses payment at the level estimated by the dental surgeon, the employee may choose to pay the difference and seek adjudication by Application for Hearing. A dental surgeon may choose to settle for the payment allowed, or the carrier shall direct the employee to a dental surgeon who will provide his services at the payment level specified by the carrier.

R612-2-19. Ambulance Charges.

Ambulance charges must not exceed the rates adopted by the State Emergency Medical Service Commission for similar services.

R612-2-20. Travel Allowance and Per Diem.

A. An employee who, based upon his/her physician's advice, requires hospital, medical, surgical, or consultant services for injuries arising out of and in the course of employment and who is authorized by the self-insurer, the carrier, or the Commission to obtain such services from a physician and/or hospital shall be entitled to:

1. Subsistence expenses of $5 per day for breakfast, $6 per day for lunch, $10 per day for dinner, and actual lodging expenses as per the state of Utah's in-state travel policy provided:

(a) The employee travels to a community other than his/her own place of residence and the distance from said community and the employee's home prohibits return by 10:00 p.m., and

(b) The absence from home is necessary at the normal hour for the meal billed.

2. Reasonable travel expenses regardless of distance that are consistent with the state of Utah's travel reimbursement rates, or actual reasonable costs of practical transportation modes above the state's travel reimbursement rates as may be required due to the nature of the disability.

B. This rule applies to all travel to and from medical care with the following restrictions:

1. The carrier is not required to reimburse the injured employee more often than every three months, unless:

(a) More than $100 is involved, or

(b) The case is about to be closed.

2. All travel must be by the most direct route and to the nearest location where adequate treatment is reasonably available.

3. Travel may not be required between the hours of 10:00 p.m. and 6:00 a.m., unless approved by the Commission.

4. Requests for travel reimbursement must be submitted to the carrier for payment within one year of the authorized medical care.

5. Travel allowance shall not include picking up prescriptions unless documentation is provided substantiating a claim that prescriptions cannot be obtained locally within the injured worker's community.

6. The Commission has jurisdiction to resolve all disputes.

R612-2-21. Notice to Health Care Providers.

Any notice from a carrier denying further liability must be mailed to the Commission and the patient on the same day as it is mailed to the health care provider. Where it can be shown, in fact, that a medical care provider and the injured employee have received a denial of further care by the insurance carrier or self-insured employer, further treatment may be performed at the expense of the employee. Any future ratification of the denial by the Commission will not be considered a retroactive denial but will serve to uphold the force and effect of the previous denial notice.

R612-2-22. Medical Records.

A. When any medical practitioner provides copies of medical records to the parties of an industrial case, the following charges are presumed reasonable:

1. A search fee of $15,

2. Copies at $0.50 per page including copies of microfilm, and

3. Actual costs of postage.

B. Those persons or entities who are entitled to copies of medical records involving an industrial case are:

1. The injured employee or his/her dependents,

2. The employer of the injured worker,

3. The employer's workers' compensation insurance carrier,

4. The Uninsured Employers' Fund,

5. The Employers' Reinsurance Fund,

6. The Commission, and

7. Any attorney representing any of the above in an industrial injury or occupational disease claim.

C. No other person or entity is entitled to medical records unless ordered by a Court or provided with a notarized release executed by the injured worker.

D. The Commission will operate in the release of its records to the parties/entities as specified above unless the information is classified as confidential under the Utah Privacy Act.

E. No fee shall be charged when the Commission's Relative Value Schedule (RVS) requires specific documentation for a procedure or when physicians and surgeons are required to report by statute or rule.

F. An injured worker may obtain one of each of the following records related to the industrial injury or occupational disease, at no cost, when the injured worker or his/her dependents have a signed form by the division to substantiate his/her industrial injury/illness claim:

1. History and physical,

2. Operative reports of surgeries,

3. Discharge summary, and

4. Emergency room records,

5. Radiological reports,

6. Specialized testing results,

7. Physician SOAP notes, progress notes or specialized reports.

(a) Alternatively, a summary of the patient's record may be made available to the claimant at the discretion of the physician.

8. And such other records as may be requested by the Commission in order to make a determination of liability.

R612-2-23. Adjusting Relative Value Schedule (RVS) Codes.

A. When adjusting any medical provider's bill who has billed per the Commission's RVS the adjusting entity shall provide one or more of the following explanations as applies to the down coding when payment is made to the medical provider:

1. Code 99202, 99203, 99204 or 99205 - the submitted documentation for a new patient did not meet the three key components lacking in the level of history for the code billed.

2. Code 99202, 99203, 99204 or 99205 - the submitted documentation for a new patient did not meet the three key components lacking in the level of examination for the code

billed.

3. Code 99202, 99203, 99204 or 99205 - the submitted documentation for a new patient did not meet the three key components lacking in the level of medical decision making for the code billed.

4. Code 99202, 99203, 99204, or 99205 - the submitted documentation for a new patient did not meet the three key components lacking in the level of history and exam for the code billed.

5. Code 99213, 99214 or 99215 - the submitted documentation for an established patient did not meet the two key components lacking in the level of history and exam that the code billed.

6. Code 99213, 99214 or 99215 - the submitted documentation for an established patient did not meet the two key components lacking in the level of history and medical decision making for the code billed.

7. Code 99213, 99214 or 99215 - the submitted documentation for the established patient did not meet the two key components lacking in the level of exam and medical decision making for the code billed.

B. The above explanations may be abbreviated, with a legend provided, to accommodate the space of computerized messages.

R612-2-24. Review of Medical Payments.

A. Health care providers and payors are primarily responsible to resolve disputes over fees for medical services between themselves. However, in some cases it is necessary to submit such disputes to the Division for resolution. The Commission therefore establishes the following procedure for submission and review of fees for medical services.

1. The provider shall submit a bill for services rendered, with supporting documentation, to the payor within one year of the date of service;

2. The payor shall evaluate the bill according to the guidelines contained in the Commission's Relative Value Fee Schedule (RVS) and shall pay the provider the appropriate fee within 45 days as required by Rule R612-1-14.

3. If the provider believes that the payor has improperly computed the fee under the RVS, the provider or designee shall request the payor to re-evaluate the fee. The provider's request for re-evaluation shall be in writing, shall describe the specific areas of disagreement and shall include all appropriate documentation. The provider shall submit all requests for re-evaluation to the payor within one year of the date of the original payment.

4. Within 30 days of receipt of the written request for re-evaluation, the payor shall either pay the additional fee due the provider or respond with a specific written explanation of the basis for its denial of additional fees. The payor shall maintain proof of transmittal of its response.

B. If the provider continues to disagree with the payor's determination o the appropriate fee, the provider shall submit the matter to the Division by filing with the Division a written explanation of the disagreement. The provider's explanation shall include copies of:

1. The provider's original bill and supporting documentation;

2. The payor's initial payment of that bill;

3. The provider's request for re-evaluation and supporting documentation; and

4. The payor's written explanation or its denial of additional fees.

C. The Division will evaluate the dispute according to the requirements of the RVS and, if necessary, by consulting with the provider, payor, or medical specialists. Within 45 days from the date the Division receives the provider's request, the Division will mail its determination to both parties.

D. Any party aggrieved by the Division's determination may file an application for hearing with the Division of Adjudication to obtain formal adjudication of the dispute.

R612-2-25. Injured Worker's Right to Privacy.

A. No agent of the employer or the employer's insurance carrier shall be present during an injured worker's visit with a medical provider, unless agreed upon by the claimant.

B. If an agent of the employer or the employer's insurance carrier is excluded from the medical visit, the medical provider and the injured worker shall meet with the agent at the conclusion of the visit so as to communicate regarding medical care and return to work issues.

R612-2-26. Utilization Review Standards.

A. As used in this subsection:

1. "Payor" means a workers' compensation insurance carrier, a self-insured employer, third-party administrator, uninsured employer or the Uninsured Employers' Fund, which is responsible for payment of the workers' compensation claim.

2. "Health Care Provider" means a provider of medical services, including an individual provider, a health-service plan, a health-care organization, or a preferred-provider organization.

3. "Request for Authorization" means any request by a physician for assurance that appropriate payment will be made for a course of proposed medical treatment, including surgery or hospitalization, or any diagnostic studies beyond plain X-rays.

4. "Utilization Review," as authorized in Section 34A-2-111, is a process used to manage medical costs, improve patient care, and enhance decision-making. Utilization review includes, but is not limited to, the review of requests for authorization to treat, and the review of bills, for the purpose of determining whether the medical services provided were or would be necessary, to treat the effects of the injury/illness. Utilization review does not include bill review for the purpose of determining whether the medical services rendered were accurately billed. Nor does it include any system, program, or activity in connection with making decisions concerning whether a person has sustained an injury or illness which is compensable under Section 34A-2 or 34A-3.

5. "Reasonable Attempt" is defined as at least two phone calls and a fax, or three phone calls, within five business days from date of the payor's receipt of the physician's request for review.

B. Any utilization review system shall establish an appeals process which utilizes a physician(s) for a final decision by the insurer, should an initial review decision be contested. The payor may establish levels of review that meet the following criteria:

1. Level I--Initial Request and Review. A payor may use medical or non-medical personnel to initially apply medically-based criteria to a request for authorization for payment of a specific treatment. The treating physician must send all the necessary documentation for the payor to make a decision regarding the treatment recommended. The payor must then notify the physician within five business days of the request for authorization of payment for the treatment, by a method which provides certification of transmission of the document, of either an acceptance or a denial of the request. A denial for authorization of payment for a recommended treatment utilizing the Commission's form, Form 223, must be sent to the provider with the criteria used in making the determination to deny payment for the treatment. A copy of the denial must also be mailed to the claimant. Level I--Request and Review does not include authorization requests for services billed from the Restorative section of the Relative Value Schedule (RVS). Requests for authorization for restorative services are governed by rule R568-2-3(B).

2. Level II--Review. A physician, who has been denied authorization of payment for treatment, or has received no response within five business days from the request for authorization for payment at Level I review, may request a physician's review by sending the completed portion of the Commission form 223 to the payor. Such a request for review may be filed by any physician who has been denied authorization for payment for restorative services beyond the initial eight visits as authorized by Rule R568-2-3(B). The requesting physician must include the times and days that he/she is available to discuss the case with the reviewing physician, and must be reasonably available during normal business hours. The payor's physician representative must complete the review within five business days of the treating physician's request for review. Before the insurer's physician representative may issue a denial of an authorization for payment to treat, a reasonable effort must have made to contact the requesting treating physician to discuss the differing aspects of the case. Failure by the payor to respond within five business days, by a method which provides certification of transmission, to a denial for authorization for payment for treatment, shall constitute an authorization for payment of the treatment. The payor's denial to pay for the recommended treatment must be issued on Commission's form 223, and the denial must be accompanied by the criteria that was used in making the decision to deny authorization, along with the name and speciality of the reviewing physician. The denial to authorize payment for treatment must then be sent to the physician, the claimant, and the Commission. The payor shall notify the Commission if an additional five days is needed in order to contact the treating physician or to review the case. An additional extension of time may be requested from the Commission to accommodate highly unusual circumstances or particularly difficult cases.

C. Upon receipt of denial of authorization for payment for medical treatment at Level II, the Commission will facilitate, upon the request of the claimant, the final disposition of the case. If the parties agree, the medical dispute may be resolved by the Commission through binding mediation or medical review. If there is not agreement among the parties, the Commission will resolve the dispute through formal adjudication. The payor shall be responsible for sending the claimant the Commission appeals information when the denial for authorization for payment for medical treatment is sent to the claimant.

D. If the medical treatment requested is not an emergency, and treatment is rendered by the physician after, receiving notice of the utilization standards encompassed in this rule, the following shall apply:

1. The Commission shall, if the disputed medical treatment is ultimately determined to be compensable as an expense necessary to treat the industrial injury or occupational disease, order that the physician be reimbursed at only 75% of the of the amount otherwise payable had appropriate authorization been timely obtained. The injured worker shall not be liable for any additional payment to the physician above the 75%.

2. Neither the worker's employer or its workers' compensation insurer shall be liable for any portion of the cost of disputed medical treatment, if that treatment is ultimately determined not to be compensable as an expense necessary to treat an industrial injury or occupational disease.

3. A worker may become liable for the cost of the disputed medical treatment, if that treatment is ultimately determined not to be compensable as an expense necessary to treat the industrial injury or occupational disease.

4. Except for any co-pays or deductibles under the worker's health insurance plan, the penalty provision in D(1) and D(3) shall not apply if the physician performs the medical treatment in question, having been preauthorized in writing to do the same by a health insurer or other non-worker's compensation insurance payor.

5. The penalty provisions in D(1) shall not apply to medical treatment rendered in emergency situations, which are defined as a threat to life or limb.

6. The Commission shall notify a physician, in writing, of reported violations of this rule. Repeated violations of this rule by a physician may result in a report from the Commission to the Department of Commerce, Division of Occupational/Professional Licensing.

KEY: workers' compensation, fees, medical practitioner
December 2, 1997 **34A-2-101 et seq.**
34A-3-101 et seq.
34A-1-104

R612. Labor Commission, Industrial Accidents.
R612-4. Premium Rates.
R612-4-1. Authority.

This rule is enacted under the authority of Section 34A-1-104 and 59-9-101.

R612-4-2. Premium Rates for the Uninsured Employers' Fund and the Employers' Reinsurance Fund.

A. Pursuant to Section 59-9-101(2), the workers' compensation premium rates effective January 1, 1998, as established by the Labor Commission, shall be:

1. 0.50% for the Uninsured Employers' Fund;
2. 8.5% for the Employers' Reinsurance Fund;
3. 0.25% for the workplace safety account.

B. The premium rates are a percentage of the total workers' compensation insurance premium income as detailed in Section 59-9-101(2)(a).

KEY: workers' compensation, rates
December 2, 1997 **59-9-101(2)**
Notice of Continuation December 19, 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, 1996, edition are incorporated by reference.

2. FR Vol. 61, No. 120, Thursday, June 20, 1996, Pages 31427 to and including 31434, "Consolidation of Repetitive Provisions; Technical Amendments; Final Rule" is incorporated by reference.

3. FR Vol. 61, No. 165, Friday, August 23, 1996, Pages 43454 to and including 43459, "Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite; Final Rule corrections" is incorporated by reference.

4. FR Vol. 61, No.214, Monday, November 4, 1996, Pages 56746 to and including 56856, Occupational Exposure to 1,3 Butadiene; Final Rule is incorporated by reference.

5. FR Vol. 62, No. 7, Friday, January 10, 1997, Pages 1494 to and including 1619, "Occupational Exposure to Methylene Chloride; Final Rule" is incorporated by reference.

6. FR Vol. 62, No. 12, Friday, January 17, 1997, Pages 2558 to and including 2565, "Alaska, Indiana, Iowa, Kentucky, Minnesota, South Carolina, Utah, Virgin Islands and Wyoming State Plans; Approval of Plan Supplements; Levels of Federal Enforcement; Final Rule" is incorporated by reference.

B. Construction Standards.

1. Section 29 CFR 1926.20 through the end of part 1926, of the July 1, 1996 edition is incorporated by reference.

2. FR Vol. 61, No.156, Monday, August 12, 1996, Pages 41738 to and including 41739, "Incorporation of General Industry Health and Safety Standards Applicable to Construction Work, Final Rule; correcting amendment" is incorporated by reference.

3. FR Vol. 61, No. 165, Friday, August 23, 1996, Pages 43454 to and including 43459, Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite; Final Rule corrections is incorporated by reference.

4. FR Vol. 61, No.170, Friday, August 30, 1996, Pages 46025 to and including 46075, Safety Standards for Scaffolds Used in the Construction Industry; Final Rule is incorporated by reference.

5. FR Vol. 61, No.214, Monday, November 4, 1996, Pages 56746 to and including 56856, Occupational Exposure to 1,3 Butadiene; Final Rule is incorporated by reference.

6. FR Vol 62, No. 7, Friday, January 10, 1997, Pages 1494 to and including 1619, "Occupational Exposure to Methylene Chloride; Final Rule" 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 belts 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 belts 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 belt 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 he intends to contest such citation or proposed penalty before the Commission. Such notice of intention to contest shall be postmarked 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 employees 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 shall be postmarked within 30 days of the receipt by the employer of the notice of proposed penalty or notice that no penalty is being proposed. The Administrator 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.

c. Preservation of records. Each employer who makes,

maintains, or has access to employee exposure records or employee medical records shall preserve these records.

d. 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). The Act does not define the term "employee". However, the broad remedial nature of this legislation demonstrates a clear intent that the existence of an employment relationship, for purposes of Section 34A-6-203 to be based upon economic realities rather than upon common law doctrines and concepts. (See, U.S. v. Silk, 331 U.S. 704 (1947); Rutherford Food Corporation v. McComb, 331 U.S. 722 (1947).)

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
December 2, 1997 **34A-6**

R614. Labor Commission, Occupational Safety and Health.
R614-2. Drilling Industry.
R614-2-1. Drilling Industry -- Administrative Provision.

A. Agency.

Labor Commission, Division of Occupational Safety and Health.

B. Authority.

Title 34A, Chapter 6, Utah Occupational Safety and Health Act of 1973.

C. Scope.

1. Section 34A-6-202 establishes the authority, method, and procedures for issuance of standards by the Administrator of UOSH. The standards contained herein govern safety and health for the drilling industry and related services.

2. The UOSH Administrator, following a significant number of inspections of drilling activities, has found many issues unique to the industry which require they be addressed separately and apart from the Utah Rules and Regulations General Industry Standards.

3. Further, the collection of statistical inferences by the Utah Occupational Safety and Health Statistical division indicates a substantial need for occupational safety and health standards for drilling and related services.

D. Effective Date.

January 15, 1980.

E. Variance From Safety and Health Standards.

Variances from standards which are or may be published in this part may be requested under Subsection 34A-6-202(2)(d) of the Utah Occupational Safety and Health Act of 1973. Procedures for the granting of variances or related relief are those published as R614-1-9.

F. Adoption of Existing Standards.

The provisions of this part adopt and extend the applicability of R614 and 29 CFR 1910 and 29 CFR 1926.

G. Inspections--Right of Entry.

1. It shall be a condition of each place of employment where work is performed that the Administrator of the Utah Occupational Safety and Health Act or any authorized representative shall have the right of entry to any site for the

following purposes:

2. To inspect or investigate the matter of compliance with the safety and health standards contained in the General Industry Standards and the Oil, Gas, Geothermal and Related Services Standards.

3. For the purpose of carrying out his investigative duties under the Act, the Administrator of the Utah Occupational Safety and Health Act may, by agreement, use with or without reimbursement, the services, personnel, and facilities of any state Agency.

H. Duties of Employers and Employees.

Section 34A-6-201 defines duties of employers and employees.

I. Safety Training and Education.

1. The Administrator of the Utah Occupational Safety and Health Act shall establish and supervise programs for the education and training of employers and employees in the recognition, avoidance, and prevention of unsafe conditions in employments covered by this act.

2. Employer Responsibility.

a. The employer should avail himself of the safety and health training programs the Administrator provides.

b. The employer shall instruct each employee in the recognition and avoidance of unsafe conditions and the regulations applicable to his work environments to control or eliminate any hazards or other exposure to illness or injury.

c. In job site areas where harmful plants or animals are present, employees who may be exposed shall be instructed regarding the potential hazards, and how to avoid injury, and the first aid procedures to be used in the event of injury.

J. Reporting Requirements.

Shall meet the requirements of R614-102-13.

K. Incorporation by Reference.

1. 29 CFR 1910 and 1926 and standards of the American National Standards Institute, National Fire Protection Association, National Electrical Code, and other consensus standards are incorporated by reference, or when referenced in this UOSH standard, shall have the same force and effect as other standards, rules, or regulations.

2. Consensus standards and any changes in the referenced standards are available for examination at the Occupational Safety and Health Division, Labor Commission, as listed in the current public telephone directory.

L. General Drilling Rules.

1. Surface casing shall be run to reach a depth to prevent blowouts or uncontrolled wells. In areas where pressures and formations are unknown, surface casing shall be of sufficient size to permit the use of an intermediate string or strings of casing. Surface casing shall be set in or through an impervious formation and shall be cemented by the pump and plug or displacement or other approved method with sufficient cement to fill the annulus to the top of the hole. If cement is not circulated to surface during the primary operation, the drilling owner/operator shall perform cemented operations to assure that the annular space from the casing shoe to the surface is filled with cement.

2. The cemented casing string shall stand under pressure until the cement has reached a compressive strength of 300 pounds per square inch; providing, however, that no further operation shall be commenced until the cement has been in place at least 8 hours. The term "under pressure" as used herein shall be complied with if one float valve is used or if pressure is otherwise held.

3. Setting depths of all casing string shall be determined by taking into account formation fracture gradients and the maximum anticipated pressure to be maintained within the well bore.

4. If and when it becomes necessary to run a production string, such string shall be cemented by the pump and plug method, and shall be properly tested by the pressure method before cement plugs are drilled.

5. Natural gas which may be encountered in a substantial quantity in any section of a cable-tool drilled hole above the ultimate objective shall be shut off with reasonable diligence either by mudding or casing, or other approved method and confined to its original source. Any gas escaping from the well during drilling operations shall be, so far as practicable, conducted a safe distance from the well site and burned in accordance with the Rules and Regulations of the Environmental Quality Department of the State, or otherwise safely disposed of.

M. Site Clearing and Roads, General Requirements.

1. Employees engaged in site clearing shall be protected from hazards of irritant and toxic plants, and suitably instructed in the first aid treatment available.

2. All equipment used in site clearing shall be equipped with rollover guards in accordance with 29 CFR 1926.1000. In addition, rider-operated equipment shall be equipped with an overhead and rear canopy guard meeting the following requirements:

a. The overhead covering on this canopy structure shall be covered with not less than 1/8 inch steel plate or 1/4 inch woven wire mesh with openings no greater than one inch or equivalent.

b. The opening in the rear of the canopy structure shall be covered with no less than 1/4 inch woven wire mesh with openings no greater than one inch.

3. On single lane private roads with two-way traffic, arrangements shall be provided with adequate turnouts. Where adequate turnouts are not practical, a control system shall be provided to prevent vehicles from meeting on such single lane roads.

R614-2-2. Drilling Industry -- Definition of Terms.

A. General Terms.

1. "Act" means the Utah Occupational Safety and Health Act of 1973.

2. "Administration" means the Division of Occupational Safety and Health of the Labor Commission, also known as UOSH (Utah Occupational Safety and Health).

3. "Administrator" means the director of the Division of Utah Occupational Safety and Health.

4. "Commission" means the Labor Commission.

5. "Employee" includes any person suffered or permitted to work by an employer.

6. "Employer" means:

a. The state;

b. Each county, city, town, and school district in the

state; and

c. 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.

B. Industry Terms.

1. "Accumulator" - On a drilling rig, the nitrogen and hydraulic oil for closing the blowout preventer in an emergency is kept in an accumulator.

2. "Acidizing" - The treatment of oil-bearing limestone or other formations by chemical reaction with acid in order to increase production. Hydrochloric or other type acid is injected into the formation under pressure, bringing about an enlargement of the pore spaces and passages through which the reservoir fluids flow. The acid is held under pressure for a period of time and then pumped out; the well is swabbed and put back into production. Chemical inhibitors are combined with the acid to prevent corrosion of the pipe.

3. "A-frame" - A form of derrick or crane used to handle heavy loads.

4. "Air Drilling" - Drilling using air or gas as the circulating medium.

5. "Anchor, Deadline" - Holding the deadline to the derrick or substructure.

6. "Annular Space" - The space surrounding pipe suspended in the wellbore. The outer wall of the annular space may be an open hole or it may be a string or larger pipe.

7. "Approved" - sanctioned, endorsed,accredited certified, or accepted by a duly constituted and recognized authority or agency.

8. "Authorized Person" - A person approved or assigned by the employer to a specific type of duty or duties or to be at a specific location or locations at the job-site.

9. "Back-up Line (Snub Line)" - A wire rope, one end of which is fastened to the end of a pipe tong handle and the other end secured to hold the tongs stationary while such tongs are in use.

10. "Back-up Post" - A post, column or stanchion secured to the derrick, derrick floor or derrick foundation, the purpose of which is to make secure the dead end of the back-up line.

11. "Back-up Tong" - The name applied to the drill pipe tong suspended in the derrick and used to hold a section of drill pipe while another section is unscrewed from it by use of another tong.

12. "Barricade" - An obstruction to deter the passage of persons or vehicles.

13. "Berm" - A pile or mound of material capable of restraining a vehicle.

14. "Bit" - The cutting element attached to the bottom of the drill stem. These are broken down into three general categories: roller bits, usually having three rolling cones with milled teeth or inserts; diamond bits using diamonds for cutting; and drag bits with fixed blades.

15. "Bleed" - To drain off liquid or gas, generally slowly, through a valve called a bleeder. To bleed down or bleed off, means a controlled release of the pressure of a well or of pressurized equipment.

16. "Block" - In mechanics, one or more pulleys or sheaves mounted to rotate on a common axis; any assembly of pulleys on a common frame work. The crown block is an assembly of sheaves mounted on beams at the top of the derrick. The drilling line, is reeved over the sheaves of the crown block alternately with the sheaves of the traveling block, which is hoisted and lowered in the derrick by means of the drilling line.

17. "Blowout" - A sudden, violent escape of gas and oil (and sometimes water) from a well.

18. "Blowout Preventer" - A device attached immediately above the casing to control pressures and prevent escape of fluids from the annular space between the drill pipe and casing or shut off the hole if no drill pipe is in the hole, should a kick or blowout occur.

19. "Board" -A platform installed in the derrick approximately 90 feet above the derrick floor. The derrickman works on this board while the pipe is being hoisted from or lowered into the wellbore.

20. "Boom" - a movable arm of wood or steel used on some types of cranes or derricks to support the hoisting lines that carry the load.

21. "Bowline" - A knot much used in lifting heavy equipment with the catline. Its advantage lies in the fact that it can be readily untied irrespective of the load that has been placed on it.

22. "Breaking down" - Usually means unscrewing the drill stem into single joints and placing them on the pipe rack. This operation takes place at the completion of the well when the drill pipe will no longer be used. It also takes place when changing from one size drill pipe to another during drilling operations. It is necessary to "break the pipe down" in order that it will be in lengths short enough to be handled and moved. Also called Laying Down.

23. "Breakout Line" - Either a wire rope or a manila or fiber rope used in conjunction with a pipe tong and a cathead which serves to impart a pulling power on the tong handle to start the unscrewing or breaking of a threaded pipe joint or tool joint when the pipe is in a vertical position in the well and projecting above the rotary table.

24. "Breakout" - Refers to the act of unscrewing one section of pipe from another section, especially in the case of drill pipe while it is being withdrawn from the wellbore. During this operation the Breakout Tongs are used to start the unscrewing operation.

25. "Casing" - Steel pipe placed in an oil or gas well as drilling progresses. The function of casing is to prevent the wall of the hole from caving during drilling and to provide a means of extracting the oil if the well is productive.

26. "Cat" - A crawler type tractor noted for its ability to move over difficult terrain. It is much used in clearing the location, earth-moving operations, and skidding rigs. The operator or driver is frequently referred to as a CAT DRIVER. This term is probably a shortening of the trade name Caterpillar, which is a brand of this type of equipment.

27. "Cathead" - Is a spool shaped steel mechanical device mounted on the end of a shaft of a drawworks, well pulling hoist or other machinery onto which a fiber rope such as a catline, breakout line, make-up line, spinning line, is wrapped to impart a pulling power to such rope or line.

28. "Cathead--automatic" - A steel mechanical device, generally in such shapes as a sheave, hoist, drum, pulley or wheel, and is mounted on the shafting of a drawworks, well pulling hoist or other machinery to which is attached a breakout line, make-up line, or a spinning line. The primary purpose of the automatic cathead is to impart a pulling power on the breakout line, make-up line, and/or spinning line. (See definitions for Breakout Line, Make-up Line and Spinning Line.)

29. "Catline" - a rope, usually a manila rope which is usually reeved over a single sheave in the mast or on a sheave suspended from the derrick gin pole. It serves a general utility purpose for making pulls, lifting or lowering objects up into or from the derrick, lifting and transferring materials about the derrick floor. One end of the line is attached to the object, other end is wrapped around the cathead to effect the source of power.

30. "Cellar" - Excavation under the derrick to provide space for items of equipment at the top of the wellbore. Also serves as a pit to collect drainage of water and other fluids under the floor for subsequent disposal by jetting.

31. "Cementing" - The operation by which cement slurry is forced down through the casing and out at the lower end in such a way that it fills the space between the casing and the sides of the wellbore to a predetermined height above the bottom of the well. This is for the purpose of securing the casing in place and excluding water and other fluids from the wellbore.

32. "Christmas Tree" - A term applied to the valves and fittings assembled at the top of a well to control the flow of the fluids.

33. "Circulating Fluid"--drilling Fluid, Mud - A fluid consisting of water, oil, or other liquid which may contain clay, weighting materials and/or chemicals which is circulated through the drill pipe and well bore during rotary drilling and workover operations.

34. "Closed-container" - A container so sealed by means of a lid or other device that neither liquid nor vapor will escape from it at ordinary temperatures.

35. "Collar" - Usually refers to a coupling device used to join two lengths of pipe.

36. "Combustion" - Any chemical process that invloves oxidation sufficient to produce light or heat.

37. "Combustible Liquids" - Any liquid having a flash point at or above 100 degrees F. (37.8 degrees C.)

38. "Competent Person" - One who is capable of identifying existing and predictable hazards in the surroundings of working conditions which are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them.

39. "Corrosion" - The complex chemical or electrochemical process by which metal is destroyed through reaction with its environment. The familiar coating of rust that appears on steel is a product of corrosion.

40. "Corrosive" - An agent which, in contact with animal tissue, by chemical reaction will cause more or less severe destruction and with which systematic effects are either of secondary nature or less pronounced than with poisons.

41. "Counter Weight" - A ladder climbing assist device.

42. "Crown Block" - Two or more metal beams of plates and other metal parts assembled into a framework within which are mounted one or more sheaves. The crown block is mounted on top of the derrick. The hoisting line is reeved on the crown block sheaves.

43. "Dead Line" - This refers to the end of the drilling line which is not reeled on the hoisting drum of the rotary rig. This end of the drilling line is usually anchored to the derrick substructure and does not move as the traveling block is hoisted, hence the term "dead line."

44. "Dead Man" - A buried anchor to which guy-wires are tied to steady the derrick, boiler stacks, etc.

45. "Density" - The weight of a substance per unit volume. For instance, the density of drilling mud may be described as "10.0 lbs. per gallon" or "74.9 lbs. per cubic foot."

46. "Derrick" - Any one of a large number of types of load-bearing structures. In drilling work, the standard derrick has four legs standing at the corners of the substructure and reaching to the crown blocks. The substructure is an assembly of heavy beams used to elevate the derrick above the ground and provide space to install blowout preventers, casing heads, etc. The standard derrick has largely been replaced by the mast for drilling. The mast is lowered and raised without disassembly. For land transport it may be divided into two or more sections to avoid excessive length on the highway.

47. "Derrick Foundation" - Is either concrete, wood, or other solid and substantial material placed on the ground upon which the derrick is built and/or supported, and includes all the substructure which supports the derrick legs and derrick floor.

48. "Derrick Gin Pole" - An assembly of two or more vertical or upright members supporting one or more cross members, erected on the top of a derrick above the opening in the top thereof. It serves as a support for a block and tackle, primarily for raising or lowering the crown block to or from the top of the derrick.

49. "Derrick Ladder" - A fixed ladder attached to a derrick as a means of access to the top and/or any inside platform on the derrick.

50. "Derrick Walk" (Cat Walk) - This is a walkway extending from the V Door Ramp beyond the outer end of the drill pipe and casing storage rack at a well, the purpose of which is to facilitate the handling of the pipe between the rack and the derrick.

51. "Derrickman" - The crew member whose work station is in the derrick while the drill stem is being hoisted from or being lowered into the hold. He attaches the elevators to the drill stem members as they are being lowered into hold and detaches the elevators and racks the drill stem in the finger board after it is unscrewed and set on the floor. Other responsibilities frequently include the conditioning of the drilling fluid and maintenance of the mud and slush pumps.

52. "Diesel Electric Power" - The power supplied to a drilling rig by diesel engines driving electric generators. This type of power is widely used on drilling barges and offshore

platforms.

53. "Drawworks" - Includes an assembly of shafts, sprockets, chains, pulleys, belts, clutches, catheads, and/or other mechanical devices, suitably mounted and provided with controls, for hoisting, operating, and handling the equipment used for drilling a well or servicing a producing well. Drawworks may be either stationary or portable.

54. "Elevator" - A steel mechanical device used in connection with the hoisting equipment, suspended from the traveling block or traveling block hook, for holding in suspension pipe or sucker rods being lowered into or pulled from a well. There being so many types of elevators only the most common type is herein described as follows: one side of the elevator body is a gate or door which, when closed, forms a conjunction with the remaining part of the elevator body a circular opening that fits snugly around the pipe or rod just below the threaded joint, sleeve, or coupling thereof. The threaded joint, sleeve, or coupling being larger than the circular opening in the elevator body, the pipe or rods are held in suspension from the elevator.

55. "Fast Line" - The end of the drilling line which is affixed to the drum or reel. It is so called because it apparently travels with greater velocity than any other portion of the drilling line.

56. "Feed-off" - The act of unwinding a cable from a drum. Also a device on a drilling rig that keeps the weight on the bit constant, and lowers the drilling line automatically. Known as the "automatic driller."

57. "Finger Board" - A rack with fingers located in the derrick to contain the top of the stands of pipe while they are racked in the derrick.

58. "Finger Brace" - Any structural member either in direct or indirect contact with the finger to resist either horizontal, vertical, or diagonal movement of the finger.

59. "Fireman" - The member of the crew on a steam-powered rig who is responsible for the care and operation of the boilers. On a mechanical rig his counterpart is the motorman.

60. "Fish" - An object accidentally lost in the hole.

61. "Fishing" - Operations on the rig for the purpose of retrieving from the wellbore sections of pipe, casing or other items which may have become stuck or inadvertently dropped in the hole.

62. "Flammable" -Capable of being easily ignited,burning intensely, or having a rapid rate of flame spread.

63. "Flammable Liquid" - Any liquid having a flash point below 100 degrees F. and having a vapor pressure not exceeding 40 pounds per square inch (absolute) at 100 degrees F.

64. "Flare" - An open flame used to dispose of unwanted gas.

65. "Flash Point" (of the liquid) - The temperature at which it gives off vapor sufficient to form an ignitable mixture with the air near the surface of the liquid or within the vessel used as determined by appropriate test procedure and apparatus as specified below.

a. The flash point of liquids having a viscosity less than 45 Saybolt Universal Second(s) at 100 degrees F. (37.8) degrees C.) and a flash point below 175 degrees F. (79..4 degrees C.) shall be determined in accordance with the standard Method of test for Flash Point by the Tag Closed Tester, American Standard Testing Method ASTM D-56-69.

b. The flash point of liquids having a viscosity of 45 Saybolt Universal Second(s) or more at 175 degrees C.) or higher shall be determined in accordance with the Standard Method of Test for Flash Point by the Pensky Martens Closed Tester,(ASTM) D-93-69.

66. "Floor Hole" - An opening measuring less than 12 inches but more than 1 inch in its least dimension in any floor, roof, or platform through which materials but not persons may fall, such as a belt hold, pipe opening, or slot opening.

67. "Floor Opening" - An opening measuring 12 inches or more in its least dimension in any floor, roof, or platform through which persons may fall.

68. "Floorman" - A member of the drilling crew whose work station is usually on the derrick floor.

69. "Fracturing"(Formation) -A method of stimulating production by increasing the permeability of the producing formation. Under extremely high hydraulic pressure, a fluid such as distillate, diesel fuel, crude oil, dilute hydrochloric acid, water, or kerosene is piped downward through production tubing or drill pipe and forced out below a packer between two packers. The pressure causes cracks to open in the formation, and the fluid penetrates the formation through the cracks. Sand grains, aluminum pellets, walnut shells, or similar materials are carried in suspension by the fluid into the cracks. These are called propping agents. When the pressure is released at the surface, the fracturing fluid returns to the well. The cracks partially close on the pellets, leaving channels for oil to flow around them to the well. Sometimes shortened to "Frac."

70. "Gas Cut Mud" - Mud with entrained formation gas which gives the mud a characteristic fluffy texture.

71. "Gas" or "Gases" - The vapor state of the hydrocarbons occurring in, or derived from, petroleum or natural gas.

72. "Gel" -A gelatinous substance formed by certain colloidal dispersions at rest. Gel Strength is a measure of the ability of a colloidal dispersion to form such a gel, and is based upon its resistance to shear. The gel strength of a drilling mud determines its ability to hold solids in suspension, and for this reason bentonite and other colloidal clays are added to drilling fluids. It is important that the gel formed by the mud, when drilling is not in progress, be thixotropic--that is, it should be readily converted to a fluid state by agitation and then gel again when at rest in order to prevent the cuttings from settling to the bottom of the hole.

73. "Geronimo Escape Line" - A wire line attached near the board which has a man-riding trolley to convey personnel to the ground by use of a friction control speed device.

74. "Handrail" - A bar or pipe supported on brackets from a wall or partition, as on a stairway or ramp, to furnish persons with a handhold in case of tripping.

75. "Hazardous Substance" - A substance which, by reason of being explosive, flammable, poisonous, corrosive, oxidizing, causing irritation, or otherwise harmful, is likely to

cause death or injury.

76. "Kelly" - The heavy square or hexagonal steel pipe which goes through the rotary table and in conjunction with the drive bushing turns the drill string.

77. "Kelly Cock" - A valve installed between the swivel and the kelly. When a high pressure backflow begins, the operator can close this valve and keep the pressure off the swivel and rotary hose.

78. "Liquefied Petroleum Gases" - "LPG: and LP-Gas" mean and include any material which is composed predominantly of any of the following hydrocarbons or mixtures of them, such as propane, propylene, butane, (normal butane or iso-butane), and butylenes.

79. "Log" - A running account listing a series of events in chronological order. The driller's log is a tour-to-tour account of progress made in drilling. An electric well log is the record of geological formations which is made by a well logging device. This device operates on the principle of differential resistance of various formations to the transmission of electric current.

80. "Logging" - A generic term used when instruments are run in the hole for any of several purposes during drilling or completion operations.

81. "Lubricator" - An extension of casing or tubing above a valve on top of the casing or tubing head. Lubricators are supplied with a pack-off, or pressure sealing, device at the upper end to afford a seal on the wireline, or other connection, attached to tools run into a well.

82. "Making a Trip" - Consists of hoisting the drill pipe to the surface and returning it to the bottom of the wellbore. This is done for the purpose of changing bits, preparing to take a core, and for other reasons.

83. "Motorman" - The man on a mechanical rotary drilling rig responsible for the care and operation of the drilling engines.

84. "Mouse Hole" - A shallow cased hole close to the rotary table through the derrick floor in which a joint of drill string can be placed to facilitate connecting the joint to the kelly.

85. "Mud" - The liquid that is circulated through the wellbore during rotary drilling and workover operations. In addition to its function of bringing cutting to the surface, drilling mud also cools and lubricates the bit and drill string, protects against blowouts by containing subsurface pressures, and deposits a mud cake on the wall of the borehole to prevent loss of fluids to the formations. Although it originally was a suspension of earth solids, especially clays, in water, the mud used in modern drilling operations is a somewhat more complex three-phase mixture of liquids, reactive solids, and inert solids. The liquid phase may be fresh water, diesel oil, or crude oil, and may contain one or more conditioners.

86. "Mud Balance" - An instrument consisting of a cup and graduated arm with a sliding weight and resting on a fulcrum, used to measure weight of the mud.

87. "Mud Gun" - A pipe that shoots a jet of drilling mud under high pressure into the mud pit to mix the additives and stir the mud for other reasons.

88. "Mud Log" - To record information derived from examination and analysis of return circulation mud and drillbit cuttings.

89. "Mud off" - In drilling, to seal the hole off from the formation water or oil by using mud. Applies especially to the undesirable blocking off of the flow of oil from the formation into the wellbore. Special care is given to the treatment of drilling fluid to avoid this.

90. "Mud Pit" - The reservoir or tank through which the drilling mud is cycled to allow sand and fine sediments to settle out, where additives are mixed with mud,and where the fluid is temporarily stored before being pumped back into the well. Mud pits may be further classified as the shaker pit, settling pit, and suction pit, according to their main purpose.

91. "Mud (Slush) Pump" - A large single (triplex) or double (duplex) acting pump used to circulate mud down the drill pipe and up the annulus, under normal operations. It is a piston type pump whose pistons reciprocate in replaceable liners.

92. "Outside Derrick Platform" - A walkway extending across one or more outer sides of a derrick at an elevation of 10 feet or more above the derrick floor.

93. "Pipe Rack" - A series of parallel heavy wooden or steel bents, secured in place by bracing, on which pipe is stored. Flooring may be laid upon the bents.

94. "Platform" - A working space for persons, elevated above the surrounding floor or ground, such as a balcony or platform for the operation of machinery and equipment.

95. "Pressure Relief Device" - A device for relieving pressure, such as a direct spring-loaded safety valve, rupture disc, or piston shear pin valve.

96. "Prime Mover" - As applied to oil well drilling, this is the steam or diesel engine, electric motor, or other internal-combustion engine which is the source of power for the drilling rig.

97. "Qualified" - Means one who, by possession of a recognized degree, certificate, or professional standing, or who by knowledge, training and/or experience, has successfully demonstrated his ability to solve or resolve problems relating to the subject matter, the work, or the project.

98. "Ram" - On a blowout preventer, the closing and sealing component.

99. "Respiratory Equipment" - Is approved self-contained oxygen breathing apparatus, canister-type gas masks, air hose masks, and other approved equipment providing equivalent protection.

100. "Rig" - All mechanical equipment directly connected with the drilling of a well or for producing petroleum from a well.

101. "Rigging down" - The act of dismantling the drilling rig and auxiliary equipment following the completion of drilling operations. Also referred to as tearing down.

102. "Rigging up" - The act of assembling the drilling rig and auxiliary equipment prior to commencement of drilling operations.

103. "Rotary Drilling" - The drilling method by which a hole is drilled by a rotating bit to which a downward force (drill collars) is applied. The bit is fastened to and rotated by the drill stem, which also provides a passage for the circulating fluid.

104. "Rotary Hose" - The hose that conducts the circulating fluid from the standpipe to the swivel and kelly.

105. "Roustabout" - A laborer who assists the foreman in the general work about producing oil wells and around the property of the oil company. Also used on large offshore drilling rigs to help maintain the rig and load and unload material.

106. "Runway" - A passage for a person, elevated above the surrounding floor or ground level, such as a footwalk along shafting or a walkway between buildings.

107. "Safety Can" - Means an approved closed container, of not more than 5 gallons capacity, having a spring-closing lid and spout cover and so designed that it will safely relieve internal pressure when subjected to fire and exposure.

108. "Shale Shaker" - A vibrating screen that removes coarser cuttings from the circulating fluid before it flows into the return mud pit, disilters or desanders.

109. "Shall" - Means mandatory.

110. "Shutdown" - A term denoting that work has been temporarily stopped as on an oil well.

111. "Slurry" - Any mixture of solids and water or cement slurry which is pumped into the well to cement casing or plug back.

112. "Source of Ignition" - Any flame, arc, spark, or heat which is capable of igniting flammable liquids, sour gas, or oil, gases, or vapors.

113. "Spudding" - Refers to the act of hoisting the drill stem and permitting it to fall freely so that the drill bit strikes the bottom of the wellbore or bridge with considerable force. This is done to clean the bit of an accumulation of sticky shale which has slowed the rate of penetration and/or remove bridges or other obstructions. Careless execution of this operation can result in kinks in the drill string as well as damaged bit cones and bearings.

114. "Spudding in" - The very beginning of drilling operations of a well. The term has been handed down from cable tool operations in the early days of the oil industry.

115. "Stabbing Board" - A temporary platform in the derrick, 20 to 40 feet above the floor, on which a crewman works while casing is being run to guide a joint while it is being screwed into the joint in the rotary table.

116. "Stair Railing" - A vertical barrier erected along exposed sides of a stairway to prevent falls of persons.

117. "Stairs" or "Stairways" - A series of steps leading from one level or floor to another, or leading to platforms, pits, boiler rooms, crossovers, or around machinery, tanks, and other equipment that are used more or less continuously or routinely by employees or only occasionally by specific individuals. A series of steps and landings having three or more rises constitutes stairs or stairway.

118. "Standard Railing" - A vertical barrier erected along exposed edges of a floor opening, wall opening, ramp, platform, or runway to prevent falls of persons.

119. "Standpipe" - Part of the circulating system. A pipe extending, usually along a derrick leg, to a height suitable for attaching the rotary hose.

120. "Substructure" - The foundation on which, normally, the derrick and engines sit. Height varies depending upon the equipment required, such as the blowout preventers, for the particular operation.

121. "Swabbing" - Operation of a lifting device on a wireline to bring well fluids to the surface when the well does not flow naturally. This is a temporary operation to determine whether or not the well can be made to flow or require artificial lift or stimulation to bring oil to the surface.

122. "Thribble" - A stand of drill pipe made up of three joints, each about 30 feet in length.

123. "Toeboard" - A vertical barrier at floor level erected along exposed edges of a floor opening, wall opening, platform, runway, or ramp to prevent falls of materials.

124. "Toolpusher" - The rig owner's supervisor who is in charge of one or more rigs. Usually the drilling contractor's highest level of direct field supervision.

125. "Tour" - The word which designates the shift of a drilling crew or other oil field workers.

126. "Traveling Block" - Two or more steel plates and other metal parts assembled into a framework within which are mounted one or more sheaves on which the hoisting line is reeved in connection with the sheaves on the crown block.

127. "Traveling Block Hook" - A hook suspended from the traveling block to which the elevator links, swivel bail, or other equipment is attached.

128. "V-door Ramp" - A ramp on the side of the drilling rig where pipe is laid to be lifted to the derrick floor by the catline.

129. "V-door (Window)" - An opening in a side of a standard derrick at the floor level having the form of an inverted V. This opening is opposite the drawworks. It is used as an entry to bring in drill pipe and casing from the pipe rack.

130. "Vapor Proof" - A term used to describe a product which is not susceptible to the action of gases or other vapors.

131. "Viscosity" - A measure of liquid's resistance to flow. The viscosity of petroleum products or mud is usually expressed, and measured by the time it takes for a certain volume to flow through an orifice of specific size.

132. "Wall Opening" - An opening at least 30 inches wide, in any wall or partition, through which persons may fall, such as a yard-arm doorway or chute opening.

133. "Weight Indicator" - Instrument on a drilling or workover rig, which shows the weight suspended from hook.

134. "Weighting Material" - A material used to increase the density of drilling fluids or cement slurries.

135. "Wellbore" - The hole made by the drilling bit.

136. "Wildcat" - A well in unproved territory. With present day exploration methods and equipment about one wildcat of every 10 drilled proves to be commercially productive.

137. "Wildcatter" - One who drills wells in the hope of finding oil in territory not known to be an oil field.

138. "Wind Load Rating" - A specification of a derrick used to indicate the resistance of the derrick to the force of wind.

139. "Work-over" - To perform one or more of a variety of remedial operations on a producing oil well with the hope of restoring or increasing production. Examples of work-over operations are deepening, plugging back, pulling and

resetting the line, squeeze cementing, shooting and acidizing.

140. "Well Servicing" or "Special Services" - Consists of, but not limited to the operations listed in the 1972 Standard Industrial Classifications Manual under "1382 Oil and Gas Field Services" and "1389 Oil and Gas Field Services, Not Elsewhere classified."

R614-2-3. Drilling Industry -- General Safety and Health Provisions.

A. General Requirements.

Protective equipment, including personal protective equipment for eyes, face, head, and extremities, protective clothing, respiratory devices, and protective shields and barriers, shall be provided, used and maintained in a sanitary and reliable condition wherever it is necessary by reason of hazards of processes or environment, chemical hazards, radiological hazards, hot surfaces, or mechanical irritants encountered in a manner capable of causing injury or impairment in the function of any part of the body through absorption, inhalation, or physical contact.

B. First Aid Supplies and Training.

1. Every operation subject to the provision of these orders shall at all times have a supply of first aid equipment (24 unit min.) which shall be conveniently located so as to be readily accessible. The first aid supplies shall be encased in suitable sanitary storage places so as to protect them from contamination, and the contents of the kits replenished as used.

2. At least one employee at the work site shall be trained in first aid and rescue operations.

3. First aid equipment shall be provided. This equipment shall be stored in sanitary places which are conveniently and accessibly located. First aid equipment shall include: one set of arm and leg splints; two all-wool blankets or blankets equal in strength and fire resistance; and one stretcher. Where harmful chemicals are being used, readily accessible facilities shall be available for rapid flushing of the eyes and/or skin areas.

4. Provisions shall be made prior to commencement of the project for either prompt transportation of an injured person to a physician or hospital, or an effective communication system for contacting necessary ambulance service.

5. The telephone numbers of the physician, hospitals, or ambulances shall be conspicuously posted.

C. Housekeeping.

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.

D. Pressure Vessels and Boilers.

1. Pressure Vessels: Shall be built in accordance with the requirements for Unfired Pressure Vessels of the ASME Boiler and Pressure Vessel Code, pursuant to Section 34A-7-102.

2. Boilers: Boilers provided by the employer shall be deemed to be in compliance with the requirements of this rule when evidence of current and valid certification by an insurance company or regulatory authority attesting to the safe installation, inspection, and testing is presented.

E. Employee-Owned Equipment.

Where employees provide their own protective equipment, the employer shall be responsible to assure that it meets the appropriate American National Standard Institute or a national consensus standard.

F. Head Protection.

1. The employer shall require the use of Class A protective helmet (Safety Hard Hat) where there is a hazard from flying or falling objects.

2. Where there is a risk of injury from hair entanglement in moving parts of machinery, employees shall confine their hair to eliminate the hazard.

G. Eye and Face Protection.

Employees shall be provided with eye and face protective equipment when machines or operations present potential eye or face injury from physical, chemical, or radiation agents.

H. Respiratory Protection.

1. When necessary appropriate respiratory protective devices shall be provided by the employer and shall be used.

2. The employer shall provide and shall require employees to use self contained breathing apparatus or supplied air respirators in atmospheres which have an oxygen concentration of less than 19.5%. All units shall be of a pressure demand type or a positive pressure type.

3. All respiratory devices regardless of type shall be selected, used, and maintained in accordance with 29 CFR 1910.134 "Respiratory Protection" of the Utah Occupational Safety and Health Rules and Regulations.

a. The air from a regular compressed air line may be used for breathing air systems if:

b. A trap and carbon filter are installed and regularly maintained to remove oil, water, scale, and odor;

c. A pressure reducing diaphragm or valve is installed to reduce pressure down to requirements of the particular type of respirator; and

d. An automatic control is provided to either sound an alarm or shut down the compressor in case of over heating.

I. Occupational Noise Exposure.

1. Protection against the effects of noise exposure shall be provided when the sound levels exceed those shown in the following permissible noise exposure table when measured on the "A" scale of a standard sound level meter at slow response. When noise levels are determined by octave band analysis, the equivalent A-weighted sound level may be determined by referring to 29 CFR 1910.95(a), Figure G-9.

2. When employees are subjected to sound exceeding those listed in the following table, feasible administrative or engineering controls shall be utilized. If such controls fail to reduce sound levels within the levels of the table, personal protective equipment shall be provided and used to reduce sound levels within the levels of the table.

TABLE 1

PERMISSIBLE NOISE EXPOSURES

Duration per	Sound level dBA

day, hours	slow response
8	90
6	92
4	95
3	97
2	100
1-1/2	102
1	105
1/2	110
1/4 or less	115

When the daily noise exposure is composed of two or more periods of noise exposure of different levels, their combined effect should be considered, rather than the individual effect of each. If the sum of the following fractions: $C_1/T_1 + C_2/T_2 \ldots C_n/T_n$ exceeds unity, then the mixed exposure should be considered to exceed the limit value. C_n indicates the total time of exposure at a specified noise level, and T_n indicates the total time of exposure permitted at that level.

3. Exposure to impulsive or impact noise shall not exceed 140 dB peak sound pressure level.

4.Variations in sound levels

a. If the variations in noise levels involve maxima at intervals of 1 second or less, it is to be considered continuous.

b. In all cases where the sound levels exceed the values shown herein, a continuing, effective hearing conservation program shall be administered.

5. Audiometric Tests.

a. Audiometric testing may be requested by the UOSH Administrator whenever individual hearing loss is in question. These tests shall be arranged for by the employer and shall be given under medical supervision.

b. To ensure accurate audiograms, the facilities must meet the following minimum standards:

c. Test Room. Audiograms shall be obtained only in environments which meet the requirements of the American National Standards Institute for background noise.

d. Audiometer. Audiometers shall meet the specifications of the American National Standards Institute and should be maintained in calibration in accordance with recognized procedures.

J. Working Over or Near Water.

Employees working over or near water, where the danger of drowning exists, shall be provided with U.S. Coast Guard-approved life jackets or buoyant work vests.

K. Occupational Foot Protection.

The employer shall require employees to wear safety shoes or boots in the working areas.

L. Safety Belts, Lifelines, and Lanyards.

1. The employer shall require and provide an approved safety belt suitable for the particular job or hazard exposure, which shall be attached by means of a tailrope or lanyard to a fixed anchor and adjusted to allow a maximum drop of 6 feet in case of fall, except when working on the fingerboard or when longer tag lines are necessary to perform the work required.

2. A separate life line shall be provided for each employee exposed to the particular job or hazard.

3. Safety belts and life lines shall be checked prior to each use and shall be repaired or replaced if found to be defective.

M. Emergency Escapes.

1. A Safety Buggy with an adequate braking device shall be installed on an escape line and kept at the derrickman's working platform.

2. The Safety Buggy and escape line shall be checked by the derrickman prior to each trip.

3. An escape line shall be a wire rope of suitable diameter and type. It shall be kept free of obstruction.

4. Tension on the escape line shall be such that a 180 lb. worker sitting in the Safety Buggy will touch the ground at least 20 feet from the anchor.

5. The length of the escape line shall be adequate to assure no less than a 45 degree descent from the vertical plane and shall be securely anchored both at the ground and to the rig.

N. Gases, Vapors, Fumes, Dusts, and Mists.

1. Occupational asbestos exposure shall be controlled in accordance with 29 CFR 1910.1001 of the Utah Occupational Safety and Health Rules and Regulations.

2. Exposure to contaminants shall be limited by the regulations set forth in Chapter Z of the Utah Occupational Safety and Health Rules and Regulations.

O. Ionizing Radiation.

Sources of ionizing radiation not regulated by the Nuclear Regulatory Commission shall be regulated by 29 CFR 1910.96 of the Utah Occupational Safety and Health Rules and Regulations.

P. Non-Ionizing Radiation.

Non-ionizing radiation exposure shall be regulated by 29 CFR 1926.54; and 29 CFR 1910.97.

Q. Hydrogen Sulfide (H_2S) Gas.

1. Area Definitions

a. No Hazard Area = any well which will not penetrate a known H_2S horizon.

b. Low Hazard Area = any well which will penetrate a formation containing H_2S with a known .35 psi/ft. B.H. pressure gradient or less and/or in which the H_2S zone has been effectively sealed off by casing-cementing and/or cementing method.

c. Medium Hazard Area = any well which will penetrate a formation containing H_2S not defined in R614-2-3.Q.1.a. and b.

d. High Hazard Area = any operation expected to bring free H_2S gas to the surface, i.e., DST (Drill Stem Testing), production testing, etc.

2. H_2S Safety Equipment Procedures.

a. The well operator and employer will require that the following safety equipment shall be provided and operational on site before the hole is 500 feet above any formation as defined in R614-2-3.Q.1. suspected and/or known to contain H_2S Gas.

(1) No Hazard Area

(a) No special H_2S equipment shall be required.

(2) Low Hazard area:

(a) Two (2) thirty (30) minute self-contained breathing apparatuses for emergency use only.

(3) Medium Hazard Area:

(a) Air masks with emergency escape cylinders for each employee.

(b) Two (2) thirty (30) minute self-contained breathing apparatuses for emergencies.

(c) Three wind socks and/or streamers.

(d) Oxygen powered resuscitator with cylinder.

(e) 2-Gas detectors (pump type).

(f) A separate warning system.

(4) High Hazard Area:

(a) Manifold air masks with emergency escape cylinders for each employee.

(b) Two (2) thirty (30) minute self-contained breathing apparatuses for emergencies.

(c) Three wind socks and/or streamers.

(d) Oxygen powered resuscitator with cylinder.

(e) Two Gas detectors (pump type).

(f) A separate warning system.

3. The employer shall assure that in High Hazard Areas no employee is permitted on location without H_2S safety training, except for instruction purposes.

4. The well operator shall provide two (2) means of egress on each location in a High Hazard Area.

5. A means of communications or instructions for emergency procedures shall be established and maintained on location along with the names and telephone numbers of the person or persons to be informed in case of emergencies.

6. Employee Instructions.

a. Employees shall be instructed in the use of all H_2S safety equipment before being allowed on the location.

b. The instruction of personnel shall include the following elements.

c. Employees shall be informed of the characteristics of H_2S and its hazards.

d. Proper first-aid procedures to be used in a H_2S knock down.

e. Use of personal protective equipment.

f. Use and operation of H_2S monitoring systems.

g. Corrective action and shut-down procedures.

7. The employer shall be able to show through training and/or experience that the person(s) giving H_2S safety instruction is qualified to give such instructions.

8. Signs shall be posted 500 feet from the location, when possible, on each road leading to the location warning of the hazard of H_2S.

9. All H_2S Safety equipment shall be checked to assure readiness before each tour change.

R. Illumination.

1. Lighting in the work place shall be sufficient to enable the employees to see clearly enough to perform their work safely.

2. Vehicle lights shall not be used for lighting of rig operations in lieu of rig lights, except in emergency.

S. Sanitation.

1. Potable Water.

a. An adequate supply of potable water shall be provided in all places of employment.

b. Portable containers used to dispense drinking water shall be capable of being tightly closed, and equipped with a tap. Water shall not be dipped from containers.

c. Any container used to distribute drinking water shall be clearly marked as to the nature of its contents and not used for any other purpose.

d. The common drinking cup is prohibited.

2. Toilet Facilities.

a. Under temporary field conditions at any work site, provisions shall be made to assure that not less than one toilet facility is available.

b. Toilets shall be maintained in a clean and sanitary condition.

3. Temporary Sleeping Quarters. When temporary sleeping quarters are provided, they shall be heated, ventilated, and lighted.

4. Washing Facilities. The employer shall provide adequate washing facilities for employees engaged in operations where contaminants may be harmful to the employees.

R614-2-4. Drilling Industry -- Fire Protection and Prevention.

A. Fire Protection.

1. The employer shall be responsible for the development of a fire protection program to be followed throughout all phases of operation work, and he shall provide for the firefighting equipment. As fire hazards occur, there shall be no delay in providing the necessary equipment.

2. Access to all available firefighting equipment shall be maintained at all times.

3. A minimum of four (4) 20#, Class B-C fire extinguishers or equivalent shall be conveniently located at the rig.

4. A minimum of two (2) 20#, Class B-C fire extinguishers or equivalent shall be conveniently located on well service units.

B. Fire Prevention.

1. All sources of ignition shall be prohibited at or in the vicinity of all operations that constitute a fire hazard, unless adequate protection is provided.

2. Smoking shall be prohibited at or in the vicinity of operations which constitute a fire hazard, and shall be conspicuously posted: "No Smoking".

3. An exhaust pipe from any internal combustion engine, located within 75 feet of any well bore, process vessel, oil storage tank, or other source of ignitable vapor, shall be so constructed and used so that any emission of flame along its length or at its end is prevented.

4. Burning stoves and open fires shall not be permitted within 75 feet of the wellbore, except for purpose of maintenance and repair.

5. Engine-driven light plants shall be located at least 75 feet from the wellbore unless properly protected to prevent source of ignition.

6. Oil and Grease Hazards. Oxygen cylinders and fittings shall be kept away from oil or grease.

7. When lighting a flare pit, the lighting shall be done from the upwind side. When there is no wind or when the wind direction is uncertain, no attempt shall be made to light the pit unless the operator can position himself in an explosive-free area. The use of hand thrown rags or similar

flaming objects shall be prohibited.

a. A pilot flame shall be maintained at the end of the discharge line at all times when air, gas, or mist drilling is in progress.

C. Flammable Liquids.

1. General Requirements.

a. Only approved containers and portable tanks shall be used for storage and handling of flammable liquids. Approved safety cans shall be used for the handling and use of flammable liquids in quantities less than 5 gallons. For quantities of one gallon or less, only the original container or approved safety cans shall be used for storage, use, and handling of flammable liquids.

b. No material used for cleaning shall have a flashpoint less than 100 degrees F. Examples of materials which may have flashpoints below 100 degrees F. are Gasoline, Naphtha, etc.

c. No smoking or open flame shall be allowed within 25 feet of the handling of flammable liquids. Any engine being refueled shall be shut off during such refueling except diesel engines.

d. An electrical bond shall be maintained between containers when a flammable liquid is being transferred from one to the other.

e. Dispensing nozzles and valves shall be of the self-closing type.

f. Except for the fuel in the tanks of the operating equipment, no flammable fuel shall be stored within 75 feet of a wellbore.

g. Drainage from any fuel storage shall be in a direction away from the well and equipment.

2. Safety Procedures for Fuel Tanks

a. Propane or butane tanks shall be placed parallel to any side of the rig.

b. Fuel tanks shall be protected by crash rails or guards to prevent physical damage unless by virtue of their location they have this protection.

c. Fuel tank storage areas shall be kept free of weeds, debris, and other combustible material not necessary to the storage.

3. Liquid Petroleum Gas (LPG)

a. Liquid Petroleum Gas (LPG) shall be handled in accordance with NFPA 58-69 "Standard for Handling of Liquefied Petroleum Gases," or according to the latest published addenda or revision of that code.

b. Utilization equipment shall have a thermal coupling or equivalent installed.

R614-2-5. Drilling Industry -- Signs, Signals and Barricades.

A. Prevention Signs and Tags.

1. General. Warning signs or symbols shall be visible at all times when work is being performed, and shall be removed or covered promptly when the hazards no longer exist.

a. Regulatory signs and barricades for Hydrogen Sulfide are covered in R614-2-3.Q.8.

2. Safety Warning Signs

a. Warning signs shall be posted to denote any unusual hazardous situation.

b. Warning signs shall be posted in areas where the use of personal protective equipment is required.

c. Identification signs shall be conspicuously posted to locate emergency equipment.

d. Storage areas and containers of poisonous, toxic, flammable, or explosive material shall be properly labeled and appropriately stored according to content.

3. Transformers.

Signs indicating danger and prohibiting unauthorized access shall be conspicuously displayed on the housing or other enclosure around electrical equipment.

B. Signaling.

Signals between supervisors, employees, or other persons involved shall be established and agreed upon prior to start of operations.

R614-2-6. Drilling Industry -- Materials Handling, Storage and Use.

A. General Requirements for Storage.

1. All materials stored in tiers shall be stacked, racked, blocked, interlocked, or otherwise secured to prevent sliding, falling, or collapse.

2. Aisles and passageways shall be kept clear to provide for the free and safe movement of material handling equipment or employees. Such areas shall be kept in good repair.

3. Noncompatible materials shall be segregated in storage.

4. Bagged materials shall be stacked by stepping back the layers and cross-keying the bags at least every 10 bags high.

B. Construction and Loading of Pipe Racks.

1. Construction of pipe racks shall be designed to support any load placed thereon.

2. Pipe racks shall be set level laterally on a stable foundation. They may slope front to back to facilitate laying down or picking up pipe.

3. Provision shall be made to prevent pipe, tubular material, or other round material from rolling off pipe racks.

4. No employee shall go between pipe racks and a load of pipe during loading, unloading, and transferring operations.

5. Pipe shall be loaded and unloaded, layer by layer, with bottom layer pinned or blocked securely on all 4 corners, and each successive layer effectively chocked or blocked.

6. Spacers shall be used, and evenly spaced between the layers of pipe or material on the rack.

7. When pipe is being moved or transferred between pipe racks, truck and trailer, the temporary supports for skidding or rolling shall be so constructed, placed, and anchored so as to support the load that is placed on them.

8. During freezing weather, pipe standing on end shall be positioned so as to afford proper drainage.

C. Rigging Equipment for Material Handling.

1. General.

a. Rigging equipment for material handling shall be checked prior to use on each shift and as necessary during its use to ensure that it is safe. Defective rigging equipment shall be removed from service.

b. Rigging equipment shall not be loaded in excess of its recommended safe working load.

2. Wire Ropes.

a. Protruding ends of strands in splices on slings and bridles shall be covered or blunted.

b. An eye splice made in any wire rope shall have not less than three full tucks. However, this requirement shall not operate to preclude the use of another form of splice or connection which can be shown to be as efficient and which is not otherwise prohibited.

c. Except for eye splices in the ends of wires and for endless rope slings, each wire rope used in hoisting or lowering, or in pulling loads shall consist of one continuous piece without knot or splice. Sand lines and winch lines are excluded.

d. Eyes in wire rope bridles, slings, or bull wires shall not be formed by knots.

e. When U-bolt wire rope clips are used to form eyes, The following table shall be used to determine the number and spacing of clips.

f. When used for eye splices, the U-bolt shall be applied so that the "U" section is in contact with the dead end of the rope.

3. Natural Rope and Synthetic Fiber.

Fiber ropes which are cut, frayed (through one or more strands), or that have been in contact with caustic, acid, or any other chemical that might weaken them shall be replaced immediately.

TABLE 2

NUMBER AND SPACING OF U-BOLT WIRE ROPE CLIPS

Improved plow steel rope diameter inches	NUMBER OF CLIPS Drop forged	Other material	Minimum Spacing inches
1/2	3	4	3
5/8	3	4	3-3/4
3/4	4	5	4-1/2
7/8	4	5	5-1/4
1	5	6	6
1-1/8	6	6	6-3/4
1-1/4	6	7	7-1/2
1-3/8	7	7	8-1/4
1-1/2	7	7	9

D. Transporting, Moving, and Storing Compressed Gas Cylinders.

1. Valve protection caps shall be in place and secured.

2. When cylinders are hoisted, they shall be secured on a cradle, slingboard, or pallet. They shall not be hoisted or transported by means of magnets or choker slings.

3. When cylinders are transported by powered vehicles, they shall be secured in a vertical position.

4. Valve protection caps shall not be used for lifting cylinders from one vertical position to another. Bars shall not be used under valves or valve protection caps to pry cylinders loose when frozen. Warm, not boiling water shall be used to thaw cylinders loose.

5. Cylinders shall be secured in an upright position and shall be separated in storage as to full and empty cylinders and shall be separated as to contents.

6. No person other than the gas supplier shall attempt to mix gases in a cylinder. No one except the owner of the cylinder or person authorized by him, shall refill a cylinder. No one shall use a cylinder's contents for purposes other than those intended by the supplier.

7. No damaged or defective cylinder shall be used.

R614-2-7. Drilling Industry -- Tools - Hand and Power.

A. General Requirements.

1. Condition of tools. All hand and power tools and similar equipment, whether furnished by the employer or the employees, shall be maintained in a safe condition.

2. All hand-held powered tools shall be equipped with a constant pressure switch that will shut off the power when the pressure is released.

B. Hand Tools.

1. Employers shall not issue or permit the use of unsafe hand tools.

2. Impact tools, such as drift pins, wedges, and chisels, shall be kept free of mushroomed heads.

3. The wooden handles of tools shall be kept free of splinters or cracks and shall be kept tight in the tool.

C. Power-Operated Hand Tools.

1. Electric power operated tools.

a. Electric power operated tools shall either be of the approved double-insulated type or grounded.

b. The use of electric cords for hoisting or lowering tools shall not be permitted.

2. Pneumatic Power Tools.

a. Pneumatic power tools shall be secured to the hose or whip by some positive means to prevent the tool from becoming accidentally disconnected.

b. Safety clips or retainers shall be securely installed and maintained on pneumatic impact (percussion) tools to prevent attachments from being accidentally expelled.

c. The manufacturer's safe operating pressure for hoses, pipes, valves, filters, and other fittings shall not be exceeded.

d. The use of hoses for hoisting or lowering tools is prohibited.

e. All hoses exceeding 1/2 inch inside diameter and having a pressure greater than 150 psi shall have a safety device at the source of supply or branch line to reduce pressure in case of hose failure.

3. Fuel Powered Tools.

a. All fuel powered tools shall be stopped while being refueled, serviced, or maintained.

b. When fuel powered tools are used in enclosed spaces, the applicable requirements for concentrations of toxic gases and use of personal protective equipment, as outlined in 29 CFR 1926.55 and 1926.103 shall apply.

4. Hydraulic Power Tools.

a. The fluid used in hydraulic powered tools shall be fire-resistant fluids approved under 30 CFR 1 to 199, and shall retain its operating characteristics at the most extreme temperatures to which it will be exposed.

b. The manufacturer's safe operating pressures for hose, valves, pipes, filters, and other fittings shall not be exceeded.

D. Abrasive Wheel Machinery.

1. Abrasive wheels shall be used only on machines provided with safety guards. Safety guards will be: spindle-end guards, tongue, and workrest guards.

2. Safety guards used on machines known as right angle head or vertical portable grinders shall have a maximum exposure angle of 180 degrees and the guard shall be so located so as to be between the operator and the wheel during use.

3. The maximum angular exposure of the grinding wheel periphery and sides for safety guards used on other portable grinding machines shall not exceed 180 degrees and the top half of the wheel shall be enclosed at all times.

E. Jacks-Lever and Ratchet, Screw, and Hydraulic, Except Rig Jacks.

1. The manufacturer's rated capacity shall be legibly marked on all jacks and shall not be exceeded.

2. All jacks shall have a positive stop to prevent overtravel.

3. Heavy capacity hydraulic jacks shall have a safety device which will cause the jacks to support the load in any position in event the jack malfunctions.

R614-2-8. Drilling Industry -- Welding and Cutting.

A. Welders and cutters shall be well trained in the safe practices that apply to their work.

B. Welding, cutting, and brazing shall not be done in the presence of explosive gas or fumes, or near combustible materials, except when performed in compliance with 29 CFR 1910 Subpart Q.

R614-2-9. Drilling Industry -- Electrical.

A. General Requirements.

1. Reference materials for electrical classifications are available at the UOSH office.

2. All electrical work, installation, and wire capacities shall be in accordance with the pertinent provisions of the National Electrical Code, 1990 Edition unless otherwise provided by regulations of this part.

B. Classification of Areas.

1. Drilling Wells. Areas surrounding wells in the process of drilling or being serviced by drilling rigs shall be classified as follows:

a. Well Head Area.

(1) When the derrick is not enclosed or is equipped with a wind-break (open top and V door) and the substructure is open to ventilation, the areas shall be classified as shown in Fig. I-1.

(2) When the derrick floor and substructure are enclosed, the areas shall be classified as shown in Fig. I-2.

b. Mud Tank.

(1) The area around a mud tank located outdoors with unrestricted ventilation shall be classified to the extent shown in Figure I-3.

(2) The area around a mud tank located in an enclosure shall be classed Class I, Div. II to the extent of the enclosure as shown in Fig. I-4.

c. Mud Ditch.

When an open ditch or trench is used to connect between mud tanks, or between shale shaker and mud tanks; or open, active mud pits located outdoors with unrestricted ventilation, the area shall be classified as shown for mud tanks in Fig. I-3.

d. Mud Pump

The area surrounding a mud pump shall be unclassified unless it is located in an area that is classified because of some other facility.

e. Shale Shaker.

(1) The area surrounding a shale shaker with unrestricted ventilation shall be classified as shown in Fig. I-5.

(2) When the shale shaker is located in an enclosure, the area shall be classified as Class I, Division II to the extent of the enclosure.

f. Desander - desilter

(1) A desander - desilter located in an open area or in an adequately ventilated enclosure shall be classified as shown in Fig. I-6.

(2) A desander - desilter located in an inadequately ventilated enclosure shall be classified as Class I, Division II to the extent of the enclosure.

g. Degasser.

The area surrounding a degasser which is a closed system, is unclassified except for the vent from the degasser, which shall be classified as shown in Fig. I-7.

h. Open Sump

The area surrounding an open sump which contains volatile, flammable liquid shall be classified the same as for a mud tank as shown in Fig. I-3.

i. Diverter line vent.

The area around the diverter line shall be classified as shown in Fig. I-7 for gas vent.

2. Producing Oil and Gas Wells.

Areas adjacent to producing oil and gas wells shall be classified as follows:

a. Flowing well.

(1) Area around a flowing well located in an open area is unclassified where a cellar or below grade sump is not present.

(2) Area around a flowing well located in an open area with a cellar or below grade sump shall be Class I Division I below grade and Class I Division II above grade to the extent shown in Fig. I-8.

b. Artificially lifted wells.

(1) Beam pumping well.

(a) Where a cellar or below grade sump is not present, the area around a pumping well shall be Class I Division II to the extent shown in Fig. I-9.

(b) Area around a beam pumping well where a cellar or below grade sump is present shall be classified Class I Division I below grade and Class I Division II above grade to the extent shown in Fig. I-10.

(2) Well equipped with submersible, electric motor-driven pump.

(a) Area around a well in an open area being produced with a submersible electric motor-driven pump is unclassified if a cellar or below grade sump is not present.

(b) Where a cellar below grade sump is present at a well produced with a submersible, electric motor-driven pump, Class I Division I and Division II areas shall be classified as shown in Fig. I-8.

(3) Well produced with hydraulic subsurface pump.

(a) Area around a well being lifted with a hydraulic subsurface pump is not classified when there is no cellar or below grade sump.

(b) Where a cellar is present at a well being lifted with hydraulic subsurface pump, Class I Division I and Division II area shall be classified as shown in Fig. I-8.

(4) Gas liftwell.

(a) The area around a gas lift well located in an open area is unclassified when there is no cellar or below grade sump.

(b) Areas around a gas lift well that has a cellar or below grade sump shall be classified as Class I, Division I or Division II as shown in Fig. I-8.

C. Grounding and Bonding.

1. Portable and/or Cord and Plug-connected Equipment.

a. The noncurrent-carrying metal parts of portable and/or plug-connected equipment shall be grounded.

b. Portable tools and appliances protected by an approved system of double insulation, or its equivalent, need not be grounded. Where such an approved system is employed, the equipment shall be distinctively marked.

2. Fixed Equipment. Exposed noncurrent-carrying metal parts of fixed electrical equipment, including motors, generators, frames and tracks of electrically operated cranes, electrically driven machinery, etc., shall be grounded.

3. Effective Grounding. The path from circuits, electrical equipment, structures and conduit or enclosure to ground shall have a maximum resistance to ground of 25 ohms. Where the resistance exceeds 25 ohms, one or more driven rod electrodes shall be connected to the ground side of the system to lower the resistance to 25 ohms maximum.

4. Extension Cords/Cables. Extension cords/cables used with portable electric tools and appliances shall be of three wire type.

5. Bonding.

a. Conductors used for bonding and grounding stationary and moveable equipment shall be of ample size to carry the anticipated current.

b. When attaching bonding and grounding clamps or clips, secure and positive metal-to-metal contact shall be made.

6. Temporary Wiring. All temporary wiring shall be shall be grounded.

D. Overcurrent Protection.

1. Overcurrent protection shall be provided by fuses or circuit breakers for each feed and branch circuit, and shall be based on the current-carrying capacity of the conductors supplied and the power load being used.

2. No overcurrent device shall be placed in any permanently grounded conductor, except where the overcurrent device simultaneously opens all conductors of the circuit or for motor running protection.

3. When fuses are installed or removed with one or both terminals energized, special tools insulated for the voltage shall be used.

E. Switches, Circuit Breakers, and Disconnecting Means.

1. Each disconnecting means for motors and appliances, and each service feeder or branch circuit at the point where it originates, shall be legibly marked to indicate its purpose unless located and arranged so the purpose is evident.

2. Disconnecting means shall be located or shielded so that employees will not be injured.

F. Lockouts and/or Tagging.

Where there is danger 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. Where there is danger of machinery being started or of steam or air creating a hazard to workers while repairs or maintenance work is being done, the employees shall disconnect the lines or lock and tag the main valve closed or blank the line on all steam driven machinery, air driven machinery, pressurized lines or lines connected to such equipment if they would create a hazard to workers.

G. Electrical Equipment Installation and Maintenance.

1. General Requirements

a. Where different voltages, frequencies, or types of current (A.C. or D.C.) are to be supplied by portable cords, receptacles shall be of such design that attachment plugs used on such circuits are not interchangeable.

b. Attachment plugs or other connectors supplying equipment at more than 300 volts shall be of the skirted type or otherwise so designed that arcs will be confined.

c. Cable/cords passing through work areas shall be covered or elevated to protect it from damage which would create a hazard to employees.

d. Worn or frayed electric cables/cords shall not be used.

e. Extension cords/cables shall not be fastened with staples, hung from nails, or suspended by wire.

2. Facilities and Equipment.

a. Light plant generator shall have an adequate overload safety device.

b. All light cords and plug-ins shall be kept in good condition.

c. Rig lights shall be of an approved type for the area in which they are located.

d. Lamps and reflectors shall be cleaned frequently.

e. The rays of light shall be directed toward the objects to be illuminated, and away from the eyes of the worker.

3. Wiring and Electrical Equipment Permissible in Class I, Division II areas.

a. Wiring shall employ: Rigid threaded conduits, lead covered armoured cable, Type SO, SOW, STW, STO, GGW, W, Diesel Locomotive, or equivalent cable with approved connectors (vapor proof).

b. Electrical equipment including fixtures, plugs, receptacles, fittings and enclosures for switches and controllers shall be sealed and gasketted or totally enclosed gasketted with threaded hubs (vapor proof).

c. Motors: All A.C. motors shall be totally enclosed, fan-cooled type (TEFC) or equivalent. D.C. motors located in Class I, Division II areas will be purged (cooled) with air from a safe source.

R614-2-10. Drilling Industry -- Ladders.

A. Ladders.

1. Except where either permanent or temporary stairways or suitable ramps or runways are provided, ladders described in this chapter shall be used to give safe access to all elevations.

2. All ladders shall be maintained in a safe condition. All ladders shall be checked regularly, with the intervals between checks being determined by use and exposure.

3. Ladder requirements not specifically referenced in this part shall be in accordance with the State of Utah Occupational Safety and Health Rules and Regulations 29 CFR 1910.25, 26, and 27.

4. Rungs, cleats, and steps shall be free of splinters, sharp edges, burrs, or projections which may be a hazard.

5. Where there is a walking/working platform or access to a ladder of 24 inches or more above the floor or ground level, a step or steps of not more than 12 inches high shall be provided for access.

6. Step-across distance. The step-across distance from the nearest edge of ladder to the nearest edge of equipment or structure shall not be more than 12 inches.

7. Cages or wells shall be provided on ladders of more than 20 feet to a maximum unbroken length of 30 feet where a climbing device is not used.

8. All landing platforms shall be equipped with standard railings and toeboards, so arranged as to give safe access to the ladder.

9. The side rails of a ladder shall extend 3 feet above parapets and landing.

10. Ladder safety devices may be used on ladders over 20 feet in unbroken length in lieu of cage protection. All ladder safety devices, such as those that incorporate lifebelts, friction brakes, and sliding attachments shall meet the design requirements of the ladders which they serve.

R614-2-11. Drilling Industry -- Walking, Working Surfaces.

A. Guardrails, Handrails and Covers.

1. Guarding of Floor Openings and Floor Holes.

Floor openings and floor holes shall be guarded by a standard railing and toeboards and/or cover.

2. Guarding of Wall Openings.

Wall openings from which there is a drop of more than 6 feet shall be guarded.

3. Guarding of Open-Sided Floors, Platforms, and Runways

a. Every open-sided floor or platform 6 feet or more above adjacent floor or ground level shall be guarded by a standard railing, or equivalent.

b. Standard railing shall be provided on the inside of all mud tank runways unless other means are available to prevent an employee from falling into the mud tanks.

c. Regardless of height, open-sided floors, walkways, platforms, or runways above or adjacent to dangerous equipment and similar hazards shall be guarded with a standard railing and toeboard.

4. Stairway Railings and Guards.

Every flight of stairs having four or more risers shall be equipped with standard stair railings on open sides.

B. Floors, Stairways, and Platforms.

1. Floors, stairways, and platforms shall be free of dangerous projections or obstructions and shall be maintained in good repair and reasonably free from oil, grease, water, or other materials of similar nature. Where the type of operation necessitates working on slippery floor areas, such surfaces shall be protected against slipping by the use of mats, grates, cleats, or other methods to provide reasonable protection.

2. Each corner of a crown block shall be securely bolted or welded to the mast or derrick.

3. Each finger of a finger board shall be bolted or welded to its support beam.

4. Any temporary stabbing board or other temporary boards placed in the derrick shall be securely fastened.

5. On all derricks, ladder platforms shall be installed adjacent to, and shall provide safe access to the work platforms.

6. Ladder platforms are to be located at the crown of all drilling rigs.

7. With the exception of the stabbing board and derrick board, every platform erected on the inside of a derrick shall completely cover the space from the working edge of the platform back to the legs and girts of the derrick.

C. Exits, Access, and Egress.

1. Exits shall be provided to the outside on at least 3 sides of the derrick floor.

2. All work stations shall have two means of egress, except for hopper house.

3. No exit door of the derrick floor, including all doors of the doghouse, shall be held closed with a lock or outside latch while anyone is on the derrick floor.

4. No employee shall slide down any pipe, kelly hose, cable, or rope line except in the event of an extreme emergency.

5. No employee shall use the catline as a means of ascending to or descending from any point in the derrick except in an emergency. Even then, the rotary table shall be locked out and qualified employees shall operate the cathead and controls.

R614-2-12. Drilling Industry -- Hoisting Equipment.

A. Derricks and Cranes.

1. The employer shall comply with the manufacturer's specifications and limitations applicable to the operation of any derrick. Where manufacturer's specifications are not available, the limitations assigned to the equipment shall be based on the determinations of a qualified engineer competent in this field and such determinations will be appropriately documented and recorded.

2. Traveling Blocks shall have an operational limiting device or adequate crown timbers properly installed (Special Services are excluded).

3. Cranes mounted on barges.

a. When a crane is mounted on a barge, the rated load of a crane shall not exceed the original capacity specified by the manufacturer.

b. A load rating chart, with clearly legible letters and figures, shall be provided with each crane, and securely fixed at a location easily visible to the operator.

c. When load ratings are reduced to stay within the

limits for list of the barge with the crane mounted on it, a new load rating chart shall be provided.

d. Cranes on barges shall be positively secured.

B. Truck-Mounted Masts and Derricks.

The employer shall require that truck-mounted derricks or masts are not moved while in a raised position. This does not apply to the skidding of a drilling rig.

C. Personnel Hoisting.

1. Well Drilling: Employees shall not ride the traveling blocks to or from the boards (except in cases of emergency).

2. Special Services: Riding hoisting equipment.

a. No employee shall ride traveling blocks when rods or tubing or any other downhole equipment is being moved.

b. Anyone riding the traveling blocks shall wear an approved safety belt with appropriate safety line anchored and adjusted to prevent a fall of over 6 feet.

3. The cat-line shall not be used as a personnel carrier except in an emergency.

D. Drawworks.

1. The drawworks shall not be operated without all guards in position and properly maintained.

2. If lubrication fittings are not accessible with guards in place, machinery shall be stopped for oiling and greasing.

3. The brakes, linkage, and brake flanges of the drawworks shall be checked every day and repaired or replaced as necessary.

E. Cathead.

1. A blunt smooth-edged divider to separate the first wrap of a line on a cathead shall be installed on all manually-operated rope catheads and the clearance between the device and the friction surface of the cathead shall not exceed 1/2 of an inch.

2. The friction surface and flanges of a cathead on which a rope is manually operated shall be smooth and the diameter of the cathead between the flanges shall be uniform throughout its length with an allowable tolerance of 3/8 of an inch.

3. The key seat and projecting key on a cathead shall be covered with a smooth thimble or plate.

4. When the cathead is unattended, no rope or line shall be left wrapped on or in contact with the cathead.

5. A qualified employee shall be at the controls while a cathead is in use. He shall stop the rotation of the cathead immediately in event of an emergency.

6. No splice other than by the manufacturer shall be allowed to come into contact with the friction surface of the cathead.

7. Each cathead using chain shall be equipped with a manually operated cathead clutch or with another device adequate to keep the rotation of the cathead under control when it is in use. The clutch or device shall be of the "nongrab" type and shall release automatically when not manually held in the engaged position.

8. Every chain used in a spinning line shall have a fiber tailrope between 8 inches and 12 inches in length fastened to the pipe end of the chain.

9. Connections between lengths of cathead chain, tong chains, and spinning chain shall be of the connecting link or swivel type and of strength equal to the lighter chain. Connecting links and swivels shall be of a size and type suitable for the chain in use.

10. The operator of a cathead shall keep his operating area clear at all times. That portion of the catline not being used shall be kept coiled or spooled.

F. Wire Ropes.

1. All hoisting lines (wire ropes) shall be visually checked by a competent person daily, and shall be thoroughly inspected at least each 30 days in conjunction with a ton-mile program, or a record made of each 30 day inspection which shall designate defects and deterioration. When the wire rope is slipped or replaced, it shall be recorded on the inspection report as to date and length of wire rope removed. Such written report must be kept on file at the drilling rig and local office.

2. A dead-line anchor for a drilling line shall be so constructed, installed, and maintained that its strength shall at least equal the working strength of the hoisting line.

3. All lines and sand lines shall be visually checked daily when in use. At this time a determination shall be made as to whether the hoisting line shall be cut to bring a new line into the system, or replaced. In no event shall the hoisting line or sand line be allowed to remain in service when the following numbers of broken wires appear in any section of the line:

TABLE 3

BROKEN WIRE-ROPE TABLE

Construction	Number of Broken Wires In One Rope Lay	Number of Broken Wires In One Strand in One Lay
6 x 7	7	3
6 x 19 Seale	11	4
6 x 21 Seale or FW	13	5
6 x 25 FW	18	6
6 x 31	19	6
6 x 36	21	7
18 x 7	18	3
19 x 7	18	3
8 x 19 Seale	16	4
8 x 25 FW	25	6

4. In addition to the above criteria, a hoisting line or sand line shall be removed from service when any of the following conditions exist:

a. When end connections are corroded, cracked, bent, worn, or improperly applied.

b. When evidence of severe kinking, crushing, cutting, or unstranding are noted.

R614-2-13. Drilling Industry -- Blasting and the Use of Explosives.

A. The employer shall permit only authorized and qualified persons to use, handle and/or transport explosives.

B. Transportation of explosives shall meet the provisions of the Department of Transportation regulations.

C. Explosives and related materials shall be stored in approved facilities required under 27 CFR 55 Commerce in

Explosives adopted by reference.

D. A blaster shall be qualified in the field of transporting, storing, handling, and use of explosives and have a working knowledge of Federal, State, and Local Laws which pertains to explosives.

R614-2-14. Drilling Industry -- Machine Guarding.

A. All belts, gears, shafts, pulleys, sprockets, spindles, drums, fly wheels, or other reciprocating or rotating parts, with the exception of the cathead, shall be guarded by a guard of sufficient strength to prevent any person from coming in contact therewith, unless they are guarded by location.

B. A rotary table shall have a substantially constructed metal guard adequately covering the outer edge of the table and extending downward to completely cover all the exposed rotating side of the table including the pinion gear.

C. Machinery shall not be operated without all guards properly maintained and in position; except during maintenance, repair, or rigup work or when limited testing may be performed by a qualified person.

D. No employee shall clean or lubricate any machinery where there is danger of contact with a moving part until such machinery has been stopped.

E. Any counterweight above the derrick floor when not fully enclosed shall run away from the working surfaces or be guarded.

F. The employer shall require that the mast crown is equipped with sheave guards which shall prevent the hoisting lines from being displaced from the sheaves during operations or when being raised to or lowered from the operating position.

G. When maintenance or servicing is to be accomplished on electrical lines, air lines, gas lines, or other lines containing hazardous materials, the line being worked on shall be rendered safe by emptying, purging, disconnecting, or other means before work is begun.

R614-2-15. Drilling Industry -- Overwater Operations.

A. When work is performed over water, employees shall be instructed in proper water entry procedures to be used.

B. An emergency means of escape from platforms shall be provided when working over water.

C. Coast Guard approved life jackets or work vests shall be available for and worn by each employee when performing operations over water.

D. Due consideration shall be given when dispatching vessels consistent with weather conditions, sizes of vessels, loading, and other factors.

E. Decks of all vessels shall be kept clean of oil, grease, debris, and free of excess equipment at all times.

F. Wireline units, power packs, tool boxes, and other equipment shall be securely tied down once it has been loaded on a vessel to be transported to or from inland water locations.

G. Mobile service units (when working off a barge) shall be properly secured with chains or wire rope and load binders once it has been spotted and when it is enroute to and from locations.

H. Tag lines shall be used to guide and steady equipment being loaded or unloaded from vessels on inland water locations.

I. It shall be the responsibility of the person skippering a vessel to determine when it is safe or unsafe to tie up or jack up on a well site.

J. When a crane is being used to transfer employees over water, employees shall wear a life jacket or work vest and shall not ride on anything other than an approved personnel net.

K. When handling equipment with a side loader type marine unit hauler the operator shall not lift or lower the base of the equipment being handled below the level of the ground or dock.

L. The operator shall not lift or lower a heavy load with a side loader boom without first extending jacks or outriggers.

R614-2-16. Drilling Industry -- Anchoring and Guy Wires.

Each derrick requiring anchoring or guying, shall follow the manufacturer's recommendations for guying and anchoring. If the manufacturer's recommendations are not available, an appropriate survey by a qualified engineer shall be made. A copy of the manufacturer's recommendations or a signed copy of the engineer's survey shall be made available for inspection on each derrick.

R614-2-17. Drilling Industry -- Air and Hydraulic Pressure.

A. Safety Procedures for Air Compressors.

1. Air compressors used or operated shall be constructed, installed, operated, and repaired to conform to the Engineering Standards of ASME and ANSI.

2. All air compressors shall have at least one air pressure regulator to control proper air flow.

3. The safety relief (safety pop-off) valve on the main air tank shall be checked periodically and kept in proper working order.

4. There shall be no valve in the discharge opening of a safety relief valve or in the discharge pipe connected thereto.

5. The piping connected to the pressure side and discharge side of a safety relief valve shall not be smaller than the normal pipe size openings of the device.

6. The piping from the discharge side of the safety relief device shall be securely tied down.

7. The piping from the discharge side of the safety relief valve shall be sloped in order to drain liquids.

8. All valves and pressure control devices shall be kept in the proper working order.

9. Hydraulic pressure lines shall not be subjected to pressures exceeding those recommended by the manufacturer.

B. Hydraulic Tong Control Mechanism.

1. The input pressure line on power tongs shall be disconnected or disengaged before any repair, replacement, or other work of a similar nature is done on tongs, chains, dies, or their component parts.

2. Pressure lines (hydraulic or air) shall have a safety relief valve which shall never be set higher than manufacturer's specifications for the working pressure of the lines or valve.

3. Hydraulic tongs shall be backed up with a safety device able to withstand the full torque of the power tool.

C. Mud Pits and Tanks, Mud Pumps, Piping and Hoses.

1. All fixed mud guns used for jetting shall be pinned or hobbled when in use and unattended.

2. Hoses shall not be used for jetting operations.

3. When necessary for an employee to enter a mud tank which has contained toxic fluid, adequate personal protective equipment shall be utilized or the tank shall be purged of all harmful substances.

4. Clamps and safety lines or chains shall be used to fasten the kelly hose at the standpipe end to the derrick and at the swivel end to the swivel housing, and all other flexible mud lines shall be appropriately secured.

5. The suction pit or tanks used for the circulation of flammable materials shall not be within 75 feet of well bore.

6. All mud pumps associated with a drilling rig shall be equipped with a safety pressure relief valve and an operating gauge in the system.

7. The safety pressure relief valve shall be set to discharge at a pressure not in excess of the established working pressure of the pump, pipe, and fittings.

8. A guard shall be placed around the shearing pin and spindle of a safety pressure relief valve.

9. The discharge from a safety pressure relief valve shall be piped to a place where it will not endanger employees.

10. There shall be no valve between a pump and its safety pressure relief valve.

11. The piping connected to the pressure side and discharge side of a safety pressure relief valve shall not be smaller than the normal pipe size opening of valve.

12. The piping on the discharge side of a safety pressure relief valve shall be properly secured.

R614-2-18. Drilling Industry -- Drilling Operations.

A. When maintenance or servicing is to be accomplished on power-driven equipment, the immediate source of power to the individual piece of equipment to be worked on shall be locked out. When maintenance or servicing is to be accomplished on electrical lines, air lines, gas lines, or other lines containing hazardous materials, the line being worked on shall be rendered safe by emptying, purging, disconnecting, or other means before work is begun.

B. Drillers shall never engage the rotary clutch without watching the rotary table.

C. Tools or other materials shall not be carried up or down a ladder unless properly secured to the body, leaving both hands free for climbing.

D. The hoisting line (wire rope) shall not be removed from the drum until the traveling blocks are to be laid on the derrick floor, or the traveling blocks are to be held suspended by a separate wire rope.

E. The hoisting line (wire rope) shall not be in direct contact with any derrick member, any stationary equipment, or material in the derrick except the crown block and any traveling block sheaves, a line spooler, a line stabilizer or weight indicator.

F. Every overhead sheave or pulley on which a line spooler counterweight rope runs shall be fastened securely to its support.

G. Every rig shall be equipped with a safety valve (Kelly Cock) with connections for each type of tool joint being used.

H. Blowout Prevention Equipment. While a well is being drilled, tested, completed, reconditioned, or is otherwise being worked on, blowout prevention equipment shall be installed and used in accordance with recognized standards and shall be reasonably adequate to keep the well under control at all times. The blowout prevention equipment provided shall be approved by the State of Utah Oil, Gas, and Mining Division.

I. Spinning chains shall not be handled near the rotary table while it is in motion. Workers shall not place the chain on the joint of pipe in the mouse hole while the table is rotating.

J. Chains used in connection with drilling or production operations shall be suitable for the type of service. Chains used in a spinning line, in a long line, or on a cathead must be of an approved type.

K. Every drilling rig shall be equipped with a reliable weight indicator.

L. Any weight indicator hung above the floor shall be secured to the derrick by means of a wire rope safety line or chain.

M. Every test plug used above the derrick floor shall be attached to the elevator links by safety line or chain.

N. The operator shall not leave the brake without tying the brake down or securing it with adequate counterbalance unless the drawworks is equipped with an automatic feed control.

O. The operator shall not engage the rotary clutch until the rotary table is clear of personnel and material.

P. The operator shall not leave the controls while the hoisting drum is on motion, except when drilling.

Q. Each rotary tong shall be securely attached to the derrick or a backup post with adequate wire rope safety lines.

R. A mud box or other effective means shall be provided on all rigs to convey any fluids away from the derrick floor while pulling drill stem test or breaking wet joints.

S. Hoses, lines, or chains shall not be handled or used near the rotary table while it is in motion.

T. A kelly pull-back post shall be provided for pulling the kelly back to the rat hold. The pull-back post shall be secured either to the derrick foundation, side sills, or floor sills, and shall not be attached to or in contact with the derrick legs, girts, or braces.

U. Whenever drill pipes, drill collars, or tubing are racked in the derrick provision shall be made for drainage of any fluids or gases in the stands.

V. The toolpusher (or other qualified employee) shall be in charge and present during the operation of raising or lowering a derrick.

W. The employer shall not allow employees under or in a derrick being raised or lowered.

X. No employee shall handle a traveling hoisting line unless he uses a suitable hand guard which shall be secured to the derrick.

Y. The rotary table shall not be used for the final making up or initial breaking out of a pipe connection.

Z. All pipe and drill collars racked in a derrick shall be adequately secured to prevent them from falling across the derrick.

AA. Safety clamps used on drill collars, flush joint pipe, or similar equipment for the purpose of preventing its falling in the well when not held by the elevator, shall be removed from the pipe and drill collars before racking.

BB. Racking foundations shall be designed to withstand the load of racked pipe and drill collars.

R614-2-19. Drilling Industry -- Special Services.

A. Special Services.

1. The owner/operator shall require that all applicable requirements of other sections of these Rules and Regulations, in addition to the following requirements, shall apply to Special Services and Operations.

2. The supervisor of the special service shall hold a pre-job meeting with his crew to review responsibilities for the operations to be performed.

3. Special services fire extinguishers shall be placed in an accessible position.

4. Precautions shall be taken to prevent personnel or vehicles from crossing under or over unprotected wire lines, pressurized hoses, or pipe.

5. There shall be a minimum number of employees in the derrick or within 6 feet of the wellbore during the time a swab line or other wire line is being run in the hole.

6. Smoking or open fires shall be permitted only in designated areas.

7. A frozen flow line or hose shall not knowingly be flexed or hit.

8. Line wipers shall be adequately secured.

9. Oil savers should not be adjusted while the line is in motion except by remote means.

10. Only a qualified person shall operate the cathead.

11. All discharge lines shall be laid with sufficient flexible joints, preventing rigidity so as to prevent excess vibration at wellbore.

12. When using an open ended flow line to flow or bleed off a well, it shall be secured at the end of the flow line and at each 30 foot interval before opening the flow line.

B. Mud Pits and Tanks.

1. Portable tanks shall be located where it is not possible for employees or equipment to come into contact with overhead power lines.

2. All valves and gauges shall be checked to be sure there is no pressure on the lubricator before working on or removing it. Prior to breaking out (rigging down), all pressure shall be bled off the lines that are to be broken out.

3. A lubricator or other adequate control devices shall be used to allow the removal of the downhole tool under controlled conditions.

4. Only necessary personnel shall be permitted near the pressurized lubricator, flow lines, and wellbore.

5. All wellbore adapters, wireline valves, and lubricating equipment shall be of such a design, strength, and material to withstand the maximum surface pressure of the well and the lateral movement of the lubricator.

C. Safety Procedures for Drill Stem Tests.

1. Initial opening of drill stem test tools shall be restricted to daylight hours only.

2. Test line and valves shall be checked, and the test line shall be securely anchored at each end and at each 30 foot interval.

3. When taking a drill stem test, and hydrocarbons appear at the surface, it shall be mandatory that such hydrocarbons are reversed out before coming out of the hole.

4. Drill stem tests shall not be taken in known or expected zones containing H_2S with tubular goods of strengths less than Grade "E" drill pipe.

5. All drill stem tests in known or expected zones containing H_2S shall be reversed out. This shall be done in daylight hours only.

6. A reversing mechanism shall be included in the test tool assembly in order to be able to reverse.

7. The kelly hose shall not be used as part of the test line.

D. Treating.

1. The special services supervisor shall personally check to see that all valves in discharge lines are open before giving orders to pump.

2. During operations each employee designated to handle the pumping shall remain constantly at his designated position while the pump is in operation, unless relieved by an authorized employee as directed by the supervisor on that job.

3. Cementing pressure shall not exceed equipment maximum safe working pressure.

4. All acidizing, fracturing, and hot oil trucks and tanks shall be at least 75 feet from the wellbore.

5. The services supervisor shall see that all flammable fluid spilled on location is adequately covered with dirt before pumping operations start.

6. Flammable fluids shall not be bled back into open measuring tanks on equipment designed for pumping.

7. All spilled oil or acid shall be covered or properly disposed of after breakout with adequate precautions taken to prevent personnel from contact with such material.

8. All equipment that could produce a source of ignition shall not be permitted within 75 feet of any tank containing a flammable material.

9. When pumping a flammable fluid, all electrical or internal combustion equipment not used for performance of the job, and all fires shall be shut down or off during treatment.

10. All blending equipment used in fracturing operations shall be grounded to a conductive rod driven into the ground and all sand hauling equipment, unloading sand into blender hopper, shall be "electrically bonded" to the blender.

11. All supercharged suction hoses shall be covered with hose covers to deflect fluids when pumping flammable fluids.

R614-2-20. Drilling Industry -- Safety Procedures for Air and Gas Drilling.

A. Drilling compressors (air or gas) shall be located at least 150 feet from the wellbore and in a direction away from

the discharge or blooie line.

B. The air or gas discharge line (blooie line) shall be laid in as nearly a straight line as possible from the drilling head. It must be at least 150 feet in length. This discharge line shall be securely coupled and anchored to prevent movement. It shall be laid into a discharge pipe in such a direction from the wellbore as to allow prevailing winds to carry produced or circulated gas away from the rig.

C. All combustible material shall be kept at least 100 feet away from the discharge line.

D. The air line from the compressors to the standpipe shall be of adequate strength to withstand at least the maximum discharge pressure of the compressors used, and shall be checked daily by the compressor operator for any evidence of damage or weakness.

E. All cars, trucks, house trailers, etc., shall be parked at least 75 feet from the wellbore, except when delivering equipment or supplies.

F. Smoking shall not be allowed within 75 feet of the drilling rig while drilling air or gas.

G. Designated employees shall be shown and taught how to use control units and the blowout preventer and all fire fighting equipment.

H. Designated employees shall be shown and taught how to use the emergency shut-off equipment during gas drilling.

I. All pipe connections carrying gas or air to or from the wellbore shall be made up tightly. All lines and connections shall be frequently checked for leaks.

J. In the case of gas drilling, a shut-off valve shall be installed on the main feeder line at least 150 feet from the wellbore; in the case of air drilling, the shut-off valve shall be located near the compressors.

K. When making a connection, the standpipe valve shall be closed and the bleed-off line shall be open before breaking a tool joint.

L. One Class B-C fire extinguisher of at least 150 lbs. dry chemical capacity or equivalent shall be stationed on the job in addition to 4-20# capacity, or their equivalent, fire extinguishers with a Class B-C rating.

KEY: safety
December 2, 1997 **34A-6**

R614. Labor Commission, Occupational Safety and Health.
R614-3. Farming Operations Standards.
R614-3-1. Authority, Method of Adoption, and Effective Date.

A. This standard is adopted by authority given the Administrator of the Division of Occupational Safety and Health , Labor Commission, under Title 34A, Chapter 6. As required, adoption is through Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

B. R614-3-1, 2, 3, 4, 5, 6, 7, 8, 9, 12, 14, 16, 17, and 18 are existing standards and are presently in effect. R614-3-10, 11, 13, 15, and 19 are effective October 13, 1986.

R614-3-2. Scope and Definitions.

A. This rule contains Occupational Safety and Health Standards applicable to farming operations, for farms employing eleven (11) or more employees during any part of a year or maintain a labor camp. Family members of farm employers shall not be regarded as employees when making the determination as to number.

B. General Definitions

1. "Act" means the Utah Occupational Safety and Health Act of 1973.

2. "Administration" means the Division of Occupational Safety and Health of the Labor Commission, also known as UOSH (Utah Occupational Safety and Health).

3. "Administrator" means the director of the Division of Occupational Safety and Health.

4. "Commission" means the Labor Comission.

5. "Employee" includes any person suffered or permitted to work by an employer.

6. "Employer" means:

a. The state;

b. Each county, city, town, and school district in the state; and

c. 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.

C. Farming Definitions

1. "Agricultural tractor" means any vehicle, of more than 20 engine horsepower, designed to furnish the power to pull, carry, propel, or drive farm implements. All self propelled implements are excluded.

2. "Confined Space" means an open topped space more than four feet deep, or an enclosed space, such as a tank, vessel, silo, vault, pit, that is not designed for continuous employee occupancy, and: (1) contains an actual or potentially hazardous atmosphere or other safety or health hazard; (2) makes ready escape difficult; or (3) restricts entry for rescue purposes.

3. "Farmfield equipment" means tractors or implements, including self propelled implements, or any combination thereof used in agricultural operations.

4. "Farming operation" is defined as any operation involved in the growing or harvesting of crops, the raising of livestock or poultry, or similar activities conducted by a farmer on sites such as farms, ranches, orchards, dairy farms or similar farming operations.

5. "Farmstead equipment" means agricultural equipment normally used in a stationary manner. This includes, but is not limited to, materials handling equipment and accessories for such equipment whether or not the equipment is an integral part of a building.

6. "Ground driven components" are components which are powered by the turning motion of a wheel as the equipment travels over the ground.

7. "Guard" or "Shield" is a barrier designed to protect against employee contact with a hazard created by a moving machinery part.

8. "Hand labor operations" means agricultural activities or operations performed by hand or with hand tools. Some

examples of "hand labor operations" are the hand harvest of vegetables, nuts, and fruit, hand weeding of crops and hand planting of seedlings. "Hand labor" does not include such activities as logging operations, the care or feeding of livestock, or hand labor operations in canning facilities or packing houses.

9. "Handwashing facility" means a facility providing either a basin, container, or outlet with an adequate supply of potable water, soap and single use towels.

10."Highway" means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

11."Labor camp" is defined as farm housing directly related to the seasonal or temporary employment of migrant farm workers. In this context, "housing" includes both permanent and temporary structures under the control of the employer, located on or off the property and that is provided as a condition of employment.

12. "Low profile tractor" means a wheeled tractor possessing the following characteristics: (1) the front wheel spacing is equal to the rear wheel spacing; (2) the clearance from the bottom of the tractor chassis to the ground does not exceed 18 inches; (3) the highest point of the hood does not exceed 60 inches; and (4) the tractor is designed so that the operator straddles the transmission when seated.

13. "Potable water" means water that meets the standards for drinking purposes by the state or local authority having jurisdiction or water that meets the quality standards prescribed by the Bureau of Public Water Supplies, Utah Department of Health.

14. "Power take off shafts" are the shafts and knuckles between the tractor, or other power source, and the first gear set, pulley, sprocket, or other components on power take off shaft driven equipment.

15. "Service building" shall mean a building housing toilets, lavatories, bathing facilities, a service sink, and may also include laundry and such other facilities as may be required.

16. "Toilet facility" means a facility designed for the purpose of both defecation and urination, including biological or chemical toilets, combustion toilets, or sanitary privies, which is supplied with toilet paper adequate to employee needs. Toilet facilities may be either fixed or portable.

17. "Wastewater" shall mean discharges from all plumbing facilities, such as restrooms, kitchen, and laundry fixtures, either separately or in combination.

R614-3-3. General Duty Clause and Applicable General Standards.

A. Section 34A-6-201 defines the General Duty Clause.

B. The following General Standards shall apply to farm operations: 29CFR1910.111 Storage and Handling of Anhydrous Ammonia; 29CFR1910.266 Pulpwood Logging.

R614-3-4. Employer and Employee Responsibility.

A. The employer 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 take appropriate action to correct such conditions immediately.

B. The employer 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.

C. 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 should be the duty of the employee to make the place, tools, or equipment safe. If this cannot be done, then it becomes the employee's duty to immediately report the unsafe place, tools, equipment, or conditions to the employer.

D. 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.

E. No employer or employee shall remove, displace or destroy or carry away any safety devices or safeguard 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.

R614-3-5. Reporting Requirements for Accidents and Fatalities.

Each employer shall shall meet the injury reporting requirements of R614-1-5.C.

R614-3-6. Recording Occupational Injuries and Illnesses.

A. General. This part provides for record keeping by employers to develop, collect, and analyze information regarding occupational accidents and illnesses.

B. Log and Summary. Each employer having 11 or more employees during any part of a calendar year or who has been notified by the Commission to keep records as part of the "Annual Survey of Occupational Injuries and Illnesses", shall maintain in each establishment a log and summary of all recordable occupational injuries and illnesses for that establishment. The 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. The federal OSHA Form No. 200 or any private equivalent form may be used. The Form or its equivalent shall be completed in the detail provided in the form and instructions contained in 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 readable and comprehensible.

C. The employer may maintain the log and summary of occupational injuries and illnesses at a place other than the establishment under the following circumstances:

1. 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.

2. 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.

R614-3-7. Safety and Health Protection on the Job Poster.

Each employer shall display in a location convenient to employees the "Safety and Health Protection on the Job" poster. The poster is provided to inform employees of the protections and obligations under the act. The Administrator shall furnish the poster at no charge.

R614-3-8. General Safety Requirements.

A. Good housekeeping is the first law of accident prevention and should be a primary concern of all employers and employees. Floors and platforms shall be free of dangerous projections or obstructions and shall be maintained in good repair and reasonably free from oil, grease, water or other materials of similar nature.

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. Clothing shall be appropriate for the work being done. Loose clothing 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 as soon as practicable and shall not be worn until properly cleaned.

D. Wrist watches, rings, or other jewelry shall not be worn on the job where they constitute a safety hazard.

E. 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.

R614-3-9. Medical Services and First Aid.

A. The employer shall insure the availability of medical personnel for advice and consultation on matters of Occupational Health.

B. Emergency Posting Required. 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) Employer or representative, (2) Doctor, (3) Hospital, (4) Ambulance, (5) Fire Department, (6) Sheriff or Police, (7) First aid person.

C. Proper equipment for prompt transportation of the injured person to a physician or hospital or a communication system for contacting necessary ambulance service, shall be provided.

D. In the absence of reasonably accessible medical personnel, a person who has a valid certificate in first aid training from the Mine Safety and Health Administration, the American Red Cross, or equivalent training that can be verified by documentary evidence, shall be available at the worksite to render first aid.

E. An adequate supply of first aid supplies shall be readily accessible at the worksite. The first aid supplies shall be encased in suitable sanitary storage places so as to protect them from contamination.

F. Where the employee's eyes or body may be exposed to injurious materials, suitable facilities for quick drenching or flushing of the eyes and body shall be provided within the work area for immediate emergency use.

R614-3-10. Respiratory Protective Equipment.

A. When an employee is or may be exposed to harmful concentrations of gases, vapors, smoke, fumes, mists or dusts created by permanent or temporary work processes, respiratory protective equipment, approved for the purpose, shall be provided by the employer and worn by the employee.

B. Employees shall be trained in the use of respiratory equipment that they may be expected to use.

C. The employer shall ensure that respiratory protective equipment required by these regulations is used as intended by the manufacturer, and that it provides the employee with adequate respiratory protection.

D. Respiratory protective equipment used to protect employees shall be readily available and shall be maintained in good working order and in a sanitary condition.

E. Filter type, cartridge or single use respiratory protective equipment shall not be used in any confined space.

R614-3-11. Requirements for Confined Space Entry.

A. No employee shall be required or permitted to enter a confined space:

1. Unless protected by self contained or airline type respiratory protective equipment, the employer shall ensure that air supplied for respirators by compressors, fans, or similar devices is free of dusts, oil vapors, toxic or noxious fumes or gases; or

2. Unless an approved ventilation system is being used to ensure the removal of any harmful gases, vapors, smoke, fumes, mists, or dusts from within the confined space; or

3. Until appropriate tests have been made immediately prior to entry to confirm the absence of any harmful gases, vapors, smoke, fumes, mists or dusts or a sufficiency of oxygen. Testing shall be done at intervals during an employee's presence in the confined space to ensure no change of conditions; or

4. When flammable or explosive gases are present, until ventilated, purged and all sources of ignition have been controlled or eliminated.

B. An employee required or permitted to enter a confined space where a harmful atmosphere exists or may develop, shall:

1. Wear a safety belt to which is attached a life line tended at all times by another person stationed outside the entrance and so equipped as to be capable of effecting a rescue, and

2. When entered from the top, wear a safety belt or a harness of a type of which will keep the employee in a vertical position in case of rescue.

C. When the work being performed is such that more than one employee is required or permitted to enter a confined space, provision shall be made in the planning of the

work to avoid the safety lines or air hoses from becoming entangled.

D. An employee required or permitted to enter a confined space being ventilated with a ventilation system to maintain respirable air, and in which a harmful atmosphere cannot develop shall:

1. Be attended by and in communication with another person stationed at or near the entrance, or

2. Be provided with a means of continuous communication with a person outside, or

3. Be visually checked by a designated person at intervals as often as may be required by the nature of the work to be performed.

R614-3-12. Pesticides.

Pesticide storage, use and clean up shall meet the provisions required by the Utah Department of Agriculture under Title 4, Chapter 14, Utah Pesticide Control Act; the United States Environmental Protection Agency (EPA); and Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

R614-3-13. Flammable and Combustible Liquids.

A. This Section applies to the storage of flammable and combustible liquids having a flash point below 200 degrees F (93.3 degrees C).

B. Storage areas shall be kept free of weeds and other combustible material. Open flames and smoking shall not be permitted in flammable or combustible liquids storage areas.

C. Storage tanks shall be provided with a free opening vent to relieve vacuum or pressure which may develop in normal operation or from fire exposure.

D. Tanks and containers for the storage of flammable and combustible liquids aboveground shall be conspicuously marked with the name of the product which they contain and "FLAMMABLE - KEEP FIRE AND FLAME AWAY."

E. Dispensing Flammable Liquids and Combustibles

1. Containers to which flammable liquids are being transferred shall be bonded together to eliminate static electricity.

2. Dispensing units shall be protected against physical damage by suitable means.

3. Dispensing devices (pumps, hoses and nozzles) shall be of approved type and be maintained to prevent leakage.

4. Flammable and combustible liquids shall not be dispensed by pressure from drums, barrels and similar containers. Approved pumps taking suction through the top of the container or approved self closing valves shall be used.

5. Flammable and combustible liquids shall be kept in closed containers when not actually in use.

6. Care shall be taken to eliminate source of ignition where flammable liquids are used.

F. L.P.G. Storage for use shall be in an approved container.

1. Shall have a relief valve on container.

2. Shall have an automatic shut off (thermocoupler) on utilization equipment.

3. Shall have a relief valve between each shut off valve.

R614-3-14. Labor Camp Sanitation.

A. NOTE: FR Vol 62, No. 12, Friday, January 17, 1997, Pages 2558 to and including 2565, "Alaska, Indiana, Iowa, Kentucky, Minnesota, South Carolina, Utah, Virgin Islands and Wyoming State Plans; Approval of Plan Supplements; Levels of Federal Enforcement; Final Rule" is incorporated by reference.

This change amends OSHA's regulations to reflect the Assistant Secretary's decision approving amendments to nine (9) State plans to exclude coverage of the field sanitation standard and the temporary labor camp standard as it applies to agriculture (with the exception of temporary labor camps for employees engaged in egg, poultry or red meat production, or the post-harvest processing of agriculture or horticultural commodities) from their State Plans. The states of Alaska, Indiana, Iowa, Kentucky, Minnesota, South Carolina, Utah, Virgin Islands, and Wyoming have elected to follow the jurisdictional transfer of authority as effected by Secretary of Labor's Orders 5-96 and 6-96, published in the Federal Register on January 2, 1997, between the Employment Standards Administration (ESA) and OSHA with regard to these two OSHA standards. OSHA is hereby amending pertinent sections of its regulations on approved State plans to reflect this relinquishment of State jurisdiction and transfer of OSHA enforcement authority to ESA in these nine (9) States.

B. General

1. Camps which move regularly due to the nature of the work, such as sheep or cattle camps, are exempt from this Part.

2. Each structure made available for occupancy shall comply with the requirements of the applicable building, zoning, electrical, health, fire, and animal control codes and all local ordinances.

3. Labor camp sites shall be constructed to provide adequate surface drainage and shall be isolated at least 100 feet from barnyards, corrals and any existing or potential health hazard.

4. Each structure made available for occupancy shall be of sound construction, shall assure adequate protection against weather, and shall include essential facilities to permit maintenance in a clean and operable condition. Comfort and safety of occupants shall be provided for by adequate heating, lighting, ventilation or insulation when necessary to reduce excessive heat. Total window area in permanent structures should be equal to at least 10 percent and in no case less than 5 percent of the floor area. Windows shall be openable and screened or mechanical ventilation must be provided.

5. Floors, walls and ceilings in permanent and semipermanent structures shall be of smooth, nonabsorbent easily cleanable materials, kept clean and in good repair.

6. In dormitory type facilities beds shall be separated by a horizontal distance of at least five (5) feet, reducible to three (3) feet if beds are alternated head to foot, except in the case of double deck bunks, which shall have a minimum horizontal separation of six (6) feet under all circumstances. If suitable permanent partitions are installed between beds, spacing requirements may be modified upon approval of the health department having jurisdiction.

7. All combustion type room heating devices shall be

supplied with proper vent pipes. Gas fired facilities shall meet standards of the American Gas Association.

8. All service buildings shall:

a. Be located not less than 15 feet and not more than 500 feet from any sleeping quarters served.

b. Where practical, be of permanent construction, and be provided with adequate light, heat and ventilation.

c. Have interiors of smooth, moisture resistant material, to permit frequent washing and cleaning.

d. Have all outer openings effectively screened.

e. Where electric power is available, service buildings shall be provided with outside lighting to indicate the location and entrance doorways of each.

C. Water Supply

1. Potable water supply systems for labor camp occupants shall meet the requirements of the Utah State rules and regulations relating to public drinking water supplies.

2. In addition to the requirements of the rules and regulations relating to public drinking water supplies the design of water system facilities shall be based on the suppliers engineer's estimates of water demands, but shall in no case be less than Source Capacity of 50 gallons per day per person and Storage Volume of 25 gallons per person. Distribution System Capacity shall maintain a water system pressure in excess of 20 psi at all points in the distribution system during peak hourly flow conditions. Noncommunity systems in remote areas can be exempted from this requirement, on a case by case basis, if flow from the system is always unregulated and free flowing. The peak hourly flow should be calculated for the number of fixture units presented in the Utah Plumbing Code.

3. The source and storage requirements as indicated above do not include water demands for outside use or fire protection. However, if the culinary system is intended to provide water for such uses, the water requirements indicated above must be appropriately increased. Specific information on watering requirements (e.g. area of land to be irrigated) must be provided for Department of Health review.

4. Construction of a public drinking water supply system intended to serve occupants of any labor camp shall not commence until plans prepared by a licensed professional registered engineer have been submitted to and approved in writing by the Utah State Department of Health. Following construction the system may not be placed in service until a final inspection is made by a representative of the Utah State Department of Health or the local health department having jurisdiction.

5. Any culinary system or portion thereof that is drained seasonally must be cleaned, flushed, and disinfected prior to use. Furthermore, a water sample of satisfactory bacteriologic quality, i.e. a sample showing not more than one coliform bacteria per 100 ml sample, must be obtained before being placed into service. Systems operated on a seasonal basis may be required to sample for bacteriologic analysis at an accelerated frequency as determined by the health department having jurisdiction.

6. In any labor camp where it is infeasible to pipe water into the area, an alternate supply may be permitted upon approval of the health department having jurisdiction.

D. Wastewater Disposal

1. All wastewater shall be discharged to a public sewer system where accessible and within 300 feet of the labor camp property line.

2. Where connection to a public sewer is not available, wastewater shall be discharged into a wastewater disposal system meeting requirements of the Utah State Code of Waste Disposal Regulations. Unless water usage rates are available, design shall be based on not less than 50 gallons per day per person.

3. All plans for the construction or alteration of a wastewater disposal system shall initially be submitted to the local health department having jurisdiction. Where plan approval is required by law to be provided by the State Department of Health, such plans will be forwarded by the local authority along with any appropriate comments. Construction or alteration of the disposal system shall not commence until the plans have been approved in writing by the appropriate health agency.

E. Toilet Facilities and Plumbing.

1. Wherever toilet facilities for males and females are located in the same building, and adjacent to each other, they shall be separated by a sound resistant wall. Direct line of sight to each restroom entrance shall be effectively obstructed. Separate facilities for men and women are not required in single family quarters.

2. Soap and toilet tissue in suitable dispensers, and individual towels or other approved hand drying facilities shall be provided in restrooms. The use of common towels in connection with such facilities is prohibited except in single family quarters.

3. Suitable waste receptacles with lids shall be provided for each restroom.

4. Adequate plumbing fixtures shall be available to all labor camp occupants as required below:

TABLE 1

REQUIRED RATIO OF PLUMBING FIXTURES - LABOR CAMP OCCUPANTS FOR SERVICE BUILDINGS

Plumbing Fixtures	Ratio of Plumbing Fixtures for Labor Camp Occupants(1)	
	Males	Females
Water Closets	1/10	1/8
Urinals(2)	1/25	---
Lavatories	1/12	1/12
Shower/Bath	1/8	1/8

(1) or fraction thereof.
(2) one unit for each 25 men or fraction thereof, up to 150 men, after which one additional unit shall be provided for each 50 persons.

5. Plumbing fixtures which normally require water for their operation shall be supplied with an adequate potable water supply under pressure. Water will be provided for showers and lavatories at a minimum temperature of 90

degrees F.

6. In camps where dormitory facilities are provided or where individual family units are not plumbed, sanitary drinking fountains shall be conveniently located.

7. Where water cannot be made available, exceptions to the above requirements may be granted upon approval of the Director or local health authorities having jurisdiction.

8. All plumbing in labor camps shall comply with provisions of Utah Plumbing Code, and applicable local plumbing codes.

9. Essential laundering facilities shall be available to camp occupants and if included as part of the labor camp facilities shall provide for each 40 occupants, or fraction thereof, at least one laundry tray, washtub, or washing machine served with an adequate supply of water.

F. Maintenance

1. The employer has the duty of controlling the conduct of camp occupants and shall make at least one daily inspection of the entire camp while in operation, for these purposes. All camp toilet and washroom facilities shall be inspected as necessary.

2. All buildings, rooms and equipment and the grounds surrounding them shall be maintained in a clean and operable condition and be protected from rubbish accumulation.

3. All necessary means shall be employed to eliminate and control any infestations of insects and rodents within all parts of any labor camp. This shall include approved screening or other control of outside openings in structures intended for occupancy or food service facilities.

4. Each bed, bunk, cot or other sleeping facility for use by occupants shall be maintained in a sanitary condition.

G. Food Service

1. All food, food service employees, ice, vending machines, food storage, preparation and serving facilities made available by the camp management except those restricted to individual or single family quarters shall comply with the requirements of the Utah State Food Service Sanitation Regulations.

2. Where occupant is permitted or required to cook foods, a space for kitchen facilities shall be provided, and shall be equipped with a cooking stove in good working order and with adequate and sufficient fuel, a kitchen sink, a refrigerator and convenient storage space for food and necessary utensils. All food items provided by camp management shall be wholesome and suitable for human consumption.

H. Solid Wastes.

Solid wastes originating in any labor camp shall be stored in a sanitary manner, in watertight containers with lids, or the equivalent, approved by the Local Health Department. The containers shall be conveniently located and the contents shall be disposed of in a manner approved by the State or Local Health Department having jurisdiction.

I. Reference Code.

1. Codes and regulations made part of these regulations by reference are:

a. Utah Plumbing Code

b. State of Utah Public Drinking Water Regulations

c. Food Service Sanitation Regulations

d. Code of Waste Disposal Regulations

e. Recreational Vehicle Park Sanitation Regulations.

f. FR Vol. 59, No. 137, Tuesday July 19, 1994, pages 36695 to and including 36700, "Retention of DOT Markings, Placards, and Labels; Final Rule" is incorporated by reference.

2. All are available on request to: Utah State Department of Health, Division of Environmental Health or the Labor Commission, Division of Occupational Safety and Health.

R614-3-15. Field Sanitation.

A. NOTE: FR Vol 62, No. 12, Friday, January 17, 1997, Pages 2558 to and including 2565, "Alaska, Indiana, Iowa, Kentucky, Minnesota, South Carolina, Utah, Virgin Islands and Wyoming State Plans; Approval of Plan Supplements; Levels of Federal Enforcement; Final Rule" is incorporated by reference.

This change amends OSHA's regulations to reflect the Assistant Secretary's decision approving amendments to nine (9) State plans to exclude coverage of the field sanitation standard and the temporary labor camp standard as it applies to agriculture (with the exception of temporary labor camps for employees engaged in egg, poultry or red meat production, or the post-harvest processing of agriculture or horticultural commodities) from their State Plans. The states of Alaska, Indiana, Iowa, Kentucky, Minnesota, South Carolina, Utah, Virgin Islands, and Wyoming have elected to follow the jurisdictional transfer of authority as effected by Secretary of Labor's Orders 5-96 and 6-96, published in the Federal Register on January 2, 1997, between the Employment Standards Administration (ESA) and OSHA with regard to these two OSHA standards. OSHA is hereby amending pertinent sections of its regulations on approved State plans to reflect this relinquishment of State jurisdiction and transfer of OSHA enforcement authority to ESA in these nine (9) States.

B. This Rule shall apply to any farming operation where 11 or more employees are engaged on any given day in hand labor operations in the field.

C. Employers shall provide the following for employees engaged in hand labor operations in the field, without cost to the employee.

1. Potable drinking water.

a. Potable water shall be provided and shall be placed in locations readily accessible to all employees.

b. The water shall be suitably cool and in sufficient amounts, taking into account the air temperature, humidity and the nature of the work performed, to meet employee's needs.

c. The water shall be dispensed in single use drinking cups or by fountains. The use of common drinking cups or dippers is prohibited.

2. Toilet and handwashing facilities.

a. One toilet facility and one handwashing facility shall be provided for each thirty (30) employees or fraction thereof, except as stated in (4).

b. Toilet facilities shall have doors that can be closed and latched from the inside and shall be constructed to insure

privacy.

c. Toilet and handwashing facilities shall be accessibly located, in close proximity to each other, and within one quarter (1/4) mile of each employee's place of work in the field. Where it is not feasible to locate facilities accessibly and within the required distance due to the terrain, they shall be located at the point of closest vehicular access.

d. Toilet and handwashing facilities are not required for employees who perform field work for a period of three (3) hours or less (including transportation time to and from the field) during the day.

3. Potable drinking water and toilet and handwashing facilities shall be maintained in accordance with appropriate public health sanitation practices, including the following:

a. Drinking water containers shall be covered, cleaned and refilled daily.

b. Toilet facilities shall be operational and maintained in clean and sanitary condition.

c. Handwashing facilities shall be maintained in clean and sanitary condition; and

d. Disposal of wastes from facilities shall not cause unsanitary conditions.

4. Employees shall be allowed reasonable opportunities during the workday to use the facilities.

R614-3-16. Slow Moving Vehicle.

A. Farm field equipment operated at a speed of 25 mph or less on a highway shall have lamps, reflectors and a slow moving vehicle emblem as required by the Utah Department of Public Safety or local law enforcement agency.

B. Every animal drawn vehicle shall be equipped with a slow moving vehicle emblem as required by the Utah Department of Public Safety or local law enforcement agency.

R614-3-17. Roll Over Protective Structures (ROPS) for Agricultural Tractors.

Agricultural tractors manufactured after October 25, 1976, shall meet the following requirements:

A. Roll over protective structure. Unless exempted under 51.4 a roll over protective structure (ROPS) shall be provided by the employer for each tractor operated by an employee. ROPS used on wheel type tractors shall meet the test and performance requirements of SAE J 1194 "Roll over Protective Structures (ROPS) for Wheeled Agricultural Tractors and SAE J 208d" Safety for Agricultural Equipment and ROPS used on track type tractors shall meet the test and performance requirements of UOSH Construction Standards Part 1000.

B. Exempted uses:

1. "Low profile" tractors while they are used in orchards, vineyards or hop yards where the vertical clearance requirements would substantially interfere with normal operations, and while their use is incidental to the work performed therein.

2. "Low profile" tractors while used inside a farm building or greenhouse in which the vertical clearance is insufficient to allow a ROPS equipped tractor to operate, and while their use is incidental to the work performed therein.

3. Tractors while used with mounted equipment which is incompatible with ROPS (e.g. cornpickers, cotton strippers, vegetable pickers and fruit harvesters.)

C. Seatbelts. Where the ROPS are required by this section, the employer shall:

1. Provide each tractor with a seatbelt which meets the requirements of 51.5.

2. Instruct each employee in the use of seatbelts to ensure use while the tractor is moving.

D. ROPS equipped tractors shall be fitted with seat belt assemblies (Type 1) conforming to the following: SAEJ114, J117, J140a, J141, J339a, and J800c, except as noted hereafter.

1. Where a suspended seat is used, the seat belt shall be fastened to the movable portion of the seat to accommodate the ride motion of the operator.

2. The seat belt anchorage shall be capable of withstanding a static tensile force of 4448N (1000 lbf) at 45 degrees to the horizontal equally divided between the anchorages. The seat mounting shall be capable of withstanding this force plus a force equal to four times the force of gravity on the mass of all applicable seat components applied 45 degrees to the horizontal in a forward and upward direction. In addition, the seat mounting shall be capable of withstanding 2224N (500 lbf) belt force plus two times the force of gravity on the mass of all applicable seat components both applied at 45 degrees to the horizontal in an upward and rearward direction. Floor and seat deformation is acceptable provided there is no structural failure or release of the seat adjuster mechanism or other locking device. The seat adjuster or locking device need not be operable after application of the test load.

E. Protection from spillage. Batteries, fuel tanks, oil reservoirs, and coolant systems shall be constructed and located or sealed to assure that spillage will not occur which may come in contact with the operator in the event of an upset.

F. Protection from sharp surfaces. All sharp edges and corners at the operator's station shall be designed to minimize operator injury in the event of an upset.

G. Remounting. Where ROPS are removed for any reason, they shall be remounted so as to meet the requirements of this paragraph.

H. Labeling. Each ROPS shall have a label, permanently affixed to the structure, which states:

1. Manufacturer's or fabricator's name and address;

2. ROPS model number, if any;

3. Tractor makes, models, or series numbers that the structure is designed to fit; and

4. That the ROPS model was tested in accordance with the requirements of this rule.

I. Operating Instructions. Every employee who operates an agricultural tractor shall be informed of the operating practices listed below and of any other practices dictated by the work environment. Such information shall be provided at the time of initial assignment and at least annually thereafter.

TABLE 2

EMPLOYEE OPERATING INSTRUCTIONS

1. Securely fasten your seat belt if the tractor has a ROPS.
2. Where possible, avoid operating the tractor near ditches, embankments, and holes.
3. Reduce speed when turning, crossing slopes, and on rough, slick, or muddy surfaces.
4. Stay off slopes too steep for safe operation.
5. Watch where you are going, especially at row ends, on roads, and around trees.
6. Do not permit others to ride.
7. Operate the tractor smoothly, no jerky turns, starts, or stops.
8. Hitch only to the drawbar and hitch points recommended by tractor manufacturers.
9. When tractor is stopped, set brakes securely and use park lock if available.

R614-3-18. Guarding of Farm Field Equipment, Farmstead Equipment.

A. This section applies to all farm field equipment and farmstead equipment manufactured after October 25, 1976. Equipment manufactured prior to that date shall meet the manufacturers specifications for guards.

B. Operating instructions. At the time of initial assignment and at least annually thereafter, the employer shall instruct every employee in the safe operation and servicing of all covered equipment with which he is or will be involved, including at least the following safe operating practices:

1. Keep all guards in place when the machine is in operation.

2. Permit no riders on farm field equipment other than persons required for instruction or assistance in machine operation;

3. Stop engine, disconnect the power source, and wait for all machine movement to stop before servicing, adjusting, cleaning, or unclogging the equipment, except where the machine must be running to be properly serviced or maintained, in which case the employer shall instruct employees as to all steps and procedures which are necessary to safely service or maintain the equipment;

4. Make sure everyone is clear of machinery before starting the engine, engaging power, or operating the machine;

5. Lock out power before performing maintenance or service on farmstead equipment.

C. Methods of guarding. Each employer shall protect employees from coming into contact with hazards created by moving machinery parts as follows:

1. Through the installation and use of a guard or shield or guarding by location.

2. Whenever a guard or shield or guarding by location is infeasible, by using a guardrail or fence.

D. Strength and design of guards.

1. Where guards are used to provide the protection required by this section, they shall be designed and located to protect against inadvertent contact with the hazard being guarded.

2. Unless otherwise specified, each guard and its supports shall be capable of withstanding the force that a 250 pound individual, leaning on or falling against the guard, would exert upon that guard.

E. Guards shall be free from burrs, sharp edges, and sharp corners, and shall be securely fastened to the equipment or building.

F. Guarding by location. A component is guarded by location during operation, maintenance, or servicing when, because of its location, no employee can inadvertently come in contact with the hazard during such operation, maintenance, or servicing. Where the employer can show that any exposure to hazards results from employee conduct which constitutes an isolated and unforeseeable event, the component shall also be considered guarded by location.

G. Guarding by railings. Guardrails or fences shall be capable of protecting against employees inadvertently entering the hazardous area.

H. Servicing and maintenance. Whenever a moving machinery part presents a hazard during servicing or maintenance, the engine shall be stopped, the power source disconnected, and all machine movement stopped before servicing or maintenance is performed, except where the employer can establish that:

1. The equipment must be running to be properly serviced or maintained;

2. The equipment cannot be serviced or maintained while a guard or guards otherwise required by this standard are in place; and

3. The servicing or maintenance can be safely performed.

I. Farm field equipment

1. Power take off guarding. All power take off shafts, including rear, mid or side mounted shafts, shall be guarded either by a master shield or by other protective guarding.

a. All tractors shall be equipped with an agricultural tractor master shield on the rear power take off except where removal of the tractor master shield is permitted by (2). The master shield shall have sufficient strength to prevent permanent deformation of the shield when a 250 pound operator mounts or dismounts the tractor using the shield as a step.

b. Power take off driven equipment shall be guarded to protect against employee contact with positively driven rotating members of the power drive system. Where power take off driven equipment is of a design requiring removal of the tractor master shield, the equipment shall also include protection from that portion of the tractor power take off shaft which protrudes from the tractor.

c. Signs shall be placed at prominent locations on tractors and power take off driven equipment specifying that power drive system safety shields must be kept in place.

2. Other power transmission components.

a. The mesh or nip points of all power driven gears, belts, chains, sheaves, pulleys, sprockets, and idlers shall be guarded.

b. All revolving shafts, including projections such as bolts, keys, or set screws, shall be guarded, except smooth shaft ends protruding less than one half the outside diameter of the shaft and its locking means.

c. Ground driven components shall be guarded if any employee may be exposed to them while the drives are in motion.

3. Functional components. Functional components, such as snapping or husking rolls, straw spreaders and choppers, cutterbars, flail rotors, rotary beaters, mixing augers, feed rolls, conveying augers, rotary tillers, and similar units, which must be exposed for proper function, shall be guarded to the fullest extent which will not substantially interfere with normal functioning of the component.

4. Access to moving parts. Guards, shields, and access doors shall be in place when the equipment is in operation. Where removal of a guard or access door will expose an employee to any component which continues to rotate after the power is disengaged, the employer shall provide, in the immediate area, the following:

a. A readily visible or audible warning of rotation; and

b. A safety sign warning the employee to look and listen for evidence of rotation and not remove the guard or access door until all components have stopped.

J. Farmstead equipment.

1. Power take off guarding.

a. All power take off shafts, including rear, mid, or side mounted shafts, shall be guarded either by a master shield or other protective guarding.

b. Power take off driven equipment shall be guarded to protect against employee contact with positively driven rotating members of the power drive system.

c. Where power take off driven equipment is of a design requiring removal of the tractor master shield, the equipment shall also include protection from that portion of the tractor power take off shaft which protrudes from the tractor.

d. Signs shall be placed at prominent locations on power take off driven equipment specifying that power drive system safety shields must be kept in place.

2. Other power transmission components. The mesh or nip points of all power driven gears, belts, chains, sheaves, pulleys, sprockets, and idlers shall be guarded. All revolving shafts, including projections such as bolts, keys, or set screws, shall be guarded, with the exception of:

a. Smooth shafts and shaft ends (without any projecting bolts, keys, or set screws), revolving at less than 10 rpm, on feed handling equipment used on the top surface of materials in bulk storage facilities; and

b. Smooth shaft ends protruding less than one half the outside diameter of the shaft and its locking means.

3. Functional components, such as choppers, rotary beaters, mixing augers, feed rolls, conveying augers, grain spreaders, stirring augers, sweep augers, and feed augers, which must be exposed for proper function, shall be guarded to the fullest extent which will not substantially interfere with the normal functioning of the component. All accessible screw conveyors shall be guarded by substantial covers or gratings, or with an inverted horizontally slotted guard of the trough type, which will prevent employees from coming into contact with the screw conveyor. Such guards may consist of horizontal bars spaced so as to allow material to be fed into the conveyor, and supported by arches which are not more than 8 feet apart. Screw conveyors under gin stands shall be considered guarded by location.

4. Sweep arm material gathering mechanisms used on the top surface of materials within silo structures shall be guarded. The lower or leading edge of the guard shall be located no more than 12 inches above the material surface and no less than 6 inches in front of the leading edge of the rotating member of the gathering mechanism. The guard shall be parallel to, and extend the fullest practical length of, the material gathering mechanism.

5. Exposed auger flighting on portable grain augers shall be guarded with either grating type guards or solid baffle type covers as follows:

a. The largest dimensions or openings in grating type guards through which materials are required to flow shall be 4-3/4 inches. The area of each opening shall be no larger than 10 square inches. The opening shall be located no closer to the rotating flighting than 2-1/2 inches.

b. Slotted openings in solid baffle type covers shall be no wider than 1-1/2 inches, or closer than 3-1/2 inches to the exposed flighting.

6. Access to moving parts. Guards, shields, and access doors shall be in place when the equipment is in operation. Where removal of a guard or access door will expose an employee to any component which continues to rotate after the power is disengaged, the employer shall provide, in the immediate area, the following:

a. A readily visible or audible warning of rotation; and

b. A safety sign warning the employee to:

(1) look and listen for evidence of rotation; and

(2) not remove the guard or access door until all components have stopped.

K. Electrical disconnect means. Application of electrical power from a location not under the immediate and exclusive control of the employee or employees maintaining or servicing equipment shall be prevented by:

1. providing an exclusive, positive, locking means on the main switch which can be operated only by the employee or employees performing the maintenance or servicing; or

2. there is an electrical disconnect switch available to the employee within 15 feet of the equipment upon which maintenance or service is being performed; and

3. a sign is prominently posted near each hazardous component which warns the employee that unless the electrical disconnect switch is utilized, the motor could automatically reset while the employee is working on the hazardous component.

R614-3-19. Electrical.

A. Electrical installation shall conform to the requirements of the local authority having jurisdiction provided that the requirements are substantially similar to the latest published addenda or revision of the National Electrical Code, ANSI/NFPA 70 and Standard for Electrical Safety Requirements for Employees Work Places ANSI/NFPA 70e.

B. Protection of Employees.

1. The employer shall inspect all electrical installations and utilization equipment as necessary to maintain it in good repair. Any damage which may be a hazard to employees shall be repaired prior to use by an employee.

2. No employer shall permit an employee to work or operate equipment within 10 feet of an electrical power circuit to which contact may be made, unless:

a. The employee is protected against electrical shock by deenergizing the circuit and grounding it or by guarding it by effective insulation or other means.

b. The employee is trained in recognition and avoidance of hazards associated with electrical circuits.

3. No employee shall be permitted or required to use electrical utilization equipment that is not intrinsically safe and approved for the location.

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R614. Labor Commission, Occupational Safety and Health.
R614-4. Hazardous Materials.
R614-4-1. Flammable Solids.

A. No source of ignition shall be permitted in locations where a hazard of dust explosion might exist until all dust producing operations have been stopped, airborne dust allowed to settle, and accumulated dusts and closed dust containers removed to an extent which will remove the hazard of dust explosion. A well administered flame permit system shall be established requiring inspection and approval by a responsible person prior to allowing spark or flame producing devices into such areas.

B. Adequate separators shall be provided to prevent iron, rocks or other sparking materials from entering, grinding, shredding, pulverizing or mixing where a hazard of dust explosion exists.

C. Machines and equipment in which the hazard of a dust explosion exists shall be so located, constructed, enclosed or vented that the force of an explosion in the machine or equipment may be dissipated without endangering employees in the regular performance of their duties.

D. Dust collectors for combustible dusts which present an explosion hazard shall be located outdoors or in detached rooms of fire resistant construction and shall be provided with adequate explosion vents, except that liquid spray type collectors may be located within buildings. Care must be exercised in the selection of liquid dust collectors.

E. Ignition by static sparks is an extreme hazard in the processing of metal powders. In addition to electrically grounding and crossbonding of all equipment, floor surfaces shall be electrically conductive and employees shall be equipped with conductive footwear. Floors shall not exceed 250,000 ohms resistance to ground. Maintaining a relative humidity between 55 and 60 percent aids in eliminating static buildup; however, relative humidity level is not a positive means of eliminating static electricity hazards. A high relative humidity shall not be used in rooms used to store, handle or process materials which are affected by moisture such as metal dusts.

F. Extreme care shall be exercised in the processing and storage of metal powders such as aluminum and magnesium to prevent water contact with the materials. Moisture reacts with powdered metals and generates hydrogen gas which is highly explosive. Materials shall be stored in tightly sealed containers and shall be brought to ambient temperatures prior to opening to prevent condensation inside the container.

G. Provisions not covered by this section shall be carried out according to the National Fire Code, Volume 3, 1992, Combustible Solids and dust Explosions, or the latest addenda or revision of that code. National fire prevention codes are also distributed as ANSI Z-12.

R614-4-2. Definitions.

A. General Definitions

1. "Act" means the Utah Occupational Safety and Health Act of 1973.

2. "Administration" means the Division of Occupational Safety and Health of the Labor Commission, also known as UOSH (Utah Occupational Safety and Health).

3. "Administrator" means the director of the Division of Occupational Safety and Health.

4. "Commission" means the Labor Commission.

5. "Employee" includes any person suffered or permitted to work by an employer.

6. "Employer" means:

a. The state;

b. Each county, city, town, and school district in the state; and

c. 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.

B. Explosives Definitions

1. "American Table of Distances" also known as Quantity Distance Tables - means American Table of Distances for Storage of Explosives as revised and approved by the Institute of the Makers of Explosives, November 5, 1971.

2. "Ammonium nitrate" - A chemical compound represented by the formula NH_4NO_3.

3. "Ammunition" - All components and any explosives case or contrivance prepared to form a charge, complete round, or cartridge for cannon, howitzer, mortar, or small arms, or for any other weapon, torpedo warhead, mine, depth charge, demolition charge, fuse, detonator, projectile, grenade, guided missile, rocket, pyrotechnics; and all chemical agents, fillers and associated hazardous materials.

4. "Ammunition and explosive materials operating area" - A restricted area specifically designed and set aside from other positions of an installation for the manufacturing, processing, storing and otherwise handling of ammunition or explosive materials.

5. "Approved" or "approval" - Means sanctioned, endorsed, accredited, certified, or accepted as satisfactory by a duly constituted and nationally recognized authority or agency.

6. "Authorized person" - Means a person approved or assigned by the employer to perform a specific type of duties or to be at a specific location or locations at the job site.

7. "Barricaded" - An intervening approved barrier, natural or artificial, of such type, size and construction as to limit the effect of an explosion on nearby buildings or exposures.

8. "Blasting agent" - Any material or mixture, consisting of fuel and oxidizer, intended for blasting, not otherwise defined as an explosive. Provided, that the finished product as mixed for use or shipment, cannot be detonated by means of a number 8 test blasting cap when unconfined.

9. "Blast area" - The area of a blast, including the area immediately adjacent, within the influence of flying rock missiles.

10. "Blaster" - The person or persons authorized to use explosives for blasting purposes and meeting the qualifications contained in Part 109.22.2.

11. "Blasting cap" - A metallic tube closed at one end, containing a charge of one or more detonating compounds, and designed for and capable of detonation from the sparks or flame from a safety fuse inserted and crimped into the open end.

12. "Bulk mix delivery equipment" - Equipment (Usually a motor vehicle with or without mechanical delivery device) that transports materials in bulk form for mixing, or loading directly into blast holes, or both.

13. "Bus wire" - An expendable wire, used in parallel or series in parallel circuits, to which are connected the leg wires of electric blasting caps.

14. "Compatibility" - The ability of explosives, explosive materials, ingredients or compositions to remain unaffected when in contact with other materials or containers.

15. "Connecting wire" - An insulated expendable wire used between electric blasting caps and the leading wires or between the bus wire and the leading wires.

16. "Deflagration" - A very rapid combustion, sometimes accompanied by flame, sparks, or spattering of burning particles. Although classed as an explosion a deflagration generally implies the burning of a substance with self-contained oxygen so that the reaction zone advances into the unreacted material at less than the velocity of sound.

17. "Delay mechanism" - A mechanism designed to initiate detonation at a predetermined period of time after energy is applied to the ignition system.

18. "Detonate or detonation" - To be changed by exothermic chemical reaction usually from a solid or liquid to a gas with such rapidity that the rate of advance of the reaction zone into the unreacted material exceeds the velocity of sound in the unreacted material; that is, the advancing reaction zone is preceded by a shock wave.

19. "Detonating cord" - A flexible cord containing a center core of high explosive and used to initiate other explosives.

20. "Detonator" - Any device containing a detonating charge that is used for initiating detonation in an explosive; the term includes, but is not limited to, electric blasting caps of instantaneous and delay types, and the non-electric instantaneous and delay blasting caps.

21. "Electric blasting cap" - A blasting cap designed for and capable of detonation by means of an electric current.

22. "Emulsion explosive" - An explosive material containing substantial amounts of oxidizers dissolved in water droplets surrounded by an immiscible fuel: May be classified as Explosives Class A, Explosives Class B, or blasting agents.

23. "Explosive" - The term explosive includes any chemical compound or mechanical mixture which, when subjected to heat, impact, friction, detonation or other suitable initiation, undergoes a very rapid chemical change with the evolution of large volumes of highly heated gases which exert pressures in the surrounding medium. The term applies to materials that either detonate or deflagrate.

24. "Class A Explosives" - Explosives which possess detonating or otherwise maximum hazard; such as, but not limited to, dynamite, nitroglycerin, lead azide, blasting caps and detonating primers.

25. "Class B Explosives" - Explosives which possess flammable hazard; such as, but not limited to, propellant explosives, photographic flash powders, and some special fireworks.

26. "Class C Explosives" - Explosives which contain Class A or Class B explosives, or both, as components but in restricted quantities.

27. "Explosive Materials" - These include explosives, blasting agents and detonators. This term includes, but is not limited to, dynamite and other high explosives, slurrys, emulsions, water gels, blasting agents, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniter cord, igniters, pyrotechnics, pyrotechnic compositions, fireworks (special and common), ammunition, propellent and propellent compositions.

28. "Fireworks" - A common synonym for Pyrotechnics (special and common).

Special Fireworks - are Class B explosives as defined by the U.S. Department of Transportation.

Common Fireworks - are Class C explosives as defined by the U.S. Department of Transportation.

29. "Fuse Lighters" - Special devices for the purpose of igniting safety fuse.

30. "Hazard" - A source of danger; exposure or liability to injury or harm.

31. "Inert" - Containing no explosives, active chemicals or pyrotechnics.

32. "Leading Wire" - An insulated wire used between the electric power source and the electric blasting cap circuit.

33. "Magazine" - Any building or structure or container other than an explosives manufacturing building approved for the storage of explosive materials.

34. "Mass Detonation" - Mass Explode - The virtually instantaneous explosion of a mass of explosives when only a small portion is subjected to fire, severe concussion or impact, the impulse of an initiating agent, or to the effect of a considerable discharge of energy from without.

35. "Misfire" - An explosive charge which failed to detonate.

36. "Motor Vehicle" - Any self-propelled vehicle.

37. "Oxidizer" or "Oxidizing Material" - A substance, such as a nitrate, that readily yields oxygen or other oxidizing substance to stimulate the combustion of organic matter or other fuel.

38. "Plant" - The land, buildings, and machinery used in carrying on a trade or business.

39. "Primer" - A cartridge or container of explosives into which a detonator is inserted or attached.

40. "Propellant" - An explosive material whose rate of

combustion is low enough, and its other properties suitable, to permit its use as a propelling charge. A propellant may be either solid or liquid. A single base propellant composition consists primarily of matrix of nitrocellulose. A double base propellant composition contains nitrocellulose and nitroglycerine. A composite propellant composition contains an oxidizing agent in a matrix of binder.

41. "Pyrotechnics or Pyrotechnic Compositions" - A mixture of materials consisting essentially of an oxidizing agent (oxident) and a reducing agent (fuel), that is capable of producing an explosive self sustaining reaction when heated to its ignition temperature; such as, but not limited to, devices used to produce sound, colored lights or smokes for signaling, a bright light for illumination, and time delays.

42. "Qualified" - Means one who, by possession of a recognized degree, certificate, or professional standing, or who by extensive knowledge, training, and experience, has successfully demonstrated his ability to solve or resolve problems relating to the subject matter, the work or the project.

43. "Restricted Area" - Any area, from which personnel, aircraft, or vehicles, other than required for operations, are excluded for reasons of safety and security.

44. "Safety Fuse" - A flexible cord containing an internal burning medium by which fire or flame is conveyed at a continuous and uniform rate from the point of ignition to the point of use, usually a detonator.

45. "Semiconductive Hose" - A hose with an electrical resistance high enough to limit flow of stray electric currents to safe levels, yet not so high as to prevent drainage of static electric charges to ground. Hose of not more than 2 megohms resistance over this entire length and of not less than 5,000 ohms per foot meets the requirement.

46. "Sensitivity" - A physical characteristic of an explosive material, classifying its ability to react to externally applied energy or changes in environment.

47. "Shield" - A safeguard securely braced and of a strength proven sufficient to withstand the effects of the maximum credible incident involving the item being handled.

48. "Slurry" - An explosive material containing substantial portions of a liquid, oxidizers, and fuel, plus a thickener. Slurrys may be classified as Explosives Class A, Explosives Class B, or Blasting Agents.

49. "Small Arms Ammunition" - Any shotgun, rifle, pistol, or revolver cartridge, and cartridges for propellant-actuated power devices and industrial guns.

50. "Small Arms Ammunition Primers" - Are small percussion-sensitive explosive charges, encased in a cup, used to ignite propellant powder.

51. "Smokeless Propellants" - Solid propellants, commonly called smokeless powders in the trade, used in small arms ammunition, cannon, rockets, propellant-actuated power devices, etc.

52. "Stability" - The ability of an explosive material to retain chemical and physical properties when exposed to specific environmental conditions over a particular period of time.

53. "Stemming" - A suitable inert or incombustible device used to confine or separate explosives in a drill hole, or to cover explosives in mudcapping.

54. "Substantial Dividing Wall" - A structure designed to resist the effects of accidental explosions or to prevent propagation of detonation by blast or fragments.

55. "Water Gels" - An explosive material containing substantial portions of water, oxidizers, and fuel, plus a cross-linking agent. Water gels may be classified as Explosives Class A, Explosives Class B, or Blasting Agents.

R614-4-3. Explosive Materials, Purpose Scope and Responsibility.

A. Purpose: To set forth safe practices and standards for work performed in the manufacture and use of explosives, explosive material, ammunition, pyrotechnics, and related materials.

B. Scope and Application: These standards shall apply to the manufacture, testing, research, storage and use of explosives, explosive material, ammunition, pyrotechnics, fireworks (special and common), propellants, propellent compositions and related materials within the boundaries of the State of Utah. These standards shall apply to employers who employ one or more employees. These standards shall not apply to the laboratories of schools and colleges when confined to educational purposes or to explosive materials in the forms prescribed by the official United States Pharmacopeia or the National Formulary and used in medicines and medicinal agents.

C. Responsibility: Prior to starting new operations, it shall be the responsibility of every manufacturer within the scope of this standard to notify in writing the Administrator of the Utah Occupational Safety and Health Division of the Labor Commission.

R614-4-4. Explosive Materials, General Requirements.

A. Any new or existing operation shall have written operating rules and practices developed and approved by management as being in accordance with this part. The operating rules and practices shall include but are not limited to such items as:

1. Safety requirements,
2. Personal protective clothing and equipment,
3. Personnel and explosive material limits,
4. Equipment designation, inspection and maintenance,
5. Location and sequence of operations,
6. Housekeeping procedures,
7. Mixing procedures,
8. Destruction or disposal of explosive material,
9. Test on product and ingredients for compatibility and sensitivity before production.

B. No deviations from the operating rules and practices shall be permitted without written management approval.

C. An emergency action plan shall be in writing and shall cover those designated actions employers and employees must take to ensure employee safety in emergencies (i.e., fire, explosion, and adverse weather conditions). The following elements, at a minimum, shall be included in the plan:

1. Emergency evacuation procedures and emergency escape route assignments;
2. Procedures to be followed by employees who remain

to operate critical operations or fight fires before they evacuate;

3. Procedures to account for all employees after emergency evacuation has been completed;

4. Rescue and medical duties for all employees after emergency evacuation has been completed;

5. The preferred means of reporting explosions, fires, and other emergencies;

6. Where fire departments or other agencies are depended on for emergency assistance, prior notice shall be given of potential hazards, and

7. Names or regular job titles of persons or departments to be contacted for further information or explanation of duties under the plan.

D. Employees shall be trained regarding pertinent requirements of R614-4-4.A.,B., and C.

E. Applicable portions of the operating rules and practices shall be convenient to all employees involved in the operation. Supervisory personnel shall maintain copies of the overall operating procedure and be responsible for the enforcement of its provisions.

F. Buildings on explosives materials plant sites shall be separated by minimum distances conforming to the requirements of the "Intra Plant Distance Table for Use only Within Confines of Explosives Manufacturing Plants" (See Appendix C and D); except those buildings or sites that meet the specific requirements of other organizations such as the Department of Defense.

G. Mixing facilities for blasting agents shall be separated from storage facilities and each other in accordance with the "Table of Separation Distances of Ammonium Nitrate and Blasting Agents from Explosives or Blasting Agents" (See Appendix B.).

H. All explosive material operations shall be scrutinized to devise methods for reducing the number of employees exposed, or the quantity of material subject to a single incident. Where necessary to protect employees, appropriate shields, substantial dividing walls or barricades shall be provided to shield employees from hazards; where this is not practicable, work by remote control shall be utilized.

I. An explosive material shall not be put in production unless safe working limits have been determined and posted. Operations shall be shut down whenever limits are exceeded.

J. Appropriate visual inspections shall be made of mixing, conveying, packaging, or other equipment to establish that such equipment is in safe operating condition. All problems relating to the safety of employees shall be corrected.

K. Floors and work surfaces in hazardous locations shall be constructed to facilitate cleaning and shall have no cracks or crevices in which explosive material may lodge.

L. Buildings shall be cleaned to prevent accumulations of explosive materials. Combustible or explosive waste shall be removed from buildings as often as necessary.

M. Explosive material spills shall be cleaned up immediately. An appropriate cleaning and collection system for hazardous residues shall be provided and used.

N. Waste explosives and materials contaminated with explosives shall be kept separate from all other waste.

O. Care shall be exercised so that foreign objects or materials do not get into explosive materials.

P. Appropriate tools and equipment shall be used in explosive materials operations.

Q. Only properly identified and inspected explosives materials shall be mixed.

R. Finished explosive materials shall be identified.

S. No person shall store, handle or transport explosives or materials when such storage handling, and transportation of explosives or material constitutes an undue hazard to life.

T. Explosive material areas shall be placarded at each entrance. Personnel entering these areas shall present the proper credentials and turn over all articles prohibited by management before entering the area. Plant boundaries shall be fenced unless topography and/or other physical considerations accomplish this; the boundaries of restricted areas shall be posted at intervals to warn against trespassing.

U. Parking of vehicles in restricted areas near explosives facilities shall be controlled to minimize fire and explosion hazards and prevent congestion in event of emergency. Vehicles shall be parked in designated areas only.

R614-4-5. Building Construction.

A. Buildings used for explosive materials shall be of a safe design for the materials being handled and shall be maintained in that condition.

B. Heating equipment shall be installed in a manner to prevent ignition, deflagration or explosion of the materials being handled.

C. Buildings where dust, fumes, or vapors are possible shall be adequately ventilated, at the source of the hazard. Exhaust fans through which combustible dust or flammable vapors pass shall be equipped with nonsparking blades (or casing lined with nonsparking material) and approved motors. The entire ventilating system shall be bonded electrically and grounded properly.

D. Cleaning and collection systems shall be installed and maintained in a manner that takes into consideration the materials being handled.

R614-4-6. Electrical.

A. All electrical switches, controls, motors, wiring and equipment located in explosive material plants shall conform to the requirements of 29 CFR 1910 Chapter S (Electrical).

B. In any operations where a continuous supply of power is required, the lack of which may cause a hazard to employees an alternate source of power shall be provided.

C. The primary electrical supply to an explosives area shall be so arranged that it can be cut off by switches located at one or more central points away from the area.

D. When static electricity is a hazard nonsparking conductive floors and work surfaces or other approved methods to control and disperse static electricity is required, continuity of grounding on all mechanical devices shall be assured.

E. Only artificial lighting devices approved for the location shall be permitted in explosive areas.

R614-4-7. Fire, and/or Explosion Prevention.

A. No person shall take matches, lighters or other fire, flame, heat or spark producing devices into any restricted area containing ammunition, explosive material or readily ignitable flammable materials except by written authorization. When such authority has been received, a carrying device, too large to fit into the pockets, shall be used for matches, lighters, and similar materials. The carrying of and the use of "strike anywhere" matches are prohibited.

B. An employee whose clothing is contaminated with explosive or flammable material to the degree that it may endanger the safety of the employee shall not smoke, go near fire, open flame or spark producing devices.

C. Smoking is prohibited except in designated smoking areas.

D. The land within 25 feet of any explosive material manufacturing or mixing building shall be kept clear of rubbish, brush, dried grass, leaves, dead trees, all live trees less than 10 feet high, and other combustible materials.

R614-4-8. Protective Clothing and Equipment.

A. Management shall assure that appropriate protective clothing, eye and face protection equipment, and respiratory protection equipment, where necessary to protect the safety and health of employees, shall be used and employees trained in their use.

B. When required by exposure, a shower bath shall be taken at the end of each shift.

C. Shoes shall be cleaned before entering or leaving explosive materials buildings.

D. Contaminated work clothing and shoes shall not be worn off the plant site.

E. Employees who work upon conductive flooring, conductive mats, or conductive runners where explosive materials or flammable vapors are present must wear non-sparking conductive footwear and the conductivity shall be assured. Personnel from other departments or visitors who enter these areas shall also comply (See ANSI/UL 467-1972 Grounds and Grounding and ANSI Z41.3-1976 Conductive Safety-Toe Footwear).

F. Under no circumstances will personnel working on electrical equipment or facilities wear conductive-soled safety shoes or other conductive footwear.

G. Operational safety showers and eye wash facilities, clearly identified, shall be provided in case of contact with corrosives. All personnel employed in corrosive areas shall know the location of safety showers and eye wash facilities and be trained in their use.

R614-4-9. Intra Plant Transportation.

A. When moving explosive materials, the material shall be in acceptable containers, and covered when necessary.

B. Only authorized employees shall operate motorized equipment.

C. Vehicles used for the transportation of explosives shall be of a design to safely handle the material being moved.

R614-4-10. Explosive Materials Ingredient Preparation Operations.

A. When explosive material ingredients are susceptible to ignition by static electricity, shock, friction, spontaneous combustion, or incompatibility, adequate precaution shall be taken.

B. Blending or mixing equipment shall be of a construction suitable for the hazards of the materials being handled or processed.

C. Drive equipment for explosive material blenders, mixers, presses (hydraulic), screeners (mechanical), and other equipment shall be so designed that drive motors and pumps are located outside of the operating room in a dust-free and vapor-free atmosphere.

D. When materials are dried, the safe temperature for drying shall be established and then not exceeded at any point in the dryer apparatus or drying operation.

E. Containers used for handling oxidizers such as sodium nitrate and ammonium nitrate shall be examined for foreign material before use.

F. When necessary, screening of raw materials shall be supplemented by a permanent type magnetic separator.

G. Sulfur shall be handled so as to avoid friction and static electricity ignition.

H. Nitrocotton shall not be subjected to rough handling.

I. Extreme cleanliness shall be maintained in all nitrocotton operations. Any material that has escaped from its container shall be wet down immediately with water for proper disposal. Waste or dirty nitrocotton shall be properly disposed of.

J. Hoops and nuts on nitrocotton barrels or containers shall be wet with water or oil prior to removing them and prior to placing them back on the containers.

K. Nitrocotton shall be stored in closed containers.

L. Frozen nitrocotton shall be thawed before removing from drums.

M. Nitrocotton shall be screened before use; screens shall be of non-sparking material and grounded.

N. Nitrocotton containing less than 25% moisture shall not be screened.

O. Partially filled drums of nitrocotton or similar materials shall be closed to prevent evaporation of moisture.

P. Empty drums shall be thoroughly cleaned of nitrocotton, inside and out.

R614-4-11. Maintenance and Repairs.

A. Repairs to explosive material, machinery or buildings shall not be made without prescribed cleanup, decontamination and approval by authorized supervisory personnel.

B. All new or newly repaired process equipment used in explosive material operations shall be examined and test operated before being placed into routine operation.

C. All tools used for lubrication, repairs or adjustment of explosive material equipment shall be removed from the building or returned to their proper location before routine operations are started or resumed.

D. Refueling shall comply with 29 CFR 1910.106.

R614-4-12. Storage of Explosive Material.

A. Explosives and related materials shall be stored in approved facilities required under the applicable provisions of

27 CFR 55 Commerce in Explosives, and/or the applicable provisions of the U.S. Department of Defense Regulations.

B. All explosive materials shall be stored in an approved magazine or area unless they are in process, being used or being loaded or unloaded into or from transportation vehicles or while in the course of transportation.

R614-4-13. Transportation of Explosive Material.

Transportation of explosives shall meet all the provisions of the U.S. Department of Transportation and/or Utah Department of Transportation.

R614-4-14. Blasting Agents.

A. General. Unless otherwise set forth in this rule, blasting agents, excluding slurry, water gels, and emulsions, shall be manufactured, transported, stored, and used in accordance with these regulations. Slurry, water gels, and emulsion are covered in R614-4.

B. Fixed Location Mixing.

1. Buildings or other facilities used for the mixing of blasting agents shall conform to the following minimum requirements.

2. Buildings shall be of noncombustible construction or sheet metal on wood studs.

3. Floors shall be of concrete or other non-absorbent material. They shall be constructed without enclosed floor drains and piping into which molten materials could flow and be confined in case of fire.

4. All fuel oil storage facilities, including heating oil and process oil, shall be separated from the mixing plant, and located in such a manner that in case of tank rupture the oil will drain away from the mixing plant, or diked in a manner to contain the tank contents in case of rupture.

5. The building shall be well ventilated (See R614-4-5.C.)

6. Only heating units which do not depend on combustion processes, properly designed and located, may be used in the plant. Electric heaters with exposed resistance elements are prohibited. All direct sources of heat shall be provided from units located outside the mixing building.

7. All internal-combustion engines, such as diesel or gasoline-powered generators, shall be located outside the mixing building, or shall be properly ventilated and isolated by a permanent firewall. The exhaust systems on all such engines shall be provided with spark arrester mufflers, or be remotely located, so that any spark emission will not be a hazard to any materials in or adjacent to the building.

C. Equipment used for mixing blasting agents shall conform to the requirements of this subdivision.

1. The design of the processing equipment, including mixing and conveying equipment, shall be compatible with the relative sensitivity of the materials being handled. Equipment shall be designed to minimize the possibility of frictional heating, compaction, overloading, accumulation of dust, and confinement. All bearings and drive assemblies shall be mounted outside the mixer. All surfaces shall be accessible for cleaning. All hollow shafts shall be constructed to permit venting with an opening of at least 1/2 inch diameter.

2. Both equipment and handling procedures shall be designed to prevent the introduction of foreign objects or materials.

3. Mixers, pumps, valves and related equipment shall be designed to permit regular and periodic flushing, cleaning, dismantling and inspection.

4. All electrical equipment, including wiring, switches, controls, motors and lights which is located inside the mixing room shall conform to the requirements of 29 CFR 1910 Subpart S for Class II, Division 2 locations.

5. Mixing and packaging equipment shall be constructed of materials compatible with the materials being handled.

6. Suitable means shall be provided to prevent the flow of fuel to the mixer in case of fire. In gravity flow systems, an automatic spring-loaded shut-off valve with fusible link shall be installed.

D. The provisions of this subdivision shall be considered when determining blasting agent compositions.

1. The sensitivity of the blasting agent shall be determined by means of a No. 8 test blasting cap at regular intervals and after every change in formulations.

2. Oxidizers of small particle size, such as crushed ammonium nitrate prills or fines, may be more sensitive than coarser products and shall, therefore, be handled with greater care.

3. No hydrocarbon liquid fuel with flashpoint lower than that of no. 2 diesel fuel oil 125 degrees F. minimum shall be used.

4. Crude oil and crankcase oil shall not be used.

5. Metal powders such as aluminum shall be kept dry and shall be stored on containers or bins which are moisture-resistant or weather-tight. Solid fuels shall be used in such manner as to minimize dust explosion hazards.

6. Peroxides and chlorates shall not be used.

E. Mixing Operations

1. Safety precautions at mixing plants shall include the requirements of this subdivision.

2. The mixing, loading, and ingredient transfer areas where residues or spilled materials may accumulate shall be cleaned periodically. A cleaning and collection system for dangerous residues shall be provided.

3. A daily visual inspection shall be made of the mixing, conveying and electrical equipment to determine that such equipment is in safe operating condition. All discrepancies shall be corrected prior to operation. A program of systematic maintenance shall be conducted on a regular schedule.

4. The entire mixing and packaging plant shall be cleaned regularly and thoroughly to prevent excessive accumulation of dust, grease, and product ingredients.

5. Empty ingredient bags shall be disposed of daily in a safe manner.

6. No welding shall be permitted nor open flames allowed in or around the mixing or storage area of the plant, unless the equipment and area have been completely washed down and all fuels and oxidizing material removed.

7. Before welding or making repairs to hollow shafts, all fuels and oxidizing material shall be removed from the

outside and inside of the shaft by a thorough washing, and the shaft shall be vented.

8. Other explosive material shall not be stored inside of or within 50 feet of any building or facility used for the mixing of blasting agents.

F. Bulk delivery and mixing vehicles.

1. The provisions of this subparagraph shall apply to off-highway private operations as well as to all public highway movements.

2. A bulk vehicle body for delivering and mixing blasting agents shall conform with the requirements of this subdivision.

a. The body shall be constructed of noncombustible materials.

b. Vehicles used to transport bulk premixing blasting agents on public highways shall have closed bodies.

c. All moving parts of the mixing system shall be designed as to prevent a heat buildup. Shafts or axles which contact the product shall have outboard bearings with 1-inch minimum clearance between the bearings and the outside of the product container. Particular attention shall be given to the clearances on all moving parts.

d. A bulk delivery vehicle shall be strong enough to carry the load without difficulty and be in safe mechanical condition.

e. When electric power is supplied by a self-contained motor generator located on the vehicle, the motor generator shall be separated from the blasting agent discharge.

f. A positive action parking brake which will set the wheel brakes on at least one axle shall be provided on vehicles when equipped with air brakes and shall be used during bulk delivery operations. Wheel chocks shall supplement parking brakes whenever conditions may require.

3. Operation of bulk delivery vehicles shall conform to the requirements of this subdivision. These include the placarding requirements as specified by the Department of Transportation.

a. The operator shall be trained in the safe operation of the vehicle together with its mixing, conveying, and related equipment. The employer shall assure that the operator is familiar with the commodities being delivered and the general procedure for handling emergency situations.

b. The operator shall be familiar with applicable local, state, and federal laws and regulations governing the transportation of explosive materials to the location and on the site.

c. No person shall smoke, carry matches or any flame producing device, or carry any fire-arms while in or about bulk vehicles effecting the mixing, transfer, or down-the-hole loading of blasting agents at or near the blasting site.

d. Caution shall be exercised in the movement of the vehicle in the blasting area to avoid driving the vehicle over or dragging hoses over firing lines, cap wires, or explosive materials. The employer shall assure that the driver, in moving the vehicle, has assistance of a second person to guide his movements.

e. No in transit mixing of materials shall be performed.

4. Pneumatic loading from bulk delivery vehicles into blast holes primed with electric blasting caps or other static-sensitive systems shall conform to the requirements of the subdivision.

a. A positive grounding device shall be used to prevent the accumulation of static electricity.

b. A discharge hose shall be used that has a resistance range that will prevent conducting stray currents, but that is conductive enough to bleed off static buildup.

c. A qualified person shall evaluate all systems to determine if they will adequately dissipate static under potential field conditions.

5. Repairs to bulk delivery vehicles shall conform to the requirements of this Part.

a. No welding or open flames shall be used on or around any part of the delivery equipment unless it has been completely washed down and all oxidizer material removed.

b. Before welding or making repairs to hollow shafts, the shaft shall be thoroughly cleaned inside and out and vented with a minimum one-half inch diameter opening.

G. Bulk Storage Bins

1. The bin, including supports, shall be constructed of compatible materials, waterproof, and adequately supported and braced to withstand the combination of all loads including impact forces arising from product movement within the bin and accidental vehicle contact with the support legs.

2. The bin discharge gate shall be designed to provide a closure tight enough to prevent leakage of the stored product. Provision shall also be made so that the gate can be locked.

3. Bin loading manways or access hatches shall be hinged or otherwise attached to the bin and designed to permit locking.

4. Any electrically driven conveyors for loading or unloading bins shall conform to the requirements of 29 CFR 1910 Subpart S. They shall be designed to minimize damage from corrosion.

5. Bins containing blasting agent shall be located, with respect to inhabited buildings, passenger railroads, and public highways, in accordance with American Table of Distances and separation from other blasting agent storage and explosives storage shall be in conformity with NFPA 492.

6. Bins containing ammonium nitrate shall be separate from blasting agent storage and explosives storage in conformity with NFPA 492.

H. Storage of Blasting Agents shall conform with the requirements of R614-4-12.

I. Transportation of Blasting Agents shall conform with the requirements of R614-4-13.

R614-4-15. Slurry, Water Gel and Emulsions.

A. General Provisions. Unless otherwise set forth in this rule, slurry, water gels, and emulsions shall be manufactured, transported, stored and used in the same manner as explosives or blasting agents in accordance with these regulations.

B. Types and classification.

1. Slurry, water gels, and emulsions which are cap-sensitive as defined in R614-4-2.B. under Blasting Agent shall be classified as an explosive and manufactured, transported, stored, and used as specified for "explosives" in

this rule.

2. Slurry, water gels, and emulsions which are not cap-sensitive as defined in R614-4-2.B.of this section under Blasting Agent shall be classified as blasting agents and manufactured, transported, stored, and used as specified for "blasting agents" in this rule.

3. When tests on specific formulations of slurry, water gels, and emulsions result in Department of Transportation classification as a Class B explosive, bullet-resistant magazines are not required. See R614-4-12.

C. Fixed Location Mixing

1. Buildings or other facilities used for the mixing of slurrys, water gels and emulsions shall conform to the following minimum requirements.

2. Buildings shall be of noncombustible construction or sheet metal on wood studs.

3. Floors shall be of concrete or other non-absorbent material. They shall be constructed without enclosed floor drains and piping into which molten materials could flow and be confined in case of fire.

4. All fuel oil storage facilities, including heating oil and process oil, shall be separated from the mixing plant, and located in such a manner that in case of tank rupture the oil will drain away from the mixing plant, or diked in a manner to contain the tank contents in case of rupture.

5. The building shall be well ventilated.

6. Only heating units which do not depend on combustion processes, properly designed and located, may be used in the plant. Electric heaters with exposed resistance elements are prohibited. All direct sources of heat shall be provided from units located outside the mixing building.

7. Internal-combustion engines, such as diesel or gasoline-powered generators, when the hazard exists, shall be located outside the mixing building or shall be properly ventilated and isolated by a permanent firewall. The exhaust systems on all such engines shall be provided with spark-arrester mufflers, or be remotely located, so that any spark emission will not be a hazard to any materials in or adjacent to the building.

D. Ingredients of Slurry, Water Gels and Emulsions.

1. Ingredients of slurrys, water gels, and emulsions shall conform to the requirements of this subdivision.

2. Ingredients in themselves classified as Class A or Class B Explosives shall be stored in conformity with R614-4-15 of this rule.

3. Nitrate-water solutions may be stored in tank cars, tank trucks, or fixed tanks without quantity or distance limitations. Spills or leaks which may contaminate combustible materials shall be cleaned up immediately.

4. Metal powders such as aluminum shall be kept dry and shall be stored in containers or bins which are moisture-resistant or weathertight. Solid fuels shall be used in such manner as to minimize dust explosion hazards.

5. Ingredients shall not be stored with incompatible materials.

6. Peroxides and chlorates shall not be used.

E. Mixing Equipment

1. Mixing equipment shall comply with the requirements of this subdivision.

2. The design of the processing equipment, including mixing and conveying equipment, shall be compatible with the relative sensitivity of the materials being handled. Equipment shall be designed to minimize the possibility of frictional heating, compaction, overloading, and confinement.

3. Both equipment and handling procedures shall be designed to prevent the introduction of foreign objects or materials.

4. Mixers, pumps, valves and related equipment shall be designed to permit regular and periodic flushing, cleaning, dismantling, and inspection.

5. All electrical equipment including wiring, switches, controls, motors and lights, shall conform to the requirements of 29 CFR 1910 Subpart S.

F. Bulk delivery and mixing vehicles

1. The provisions of this subparagraph shall apply to off-highway private operations as well as to all public highway movements.

2. The design of vehicles shall comply with the requirements of this subdivision.

a. Vehicles used over public highways for the bulk transportation of water gels or of ingredients classified as dangerous commodities, shall meet the requirements of the Department of Transportation and shall meet the requirements of this Part.

b. When electric power is supplied by a self-contained motor generator located on the vehicle the generator shall be at a point separated from where the water gel is discharged.

c. The design of processing equipment and general requirements shall conform to the requirements of this Chapter.

d. A bulk delivery vehicle shall be strong enough to carry the load without difficulty and be in good mechanical condition.

e. A positive action parking brake which will set the wheel brakes on at least one axle shall be provided on vehicles when equipped with air brakes and shall be used during bulk delivery operations. Wheel chocks shall supplement parking brakes whenever conditions may require.

G. Operation of bulk delivery and mixing vehicles shall comply with the requirements of this subdivision.

1. The operator shall be trained in the safe operation of the vehicle together with its mixing, conveying, and related equipment. He shall be familiar with the commodities being delivered and the general procedure for handling emergency situations.

2. The operator shall be familiar with applicable local, state and federal laws and regulations governing the transportation of explosive materials to the location and on the site.

3. No person shall be allowed to smoke, carry matches or any flame-producing devices, or carry any firearms while in or about bulk vehicles effecting the mixing, transfer, or down-the-hole loading of slurry, water gels, and emulsions, at or near the blasting site.

4. Caution shall be exercised in the movement of the vehicle in the blasting area to avoid driving the vehicle over or dragging hoses over firing lines, cap wires, or explosive materials. The employer shall assure the driver the assistance

of a second person to guide the driver's movements.

5. No in transit mixing of materials shall be performed.

6. The location chosen for slurry, water gel, and emulsions or ingredient transfer from a support vehicle into the borehole loading vehicle shall be away from the blasting hole site when the boreholes are loaded or in the process of being loaded.

R614-4-16. Small Arms Ammunition, Small Arms Primers, and Small Arms Propellants.

A. Scope - This rule does not apply to in-process storage and intraplant transportation during manufacture of small arms ammunition, small arms primers and smokeless propellants.

B. Small Arms Ammunition

1. No quantity limitations are imposed on the storage of small arms ammunition in warehouses, retail stores, and other general occupancy facilities except those imposed by limitations of storage facilities.

2. Small arms ammunition shall be separated from flammable liquids, flammable solids as classified in 49 CFR 172, and from oxidizing materials, by a fire-resistive wall of 1 hour rating or by a distance of 25 feet.

3. Small arms ammunition shall not be stored together with Class A or Class B explosives unless the storage facility is adequate for this latter storage.

C. Smokeless Propellants

1. All smokeless propellants shall be stored in shipping containers specified in 27 CFR 55 Commerce in Explosives for smokeless propellants.

2. Commercial stocks of smokeless propellants over 20 pounds and not more than 100 pounds shall be stored in portable wooden boxes having wall of at least 1 inch nominal thickness.

3. Commercial stocks in quantities not to exceed 750 pounds shall be stored in nonportable storage cabinets having wooden walls of at least 1 inch nominal thickness. Not more than 400 pounds shall be permitted in any one cabinet.

4. Quantities in excess of 750 pounds shall be stored in magazines in accordance with R614-4-12.

D. Small Arms Ammunition Primers

1. Small arms ammunition primers shall not be stored except in the original shipping container in accordance with the requirements of Department of Transportation for small arms ammunition primers.

2. Small arms ammunition primers shall be separated from flammable liquids, flammable solids as classified in 49 CFR 172, and oxidizing materials by a fire-resistive wall of 1-hour rating or by a distance of 25 feet.

3. Not more than 750,000 small arms ammunition primers shall be stored in any one building, except as provided in R614-4-16.D.4. Not more than 100,000 shall be stored in any one pile. Piles shall be at least 15 feet apart.

4. Quantities of small arms ammunition primers in excess of 750,000 shall be stored in magazines in accordance with R614-4-12.

R614-4-17. Fireworks.

Scope - This rule applies to the manufacture of Class B and C fireworks.

A. All fireworks manufacturing shall comply with the requirements of this rule and the applicable portions of R614-4.

1. No more than 500 pounds of pyrotechnic and explosive composition shall be permitted at one time in any mixing building or any building in which pyrotechnic and explosive compositions are pressed or otherwise prepared for finishing and assembling.

2. No more than 500 pounds of pyrotechnic and explosive composition shall be permitted in a finishing and assembling building at one time.

3. In no case shall oxidizers such as nitrates, chlorates, or perchlorates be stored in the same building with combustible powdered materials such as charcoal, guns, metals, sulfur, or antimony sulfide.

B. Separation Distances.

1. All process buildings shall be separated from inhabited buildings, public highways and passenger railways in accordance with American Table of distance.

2. The separation distance between process buildings shall be in accordance with American Table of Distances.

3. Separation distances of nonprocess buildings from process buildings and magazines shall be in accordance with American Table of Distances.

4. Separation of magazines containing black powder or salutes classified as Class B fireworks from inhabited buildings, highways, and other magazines containing black powder or salutes classified as Class B fireworks shall be in accordance with American Table of Distances.

C. Building Construction

1. The exterior of process buildings constructed after this Code is adopted shall be constructed of materials no more combustible than painted wood.

2. No buildings shall have a basement. Interior wall surfaces and ceilings of buildings shall be smooth, free from cracks and crevices, noncombustible, and with a minimum of horizontal ledges upon which dust may accumulate. Wall joints and openings for wiring and plumbing shall be sealed to prevent entry of dust. Floors and work surfaces shall not have cracks or crevices in which explosives or pyrotechnic compositions may lodge.

3. Mixing, screening, pressing and assembly buildings or areas shall have conductive flooring, properly grounded.

R614-4-18. Use of Explosives and Blasting Agents.

A. General Provision

1. While explosives are being handled or used, smoking shall not be permitted and no one near the explosives shall possess matches,open light or other fire or flame except for ignition purposes. No person shall be allowed to handle explosives while under the influence of intoxicating liquors, narcotics, or other dangerous drugs.

2. Original containers or approved magazines shall be used for taking detonators and other explosives from storage magazines to the blasting area.

3. When blasting is done in congested areas or in close proximity to a structure, or any other installation that may be damaged, the blast shall be covered before firing with a mat

constructed so that it is capable of preventing fragments from being thrown.

4. Persons authorized to prepare explosive charges or conduct blasting operations shall use every reasonable precaution including but not limited to warning signals, flags, barricades, or woven wire mats to insure the safety of all employees.

5. Surface blasting operations, except during unusual conditions shall be conducted during daylight hours.

a. Unusual blasting operations associated with industrial processes that are performed inside buildings shall be permitted, regardless of time of day, if both of the following conditions are met:

(1) All requirements concerning the use of explosives during normal blasting operations are implemented; and

(2) A minimum illumination intensity of 20 foot-candles is provided within a 5-foot (1.52m) radius of where explosive charges are being assembled, where explosive charges are being placed, and where explosive materials are being attached to initiating devices.

6. Whenever blasting is being conducted in the vicinity of gas, electric, water, fire alarm, telephone, telegraph, and steam utilities, the blaster shall notify the appropriate representatives of such utilities at least 24 hours in advance of blasting, specifying the location and intended time of such blasting. Verbal notice shall be confirmed with written notice.

7. Due precautions shall be taken to prevent accidental discharge of electric blasting caps from current induced by radar, radio transmitters, lightning, adjacent powerlines, dust storms, or other sources of extraneous electricity. These precautions shall include:

a. The suspension of all blasting operations and removal of persons from the blasting area during the approach and progress of an electric storm; and

b. The posting of signs warning against the use of mobile radio transmitters. (See ANSI C-95.4 and Institute of Makers of Explosive Safety Library Publication #20.)

8. Warning signs, indicating a blast area, shall be maintained at all approaches to the blast area. The warning sign lettering shall not be less than 4 inches in height on a contrasting background.

9. The blaster shall keep an accurate, up-to-date record of explosives, explosive materials, blasting agents, and blasting supplies used in a blast and shall keep an accurate running inventory of all explosives and blasting agents stored on the operation.

10. No activity of any nature other than that which is required for drilling or for loading holes with explosive material shall be permitted in a blast area.

11. Empty boxes and paper and fiber packing materials which have previously contained explosive material shall not be used again for any purpose, but shall be destroyed by burning at an approved isolated location out of doors, and no person shall be nearer than 100 feet after the burning has started.

12. Containers of explosives shall not be left open in any magazine or within 50 feet of any magazine. In opening kegs or wooden cases, no sparking metal tools shall be used; wooden wedges and either wood, fiber or rubber mallets shall be used. Nonsparking metallic slitters may be used for opening fiberboard cases.

13. Explosives or blasting equipment that are deteriorated or damaged shall not be used.

14. No explosives shall be abandoned.

B. Blaster Qualifications.

1. A blaster shall be able to understand and give written and oral orders.

2. A blaster shall be qualified by reason of training, knowledge, or experience, in the field of transporting, storing, handling, and use of explosives material and have a working knowledge of State and local laws and regulations which pertain to explosives material.

3. Blasters shall be required to furnish satisfactory evidence of competency in handling explosives material and performing in a safe manner the type of blasting that will be required.

4. The blaster shall be knowledgeable and competent in the use of each type of blasting method used.

C. Loading of Explosive Materials.

1. Procedures that permit safe loading shall be established and followed.

2. All drill holes shall be sufficiently large to admit freely the insertion of the cartridges of explosives.

3. Tamping shall be done only with wood rods or plastic tamping poles without exposed metal parts, but nonsparking metal connectors may be used for jointed poles. Violent tamping shall be avoided. The primer shall never be tamped.

4. When loading blasting agents over electric blasting caps, semiconductive delivery hose shall be used and the equipment shall be bonded and grounded.

5. No holes shall be loaded except those to be fired in the next round of blasting.

6. No loaded holes shall be left unattended or unprotected.

7. Drilling shall not be started until all remaining butts of old holes are examined for unexploded charges, and if any are found, they shall be refired before work proceeds.

8. No employee shall be allowed to deepen drill holes which have contained explosives.

9. After loading for a blast is completed, all excess blasting caps or electric blasting caps and other explosives shall immediately be returned to their separate storage magazines.

D. Initiation of Explosive Charges - Electric Blasting.

1. Electric blasting caps shall not be used where sources of extraneous electricity make the use of electric blasting caps dangerous. Blasting cap leg wires shall be kept short-circuited (shunted) until they are connected into the circuit for firing.

2. Before adopting any system of electrical firing, the blaster shall conduct a thorough survey for extraneous currents, and all dangerous currents shall be eliminated before any holes are loaded.

3. In any single blast using electric blasting caps, all caps shall be electrically compatible.

4. Electric blasting shall be carried out by using blasting circuits or power circuits in accordance with the electric

blasting cap manufacturer's recommendations.

5. When firing a circuit of electric blasting caps, care must be exercised to ensure that an adequate quantity of delivered current is available, in accordance with the manufacturer's recommendations.

6. Connecting wires and lead wires shall be insulated single solid wires of sufficient current-carrying capacity.

7. Buss wires shall be solid single wires of sufficient current-carrying capacity.

8. When firing electrically, the insulation on all firing lines shall be adequate in good condition.

9. A power circuit used for firing electric blasting caps shall not be grounded.

10. In underground operations when firing from a power circuit, a safety switch shall be placed in the permanent firing line at intervals. This switch shall be made so it can be locked only in the "off" position and shall be provided with a short-circuiting arrangement of the firing lines to the cap circuit.

11. In underground operations there shall be a "lightning" gap of at least 15 feet in the firing system ahead of the main firing switch; that is, between this switch and the source of power. This gap shall be bridged by a flexible jumper cord just before firing the blast.

12. When firing from a power circuit, the firing switch shall be locked in the open or "off" position at all times, except when firing. It shall be so designed that the firing lines to the cap circuit are automatically short-circuited when the switch is in the "off" position. Keys to this switch shall be entrusted only to the blaster.

13. Blasting machines shall be in good condition and the efficiency of the machine shall be tested periodically to make certain that it can deliver power at its rated capacity.

14. When firing with blasting machines, the connections shall be made as recommended by the manufacturer of the electric blasting caps used.

15. The number of electric blasting caps connected to a blasting machine shall not be in excess of its rated capacity. Furthermore, in primary blasting, a series circuit shall contain no more caps than the limits recommended by the manufacturer of the electric blasting caps in use.

16. The blaster shall be in charge of the blasting machines and no other person shall connect the leading wires to the machines.

17. Blasters, when testing initiating circuits, or electric caps, shall use only blasting galvanometers or other instruments which have been designed and approved for this purpose.

18. Whenever the possibility exists that a leading line of blasting wire might be thrown over a live powerline by the force of an explosion, care shall be taken to see that the total length of wires are kept too short to hit the lines, or that the wires are securely anchored to the ground. If neither of these requirements can be satisfied, a nonelectric system shall be used.

19. In electrical firing, only the employee making leading wire connections shall fire the shot. All connections shall be made from the bore hole back to the source of firing current, and the leading wires shall remain shorted and not be connected to the blasting machine or other source of current until the charge is to be fired.

20. After firing an electric blast from a blasting machine the leading wires shall be immediately disconnected from the machine and short-circuited.

E. Use of Safety Fuse.

1. Safety fuse shall only be used where sources of extraneous electricity make the use of electric blasting caps dangerous. The use of a fuse that has been damaged in any way shall be forbidden.

2. The hanging of a fuse on nails or other projections which will cause a sharp end to be formed in the fuse is prohibited.

3. Before capping safety fuse, a short length shall be cut from the end of the supply reel so as to assure a fresh cut end in each blasting cap.

4. Only a cap crimper of approved design shall be used for attaching blasting caps to safety fuse. Crimpers shall be kept in good repair and accessible for use.

5. No unused cap or short capped fuse shall be placed in any hole to be blasted; such detonators shall be removed from the working place and destroyed.

6. No fuse shall be capped, or primers made up, in any magazine or near any possible source of ignition.

7. No employees shall be permitted to carry detonators or store detonators or primers of any kind in their clothing.

8. The minimum length of safety fuse to be used in blasting shall not be less than 36 inches or a burning time of 120 seconds.

9. At least two employees shall be present when multiple cap and fuse blasting is done by hand lighting methods.

10. Not more than 12 fuses shall be lighted by each blaster when hand lighting devices are used. However, when two or more safety fuses in a group are lighted as one by means of igniter cord, or other similar fuse lighting devices, they may be considered as one fuse.

11. The method of dropping or pushing a primer or any explosive with a lighted fuse attached is forbidden.

12. Cap and fuse shall not be used for firing mudcap charges unless charges are separated sufficiently to prevent one charge from dislodging other shots in the blast.

13. When blasting with safety fuses, consideration shall be given to the length and burning rate of the fuse. Sufficient time, with a margin of safety, shall always be provided for the blaster to reach a place of safety.

F. Use of Detonating Cord.

1. Care shall be taken to select a detonating cord consistent with the type and physical condition of the bore hole and stemming and the type of explosives used.

2. Detonating cord shall be handled and used with the same respect and care given other explosives.

3. The line of detonating cord extending out of a bore hole or from a charge shall be cut from the supply spool before loading the remainder of the bore hole or placing additional charges.

4. Detonating cord shall be handled and used with care to avoid damaging or severing the cord during and after loading and hooking up.

5. Detonating cord connections shall be complete and

positive in accordance with approved and recommended methods. Knot-type or other cord-to-cord connections shall be made only with detonating cord in which the explosive core is dry.

6. All detonating cord trunklines and branchlines shall be free of loops, sharp kinks, or angles that direct the cord back toward the oncoming line of detonation.

7. All detonating cord connections shall be inspected before firing the blast.

8. When detonating cord millisecond-delay connectors or short-interval delay electric blasting caps are used with detonating cord, the practice shall conform strictly to the manufacturer's recommendations.

9. When connecting a blasting cap or an electric blasting cap to detonating cord, the cap shall be taped or otherwise attached securely along the side or the end of the detonating cord, with the end of the cap containing the explosive charge pointed in the direction in which the detonation is to proceed.

10. Detonators for firing the trunkline shall not be brought to the loading areas nor attached to the detonating cord until everything else is in readiness for the blast.

G. Firing the Blast.

1. Before a blast is fired, a warning signal shall be given by the blaster in charge, who has made certain that all surplus explosives are in safe place and all employees, vehicles, and equipment are at a safe distance, or under sufficient cover.

2. Before firing any blast, warning shall be given, and all possible entries into the blasting area, shall be carefully guarded. The blaster shall make sure that all employees are out of the blast area before firing a blast.

H. Inspection After Blasting.

1. Immediately after the blast has been fired, the firing line shall be disconnected from the blasting machine, or where power switches are used, they shall be locked open or in the off position.

2. Sufficient time shall be allowed for the smoke and fumes to leave the blast area before returning to the shot. An inspection of the area and the surrounding rubble shall be made by the blaster to determine if all charges have been exploded before employees are allowed to return to the operation. Any unexploded explosives shall be disposed of safely.

I. Misfires.

1. If a misfire is found, the blaster shall provide proper safeguards for excluding all employees from the danger zone.

2. No other work shall be done except that necessary to remove the hazard of misfire and only those employees necessary to do the work shall remain in the danger zone.

3. No attempt shall be made to extract explosives from any charged or misfired hole; a new primer shall be put in and the hole refired. If refiring of the misfired hole presents a hazard, the explosives may be removed by washing out with water or, where the misfire is under water, blown out with air.

4. If there are any misfires while using cap and fuse, all employees shall be required to remain away from the charge for at least 1 hour. If electric blasting caps are used and a misfire occurs, this waiting period may be reduced to 30 minutes. Misfires shall be handled under the direction of the blaster in charge of the blasting and all wires shall be carefully traced and search made for unexploded charges.

5. No drilling, digging, or picking shall be permitted until all missed holes have been detonated or the authorized representative has approved the work can proceed.

J. Underwater Blasting.

1. Loading tubes and casings of dissimilar metals shall not be used because of possible electric transient currents from galvanic action of the metals and water.

2. Only water-resistant blasting caps and detonating cords shall be used for all marine blasting. Loading shall be done through a non-sparking metal loading tube when tube is necessary.

3. No blast shall be fired while any vessel under way is closer than 1,500 feet to the blasting area. Those on board vessels or craft moored or anchored within 1,500 feet shall be notified before a blast is fired.

4. No blast shall be fired while any swimming or diving operations are in progress in the vicinity of the blasting area. If such operations are in progress, signals and arrangements shall be agreed upon to assure that no blast shall be fired while any person is in the water.

5. Blasting flags shall be displayed.

6. The storage and handling of explosives aboard vessels used in underwater blasting operations shall be according to provisions outlined herein on handling and storing explosives.

7. When more than one charge is placed under water, a float device shall be attached to an element of each charge in such a manner that it will be released by the firing. Misfires shall be handled in accordance with the requirements of R614-4-18.I.

R614-4-19. Product Testing.

A. Every program for testing of explosive materials shall be examined by the employer for all foreseeable hazards involved in the test. When a specific hazard can be foreseen which affects safety, alternate means for attaining the objectives of the test shall be adopted.

B. No test shall be conducted unless safe testing facilities are available. The employer shall determine the adequacy of available facilities and the need for additional safeguards prior to beginning tests.

C. The test crew shall consist of at least two members during tests: one member of the crew shall serve as safety observer and shall be stationed at a safe location so as to summon help and offer aid in an emergency.

D. The quantity of explosive material taken to a test site shall not exceed that required to conduct the test safely.

E. It shall be the responsibility of the person in charge of the test to take the necessary action to protect by location or distance, personnel that may be endangered by the test.

F. If a test item fails to function (explode) no attempt shall be made to determine the nature of the malfunction until sufficient time has elapsed to assure that the test item is not reacting. The test item shall be handled cautiously, preferably by remote control and disposed of as soon as possible. Care shall be taken to avoid inhaling the reaction products of test compositions.

R614-4-20. Storage of Ammonium Nitrate.

A. Storage

1. Except as provided in R614-4-12. this rule applies to the storage of ammonium nitrate in the form of crystals, flakes, grains, or prills, including fertilizer grade, dynamite grade, nitrous oxide grade, technical grade, and other mixtures containing 60 percent or more ammonium nitrate by weight but does not apply to blasting agents.

2. This rule does not apply to the transportation of ammonium nitrate.

3. The storage of ammonium nitrate and ammonium nitrate mixtures that are more sensitive than allowed by the "Definition of Test Procedures for Ammonium Nitrate Fertilizer" (available from the Fertilizer Institute, 1015 18th Street, N.W., Washington, D.C. 20036) is prohibited.

4. Nothing in this rule shall apply to the production of ammonium nitrate or to the storage of ammonium nitrate on the premise of the producing plant.

5. The standards for ammonium nitrate (nitrous oxide grade) are those found in the "Specifications, Properties, and Recommendations for Packaging, Transportation, Storage, and Use of Ammonium Nitrate", Available from the Compressed Gas Association, Inc., 500 Fifth Avenue, New York, New York 10036.

B. General.

1. This rule applies to all persons storing, having, or keeping ammonium nitrate, and to the owner or lessee of any building, premises, or structure in which ammonium nitrate is stored in quantities of 1,000 pounds or more.

2. Approval of large quantity storage shall be subject to due consideration of the fire and explosion hazards, including exposure to toxic vapors from burning or decomposing nitrate.

C. Storage Buildings.

1. Storage buildings shall not have basements unless the basements are open on at least one side. Storage buildings shall not be over one story in height.

2. Storage buildings shall have adequate ventilation, or be of a construction that will be self-ventilating in the event of fire.

3. The wall on the exposed side of a storage building within 50 feet of a combustible building, forest, piles of combustible materials and similar exposure hazards shall be of fire-resistive construction. In lieu of the fire-resistive wall, other suitable means of exposure protection such as a free standing wall may be used. The roof coverings shall be Class C or better, as defined in the Manual on Roof Coverings, NFPA 203M-1970 or latest edition thereof.

4. All flooring in storage and handling areas shall be of noncombustible materials or protected against impregnation by ammonium nitrate and shall be without open drains, traps, tunnels, pits or pockets into which any molten ammonium nitrate could flow and be confined in the event of fire.

5. The continued use of an existing storage building or structure not in strict conformity with this Rule may be approved in cases where such continued use will not constitute a hazard to life.

6. Buildings and structures shall be dry and free from water seepage through the roof, walls, and floors.

D. Storage of Ammonium Nitrate in Bags, Drums, or Other Containers.

1. Bags and Containers

a. Bags and containers used for ammonium nitrate must comply with specifications and standards required for use in interstate commerce.

b. Containers used on the premises in the actual manufacturing or processing need not comply with provisions of R614-4-20.D.1.a.

2. Storage

a. Containers of ammonium nitrate shall not be accepted for storage when the temperature of the ammonium nitrate exceeds 130 degrees F.

b. Bags of ammonium nitrate shall not be stored within 30 inches of the storage building walls and partitions.

c. The height of piles shall not exceed 20 feet. The width of piles shall not exceed 20 feet and the length 50 feet except that where the building is of noncombustible construction or is protected by automatic sprinklers the length of piles shall not be limited. In no case shall the ammonium nitrate be stacked closer than 36 inches below the roof or supporting and spreader beams over head.

d. Aisles shall be provided to separate piles by a clear space of not less than 3 feet in width. At least one service or main aisle in the storage area shall not be less than 4 feet in width.

E. Storage of Bulk Ammonium Nitrate.

1. Warehouses shall have adequate ventilation or be capable of adequate ventilation in case of fire.

2. Unless constructed of noncombustible material or unless adequate facilities for fighting a roof fire are available, bulk storage structures shall not exceed a height of 40 feet.

F. Bins

1. Bins shall be clean and free of materials which may contaminate ammonium nitrate.

2. Due to the corrosive and reactive properties of ammonium nitrate, and to avoid contamination, galvanized iron, copper, lead, and zinc shall not be used in a bin constructed unless suitably protected. Aluminum bins and wooden bins protected against impregnation by ammonium nitrate are permissible. The partitions dividing the ammonium nitrate storage from other products which would contaminate the ammonium nitrate shall be of tight construction.

3. The ammonium nitrate storage bins or piles shall be clearly identified by signs reading "Ammonium Nitrate" with letters at least 2 inches high.

G. General.

1. Piles or bins shall be so sized and arranged that all material in the pile is moved out periodically in order to minimize possible caking of the stored ammonium nitrate.

2. Height or depth of piles shall be limited by the pressure-setting tendency of the product. However, in no case shall ammonium nitrate be piled higher at any point than 36 inches below the roof or supporting and spreader beams over head.

3. Ammonium nitrate shall not be accepted for storage when the temperature of the product exceed 130 degrees F.

4. Dynamite, other explosives, and blasting agents shall

not be used to break up or loosen caked ammonium nitrate.

H. Contaminants.

1. Ammonium nitrate shall be in a separate building or shall be separated by approved type fire-walls of not less than 1 hour fire-resistance rating from storage of organic chemicals, acids, or other corrosive materials, materials that may require blasting during processing or handling, compressed flammable and combustible materials or other contaminating substances, including but not limited to animal fats, baled cotton, baled rags, baled scrap paper, bleaching powder, burlap or cotton bags, caustic soda, coal, coke, charcoal, cork, camphor, excelsior, fibers of any kind, fish oils, fish meal, foam rubber, hay, lubricating oil, linseed oil, or other oxidizable or drying oils, naphthalene, oakum, oiled clothing, oiled paper, oiled textiles, paint straw, sawdust, wood shavings, or vegetable oils. Walls referred to in this subdivision need extend only to the underside of the roof.

2. In lieu of separation walls, ammonium nitrate may be separated from the materials referred to in R614-4-20.H.1. by a space of at least 30 feet.

3. Flammable liquids such as gasoline, kerosene, solvents, and light fuel oils shall not be stored on the premises except when such storage conforms to R614-4-1, and when walls and sills or curbs are provided in accordance with R614-4-20.H.1. or 2.

4. LP-gas shall not be stored on the premises except when such storage conforms to 29 CFR 1910.110.

I. Storage.

1. Sulfur and finely divided metals shall not be stored in the same building with ammonium nitrate except when such storage conforms to R614-4-1. through 20.

2. Explosives and blasting agents shall not be stored in the same building with ammonium nitrate except on the premises of makers, distributors, and user-compounders of explosives or blasting agents.

3. Where explosives or blasting agents are stored in separate buildings, other than on the premises of makers, distributors, and user-compounders of explosives or blasting agents, they shall be separated from the ammonium nitrate by the distances and/or barricades specified in R614-4-21 but not less than 50 feet.

4. Storage and/or operations on the premises of makers, distributors and user-compounders of explosives or blasting agents shall be in conformity with R614-4-1. through 20. of these rules.

J. General Precautions.

1. Electrical

a. Electrical installations shall conform to the requirements of 29 CFR 1910 Subpart S, for ordinary locations. They shall be designed to minimize damage from corrosion.

b. In areas where lightning storms are prevalent, lightning protection shall be provided. (See the Lightning Protection Code, NFPA 78-1979).

c. Provisions shall be made to prevent unauthorized personnel from entering the ammonium nitrate storage area.

2. Fire Protection.

a. Not more than 2,500 tons of bagged ammonium nitrate shall be stored in a building or structure not equipped with an automatic sprinkler system. Sprinkler systems shall be approved type and installed in accordance with 29 CFR 1910.159.

b. Suitable fire control devices such as small hose or portable fire extinguishers shall be provided throughout the warehouse and in the loading and unloading area. Suitable fire control devices shall comply with the requirements of 29 CFR 1910.157 and 1910.158.

c. Water supplies and fire hydrants shall be available in accordance with recognized good practices.

R614-4-21. Sources of Standards.

The following sources and publications were used in the Development of R614-4.

A. Institute of Makers of Explosives Safety Library Publications, 1575 Eye Street, N.W., Suite 550, Washington, D.C. 20005.

B. The American Table of Distances

C. Suggested Code of Regulations for the Manufacture, Transportation, Storage, Sale, Possession, and Use of Explosive Materials.

D. "Do's and Don'ts" Instructions and Warnings

E. Glossary of Industry Terms

F. Safety in the Transportation, Storage, Handling and Use of Explosives.

G. Safety Guide for the Prevention of Radio Frequency Radiation Hazards in the Use of Electric Blasting Caps.

H. IME Standard for the Safe Transportation of Class C Detonators (Blasting Caps) in a Vehicle with Certain Other Explosives.

I. Department of Defense Standards.

Superintendent of Documents, Government Printing Office, Washington, D.C. 20402

1. DOD 5154.4S DOD Ammunition and Explosives Safety Standards

2. AMCP 706-186 Engineering Design Handbook, Military Pyrotechnics Series, Part Two--Safety, Procedures and Glossary

3. DOD 4145.26M DOD Contractor's Safety Manual for Ammunition, Explosives and Related Dangerous Material

J. National Fire Protection Association Codes, 470 Atlantic Avenue, Boston MA 02210.

1. NFPA 44a-1974 Code for the Manufacture, Transportation, and Storage of Fireworks

2. NFPA 495-1973 Code for the Manufacture, Transportation, Storage and Use of Explosive Materials

3. NFPA 492-1976 Separation Distances of Ammonium Nitrate and Blasting Agents from Explosives or Blasting Agents

4. NFPA 203M-1970 Manual on Roof Coverings

5. NFPA 78-1979 Lightning Protection Code

6. NFPA 490-1975 Storage of Ammonium Nitrate

7. NFPA 91-1973 Blower and Exhaust Systems for Dust, Stock, and Vapor Removal or Conveying

K. Code of Federal Regulations Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

1. CFR 14 Aeronautics and Space

2. CFR 27 Alcohol, Tobacco Products, and Firearms

3. CFR 29 Labor
4. CFR 30 Mineral Resources
5. CFR 46 Shipping
6. CFR 49 Transportation

L. National Institute for Occupational Safety and Health Reports available from: U.S. Department of Commerce, National Technical; Information Service, Springfield, VA 22161.

1. PB 297 827 A Safe Practices Manual for the Manufacturing, Transportation, Storage and Use of Explosives
2. PB 297 807 A Safe Practices Manual for the Manufacturing, Transportation, Storage, and Use of Pyrotechnics

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R614. Labor Commission, Occupational Safety and Health.
R614-5. Materials Handling and Storage.
R614-5-1. Crawler Locomotive and Truck Cranes.

Two Blocking Damage Preventive Feature. On hydraulic cranes with power telescoping booms, an "Anti Two-Blocking" feature, warning device, or other arrangement, shall be provided to warn the crane operator to avoid colliding ("two-blocking") the hook block with the boom point when hoisting the load, when extending the boom or when booming up or down.

R614-5-2. Conveyors.

This rule is to cover minimum standards for the safe installation, operation and maintenance of all types of conveying machinery and equipment, which includes belt, bucket, chain, roller, reciprocating or oscillating, screw, pneumatic, and flight conveyors or conveying systems. In the event these orders do not cover a specific hazardous condition, the ANSI standard B-20.1, 1996 shall be used as a guide.

A. Guarding.

1. Driving mechanisms of conveying equipment shall be enclosed by housing or guards where it is possible for workers to come in contact with gears, chain or belt drives or moving shafts. The guards shall be constructed so no part of the body or clothing can contact the driving mechanism.

2. Head pulleys, tail pulleys, take up, counterweights, sprockets, sheaves, drums, blocks, etc., shall be enclosed with guards or the area blocked off with rails or fence so workers cannot come in contact with moving parts.

3. Bucket elevators shall be enclosed in a housing or the area blocked off so no hazard exists from falling material.

4. Screw conveyors, troughs, or box openings shall have covers, grating or guard rails to prevent workers from coming in contact with the moving conveyor.

5. Conveyors passing over work areas, aisles or walkways where workers are exposed shall be covered underneath to eliminate hazard from falling material or personal contact.

6. Openings to hoppers, chutes or other discharge points where workers may be exposed shall be guarded by railings, toeboards, baffleplates, chains, temporary covers and front and sides high enough to prevent workers falling into them and material being discharged from striking them.

7. Platforms with side rails shall be constructed on trippers where a worker is required to ride or climb on the tripper to operate the controls so he cannot slip off or come in contact with the moving machinery. If a platform is not required, levers and controls shall be located so the worker can safely operate the tripper without coming in contact with the moving machinery.

B. Inspection and Maintenance.

1. Periodic inspection of the entire conveying mechanism shall be made for worn parts, defective couplings, loose belts, chains and defective safety devices such as brakes, backstops, overload releases, guards, etc.

2. Such inspection shall be made while the equipment is stopped and locked out except where the inspector can stand completely in the clear of any moving parts.

3. Lubrication of machine parts shall not be done while equipment is operating unless grease and oil fittings are equipped with extensions which permit such lubrication from a position where the worker cannot come in contact with the moving machinery.

C. Walkways, Platforms, Balconies

1. Where conveyors must be crossed over during operation, a walkway with stairs, platform, handrails and toeboards shall be constructed and conspicuously marked with a sign. Where walkways, ramps or stairways are located adjacent to open belt or pan conveyors, they shall be at least 20 inches in width and there shall be three feet clearance from the outside of the passageway and the moving conveyor. All stairways shall have handrails adjacent to the conveyor to prevent workers who may stumble from falling into the conveyor.

2. Where workers must cross under a conveyor, crossunders shall be plainly marked as the only passageways. The passageway shall be covered to prevent contact with moving parts or material falling off the conveyor.

D. Brakes and Backstops.

On conveyors where reversing or a runaway might occur under load in case of power failure, an anti-runaway or backstop device or automatic brake shall be provided or guard rails installed to prevent anyone from being in the area where the falling load could strike him.

E. Dust control.

1. Dust control equipment, provided at transfer points, crushers or such as sprays or exhaust hoods shall be wherever a dust condition exists which may be a health hazard to workers or a fire or explosion hazard.

2. Where the installation of dust control equipment is not practical, workers shall be provided with approved respiratory devices.

F. Fire Protection

1. Housekeeping along conveying systems shall be maintained in a manner that will prevent fires.

2. Where conveying equipment fire may present a

hazard to workers or building, emergency fire fighting equipment shall be provided and identified and strategically located to control any outbreak of fire. Equipment selection should consider the control of electrical fires, burning belting and conveyor structures, materials being handled, adjacent materials, etc.

3. Workers operating conveying equipment shall be knowledgeable in the use of the fire protection equipment furnished.

4. Where conveying equipment is located in building or tunnel enclosures where men are working, emergency fire exits shall be provided and identified.

5. All fire fighting equipment, alarm stations, etc., must be identified and readily accessible and free of obstructions.

G. Illumination.

Sufficient lighting to see the equipment clearly shall be provided at floor level, head and tail pulleys, operating stations and along conveyor systems which must be inspected - 5 to 10-foot candles of light meet this requirement.

H. Electrical.

1. Power and control circuits for conveying equipment shall be installed so as to minimize the possibility of electric shock or fire hazard. This shall include grounding. After the effective date of these orders, new equipment shall be installed in accordance with the current edition of the National Electric Code.

2. Power and control circuits shall not be enclosed in the same conduit lines or junction boxes.

3. All starting and stopping devices shall be clearly marked and the immediate area kept clear of obstructions to permit ready access.

4. All conveyor switch boxes shall be identified indicating the voltage and the equipment served.

5. Electrical installations in explosive areas shall meet the requirements, as applicable, of the National Electrical Code, Chapter 500.

6. The installation of electrical emergency conveyor stops, such as pull cables, or push buttons, is recommended where workers are manually loading or unloading or doing cleanup work while equipment is operating.

7. Overload protective devices are recommended on conveying equipment power circuits to prevent damage or fire.

I. Safe Operating Rules.

1. Manually loaded vertical or highly inclined conveyors shall have a sign at the loading point designating the load capacity.

2. No riding shall be permitted on any conveyor not specifically designed and approved to convey workers.

3. Repairs to conveyors or related equipment shall not be done while the equipment is operating. When stopped for repairs, servicing, cleaning, removing overloads, etc., the controls shall be locked or tagged out.

4. No safety device, guard, overload, cutout, brake, etc., shall be removed from a conveyor and the conveyor placed in operation without the device being reinstalled. Where permanent guards at hazardous points must be left off, the area shall be laced off with temporary boards, etc., if the conveyor is placed in operation other than for testing.

5. Workers working around or operating conveyors shall be advised of the location of the starting and stopping devices and instructed how to use them to stop the conveyor in an emergency.

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R614. Labor Commission, Occupational Safety and Health.
R614-6. Other Operations.
R614-6-1. Crushing, Screening, and Grinding Equipment.

A. Car moving, dumping, and shakeout or cleanout operations shall be performed in a safe manner and in compliance with R614-405-555. Reloading shall be performed in a safe manner.

B. Track or truck hoppers or bins shall be covered with a grizzly, or other suitable means shall be provided to prevent an employee from accidentally falling into the bin, or the employee shall wear a safety belt properly tied off. This is also applicable when working around or over crushers or rolls.

C. Equipment feeding crushing, screening and grinding facilities shall be adequately guarded and maintained in a safe manner.

D. Air lines, bars, hammers, and all other tools used shall be kept in good repair at all times. Goggles or face shields shall be worn when lancing or barring down or when any other activity may result in flying particles.

E. Protective equipment such as hard hats, safety shoes, eye protection, respiratory protection, and gloves shall be worn when needed. Operators shall wear clothing as needed to reasonably cover the body. Such clothing shall be relatively close fitting so as to preclude loose, ragged sleeves or trouser legs, long coat tails, neckties and other such items as may become entangled in the machinery.

F. Machinery guards shall be kept in place and machinery shall not be operated following repairs until guards are in place and secured. Electrical gear shall have covers in place during operation.

G. No employees shall work on the drive mechanism, in a chute, hopper, screen, grinder, or crusher unless same is locked and/or tagged in compliance with Part 15.9 and the foreman is informed of his whereabouts.

H. Adequate work platforms and walkways shall be provided. All platforms, ramps, walkways, ladders, and stairways shall be in conformance with 29 CFR 1910 Subpart D. Crossover crushing and feeding equipment shall be provided and the operators shall use such crossovers and not pass over hazardous, unprotected equipment.

I. Adequate storage for tools and supplies shall be provided.

J. Dunnage and other waste or scrap material shall have a place of disposal and shall be removed so as to permit the maintenance of an adequate housekeeping program.

K. Throwing of materials from crushers, elevators, or overhead platforms shall be prohibited, except when an area

is provided and barricaded to make it safe.

L. Electrical gear on crushing, screening, and grinding equipment shall be grounded and otherwise meet the requirements of 29 CFR 1910 Subpart S.

M. Dust shall be controlled at the source by adequate dust control equipment. Where this is not effectively accomplished, such additional procedures as wetting down, vacuum cleaning and other means shall be provided and used. Approved respiratory equipment shall be provided when dust concentrations indicate their need.

N. Areas under rod mills, ball mills, and other rotating equipment shall be adequately barricaded, or fenced to prevent persons passing under the operating mills unless such mills have at least 10' clearance above floor level.

O. Employees shall not work over rotating mills, spiral or drag classifiers or any other similar equipment unless protected by a bridge, catwalk, crossover or other protective device.

P. Reagents shall be used in conformance with directions and warnings as supplied by the manufacturer or supplier. Such hazards as caustic or acid burns, fire, poisons, irritants, etc., must be recognized and the operator trained and protected to prevent accidental or unmindful contact which may cause injury. The necessary protective equipment shall be supplied and used.

Q. Any chemicals used in connection with grinding or milling operations shall be labeled.

R. Before any crushing, screening, or grinding equipment is started, the operator shall be sure all persons are clear and machinery is released for operation.

S. Impact breakers, jaw crushers, crushing rolls, and similar equipment shall be protected by adequate covers, chain curtains or other effective guards to prevent material from being thrown out of the feed opening of the crusher.

R614-6-2. Window Cleaning.

A. General.

1. It shall be the responsibility of the employer to provide such safety devices and equipment as required by this rule. He shall be responsible for the proper use and maintenance of such equipment and devices.

2. It shall be the responsibility of the employee to wear and employ the devices so provided as directed and to assist in its reasonable care and maintenance.

3. Only employees who have been adequately trained and instructed shall be permitted to clean windows where the use of anchors, safety belts, swinging scaffolds, boatswains' chairs, tackle or other similar equipment is required.

B. Ladders-scaffolds.

1. Ladders shall not be used to clean windows whose top is more than 36 feet above the floor of adjoining ground or a flat roof or which are so placed or obstructed as to make the method unsafe. Built-up scaffolds are preferred over ladders.

2. The use of ladders with hooks attached, to be hung on or over a parapet wall or other projection, are prohibited in window cleaning.

C. Windows.

1. Windows which are of such type that both the inside and the outside of the window may be cleaned from the inside, if over 10 feet to the top of the window on the outside must be cleaned from the inside of the building.

2. Windows whose top is over 36 feet above ground, floor or flat roof, and which are of the type that cannot be cleaned from the inside must be provided with window anchors, or shall be cleaned only by use of swinging or built-up scaffolds or boatswains' chairs or other satisfactory method providing equal safety.

3. When window anchors are used, they shall meet the requirements of ANSI Standard A39.1-1969 and shall be inspected and maintained in a safe manner. No window cleaner shall use an anchor which he finds to be loose or insecure.

4. When working from a suspended scaffold or boatswain's chair, the employee shall wear an approved safety belt and shall be tied off to a line supported from a separate roof anchorage to the ground which must be separate from the rest of the rigging. The fall line shall be provided with an approved automatic locking device.

D. Equipment.

1. Extension tools shall not be over 6 feet long. A cleaner using a brush or squeegee on a pole shall attach it to his person by a wristloop, or other device to prevent dropping. Each extension device so used shall have a locking device to prevent inadvertent detachment of the brush or squeegee.

2. Brushes, buckets, squeegees, and other equipment used by a cleaner working on a scaffold or boatswains' chair shall be fastened to equipment at the moment when not in actual use in the hand of the cleaner.

3. When cleaning windows, special care shall be used where electrical supply lines present a hazard.

4. Window jacks and all other platform devices fastened to window sills for a cleaner to stand upon outside of the window without standard belts and anchors are prohibited.

5. Ropes used in windows, cleaning operations shall be inspected before being used and shall be discarded if unsafe.

R614-6-3. House and Building Moving.

A. General.

1. House movers must provide and maintain good safe equipment. Jacks, blocking, stringers, etc., must be of the proper type and sufficiently strong to support the working load and provide a reasonable factor of safety.

2. Employees shall be properly instructed in the use of the blocks, stringer, jacks, and other equipment, and they shall not be permitted to work under any building or structure until it is safely supported.

B. Utilities and Special regulations.

1. Buildings or structures must not be moved within six (6) feet of any power or communication line until the following provisions have been fully complied with:

a. Arrangements have been made with electric and telephone utilities to have employees present to take care of wires which may interfere with movement of the building or structure.

b. Electric utility linemen are present to take care of any electric supply wires which may interfere with movement of

the building or structure.

c. Telephone company utility employees are present to take care of telephone wires or cables which may interfere with movement of the building or structure.

d. No one except electric utility linemen shall be on top of the building or structure while it is passing within 6 feet of energized electric supply wires.

e. A ridge board has been installed on the ridge of the building or structure to assist in sliding wires over it.

2. All state, county, city, or municipal regulations shall also be observed.

3. A "special transporting permit" issued by the Utah Highway Patrol shall be obtained before buildings are moved on the highway.

R614-6-4. Industrial Railroads.

A. Car handling and layout.

1. Purpose. These orders set up minimum standards for industrial railroads in above-ground operations. Where it has been determined by the Labor Commission that, due to the process or operation, compliance with these orders would increase the hazards, industrial railroads need not comply provided such substandard areas are properly posted with warning signs, clearance distances indicated, areas barricaded, proper instructions given to workmen or other safety devices installed to provide maximum protection to workmen. Nothing herein shall be construed as preventing the movement of material over tracks when such material is necessary in the construction or maintenance of such tracks, nor in the movement of special work equipment used in the construction, maintenance or operation of the railroad, provided such movement shall be carried on under such conditions as are necessary to provide for the safety of all concerned.

2. Definition. An industrial railroad is a railway track, or system of tracks, with necessary appurtenances thereto, owned or controlled by an industrial concern not a common carrier, which operations are conducted solely by one or more of such industrial concerns.

3. Layout. Plant layout as it applies to the installations of railroad tracks, trestles, high lines, loading docks, clearances, crossing, etc., shall comply with the Manual of the American Railway Engineering Association-Engineering Division, and General Order No. 66 of the Public Service Commission of Utah.

a. Where there is a driveway storage space or passageway under a trestle, the passageway should be protected with an overhead shield.

b. On trestles and other places where material is unloaded from side of cars, footwalk can be placed at a distance and part of the floor or walk can be arranged so that it can be lifted to allow metal or other material to fall through. Cable nets or gratings should be provided to prevent employees from falling through openings.

4. Clearance. Standard clearances may not give enough protection where tracks pass doorways or corners of buildings or other places where workers may walk directly onto tracks in front of moving railroad equipment. These locations must be safeguarded with fixed railings or other means that force employees to detour or to become otherwise alerted to the hazard.

5. Crossings. Track crossings shall be reduced to a reasonable minimum and as far as practical shall be away from buildings or their obstructions which may impair visibility. The crossings inside plants shall be equipped with stop signs, blinking light, wig-wags, gates, or other means of effective warning or be protected by a watchman, switchman, or other responsible person.

6. Trestles and Highlines.

a. Trestles shall be equipped with walks, the outer edge of which shall be at least six (6) feet from the rail. Where practical, the floor of this walk shall extend to within four (4) inches of the ends of the ties. In no case shall the walk be less than 20 inches wide. Each walk shall be equipped with a standard railing and toeboard.

b. All dead-end tracks are to be provided with adequate blocks. Draw bar height is preferable.

7. Speed limits. Speed limits both for train and vehicular travel inside industrial plants, shall be established and enforced.

8. Movement of railroad cars by car movers other than locomotives.

a. Car moving equipment, such as continuous cable pullers, winches, or other types of car movers shall have adequate guards to protect the operator, should the cable break.

b. The maximum number of cars loaded and empty, must be established and operators instructed in these safe load limits.

c. Hand-type car movers shall be provided with a guard to protect the operator’s hand, should the tool slip.

d. Pushmobiles, trucks, and any other mobile-type car movers which are specifically intended for car moving shall have a coupler connection to railroad car being moved except when spotting only.

e. Persons assigned as car riders or so-called car droppers, must be adequately trained and shall use a safety belt and a short lanyard attached to the car they are riding while performing this work. (This is not applicable to railroad switching crews.)

9. Reporting bad order cars.

A definite procedure must be established for reporting bad order or damaged equipment, such as pin lifters, couplers, dumping mechanisms, etc.

10. Blocking of Cars.

a. When there is danger of cars rolling or drifting and employees are required to work on them, cars must be blocked with adequate wheel blocks to prevent them from rolling.

b. Where railroad cars are equipped with effective hand brakes, they may be set up to prevent cars from moving when employees are working on or inside of them in place of wheel blocks.

11. Blue Flag Procedure. When working on tracks, unloading or loading cars such as tank cars, gondolas, box cars, etc., the following blue flag track target procedure must be followed:

a. All blue flag track targets shall be of substantial

material, not less than 12" x 15" in size, shall bear the word STOP in letters not less than 4" in height, and shall be at least 28" and not more than 10' above the top of the rail when placed. The supervisor or other person in charge will determine the distance that they are to be placed on each side of the work area.

b. Track target shall be placed on spur tracks 10' from the clearance of the lead or through tracks and the switch of the spur track locked in a closed position.

c. Track target shall be securely clamped upright to the rail or fastened securely to the side of the rail.

d. At night or when weather conditions result in poor visibility, a blue light is to be placed on the track target in the space provided.

e. Where permanent derails are installed, they must be identified with the standard derail post located 8'6" from the nearest rail. Weeds and debris must be kept free of sign posts.

f. Red flags and red lights may be used in emergency cases where standard blue flag targets and blue lanterns are not immediately available, but must be replaced as soon as possible with the standard blue target and blue light.

g. Train crews shall not couple into or move railroad equipment which is protected by blue flags.

h. Railroad equipment shall not be placed in front of blue flags so as to obscure them without notification to and approval of the supervisor or other person in charge of the work on the tracks. The supervisor in charge of the work will then replace the flag for proper protection.

i. The blue flags or derails are to be removed only under the direction of the supervisor or other person in charge of the work on the tracks.

j. When two or more supervisors have groups of employees working on the same tracks, each supervisor will place his own protective lock on the blue flag derail or switch.

k. The blue flag or derail lock must be removed promptly when the work is completed and the tracks are ready for their normal use.

l. The Yardmaster or other designated person will be notified at the start and finish of all work being performed on lead or through tracks.

m. When men are required to repair cars or make mechanical adjustments in the field, the blue flag procedure must be followed.

n. At any time the blue flag procedure cannot be used, a flagman or safety watchman must be provided to give protection for employees working on equipment.

o. Derails shall never be placed on molten metal or slag tracks unless there is no other means of giving adequate protection for employees or equipment.

12. Unloading cars.

a. Training of employees is required before they are assigned to unload gondolas, bottom dumpers, side dumps, or air dump-type cars.

b. Employees are not permitted to work inside railroad cars when they are being unloaded with a magnet.

c. Bottom dump and side dump car mechanisms are to be operated with tools designed for dumping and they must be in good working condition. At no time shall tools in poor repair be used. Their condition must be reported to the supervisor immediately.

d. At no time shall a railroad car be dumped if the dumping mechanisms are defective which makes them unsafe to operate. Such defective cars will be referred to the proper authority.

e. When employees are required to enter covered hopper cars or tank cars through the hatch cover opening, the hatch cover must be fastened securely open so there is no chance of its closing while the employee is in the car.

f. When it is necessary for employees to enter covered hopper cars or tank cars, safety checks must be made to determine that there is no toxic or explosive gas or lack of oxygen.

13. Closed car thawing houses and heating equipment must be so designated and constructed as to prevent accumulations of toxic or explosive gases.

14. Before employees or locomotives are permitted to enter closed car thawing houses when in operation, ventilation must be provided to insure no toxic or explosive gas or lack of oxygen is present.

15. Lighting-Classification Yards. Classification yards and other similar areas where trains are made up to or broken down shall conform to the specification issued by the American Railway Engieering Association.

B. Operations and maintenance.

1. Trackage and controls. Trackage, roadbed signal systems, traffic control system, power lines should be maintained in good condition and shall be regularly inspected.

2. Switch throws shall be so installed as to provide adequate clearance for switchmen.

3. The rod extending from the bridle bar to the throw shall be covered or the stumbling hazard shall be otherwise minimized.

4. Derail devices shall be installed where necessary on all side tracks on or near junction with connection to through traffic lines.

5. Dead-end tracks shall have bumping blocks or the equivalent to prevent cars from running off the end of the tracks.

6. Where foot travel is required adjacent to switches, a walkway shall be provided.

7. Employees shall be prohibited from sitting on tracks or under cars.

8. Employees shall be prohibited from climbing over or crawling under cars to cross tracks, unless it is in the performance of his assigned duties.

9. Signs and Flags.

a. A sign reading STOP (white lettering on blue background) must be placed on the track, or between the rails of the track, in approach to cars which are being loaded, or unloaded, and when the sign is displayed cars must be not coupled to nor moved nor other cars placed so as to obstruct the view of the sign. Warning lights must be attached to the sign by night.

b. The sign will be placed and removed only by an authorized employee. The sign must be displayed to protect employees loading, unloading, or working in or about cars, and must not be removed until it is known that employees and

others are clear.

c. When a sign reading STOP (white lettering on blue background) is displayed, the engine must not be coupled to a tugger, nor shall the car be moved by other means.

d. A car placarded Explosives, Flammable Liquids, Dangerous shall not be cut off while in motion. No car moving under its own momentum shall be allowed to strike any car placarded Explosives, Flammable Liquids, or Dangerous nor shall any such car be coupled with more force than is necessary to complete the coupling.

e. Loaded tank cars with any of the above placards must not be cut off until the hand brake has been tried and found in proper working condition.

10. Electrical.

a. When central traffic control exists and its operation is interrupted or suspended or any irregular function of the system occurs, rail movement shall not be allowed to continue until stoppage or malfunction has been determined, and only then if such movement can be made safely and with direct communication with traffic control operation.

b. All principal electrical switches shall be marked.

c. If the track is used for the return circuit, both rails shall be well bonded at every joint, excepting those tracks governed by automatic block signals.

11. Riding Equipment and Coupling.

a. Employees are cautioned not to get on or off an engine or car which is in rapid motion.

b. Employees must face the equipment in descending ladders on engines and cars, whether standing or moving.

c. Employees are forbidden to ride on draw bars. When movement is being made, employees must not go between engine or ride on leading footboards of the engine in direction of movement, except for the purpose of uncoupling car from engine. Standing, walking on top of, and jumping from car to car is prohibited.

d. If uncoupling lever fails to work, a stop shall be made before uncoupling car. When necessary to change the alignment of couplers cars must be stopped, and under no circumstances should an attempt be made to adjust couplers with foot or hand or raise lock pin by hand, while cars are moving.

e. If necessary to make change or repairs to couplers, the circumstances must be understood by all employees who may, through misunderstanding, move or cause the car to be moved; the cars should be separated not less than one car length to reduce possibility of injury, should they be moved by mistake. Employees should, when possible, avoid standing directly in line with couplers.

f. Trainmen and enginemen must forbid employees whose duties do not connect them with the movement, to get on and off engines or cars, while in motion.

g. No one except the train, engineer crew and person authorized by management should be permitted to ride on or in a locomotive or on a train.

h. "Poling" or moving a car on another track with a pole should be done only in extreme emergency and under direct supervision. DO NOT PUSH CAR UNTIL ALL PERSONS ARE IN A SAFE PLACE.

i. Rocker or "Cradle" type dumping cars shall be equipped with an efficient positive locking device.

j. Brakemen are not permitted to ride on or between slag pots, or between slag pot and locomotive.

k. Before spotting a slag pot for filling, it shall be inspected carefully to insure that no water or wet debris is in the bottom of the pot.

l. Pots and ladles must not be filled so full as to cause spillage.

m. Before dumping slag in a new place, a member of the crew must investigate to insure that no one will be endangered by the hot slag.

n. In handling railroad cars, employees must:

(1) Use standard brake clubs.

(2) Wear a safety hat.

(3) Wear snug-fitting clothes.

(4) Be required to ride the front end of all trains that are being pushed.

(5) Get off a moving locomotive from the side, well in the clear of the footboard.

(6) Not stand on or between the rails when mounting a moving location.

12. Locomotives.

a. Locomotive shall be equipped with a bell and a whistle, both capable of giving a loud and clear warning signal.

b. Each locomotive used, between sunset and sunrise, shall have two lights, one located on the front of the locomotive and one on the rear, each of which shall enable a person in the cab of the locomotive under the condition, including visual capacity, to see a dark object for a distance of at least 300 feet ahead, and in front of such headlight in yard service and 800 feet in road service.

c. All locomotives equipped with footboards shall be equipped with toeboards. The grab irons and handrails shall be well maintained at all times.

d. Safety latches shall be provided on electric locomotives to hold trolley poles, current collector, or pantagraphs away from the trolley wires.

e. The engineer or motorman shall be made responsible for the safe operation of the locomotive.

f. Locomotives shall not be run over tracks where dirt or other materials strike the footboards.

13. Car Storage.

a. When practical, cars must be kept clear of any street or public crossing, and at least one hundred feet from the crossing.

b. A sufficient number of hand brakes must be set to hold cars; if brakes are inoperative, cars must be secured otherwise. When cars are set out on a grade, they must be coupled, if practical, and in addition to brakes being set, wheels must be blocked.

c. Cars shall not be stored on tracks unless protected with derails, when facing point switches or ascending grades toward main track, except in emergency or on instructions of proper authority, and in such cases cars must be properly secured. Wheels must be blocked where necessary.

d. When empty cars are stored on tracks adjacent to buildings an opening of at least forty feet must be made every five car lengths.

14. Air Brake Systems.

a. Where air brake systems are used, the following is applicable:

(1) Train line pressure for passenger trains is 110 pounds, for freight and mixed trains, 90 pounds. Should the proper control of a freight train or mixed train make it necessary, the use of 90 pounds brake pipe pressure is permissible. Brake pipe pressure for yard engines is governed by class of equipment handled or minimum of 80 pounds.

(2) Main reservoir pressure must be maintained at least 15 pounds minimum above adjustment of the feed valve, or brake pipe pressure.

(3) The proportion of air brakes in operation must at no time be less than 85 percent of all the cars in a train. On ascending grades rear car must have operative air brakes.

(4) Train air brake system must be charged to require air pressure, angle cocks and cut out cocks must be properly positioned, air hose must be properly coupled and must be in condition for service. An examination must be made for leaks and necessary repairs made to reduce leakage to a minimum. Retaining valves and retaining valve pipes must be inspected and known to be in condition for service.

(5) It must be known that the air brake equipment on engines is in a safe and suitable condition for service.

15. Air Brake Application.

a. Leakage from main air reservoir and related piping shall not exceed an average of three pounds per minute in a test of three minutes duration, made after the pressure was reduced forty percent below maximum pressure.

b. Brake pipe leakage must not exceed five pounds per minute after a reduction of ten pounds has been made from brake pipe air pressure of not less than seventy pounds.

c. With a full service application of brakes, and with communication to the brake cylinders closed, brakes must remain applied not less than five minutes.

d. Compressor governor shall be adjusted so that the high pressure side causes the compressor to unload at 140 pounds and the low pressure side causes the compressor to load at 130 pounds.

e. Leakage from control air reservoir, related piping and pneumatically operated controls shall not exceed an average of three pounds per minute in a test of three minutes duration.

f. Compressor or compressors must be tested for a capacity by orifice test as often as conditions require but not less frequently than once every six months.

g. Every main reservoir before being put into service, and at least once every eighteen months thereafter, shall be subjected to hydrostatic pressure not less than 25% above the maximum working pressure.

h. Where a stop is made on a grade for an indefinite period, brakes on all engines must be fully applied and sufficient hand brakes set when necessary to hold the train and air brakes on cars released. When on an ascending grade, hand brakes must be set on rear and on a descending grade, set on head end of train.

i. When stop is for a short period and retaining valves are in ue, the air brakes, when necessary, may be applied and released once every two minutes, to assist engine brakes to hold the train.

j. When setting cars out at intermediate points, a normal brake application from the automatic brake valve must be made, hand brake applied, close angle cock from locomotive, bleed air brake system on car, block wheels of car; the air brakes on the car will not be applied under an emergency application (big hole).

16. Air Brake Maintenance.

a. Before adjusting piston travel or working on the brake rigging, brakes must be cut out by closing cut-out cock in the branch line, all reservoirs drained and necessary precautions taken.

b. Air gauges must be tested at least once every six months and whenever any irregularity is reported. They shall be compared with an accurate deadweight tester, or test gauge. Gauges found inaccurate or defective must be repaired or replaced.

c. Distributing or control valves, brake application valves, equalizing piston portion, feed and reducing valves, safety valves, brake pipe vent valves, relay valves, magnet valves, dirt collectors and filters must be cleaned, repaired and tested as often as conditions require to properly maintain them in a safe and suitable condition for service.

d. On engines so equipped, hand brakes, parts and connections must be inspected and necessary repairs made as often as the service requires.

e. Minimum brake cylinder piston travel must be sufficient to provide proper brake shoe clearance when brakes are released.

f. Maximum brake cylinder piston travel when engine is standing must not exceed the following:

TABLE 1

	Inches
Driving wheel brake	6
Swivel type brake with brakes on more than one truck operated by one brake cylinder	7
Swivel type truck brake equipped with one brake cylinder	8
Swivel type truck brake equipped with two or more brake cylinders	6

g. Foundation brake rigging, and safety supports, where used, must be maintained in safe and suitable condition for service. Levers, rods, brake beams, hangers and pins must be of ample strength and must not bind or foul in any way that will affect proper operation of brakes. All pins must be properly applied and secured in place with suitable locking devices. Brake shoes must be properly applied and kept approximately in line with treads of wheels or other braking surfaces.

h. No part of the foundation brake rigging and safety supports shall be less than 2 1/2 inches above the top of the rail.

i. Before a car is released from a shop or repair track, it must be known that the brake pipe is securely clamped, angle cocks in proper position with suitable clearance; valves,

reservoirs and cylinders tight on supports and supports securely attached to car.

j. When cars are on shop or repair tracks, hand brakes and connections must be inspected, tested and necessary repairs made to insure they are in a suitable condition for safe and effective operation.

k. Brake equipment on cars must be cleaned, repaired, lubricated and tested as often as required to maintain it in a safe and suitable condition for service.

R614-6-5. Livestock Butchering and Bulk Carcass Handling.

A. Corrals and livestock.

1. Unloading areas are to be constructed so as not to endanger those employees working in these areas. They are to be constructed with a minimum width of three (3) feet. The area must be lighted with sufficient illumination so that the work can be done safely.

2. Livestock holding pens are to be constructed of a heavy type material, lumber or metal, that will stand extreme pressures from livestock. Also, all sides shall be made climbable.

3. Floors of kill pens will be made of a material with a texture to reduce slippage.

4. Employees who will work with livestock are to be physically and mentally capable to perform their duties.

5. Before any employee is to work with livestock, he shall be aware of the dangers of livestock handling.

6. Electrical shocking devices (hot shots) used for moving livestock shall be manufactured for the purpose with controlled power output and shall be used according to the manufacturer's recommendations. No direct wire shall be used for this purpose.

B. Kill Floors.

1. Dressing platforms shall have standard railing and toeboards at the back side and short board or rail on the dressing side. The rail on the dressing side shall have sufficient clearance above the platform for cleanup but low enough to catch an employee in case of slippage.

2. Employees using explosive-actuated knockers shall be instructed in the use of the tool.

3. Employees using pneumatic knockers shall also be instructed in the use of the tool.

4. Couplings on high pressure hoses shall be pinned, chained or otherwise secured to prevent them from uncoupling accidentally.

5. Employees knocking cattle with the explosive-actuated or pneumatic knockers need not be carded by the manufacturer.

6. Explosive-actuated or pneumatic knockers, either loaded or unloaded, shall not be pointed at workmen.

7. Explosive-actuated knockers shall not be loaded until just prior to intended firing. No loaded tool shall be left unattended.

8. All hoist and balancers shall be equipped with safety chains.

9. All control switches are to be suspended and free swinging so as to permit the operator to move completely clear of hoist area.

10. Safety hats shall be worn by all employees.

11. All water and steam lines 160 degrees or more are to be designated as such by a sign indicating hot water and hot metal pipes shall be located or covered so as to prevent contact with hot surfaces.

12. Splitting area must be clear of all unauthorized personnel before operating saw.

C. Coolers and loading areas.

1. All rails carrying animal carcasses shall be under a periodic maintenance and inspection schedule. All rail hangers, connecting bolts and switching areas are to be checked for tightness and wear.

2. Freezers, coolers, and dry storage areas shall have provisions for adequate aisles and exits.

3. Unit coolers, heaters and refrigeration piping that is within stacking limits must be adequately protected. In ceiling coil type freezers, all stacking shall be limited to avoid striking and breaking pipes.

4. Defrosting by heat is preferred to scraping of coils. If scraping is necessary, great caution must be used and provisions for emergencies must be made.

5. Unit coolers must be provided with adequate barriers to prevent any product from coming in contact with either unit or piping. Valves, pump-out lines and the like shall be so located at the installation so that they are not vulnerable to damage.

6. All freezer and cooler doors shall be equipped with two-way door openers.

7. All dock areas are to be kept clean and free of all refuse.

8. Empty beef trollies shall not be left hanging on any rail.

9. All dock boards or plates shall have an under-structure preventing them from sliding backward or forward when in loading position. Plates shall be provided with suitable chains, or other fixture, on each side for safe lowering into position.

10. Workers must be trained in safe lifting.

11. Sanitation measures taken shall be such as to protect the health and well being of the employees. A system shall be established and maintained for waste and trash disposal so that reasonable level of housekeeping may be maintained. Wastes shall not be allowed to accumulate so as to ferment or putrefy or otherwise become unsanitary and hazardous.

12. A sufficient level of illumination shall be supplied for the type of work in the area. Reference: ANSI Standard A11.1, Industrial Lighting.

TABLE 2

MEAT PACKING

Slaughtering	30 foot-candles.
Cleaning, Cutting, etc.	100 foot-candles.
Inspection, difficult	100 foot-candles.

R614-6-6. Motor Vehicle Transportation of Workers.

A. General.

1. The purpose of this Safety Code is to prescribe minimum standards for the safe transportation of employees

to and from their places of employment as set forth in Title 34, Chapter 36, Transportation of Workers.

2. These rules shall apply to every motor vehicle, including passenger automobiles and station wagons, used to transport employees to and from their place of employment whether or not used upon a public highway.

3. All specifications in this code are minimum. At any particular operation these rules can be enhanced or made more stringent if necessary to protect the life and safety of employees.

4. All owners of motor vehicles used to transport workers, or their duly appointed agents, and drivers of such vehicles shall abide by all safety orders issued by the Labor Commission, or by its duly authorized representative.

5. The right of inspection and examination at any reasonable time is reserved by the Labor Commission or its duly designated agent.

6. These rules shall not apply to motor carriers or to motor vehicles owned and operated by the government of the United States.

7. These rules and regulations do not apply to the transportation of agricultural workers.

B. Drivers.

1. Only authorized, experienced, competent, qualified and licensed drivers, not less than 18 years of age, shall be permitted to operate vehicles used to transport workers. A chauffeur's license is not required, except as may be required by law.

2. No employee shall be used to operate a vehicle for the purpose of transporting workmen after such an employee has completed twelve (12) aggregate hours of work in any period of twenty-four (24) consecutive hours, excluding rest stops and a meal period of not exceeding one hour. During period of regular shift change, this shall not preclude working two (2) alternate eight-hour shifts with an eight-hour off period between the two shifts.

NOTE: A rest stop is a period of time of not less than two (2) hours and during which time the employee is released from all duty and responsibility. Aggregate hours of work includes all types and classifications of employment and shall not be construed to apply to only those hours driving a vehicle.

3. In lieu of responsible supervisory personnel the operator of a vehicle shall at all times be in charge of workers and responsible for the observance of safety rules.

4. There shall be some signal system, or signalling device provided for the supervisor to communicate with or signal the driver, where the supervisor is separated from the driver.

5. Signals adopted shall be simple and understood by both driver and supervisor. If a signalling device is used, it shall be maintained in good working order.

C. Operation of vehicles.

1. No vehicle shall be loaded beyond its safe carry capacity.

2. No motor vehicle shall be driven if it is so loaded, or if the load thereon is so distributed or so inadequately secured, as to prevent its safe operation.

3. No motor vehicle shall be driven when the passengers or any object obscures the driver's view ahead or to either side, or interferes with the free movement of his arms or legs, or prevents his free and ready access to his controls and emergency equipment, or prevents the free and ready exit of any persons from the vehicle.

4. All vehicles transporting workers shall observe all motor vehicle laws of this state and the cities and counties in which the vehicle is operated.

5. The driver of any vehicle transporting workers, before crossing at grade any tracks of a railroad, shall stop such vehicle not less than 10, not more than 50 feet from the nearest rail of such track, and while so stopped shall look and listen in both directions along such tracks for approaching trains or cars.

a. This requirement shall not apply:

(1) To tracks where traffic control signals are in operation and give indication to approaching vehicular traffic to proceed.

(2) To industry track crossing across which train operations are required by law to be conducted under flat protection; or

(3) To industry track crossing within which the indicated speed of vehicles is 20 miles per hour.

b. Unless a train is approaching, motor vehicles carrying workers are not required to stop at crossings where the Public Service Commission has determined and plainly marked exempt.

6. Only persons authorized by management shall be allowed to ride on vehicles.

7. Vehicles transporting workers shall be driven completely off the highway or road to discharge or take on workers. When the width of the highway or road does not allow the observance of this rule, the vehicle shall draw to the extreme right of the usable portion of the road before discharging or taking on workers, provided there is 16 feet of roadway opposite such vehicle for free passage of other vehicles.

D. Securing of Tools, Equipment, etc.

1. Racks, boxes, holsters, or equivalent means shall be provided and arranged so passengers will not be endangered by tools or equipment being transported, loaded or removed, and tools and equipment preferably placed or arranged so they are accessible from the outside of the vehicle.

2. Tools and materials shall be secured in the racks and boxes provided.

3. When materials of any type are transported at the same time, workers shall be protected from the hazards of materials by adequate partitions or proper securing of loads.

4. A motor vehicle used to haul or transport workers must be equipped with sides at least 42" high and shall have adequate seating facilities.

E. Hauling of Explosives Prohibited.

No explosives, injurious chemicals of pesticides shall be hauled on any vehicles while they are engaged in transporting workers. This rule shall not prohibit the driver and the qualified powder crew from riding in a vehicle in which explosives are being hauled.

F. Hauling of Gasoline, etc.

Gasoline and other low flash point liquids shall not be

hauled on vehicles transporting workers except in approved safety containers of not more than five-gallon capacity, and provided such containers are carried in a safe suitable location outside the passenger compartment. Such containers shall be carried as far away from the passenger compartment as possible and where they will not block exit from the vehicle and shall be firmly secured to prevent shifting, or shall be placed in well ventilated compartments or racks.

G. Refueling of Vehicles.

1. Smoking in the vicinity of vehicles being refueled is prohibited.

2. Refueling while motor is running or when within close proximity to any open fires or flame is prohibited.

H. Workers' Duties.

1. Workers riding in motor vehicles shall not stand while the vehicle is in motion. Passengers must wait for the vehicle to come to a complete stop before boarding or leaving.

2. Workers shall be prohibited from riding on running boards or fenders, hoods or cab tops, or with their arms or feet hanging out of or over the rear or side of any vehicle, or on sides of pickups or on tail gates.

3. When dismounting from a vehicle on a highway or road, the workers shall wait until the vehicle has proceeded before crossing the road unless the vehicle has stopped at its destination.

4. Workers wearing equipment which might injure a fellow worker (spurs, exposed sharp tools, etc.) shall remove such equipment before entering any vehicle in which workers are being transported.

5. Scuffling or horseplay while riding in any vehicle is prohibited.

6. Any hazardous condition or defect of a motor vehicle or unsafe practice of driver or workers riding in vehicles used to transport workers shall be reported to the employer, supervisor, or driver as soon as possible by any worker having knowledge of such conditions.

I. Heating the Vehicle.

Any heating units provided for the comfort of workers riding in vehicles used in their transportation shall be guarded or insulated to prevent workers from being burned by accidental contact. The use of hot water radiator type heaters is recommended.

1. If it is necessary to use stoves for heating, such stoves shall be securely attached to the bed of the vehicle and shall be equipped with doors which lock securely. Pipes and other attachments shall be securely fastened to the stove and to the vehicle. Pipes shall be either of continuous length or welded or riveted to the joints.

2. Heating facilities shall be arranged so that smoke, fumes or gases will not enter the vehicle.

J. Inspection, Testing, and Repairs.

1. All vehicles shall be kept in good repair and safe operating condition at all times. Vehicles with defective gears, tires, steering equipment or brakes shall not be used to transport workers.

2. Inspection or testing by the driver of all parts vital to the safe operation of vehicles, such as brakes, steering gear, tires, lights and signalling devices, shall be made at the beginning of each shift or each day, and as often as necessary during use. Any condition found then or at any other time which will prevent the safe operation of the vehicle shall be corrected before the vehicle is used.

3. Compartments for workers shall be kept in a clean and sanitary condition.

R614-6-7. Hot Metallurgical Operations.

A. The purpose of this rule is to cover the minimum standards and requirements for the safe operation and maintenance of all types of facilities associated with Hot Metallurgical Operations. Other Safety Rules and Regulations must be complied with when and if they apply to these operations. Furthermore, it is not the intent of this rule to make specific rules to cover every hazard of an operation. Each operation shall be analyzed for hazards peculiar to that operation and then Safe Operating Rules and Procedures Shall Be Provided and Administered by Management.

B. Provisions shall be made for on-the-job training of personnel to insure a safe operation.

C. Work shoes or leather boots with a minimum height of six (6) inches shall be worn by personnel working around molten metal or other hot process materials. Safety shoes are recommended. Special protective equipment shall be provided and worn as required.

D. In areas where employees are exposed to toxic and nuisance gases and dusts, adequate ventilating and collecting systems shall be provided to insure that such toxic and nuisance gases and dusts are maintained within the recommended maximum allowable concentration as proposed and adopted by the American Conference of Governmental Industrial Hygienists. Where this cannot be accomplished and employees are required to work in excessive concentrations, U.S. Bureau of Mines approved respirators or supplied fresh air breathing equipment shall be provided.

E. Equipment shall be provided to test for the presence of toxic and nuisance gases and dusts and qualified personnel will make and evaluate such tests.

F. Furnaces.

1. Furnace combustion systems shall be equipped with fail safe controls and these controls shall not be by-passed during normal operations. Also emergency shut-off systems for fuel supply shall be provided if necessary.

2. Fuel lines and control valves shall be properly identified and accessible.

3. To insure the safe operation of stand-by fuel systems, operating instructions shall be posted in a conspicuous and accessible location and employees trained in these procedures.

4. Whenever a hazard exists while charging or feeding furnaces or process equipment, an adequate warning system shall be provided and used to warn and protect personnel.

5. In processes where water or wet material are necessary to the normal operation of the process, they shall be used only under carefully controlled conditions.

6. On multiple hearth furnace operations, where it is required to work on the furnace as a normal operating procedure adequate working platforms shall be provided when working hearth levels more than four (4) feet above

normal roster floors.

7. Solid decking shall be provided where a hazard exists of free flowing hot material falling from one floor to another.

8. Material to be charged into a furnace shall not include items foreign to the normal process that may cause an explosion, such as pressure vessels or closed cylinders.

9. Adequate procedures and tools shall be provided and compliance enforced for removal of product from furnace or oven or while working hot process materials. When pipe is used as a tool, the end adjacent to the employee must be sealed.

10. Copper matte launders shall be covered whenever practical.

11. Unauthorized personnel shall not stand near pots, ladles, furnaces, etc., when molten material is being handled. Warning systems shall be provided and sounded before a pour is made or the material is moved.

12. Bails and trunions on ladles and pots used to carry molten material must be tested by nondestructive methods to determine if any flaws exist. The tests are to be made and evaluated by qualified personnel on regular, scheduled periods of not to exceed twelve (12) months and a record maintained of each inspection. Defective components must be removed from service immediately.

13. The dumping hook for pots or ladles shall not be attached until the pot or ladle is in the specific area where it is to be dumped.

14. Clean-up crews assigned to work in the area of molten metal, hot slag, hot by-products, hot calcine or similar products shall be adequately instructed and supervised concerning hazards of material and location.

R614-6-8. Elevators, Escalators, Aerial Trams, Manlifts, Workers' Hoists, Etc.

A. This part will cover elevators of various types, dumbwaiters, escalators, moving walks, aerial trams and ski lifts, manlifts, and personnel and material hoists or other mechanical applications of a similar nature when used to transport employees. It will not cover conveyors used to move material to and from storage, stacking or tiering machines, mine hoists, elevators, or skips.

B. Where local laws or ordinances have more strict regulations such laws or ordinances shall apply.

C. Elevators, escalators, and moving walks shall be designed, installed, operated, inspected, maintained and tested as specified in American National Standard Institute, A17.1, which is hereby incorporated by reference.

D. Aerial tramways and ski lifts shall meet the provisions specified in American National Standards Institute Code B77.1 which is hereby incorporated by reference.

E. Manlifts shall meet the provisions specified in American National Standards Institute Safety Code A90.1 which is hereby incorporated by reference.

F. Material hoists and workers' hoists shall meet the safety provisions specified in American National Standards Institute A10.2 and A10.4, which is hereby incorporated by reference. For a hoist to meet the provisions to transport workers (A10.4) it shall also meet safety provisions, out of American National Standards Institute Safety Code A17.1 which is hereby incorporated by reference.

G. Material hoists which do not meet the requirements for worker's hoists (A10.4) must be clearly marked "NO RIDERS" or a similar sign. All employees are required to enforce any restrictions against any workers riding such hoists.

H. Before any equipment covered by this part is installed or a major revision or remodeling begins on such equipment, the Administrator must be advised at least one week in advance of such installation, revision, or remodeling.

R614-6-9. Filters and Centrifuges.

A. Filters-General.

1. The necessary protective equipment shall be supplied and used, to protect employees from chemically harmful, hot or irritating materials.

2. Most filtration equipment is dependent on vacuum and/or pressure operation. Therefore, hazards produced by such vacuum or pressure shall be recognized and precautions and training given commensurate with such hazards.

3. Covers, ventilating hoods, feed chutes or other auxiliary equipment located overhead or suspended above the workers shall be adequately secured by recognized engineering standards and shall be inspected frequently to assure that corrosion wear or any other factor has not deteriorated the suspension system, making it unsafe.

4. When hoods or covers are movable and raised (suspended) so that workers must work under them, positive blocking or supports sufficient to support the load must be in place before the employee commences work under the hood or cover.

5. Floors, walkways, ramps, stairs, or other such equipment shall be adequate for the work performed and they shall have handrailings. Where the materials handled cause floors to become slick, anti-skid surfaces shall be provided.

6. When it is necessary to handle heavy components (in excess of 100 lbs) as a regular part of the operation, a hoist shall be provided. In some cases, depending on the lifting position of the employee, a hoist may be necessary when the components weigh less than 100 lbs.

7. Any filter which is activated by pressure shall be equipped with a pressure gauge installed so as to indicate the pressure within the functional mechanism of the filter.

8. All electrical gear installed in connection with filtration must be grounded. Switch gear should be waterproof or installed above or away from the filtration area. All switch gear shall be properly identified.

9. Sumps or other floor openings shall be protected by covers or railings or other satisfactory barricades.

B. Plate and Frame Filters.

1. The filter shall be fitted for the maximum pressure which can be delivered by the feed pump.

2. Plates and frames shall be properly fitted and dressed so as to reduce leakage to a minimum.

3. Provisions shall be established to control leakage from squirting from the filter into the work area. A full cover is recommended.

4. The handles on plates and frames shall be securely attached. When wooden plates and frames are used, the

handles shall be inspected and maintained so as to prevent their pulling out while being handled. Plates and frames with loose handles shall not be installed when reassembling a filter.

5. Spigots, when used, shall be adequately maintained.

6. When the filter cake is dropped into an agitator, hopper, extender chute, or tank, a grizzly or other effective means shall be provided to protect the employee from getting caught or falling into such equipment.

7. Hydraulic closers shall be fitted for the pressure encountered. Adequate blocks or other satisfactory method shall be provided so that the hydraulic pressure can be relieved during the operating cycle of the filter.

8. When a bar is used to tighten the filter, a hand guard or block or other satisfactory means shall be provided on the handle to protect the hands of the operator from being mashed against the floor or other contact surface.

C. Drum filters.

1. Driving machinery shall be guarded or totally enclosed.

2. Agitator drive arms shall be arranged or shall be guarded so that the employee is protected at scissor or pinch points.

3. Air lancing of the feed bath or air agitation shall be controlled. Goggles or face shields shall be worn when using an air lance.

4. Repulper agitators shall be protected by grizzly or other means so that hands or feet cannot come in contact with the blades.

5. Filters shall be maintained or a cover shall be provided so that the blow cannot pass through holes in the blanket in such a manner as to endanger workers. This shall be interpreted as meaning hazardous chemicals or hot solutions.

6. Belt discharges shall be guarded so that the nip points are enclosed or otherwise protected.

7. Employees shall not enter the inside of a drum until it is established that a safe atmosphere exists. A fan or other source of breathable air shall be supplied to insure an adequate oxygen supply inside the drum. An employee shall be available outside the drum in case of emergency.

D. Disc or Leaf Filters.

1. Driving mechanisms shall be adequately guarded or enclosed.

2. Adequate footing shall be provided when changing sectors, retainers or rods.

3. The filter shall be fitted for the vacuum and pressures encountered.

4. Disposal of filter cake shall meet the provisions outlined in R614-6-9.B.6.

5. If conveyor discharge is used, the conveyors shall meet the standards set forth in R614-5-2.

E. Pressure filters-Horizontal and Vertical tank type.

1. Pressure filter tanks shall be constructed under the standards established for unfired pressure vessels.

2. The filter shall be fitted for the pressures encountered.

3. All seal gaskets shall be maintained so as to preclude leakage.

4. Closure mechanisms shall be positive so as to prevent any possibility of the tank opening while under pressure.

5. Hinged lever type of closures shall be so arranged that when the handle passes center, when opening the filter, that the operator is protected from the thrust on the handle or it is reduced to a safe force which can be easily controlled.

6. Individual screw type closures shall all be in place and tightened so as to receive strain uniformly around the circumference of the tank before the filter is placed in operation.

7. No pressure tank type filter shall be opened until all pressure has been relieved and is open to atmosphere.

8. Filter media shall be cleaned in a safe manner. Due caution shall be exercised when using steam, hot water or compressed air.

F. Pan, Tray and Belt Filters.

1. The applicable provisions for all above-mentioned filters shall be followed.

2. The slurry feed shall be so controlled to prevent splashing onto the operator.

G. Vacuum and filtrate pumps and lines.

1. All drives shall be enclosed or guarded.

2. Lines shall be adequately identified.

3. When valves are installed in lines, they shall be accessible from floors, ladders or platforms provided, or shall have extension handles to the working area.

H. Filter aids and reagents.

1. Operators shall be knowledgeable concerning any additives used and the reaction which may be hazardous.

2. Chemicals which may be poisonous or severely ittiating shall have such warnings posted along with procedure concerning their use and instructions in case of hazardous exposure.

3. The storage and handling of any chemicals used shall be in conformance with the Manufacturing Chemists Association data sheet concerning the material.

4. Steam and hot solutions or slurries shall be identified and where practical shall have the lines insulated in areas where employees may contact them.

I. Centrifuges.

1. The housing of all centrifuges shall be electrically grounded.

2. Operators of centrifuges shall be trained concerning the hazards of the operation.

3. Each centrifuge shall be equipped with an interlocking device that will prevent the cover from being opened while the machine is in operation or under power.

4. When the cover is bolted, the interlock will not be necessary, but a positive procedure of lockout and tagging shall be enforced.

5. Each centrifuge shall be adequately anchored and shall be equipped with a vibration cutout device. This must be maintained operable at all times. This requirement may be waived when the centrifuge has a full-time attendant.

R614-6-10. Food Processing.

A. Grinders and cutters.

1. Production rooms shall have adequate lighting throughout working and storage areas.

2. Machines and equipment shall be installed and used

in the manner recommended by their manufacturer.

3. Machine operators shall be trained in the machine operation and especially in safety as concerns the particular machine or process.

4. Grinders shall be provided with suitable pushing bars. Supervision shall see that the pushers are used and that hands are not used to feed grinders.

5. Every power-driven food grinder of the worm type shall be so constructed, installed or guarded that the employee's fingers cannot come in contact with the worm. Examples:

a. Mechanical feeding.

b. Grating or bar guards over opening arranged in such a manner that the fingers cannot reach the worm.

c. Distance from the feed opening to screw in excess of an arm's length.

d. Restricting the size of the feed opening.

6. Under no circumstances shall pusher be used in lieu of a positive method of guarding)

7. Before cleaning food grinders, choppers, or similar powered equipment, the controls shall be locked and/or tagged in the off position.

8. Processing machines shall be installed at the proper height, or platforms installed, so the operator can accomplish the work without using stools or make-shift devices to stand on.

9. Chopper and blender bowls shall be guarded. When guarding is not practical, explicit instructions and supervision must assure that hands do not enter the bowl.

10. Machines having a plunger, piston or fast moving press type of operation shall be equipped with two hand controls, remote controls, interlocking devices, etc., to prevent the operator from being caught in the closure.

11. Knife changing or any repairs or changes which will permit the employee to be caught in the machinery or its driving mechanism shall not be done until the power controls are in the off position and/or tagged and locked.

B. Material and arrangement.

1. Machines shall be installed so as to give safe operation space and adequate access.

2. A system shall be established and maintained for waste and trash disposal so that a reasonable level of housekeeping may be maintained. Wastes shall not be allowed to accumulate so as to ferment or putrefy or otherwise become unsanitary and hazardous.

3. Excess material in the work places may be hazardous and shall be avoided.

4. Equipment shall be maintained so as to prevent metal edges from wearing sharp, tools from wearing or otherwise becoming hazardous, broken handles, etc. Buckets, pans, trays, etc., shall have a place and be in their place. Bails and handles on service containers shall be maintained safe.

5. Hoses shall be selected for the type of usage involved. Hoses shall be identified so that there is not an interchange of cold water hose into hot water, air or steam usage.

6. Hose couplings on air, hot water, and steam lines shall be secured by pinning, chains, or other satisfactory methods.

7. Hoses shall not be strung across work areas and left unattended. A rack, reel or other device shall be provided for hose storage.

C. Tools.

1. Hand knives and other sharp tools when carried, except in hand, shall be kept in a scabbard, case, holder or otherwise protected from accidental contact.

2. 29 CFR 1910 Subpart S adopts the National Electrical Code. This includes the grounding of all machines and electrical tools, and extension cords. Electrical installation must meet the provisions of these codes.

3. All portable tools shall have suitable guards that meet accepted codes. Employees using portable power tools shall be instructed and supervised in their proper use and care.

D. Refrigeration maintenance.

1. All mechanical personnel who are scheduled or designated to do any work whatsoever on a refrigeration system shall be briefed on the entire job before beginning. The production foreman and superintendent, safety department, and emergency personnel shall be notified that work is to be done.

2. Some of the basics that shall be checked before a refrigerant system is opened are:

a. Trace out piping.

b. Locate branch shut off valves.

c. Tag or lock out all switches, equipment, and valves that may affect the job.

d. Obtain all necessary safety equipment, and be sure that it is in operating condition.

e. Check to see that chemicals and gases are purged or evacuated from the system.

f. Note the effect of liquid and oil on pump-out operations.

g. Confer with associated personnel on safety precautions, safety equipment, standby safety equipment, emergency plans and first-aid measures.

h. Locate safety shower or deluge water supply.

i. Establish an evacuation route.

j. Check for location of nearest fire alarm, stretcher, and fire extinguisher. Know all emergency telephone numbers.

3. Before leaving the job make necessary checks to see that equipment is secured or safe to operate. If the job is not completed, post suitable warning, tag and lock controls, and notify supervisors of subsequent shift. Clean up all protective equipment.

E. Hot Processing.

1. Deep frying and similar processes where hot shortening or grease is handled or used must have adequate safety procedures established. Training in safe methods is essential and supervision must be assured that the safe procedures and methods are followed and that equipment used will function in a safe manner.

2. Hand transferring of hot grease or similar materials shall be done with extreme care, using gloves or pads to protect hands, and quantities not to exceed 1 U.S. gallon. Eye protection should be worn. Other employees shall be excluded from the hazard area.

3. Ventilation hoods over frying areas shall be cleaned sufficiently to keep them relatively grease free. A 10 B.C. fire extinguisher shall be available in the immediate area.

4. Lard rendering and filtration shall be so arranged, guarded, and protected as to prevent the workers from being exposed to the hazards of burns.

5. Sanitation and housekeeping measures shall be sufficient to protect the health and well being of the employees. Rotted or putrefied products and diseased animal products shall not be handled unless the employee is protected from skin contact. Other protection may be needed, and if so shall be used.

R614-6-11. Boilers and Pressure Vessels.

Boilers and pressure vessels shall meet the requirements of Section 34A-7-102.

KEY: machinery, work-related diseases, boilers*
December 2, 1997 **34A-7-101**
34A-7-102
34A-7-103
34A-7-104
34A-7-105
34A-6-201 et seq.

R614. Labor Commission, Occupational Safety and Health.
R614-7. Construction Standards.
R614-7-1. Roofing, Tar-Asphalt Operations.

A. Roofing

1. Roofing employees shall be protected by adequate provisions from falling from roofs. These provisions may include:

2. When work is done on roofs which are more than sixteen (16) feet from the ground to the eaves, and where there is no parapet wall at the eaves, and such roof has a slope greater than four (4) inches in one (1) foot, a substantial catch platform or scaffold platform of sufficient width to extend at least two (2) feet beyond the outer edge of the eaves' projection shall be used.

3. As an alternative to such a platform, each person working on the roof shall be provided with a safety belt and life line securely fastened to a safe anchorage.

4. Roofs between six (6) and fifteen (15) feet from the ground to eaves and meeting other provisions above may be protected by a 2 x 4 or larger toeboard securely held at the work position or adequate roof jacks provided the slope does not exceed 12 inches in one (1) foot.

5. Roof ladders may also be used.

6. Workers on roofs having a slope greater than 12/12 pitch shall be protected with safety belts and life lines or by substantial roof ladders or other methods providing positive protection.

7. On oval shaped (dome) roofs a rope type of roof ladders is recommended. When the slope is greater than 2 to 1 (24 x 12) the employee shall be protected by life line or a fixed scaffold.

8. Roofing material and workers shall be distributed over the roof structure so as to prevent localized overloading.

9. Employees shall not carry loads exceeding 100 pounds on ladders, roofs or other elevated areas.

10. Employees shall not work on sloped roofs which are snow or ice covered except for the purpose of making same safe.

B. Hot roofing.

1. Protective clothing and equipment.

a. Roofers handling hot roofing materials shall be fully clothed including long sleeved shirts buttoned at the wrists. Other employees may wear no less than "T" shirts over their upper body.

b. Substantial shoes no less than six (6) inches in height, fully laced or secured shall be worn.

c. No gauntlet gloves shall be permitted. Wrist length gloves shall be worn.

d. Employees subjected to the possibility of splashing hot materials shall wear face shields or goggles.

2. Heating equipment.

a. All heating kettles shall be equipped with a temperature measring device in operating condition and the asphalt shall not be heated in excess of 50 degrees below the Flash Point.

b. Toxic and combustible vapors are given off during heating of asphalt and tar materials. Employees working with these materials shall be instructed in safety precautions and in the proper methods of handling.

c. Attendants shall be within 100 feet of the kettle at all times while the burner flame is on.

d. Kettle heating equipment shall be installed and maintained in conformity with the American National Standards Institute Requirements for the fuel being used.

e. A fire extinguisher no smaller than 10 B-C rating shall be installed in close proximity to heating kettles.

f. During melting and heating operations, care shall be taken to prevent moisture from getting into the hot mix.

3. Material handling.

a. Pump lines handling hot asphalt shall be positioned securely and equipped with a shut-off valve on each of a coupler which may be opened when lines are full.

b. Pump lines shall not be subjected to pressures in excess of the safe working pressure of the lines being used.

c. Hot asphalt shall not be carried up ladders but shall be pumped or hoisted.

d. Hoisting frames and equipment shall be installed in a safe manner, properly secured and positioned so that the operator has access to the bucket or container without subjecting himself to hazard.

e. Every tar bucket used by roofers or workers in similar trades shall be made of No. 24 gauge or heavier sheet steel and shall have a metal bail of no less than 1/4 inch diameter material. The bail shall be fastened to offset ears or the equivalent which have been riveted, welded or otherwise securely attached to the bucket. Soldered bail sockets are not permissible. Most paint buckets will not comply with these regulations.

f. Extreme caution shall be taken when working near sky lights or other roof holes.

g. Employees shall be positioned in such a manner that they cannot be struck by a bucket or other roofing material which may accidentally fall either while being hoisted,

lowered or used in the roofing operation.

4. Flammable liquid with a flash point below 100 degrees F. (gasoline and similar products) shall not be used for cleaning purposes.

5. Workers shall not ride on top of loaded trucks or on running boards but shall be seated inside the cab of the vehicle.

6. Provisions of 29 CFR 1926.451 and 1926.1050 shall be complied with as applicable, covering scaffolds and ladders.

C. Asphalt mixing plants.

1. Toxic and combustible vapors are given off during heating of asphalt and tar materials. Employees working with these materials shall be instructed in necessary precautions and in the proper methods of handling.

2. Suitable clothing and protective devices shall be worn by employees handling or applying asphalt and tar materials.

3. Positive care shall be taken to prevent heating materials above the flashpoint. Mixing operations shall be performed at the lowest practicable temperature.

4. Drums or other containers in which liquid bituminous materials are stored shall be kept tightly closed when not in use and shall be protected from sources of excess heat, sparks, and open flames.

5. A 10 B.C. fire extinguisher shall be provided at locations where heating devices or melting kettles are in use.

6. Asphalt or tar heating kettles when in use shall not be left unattended and shall be securely fastened to prevent accidental tipping. They shall be provided with a lid and thermometer.

7. During melting and heating operations, care shall be taken to prevent moisture from getting into the hot mix. The use of gasoline or similar volatile materials as thinners is prohibited.

8. Where natural ventilation is insufficient at enclosed areas in which hot tar, asphalt, etc., are being heated or applied, an approved method of mechanical ventilation shall be provided. In addition, respirators shall be furnished to workers where required.

9. Heating, pumping, and application operations shall not be left unattended and an operator shall be stationed near the equipment to cut off flow or care for other emergencies.

10. Spraymen handling hot asphalt or tar shall not be allowed to work under hoses supplying hot materials to the sprays. Only flexible metallic hoses fitted with insulated handles shall be used in hand-spraying operations.

11. Form pins having mushroomed or split heads shall be discarded or effectively repaired.

12. Pipe lines which contain hot oil or asphalt shall be equipped with a shut-off valve on each side of a coupler which may be opened when lines are full.

R614-7-2. Grizzlies Over Chutes, Bins, and Tank Openings.

A. Employees shall be furnished with and be required to use approved type safety belts 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, draw holes 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.

R614-7-3. Cranes and Derricks.

Two Blocking Damage Preventive Feature. On hydraulic cranes with power telescoping booms, an "Anti Two-Blocking" feature, warning device, or other arrangement, shall be provided to warn the crane operator to avoid colliding ("two blocking") the hook block with the boom point when hoisting the load, when extending the boom or when booming up or down.

KEY: safety
December 2, 1997 **34A-6**

R643. Natural Resources; Oil, Gas and Mining; Abandoned Mine Reclamation.
R643-870. Abandoned Mine Reclamation Regulation Definitions.
R643-870-500. Definitions as Used in R643-870 through R643-886.

"Abandoned Mine Reclamation Account" or "Account" means an account created in the general fund which is established for the purpose of providing monies to administer the abandoned mine reclamation program.

"Act" means Title 40, Chapter 10, Utah Code Annotated, known as Regulation of Coal Mining and Reclamation Operations.

"Director" means the Director of the Office of Surface Mining Reclamation and Enforcement.

"Division" means the Division of Oil, Gas and Mining.

"Eligible lands and water" means land and water eligible for reclamation or drainage abatement expenditures which were mined for coal or which were affected by such mining, wastebanks, coal processing, or other coal mining processes and left or abandoned in either an unreclaimed or inadequately reclaimed condition prior to August 3, 1977, and for which there is no continuing reclamation responsibility. Provided, however, that lands and water damaged by coal mining operations after that date may also be eligible if they meet the requirements specified in R643-874-124 and R643-874-125. For additional eligibility requirements for water projects, see R643-874-140. For additional eligibility requirements for lands affected by remining operations see R643-874-128. For eligibility requirements for lands affected by mining for minerals other than coal, see R643-875-140.

"Emergency" means a sudden danger or impairment that presents a high probability of substantial physical harm to the health, safety, or general welfare of people before the danger can be abated under normal program operation procedures.

"Expended" means that moneys have been obligated, encumbered, or committed by contract by the Division for work to be accomplished or services to be rendered.

"Extreme danger" means a condition that could reasonably be expected to cause substantial physical harm to persons, property, or the environment and to which persons or improvements on real property are currently exposed.

"Left or abandoned in either an unreclaimed or inadequately reclaimed condition" means lands and water:

(a) Which were mined or which were affected by such mining, wastebanks, processing or other mining processes prior to August 3, 1977,and on which all mining has ceased;

(b) Which continue, in their present condition, to degrade substantially the quality of the environment, prevent or damage the beneficial use of land or water resources, or endanger the health and safety of the public; and

(c) For which there is no continuing reclamation responsibility under State or Federal Laws, except as provided in R643-874-124 and R643-874-142.

"Office" or "OSM" means the Federal Office of Surface Mining Reclamation and Enforcement.

"Owner" means the owner of real property who is shown to be the owner of record on the plats located in the county courthouse of the county in which the real property is located.

"Permanent facility" means any structure that is built, installed, or established to serve a particular purpose or any manipulation or modification of the surface that is designed to remain after the reclamation activity is completed, such as a relocated stream channel or diversion ditch.

"Project" means a delineated area containing one or more abandoned mine land problems. A project may be a group of related reclamation activities with a common objective within a political subdivision of a state or within a logical, geographically defined area, such as a watershed or conservation district.

"Reclamation activity" means the restoration, reclamation, abatement, control, or prevention of adverse effects of past mining.

"Reclamation Plan" means a plan submitted by the Division and approved by the Office of Surface Mining Reclamation and Enforcement.

"Reclamation Program" means the program established by the Division in accordance with this chapter for reclamation of lands and water adversely affected by past mining, including the reclamation plan and annual applications for grants.

"Secretary" means the Secretary of the Department of Interior or his or her representative.

KEY: mines, reclamation
December 16, 1997 **40-10-1 et seq.**
Notice of Continuation June 24, 1997

R645. Natural Resources; Oil, Gas and Mining; Coal.
R645-100. Administrative: Introduction.
R645-100-100. Scope.

110. General Overview. The rules presented herein establish the procedures through which the Utah State Division of Oil, Gas and Mining will implement those provisions of the Coal Mining Reclamation Act of 1979, (the Act) pertaining to the effects of coal mining and reclamation operations and pertaining to coal exploration.

120. R645 Rules Organization. The R645 Rules have been subdivided into the four major functional aspects of the Division's coal mining and exploration State Program.

121. The heading entitled ADMINISTRATIVE encompasses general introductory material, definitions applicable throughout the R645 Rules, procedures for the exemption of certain coal extraction activities, designating areas unsuitable for coal mining, protection of employees, and requirements for blaster certification.

122. The heading entitled COAL EXPLORATION establishes the minimum requirements for acquiring approval and identifies performance standards for coal exploration.

123. The heading entitled COAL MINE PERMITTING describes certain procedural requirements and options attendant to the coal mine permitting process. Moreover, the minimum requirements for acquiring a permit for a coal mining and reclamation operation are identified.

124. The heading entitled INSPECTION AND ENFORCEMENT delineates the authority, administrative procedures, civil penalties, and employee protection attendant to the Division's inspection and enforcement program.

130. Effective Date. The provisions of R645-100 through and including R645-402 will become effective and enforceable upon final approval by the Office of Surface Mining, U.S. Department of the Interior. Existing coal regulatory program rules, R645 Chapters I and II, will be in effect until approval of R645-100 through R645-402 by the Office of Surface Mining and will be considered repealed upon approval of R645-100 through R645-402.

R645-100-200. Definitions.

As used in the R645 Rules, the following terms have the specified meanings:

"Abandoned site" means, for the purpose of R645-400, a coal mining and reclamation operation for which the Division has found in writing that,

(a) All coal mining and reclamation operations at the site have ceased;

(b) The Division has issued at least one notice of violation or the initial program equivalent, and either:

(i) Is unable to serve the notice despite diligent efforts to do so; or

(ii) The notice was served and has progressed to a failure-to-abate cessation order or the initial program equivalent;

(c) The Division:

(i) Is taking action to ensure that the permittee and operator, and owners and controllers of the permittee and operator, will be precluded from receiving future permits while violations continue at the site; and

(ii) Is taking action pursuant to section 40-10-20(5), 40-10-20(6), 40-10-22(1)(d), or 40-10-22(2)(a) of the Act to ensure that abatement occurs or that there will not be a recurrence of the failure-to-abate, except where after evaluating the circumstances it concludes that further enforcement offers little or no likelihood of successfully compelling abatement or recovering any reclamation costs; and

(d) Where the site is, or was, permitted or bonded:

(i) The permit has expired or been revoked, or permit revocation proceedings have been initiated and are being pursued diligently; and

(ii) The Division has initiated and is diligently pursuing forfeiture of, or has forfeited, the performance bond.

(e) In lieu of the inspection frequency established in R645-400-130 the Division shall inspect each abandoned site as necessary to monitor for changes of environmental conditions or operational status at the site.

(f) Before ceasing to perform inspections at the frequency required by R645-400-130 at an abandoned site, the Division will:

(i) Evaluate the environmental conditions and operational status of the site; and

(ii) Document in writing the inspection frequency necessary to comply with paragraph (e) of this definition and the reasons for selecting that frequency.

"Account" means the Abandoned Mine Reclamation Account established pursuant to Section 40-10-25 of the Act.

"Acid Drainage" means water with a pH of less than 6.0 and in which total acidity exceeds total alkalinity discharged from an active, inactive, or abandoned coal mining and reclamation operation, or from an area affected by coal mining and reclamation operations.

"Acid-Forming Materials" means earth materials that contain sulfide minerals or other materials which, if exposed to air, water, or weathering processes, form acids that may create acid drainage.

"Act" means Utah Code Annotated Section 40-10-1 et seq.

"Adjacent Area" means the area outside the permit area where a resource or resources, determined according to the context in which adjacent area is used, are or reasonably could be expected to be adversely impacted by proposed coal mining and reclamation operations, including probable impacts from underground workings.

"Administratively Complete Application" means an application for permit approval or approval for coal exploration, where required, which the Division determines to contain information addressing each application requirement of the State Program and to contain all information necessary to initiate processing and public review.

"Affected Area" means any land or water surface area which is used to facilitate, or is physically altered by, coal mining and reclamation operations. The affected area includes the disturbed area; any area upon which coal mining and reclamation operations are conducted; any adjacent lands the use of which is incidental to coal mining and reclamation operations; all areas covered by new or existing roads used to gain access to, or for hauling coal to or from coal mining and

reclamation operations, except as provided in this definition; any area covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, shipping areas; any areas upon which are sited structures, facilities, or other property material on the surface resulting from, or incident to, coal mining and reclamation operations; and the area located above underground workings. The affected area shall include every road used for purposes of access to, or for hauling coal to or from, coal mining and reclamation operations, unless the road (a) was designated as a public road pursuant to the laws of the jurisdiction in which it is located; (b) is maintained with public funds, and constructed, in a manner similar to other public roads of the same classification within the jurisdiction; and (c) there is substantial (more than incidental) public use. Editorial Note: The definition of "Affected area", insofar, as it excludes roads which are included in the definition of "Surface coal mining operations", was suspended at 51 FR 41960, Nov. 20, 1986. Accordingly, Utah suspends the definition of Affected Area insofar as it excludes roads which are included in the definition of "coal mining and reclamation operations."

"Agricultural Use" means the use of any tract of land for the production of animal or vegetable life. The uses include, but are not limited to, the pasturing, grazing, and watering of livestock, and the cropping, cultivation, and harvesting of plants.

"Alluvial Valley Floors" means the unconsolidated stream-laid deposits holding streams with water availability sufficient for subirrigation or flood irrigation agricultural activities, but does not include upland areas which are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion, deposits formed by unconcentrated runoff or slope wash, together with talus, or other mass-movement accumulations, and windblown deposits.

"Applicant" means any person seeking a permit, permit change, and permit renewal, transfer, assignment, or sale of permit rights from the Division to conduct coal mining and reclamation operations or, where required, seeking approval for coal exploration.

"Application" means the documents and other information filed with the Division under the R645 Rules for the issuance of permits; permit changes; permit renewals; and transfer, assignment, or sale of permit rights for coal mining and reclamation operations or, where required, for coal exploration.

"Approximate Original Contour" means that surface configuration achieved by backfilling and grading of the mined areas so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain with all highwalls, spoil piles, and coal refuse piles having a design approved under the R645 Rules and prepared for abandonment. Permanent water impoundments may be permitted where the Division has determined that they comply with R645-301-413.100 through R645-301-413.334, R645-301-512.240, R645-301-514.300, R645-301-515.200, R645-301-533.100 through R645-301-533.600, R645-301-542.400, R645-301-733.220 through R645-301-733.224, R645-301-743, R645-302-270 through R645-302-271.400, R645-302-271.600, R645-302-271.800, and R645-302-271.900.

"Aquifer" means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for a specific use.

"Arid and Semiarid Area" means, in the context of ALLUVIAL VALLEY FLOORS, an area where water use by native vegetation equals or exceeds that supplied by precipitation. All coalfields in Utah are in arid and semiarid areas.

"Auger Mining" means a method of mining coal at a cliff or highwall by drilling holes into an exposed coal seam from the highwall and transporting the coal along an auger bit to the surface.

"Best Technology Currently Available" means equipment, devices, systems, methods, or techniques which will (a) prevent, to the extent possible, additional contributions of suspended solids to stream flow or runoff outside the permit area, but in no event result in contributions of suspended solids in excess of requirements set by applicable state or federal laws; and (b) minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife, and related environmental values, and achieve enhancement of those resources where practicable. The term includes equipment, devices, systems, methods, or techniques which are currently available anywhere as determined by the Director, even if they are not in routine use. The term includes, but is not limited to, construction practices, siting requirements, vegetation selection and planting requirements, animal stocking requirements, scheduling of activities, and design of sedimentation ponds in accordance with R645-301 and R645-302. Within the constraints of the State Program, the Division will have the discretion to determine the best technology currently available on a case-by-case basis, considering among other things the economic feasibility of the equipment, devices, systems, methods or techniques, as authorized by the Act and the R645 Rules.

"Blaster" means a person who is directly responsible for the use of explosives in connection with surface blasting operations incidental to UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES or SURFACE COAL MINING AND RECLAMATION ACTIVITIES, and who holds a valid certificate issued by the Division in accordance with the statutes and regulations administered by the Division governing training, examination, and certification of persons responsible for the use of explosives in connection with surface blasting operations incident to coal mining and reclamation operations.

"Board" means the Board of Oil, Gas and Mining for the state of Utah, or the Board's delegated representative.

"Cemetery" means any area of land where human bodies are interred.

"Coal" means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D388-95.

"Coal Exploration" means the field gathering of: (a)

surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or (b) the gathering of environmental data to establish the conditions of an area before beginning coal mining and reclamation operations under the requirements of the R645 Rules.

"Coal Mine Waste" means coal processing waste and underground development waste.

"Coal Mining and Reclamation Operations" means (a) activities conducted on the surface of lands in connection with a surface coal mine or, subject to the requirements of Section 40-10-18 of the Act, surface coal mining and reclamation operations and surface impacts incident to an underground coal mine, the products of which enter commerce or the operations of which directly or indirectly affect interstate commerce. Such activities include all activities necessary and incidental to the reclamation of the operations, excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining; the use of explosives and blasting; in-situ distillation; or retorting, leaching, or other chemical or physical processing; and the cleaning, concentrating, or other processing or preparation of coal. Such activities also include the loading of coal for interstate commerce at or near the mine site. Provided, these activities do not include the extraction of coal incidental to the extraction of other minerals, where coal does not exceed 16-2/3 percent of the tonnage of minerals removed for purposes of commercial use or sale, or coal exploration subject to Section 40-10-8 of the Act; and, provided further, that excavation for the purpose of obtaining coal includes extraction of coal from coal refuse piles; and (b) the areas upon which the activities described under part (a) of this definition occur or where such activities disturb the natural land surface. These areas will also include any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of those activities and for haulage and excavation, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or material on the surface, resulting from or incident to those activities.

"Coal Mining and Reclamation Operations Which Exist on the Date of Enactment" means all coal mining and reclamation operations which were being conducted on August 3, 1977.

"Coal Preparation or Coal Processing" means the chemical and physical processing and the cleaning, concentrating, or other processing or preparation of coal.

"Coal Processing Plant" means a facility where coal is subjected to chemical or physical processing or the cleaning, concentrating, or other processing or preparation. Coal processing plant includes facilities associated with coal processing activities, such as, but not limited to, the following: loading facilities; storage and stockpile facilities; sheds, shops, and other buildings; water-treatment and water-storage facilities; settling basins and impoundments; and coal processing and other waste disposal areas.

"Coal Processing Waste" means earth materials which are separated from the product coal during cleaning, concentrating, or the processing or preparation of coal.

"Collateral Bond" means an indemnity agreement in a sum certain executed by the permittee as principal which is supported by the deposit with the Division of: (a) a cash account, which will be the deposit of cash in one or more federally-insured or equivalently protected accounts, payable only to the Division upon demand, or the deposit of cash directly with the Division; (b) negotiable bonds of the United States, a State, or a municipality, endorsed to the order of, and placed in the possession of, the Division; (c) negotiable certificates of deposit, made payable or assigned to the Division and placed in its possession, or held by a federally insured bank; (d) an irrevocable letter of credit of any bank organized or authorized to transact business in the United States payable only to the Division upon presentation; (e) a perfected, first lien security interest in real property in favor of the Division; or (f) other investment grade rated securities having a rating of AAA or AA or A, or an equivalent rating issued by a nationally recognized securities rating service, endorsed to the order of, and placed in the possession of, the Division.

"Combustible Material" means organic material that is capable of burning, either by fire or through oxidation, accompanied by the evolution of heat and a significant temperature rise.

"Community or Institutional Building" means any structure, other than a public building or an occupied dwelling, which is used primarily for meetings, gatherings or functions of local civic organizations or other community groups; functions including, but not limited to educational, cultural, historic, religious, scientific, correctional, mental-health or physical-health care facility; or is used for public services, including, but not limited to, water supply, power generation, or sewage treatment.

"Compaction" means increasing the density of a material by reducing the voids between the particles, and is generally accomplished by controlled placement and mechanical effort such as from repeated application of wheel, track, or roller loads from heavy equipment.

"Complete and Accurate Application" means an application for permit approval or approval for coal exploration, where required, which the Division determines to contain all information required under the Act, the R645 Rules, and the State Program that is necessary to make a decision on permit issuance.

"Continuously Mined Areas" means land which was mined for coal by underground mining operations prior to August 3, 1977, the effective date of the Federal Act, and where mining continued after that date.

"Cooperative Agreement" means the agreement between the Governor of the State of Utah and the Secretary of the Department of the Interior as published at 30 CFR 944.30.

"Cropland" means land used for the production of

adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops.

"Cumulative Impact Area" means the area, including the permit area, within which impacts resulting from the proposed operation may interact with the impacts of all anticipated mining on surface and groundwater systems. Anticipated mining will include, at a minimum, the entire projected lives through bond releases of: (a) the proposed operation, (b) all existing operations, (c) any operation for which a permit application has been submitted to the Division, and (d) all operations required to meet diligent development requirements for leased federal coal for which there is actual mine development information available.

"Cumulative measurement period" means, for the purpose of R645-106, the period of time over which both cumulative production and cumulative revenue are measured.

(a) For purposes of determining the beginning of the cumulative measurement period, subject to Division approval, the operator must select and consistently use one of the following:

(i) For mining areas where coal or other minerals were extracted prior to August 3, 1977, the date extraction of coal or other minerals commenced at that mining area or August 3, 1977, or

(ii) For mining areas where extraction of coal or other minerals commenced on or after August 3, 1977, the date extraction of coal or other minerals commenced at that mining area, whichever is earlier.

(b) For annual reporting purposes pursuant to R645-106-900, the end of the period for which cumulative production and revenue is calculated is either

(i) For mining areas where coal or other minerals were extracted prior to July 1, 1992, June 30, 1992, and every June 30 thereafter; or

(ii) For mining areas where extraction of coal or other minerals commenced on or after July 1, 1992, the last day of the calendar quarter during which coal extraction commenced, and each anniversary of that day thereafter.

"Cumulative production" means, for the purpose of R645-106, the total tonnage of coal or other minerals extracted from a mining area during the cumulative measurement period. The inclusion of stockpiled coal and other mineral tonnages in this total is governed by R645-106-700.

"Cumulative revenue" means, for the purpose of R645-106, the total revenue derived from the sale of coal or other minerals and the fair market value of coal or other minerals transferred or used, but not sold, during the cumulative measurement period.

"Current Assets" means cash or other assets or resources which are reasonably expected to be converted to cash or sold or consumed within one year or within the normal operating cycle of the business.

"Current Liabilities" means obligations which are reasonably expected to be paid or liquidated within one year or within the normal operating cycle of the business.

"Direct Financial Interest" means ownership or part ownership by an employee of lands, stocks, bonds, debentures, warrants, partnership shares, or other holdings, and also means any other arrangement where the employee may benefit from his or her holding in or salary from coal mining and reclamation operations. Direct financial interests include employment, pensions, creditor, real property, and other financial relationships.

"Director" means the Director, Utah State Division of Oil, Gas and Mining, or the Director's representative.

"Director of the Office" means the Director of the Office of Surface Mining, Reclamation and Enforcement, U.S. Department of the Interior.

"Disturbed Area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal waste is placed by coal mining and reclamation operations. Those areas are classified as disturbed until reclamation is complete and the performance bond or other assurance of performance required by R645-301-800 is released. For the purposes of R645-301-356.300, R645-301-356.400, R645-301-513.200, R645-301-742.200 through R645-301-742.240, and R645-301-763, disturbed area will not include those areas (a) in which the only coal mining and reclamation operations include diversion ditches, siltation structures, or roads that are designed, constructed and maintained in accordance with R645-301 and R645-302; and (b) for which the upstream area is not otherwise disturbed by the operator.

"Diversion" means a channel, embankment, or other man-made structure constructed to divert water from one area to another.

"Division" means Utah State Division of Oil, Gas and Mining, the designated state regulatory authority.

"Downslope" means the land surface between the projected outcrop of the lowest coalbed being mined along each highwall and a valley floor.

"Edge Effect" means the positive effect created by the juxtaposition of two diverse habitats.

"Embankment" means an artificial deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water, support roads or railways, or for other similar purposes.

"Employee" means any person employed by the Division who performs any function or duty under the Act, and does not mean the Board of Oil, Gas and Mining which is excluded from this definition.

"Ephemeral Stream" means a stream which flows only in direct response to precipitation in the immediate watershed, or in response to the melting of a cover of snow and ice, and which has a channel bottom that is always above the local water table.

"Essential Hydrologic Functions" means the role of an ALLUVIAL VALLEY FLOOR in collecting, storing, regulating, and making the natural flow of surface or ground water, or both, usefully available for agricultural activities by reason of the valley floor's topographic position, the landscape, and the physical properties of its underlying materials. A combination of these functions provides a water supply during extended periods of low precipitation.

"Excess Spoil" means spoil material disposed of in a location other than the mined-out area, provided that the spoil material used to achieve the approximate original contour or to blend the mined-out area with the surrounding terrain in accordance with R645-301-553.220 in nonsteep slope areas will not be considered excess spoil.

"Existing Structure" means a structure or facility used in connection with or to facilitate coal mining and reclamation operations for which construction began prior to January 21, 1981.

"Extraction of Coal as an Incidental Part" means the extraction of coal which is necessary to enable government-financed construction to be accomplished. For purposes of R645-102, only that coal extracted from within the right-of-way in the case of a road, railroad, utility line, or other such construction, or within the boundaries of the area directly affected by other types of government-financed construction, may be considered incidental to that construction. Extraction of coal outside the right-of-way or boundary of the area directly affected by the construction will be subject to the requirements of the Act and the R645 Rules.

"Federal Act" means the Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87).

"Federal Lands" means any land, including mineral interests, owned by the United States without regard to how the United States acquired ownership of the lands or which agency manages the lands. It does not include Indian lands.

"Fixed Assets" means plants and equipment, but does not include land or coal in place.

"Flood Irrigation" means, with respect to ALLUVIAL VALLEY FLOORS, supplying water to plants by natural overflow or the diversion of flows, so that the irrigated surface is largely covered by a sheet of water.

"Fragile Lands" means, for the purposes of R645-103-300, geographic areas containing natural, ecologic, scientific, or aesthetic resources that could be significantly damaged or be destroyed by coal mining and reclamation operations. Examples of fragile lands include valuable habitats for fish or wildlife, critical habitats for endangered or threatened species of animals or plants, uncommon geologic formations, paleontological sites, National Natural Landmark sites, areas where mining may result in flooding, environmental corridors containing a concentration of ecologic and aesthetic features, areas of recreational value due to high environmental quality.

"Fugitive Dust" means that particulate matter not emitted from a duct or stack which becomes airborne due to the forces of wind or coal mining and reclamation operations, or both. During coal mining and reclamation operations, it may include emissions from haul roads; wind erosion of exposed surfaces, storage piles, and spoil piles; reclamation operations; and other activities in which material is either removed, stored, transported, or redistributed.

"Fund" means the Abandoned Mine Reclamation Account established pursuant to 40-10-25 of the Act.

"Government-Financed Construction" means, for the purposes of R645-102, construction funded 50 percent or more by funds appropriated from a government-financing agency's budget or obtained from general revenue bonds, but will not mean government-financing agency guarantees, insurance, loans, funds obtained through industrial revenue bonds or their equivalent, or in-kind payments.

"Government Financing Agency" means, for the purposes of R645-102 a federal, state, county, municipal, or local unit of government, or a department, bureau, agency or office of the unit which, directly or through another unit of government, finances construction.

"Gravity Discharge" means, with respect to UNDERGROUND MINING AND RECLAMATION ACTIVITIES, mine drainage that flows freely in an open channel downgradient. Mine drainage that occurs as a result of flooding a mine, to the level of the discharge, is not gravity discharge.

"Ground Cover" means the area of ground covered by the combined aerial parts of vegetation and the litter that is produced naturally on-site, expressed as a percentage of the total area of measurement.

"Ground Water" means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated.

"Habitats of Unusually High Value for Fish and Wildlife" means an area defined by the state as crucial-critical use areas for wildlife.

"Half-Shrub" means a perennial plant with a woody base whose annually produced stems die back each year.

"Head-of-Hollow Fill" means a fill structure consisting of any material, other than organic material, placed in the uppermost reaches of a hollow where side slopes of the existing hollow, measured at the steepest point, are greater than 20 degrees, or the average slope of the profile of the hollow from the toe of the fill to the top of the fill, is greater than ten degrees. In head-of-hollow fills, the top surface of the fill, when completed, is at approximately the same elevation as the adjacent ridge line, and no significant area of natural drainage occurs above the fill draining into the fill area.

"Higher or Better Uses" means postmining land uses that have a higher economic value or nonmonetary benefit to the landowner, or the community, than the premining land uses.

"Highwall" means the face of exposed overburden and coal in an open cut of surface coal mining and reclamation activities or for entry to underground mining activities.

"Highwall Remnant" means that portion of highwall that remains after backfilling and grading of a REMINING permit area.

"Historic Lands" means, for the purposes of R645-103-300, areas containing historic, cultural, and scientific resources. Examples of historic lands include archeological sites, properties listed on or eligible for listing on a Utah or National Register of Historic Places, National Historic Landmarks, properties having religious or cultural significance to native Americans or religious groups, and properties for which historic designation is pending.

"Historically Used for Cropland" means (a) lands that have been used for cropland for any five years or more out of the ten years immediately preceding the acquisition, including purchase, lease, or option, of the land for the purpose of conducting or allowing through resale, lease, or option the conducting of coal mining and reclamation operations; (b)

lands that the Division determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration, that the permit area is clearly cropland but falls outside the specific five-years-in-ten criterion, in which case the regulations for prime farmland may be applied to include more years of cropland history only to increase the prime farmland acreage to be preserved; or (c) lands that would likely have been used as cropland for any five out of the last ten years, immediately preceding such acquisition but for the same fact of ownership or control of the land unrelated to the productivity of the land.

"Hydrologic Balance" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the dynamic relationships among precipitation, runoff, evaporation, and changes in ground and surface water storage.

"Hydrologic Regime" means the entire state of water movement in a given area. It is a function of the climate and includes the phenomena by which water first occurs as atmospheric water vapor, passes into a liquid or solid form, falls as precipitation, moves along or into the ground surface and returns to the atmosphere as vapor by means of evaporation and transpiration.

"Imminent Danger to the Health and Safety of the Public" means the existence of any condition or practice, or any violation of a permit or other requirements of the Act in a coal mining and reclamation operation, which could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would avoid exposure to the danger during the time necessary for abatement.

"Impounding Structure" means a dam, embankment, or other structure used to impound water, slurry, or other liquid or semiliquid material.

"Impoundments" means all water, sediment, slurry, or other liquid or semiliquid holding structures, either naturally formed or artificially built.

"Indian Lands" means all lands, including mineral interests, within the exterior boundaries of any federal Indian reservation, notwithstanding the issuance of any patent, and including rights-of-way, and all lands including mineral interests held in trust for or supervised by an Indian tribe.

"Indirect Financial Interest" means the same financial relationships as for direct ownership, but where the employee reaps the benefits of such interests, including interests held by his or her spouse, minor child(ren) and other relatives, including in-laws, residing in the employee's home. The employee will not be deemed to have an indirect financial interest if there is no relationship between the employee's functions or duties and the coal mining and reclamation operations in which the spouse, minor child(ren), or other resident relatives hold a financial interest.

"In-Situ Processes" means activities conducted on the surface or underground in connection with in-place distillation, retorting, leaching, or other chemical or physical processing of coal. The term includes, but is not limited to, in-situ gasification, in-situ leaching, slurry mining, solution mining, borehole mining, and fluid-recovery mining.

"Intermittent Stream" means (a) a stream, or reach of a stream, that drains a watershed of at least one square mile, or (b) a stream, or reach of a stream, that is below the local water table for at least some part of the year and obtains its flow from both surface runoff and groundwater discharge.

"Irreparable Damage to the Environment" means any damage to the environment in violation of the Act, the State Program, or the R645 Rules that cannot be corrected by actions of the applicant.

"Knowingly" means for the purposes of R645-402, that an individual knew or had reason to know in authorizing, ordering, or carrying out an act or omission on the part of a corporate permittee that such act or omission constituted a violation, failure, or refusal.

"Land Use" means specific uses or management-related activities, rather than the vegetation or cover of the land. Land uses may be identified in combination when joint or seasonal uses occur and may include land used for support facilities that are an integral part of the use. Changes of land use from one of the following categories to another will be considered as a change to an alternative land use which is subject to approval by the Division.

CROPLAND - Land used for the production of adapted crops for harvest, alone or in rotation with grasses and legumes, that include row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar crops.

DEVELOPED WATER RESOURCES - Land used for storing water for beneficial uses such as stock ponds, irrigation, fire protection, flood control, and water supply.

FISH AND WILDLIFE HABITAT - Land dedicated wholly or partially to the production, protection, or management of species of fish or wildlife.

FORESTRY - Land used or managed for the long-term production of wood, wood fiber, or wood-derived products.

GRAZING LAND - Land used for grasslands and forest lands where the indigenous vegetation is actively managed for grazing, browsing, or occasional hay production.

INDUSTRIAL/COMMERCIAL - Land used for (a) extraction or transformation of materials for fabrication of products, wholesaling of products, or long-term storage of products; this includes all heavy and light manufacturing facilities, or (b) retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments.

PASTURE LAND OR LAND OCCASIONALLY CUT FOR HAY - Land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed.

RECREATION - Land used for public or private leisure-time activities, including developed recreation facilities such as parks, camps, and amusement areas, as well as areas for less intensive uses such as hiking, canoeing, and other undeveloped recreational uses.

RESIDENTIAL - Land used for single and multiple-

family housing, mobile home parks, or other residential lodgings.

UNDEVELOPED LAND OR NO CURRENT USE OR LAND MANAGEMENT - Land that is undeveloped or if previously developed, land that has been allowed to return naturally to an undeveloped state or has been allowed to return to forest through natural succession.

"Liabilities" means obligations to transfer assets or provide services to other entities in the future as a result of past transactions.

"Materially Damage the Quantity or Quality of Water" means, with respect to ALLUVIAL VALLEY FLOORS, to degrade or reduce, by coal mining and reclamation operations, the water quantity or quality supplied to the alluvial valley floor to the extent that resulting changes would significantly decrease the capability of the alluvial valley floor to support agricultural activities.

"Mining" means, for the purposes of R645-400-351, (a) extracting coal from the earth or coal waste piles and transporting it within or from the permit area; and (b) the processing, cleaning, concentrating, preparing or loading of coal where such operations occur at a place other than a mine site.

"Mining area" means, for the purpose of R645-106, an individual excavation site or pit from which coal, other minerals and overburden are removed.

"Moist Bulk Density" means the weight of soil (oven dry)per unit volume. Volume is measured when the soil is at field moisture capacity (1/3 bar moisture tension). Weight is determined after drying the soil at 105 degrees Celsius.

"NRCS" means Natural Resources Conservation Service, U.S. Department of Agriculture.

"MSHA" means the Mine Safety and Health Administration, U.S. Department of Labor.

"Mulch" means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing microclimatic conditions suitable for germination and growth.

"Natural Hazard Lands" means, for the purposes of R645-103-300, geographic areas in which natural conditions exist which pose or, as a result of coal mining and reclamation operations, may pose a threat to the health, safety, or welfare of people, property or the environment, including areas subject to landslides, cave-ins, large or encroaching sand dunes, severe wind or soil erosion, frequent flooding, avalanches, and areas of unstable geology.

"Net Worth" means total assets minus total liabilities and is equivalent to owners' equity.

"Noxious Plants" means species that have been included on the official Utah list of noxious plants.

"Occupied Dwelling" means any building that is currently being used on a regular or temporary basis for human habitation.

"Office" means Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior.

"Operator" means any person engaged in coal mining who removes, or intends to remove, more than 250 tons of coal from the earth or from coal refuse piles by mining within 12 consecutive calendar months in any one location.

"Other minerals" means, for the purpose of R645-106, any commercially valuable substance mined for its mineral value, excluding coal, topsoil, waste and fill material.

"Other Treatment Facilities" means, for the purposes of R645-301-356.300, R645-301-356.400, R645-301-513.200, R645-301-742.200 through R645-301-742.240, and R645-301-763, any chemical treatments, such as flocculation or mechanical structures such as clarifiers, that have a point source discharge and that are utilized to prevent additional contribution of suspended solids to stream flow or runoff outside the permit area.

"Outslope" means the face of the spoil or embankment sloping downward from the highest elevation to the toe.

"Overburden" means material of any nature, consolidated or unconsolidated, that overlies a coal deposit, excluding topsoil.

"Owned or controlled" and "owns or controls" means any one or a combination of the relationships specified in paragraphs (a) and (b) of this definition:

(a)(1) Being a permittee of a coal mining and reclamation operation;

(2) Based on the instrument of ownership or voting securities, owning of record in excess of 50 percent of an entity; or

(3) Having any other relationship which gives one person authority directly or indirectly to determine the manner in which an applicant, an operator, or other entity conducts coal mining and reclamation operations.

(b) The following relationships are presumed to constitute ownership or control unless a person can demonstrate that the person subject to the presumption does not in fact have the authority directly or indirectly to determine the manner in which the relevant coal mining and reclamation operation is conducted:

(1) Being an officer or director of an entity;

(2) Being the operator of a coal mining and reclamation operation;

(3) Having the ability to commit the financial or real property assets or working resources of an entity;

(4) Being a general partner in a partnership;

(5) Based on the instruments of ownership or the voting securities of a corporate entity, owning of record 10 through 50 percent of the entity; or

(6) Owning or controlling coal to be mined by another person under a lease, sublease, or other contract and having the right to receive such coal after mining or having authority to determine the manner in which that person or another person conducts coal mining and reclamation operation.

"Parent Corporation" means corporation which owns or controls the applicant.

"Perennial Stream" means a stream or part of a stream that flows continuously during all of the calendar year as a result of groundwater discharge or surface runoff. The term does not include intermittent stream or ephemeral stream.

"Performance Bond" means a surety bond, collateral bond, or self-bond, or a combination thereof, by which a permittee assures faithful performance of all the requirements of the Act, the R645 Rules, the State Program, and the requirements of the permit and reclamation plan.

"Performing Any Function or Duty Under This Act" means those decisions or actions, which if performed or not performed by a board member or employee, affect the State Program under the Act.

"Permanent Diversion" means a diversion remaining after coal mining and reclamation operations are completed which has been approved for retention by the Division and other appropriate state and federal agencies.

"Permanent Impoundment" means an impoundment which is approved by the Division and, if required, by other state and federal agencies for retention as part of the postmining land use.

"Permit" means a permit to conduct coal mining and reclamation operations issued by the Division pursuant to the State Program. For purposes of the federal lands program, permit means a permit issued by the Division pursuant to the cooperative agreement with the Secretary.

"Permit Area" means the area of land, indicated on the approved map submitted by the operator with his or her application, required to be covered by the operator's performance bond under R645-301-800, and which will include the area of land upon which the operator proposes to conduct coal mining and reclamation operations under the permit, including all disturbed areas, provided that areas adequately bonded under another valid permit may be excluded from the permit area.

"Permit Change" means any coal mining and reclamation operations not previously approved by the Division in the Permit or in any previously-approved permit change under R645-303-220.

"Permittee" means a person holding, or required by the Act or the R645 Rules to hold, a permit to conduct coal mining and reclamation operations issued by the Division pursuant to the State Program or, under the cooperative agreement pursuant to Section 523 of P.L. 95-87, by the Director of the Office and the Division.

"Person" means an individual, Indian tribe when conducting coal mining and reclamation operations on non-Indian lands, partnership, association, society, joint venture, joint-stock company, firm, company, corporation, cooperative or other business organization, and any agency, unit, or instrumentality of federal, state, or local government including any publicly owned utility or publicly owned corporation of federal, state, or local governments.

"Person Having an Interest Which Is or May Be Adversely Affected or Person With a Valid Legal Interest" means any person (a) who uses any resource of economic, recreational, aesthetic, or environmental value that may be adversely affected by coal exploration or coal mining and reclamation operations or any related action of the Division, or the Board, or (b) whose property is or may be adversely affected by coal exploration or coal mining and reclamation operations or any related action of the Division or the Board.

"Precipitation Event" means a quantity of water resulting from drizzle, rain, snow, sleet, or hail in a limited period of time. It may be expressed in terms of recurrence interval. As used in the R645 Rules, precipitation event also includes that quantity of water emanating from snow cover as snowmelt in a limited period of time.

"Previously Mined Area" means land previously mined on which there were no coal mining and reclamation operations subject to the standards of the Federal Act.

"Prime Farmland" means those lands which are defined by the Secretary of Agriculture in 7 CFR 657 (Federal Register Vol. 4 No. 21) and which have historically been used for cropland as that phrase is defined herein.

"Principal Shareholder" means any person who is the record or beneficial owner of ten percent or more of any class of voting stock.

"Prohibited Financial Interest" means any direct or indirect financial interest in any coal mining and reclamation operation.

"Property to be Mined" means both the surface estates and mineral estates within the permit area and the area covered by underground workings.

"Public Building" means any structure that is owned or leased and principally used by a government agency for public business or meetings.

"Public Office" means a facility under the direction and control of a governmental entity which is open to public access on a regular basis during reasonable business hours.

"Public Park" means an area or portion of an area dedicated or designated by any federal, state, or local agency primarily for public recreational use, whether or not such use is limited to certain times or days, including any land leased, reserved, or held open to the public because of that use.

"Public Road", for the purpose of part R645-103-200, R645-301-521.123, and R645-301-521.133 means a road (a) which has been designated as a public road pursuant to the laws of the jurisdiction in which it is located; (b) which is maintained with public funds in a manner similar to other public roads of the same classification within the jurisdiction; (c) for which there is substantial (more than incidental) public use; and (d) which meets road construction standards for other public roads of the same classification in the local jurisdiction.

"Publicly Owned Park" means a public park that is owned by a federal, state, or local governmental entity.

"Qualified Laboratory" means, for the purposes of R645-302-290, a designated public agency, private firm, institution, or analytical laboratory which can prepare the required determination of probable hydrologic consequences or statement of results of test borings or core samplings under SOAP and which meet the standards of R645-302-295.100.

"Rangeland" means land on which the natural potential (climax) plant cover is principally native grasses, forbs, and shrubs valuable for forage. This land includes natural grasslands and savannahs, such as prairies, and juniper savannahs, such as brushlands. Except for brush control, management is primarily achieved by regulating the intensity of grazing and season of use.

"Reasonably Available Spoil" means spoil and suitable coal mine waste material generated by the remining activity or other spoil or suitable coal mine waste material located in the permit area that is accessible and available for use, and that when rehandled will not cause a hazard to public safety or significant damage to the environment.

"Recharge Capacity" means the ability of the soils and

underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation.

"Reclamation" means those actions taken to restore mined land as required by the R645 Rules to a postmining land use approved by the Division.

"Recurrence Interval" means the interval of time in which a precipitation event is expected to occur once, on the average. For example, the 10-year 24-hour precipitation event would be that 24-hour precipitation event expected to occur on the average once in ten years.

"Reference Area" means a land unit maintained under appropriate management for the purpose of measuring vegetation ground cover, productivity, and plant species diversity that are produced naturally or by crop production methods approved by the Division. Reference areas must be representative of geology, soil, slope, and vegetation in the permit area.

"Refuse Pile" means a surface deposit of coal mine waste that does not impound water, slurry, or other liquid or semiliquid material.

"Remining" means conducting coal mining and reclamation operations which affect previously mined areas.

"Renewable Resource Lands" means aquifers and areas for the recharge of aquifers and other underground waters, areas for agricultural or silvicultural production of food and fiber, and grazing lands. For the purposes of R645-103, RENEWABLE RESOURCE LANDS means geographic areas which contribute significantly to the long-range productivity of water supply or of food or fiber products, such lands to include aquifers and aquifer recharge areas.

"Renewal of a Permit" means, for the purposes of R645-302-300, a decision by the Division to extend the time by which the permittee may complete mining within the boundaries of the original permit.

"Road" means a surface right-of-way for purposes of travel by land vehicles used in coal mining and reclamation operations or coal exploration. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side areas, approaches, structures, ditches, and surface. The term includes access and haul roads constructed, used, reconstructed, improved, or maintained for use in coal mining and reclamation operations or coal exploration, including use by coal hauling vehicles to and from transfer, processing, or storage areas. The term does not include ramps and routes of travel within the immediate mining area or within spoil or coal mine waste disposal areas.

"Safety Factor" means the ratio of the available shear strength to the developed shear stress, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces, as determined by accepted engineering practices.

"Secretary" means the Secretary of the Department of Interior or his or her representative.

"Sedimentation Pond" means an impoundment used to remove solids from water in order to meet water quality standards or effluent limitations before the water leaves the permit area.

"Self Bond" means an indemnity agreement in a sum certain executed by the applicant or by the applicant and any corporate guarantor, and made payable to the Division with or without separate surety.

"Significant Forest Cover" means an existing plant community consisting predominantly of trees and other woody vegetation. The Secretary of Agriculture will decide on a case-by-case basis whether the forest cover is significant within those national forests in Utah.

"Significant, Imminent Environmental Harm to Land, Air, or Water Resources" means (a) the environmental harm has an adverse impact on land, air, or water resources which resources include, but are not limited to, plant and animal life; (b) an environmental harm is imminent, if a condition, practice, or violation exists which (i) is causing such harm, or (ii) may reasonably be expected to cause such harm at any time before the end of the reasonable abatement time that would be set under 40-10-22 of the Act, and (c) an environmental harm is significant if that harm is appreciable and not immediately repairable.

"Significant Recreational, Timber, Economic, or Other Values Incompatible With Coal Mining and Reclamation Operations" means those values to be evaluated for their significance which could be damaged beyond an operator's ability to repair or restore by, and are not capable of existing together with, coal mining and reclamation operations because of the undesirable effects mining would have on those values, either on the area included in the permit application or on other affected areas. Those values to be evaluated for their importance include (a) recreation, including hiking, boating, camping, skiing, or other related outdoor activities, (b) timber management and silviculture, (c) agriculture, aquaculture, or production of other natural, processed, or manufactured products which enter commerce, and (d) scenic, historic, archaeologic, aesthetic, fish, wildlife, plants, or cultural interests.

"Siltation Structure" means, for the purposes of R645-301-356.300, R645-301-356.400, R645-301-513.200, R645-301-742.200 through R645-301-742.240, and R645-301-763, a sedimentation pond, a series of sedimentation ponds or other treatment facilities.

"Slope" means average inclination of a surface, measured from the horizontal, generally expressed as the ratio of a unit of vertical distance to a given number of units of horizontal distance (e.g., 1v:5h). It may also be expressed as a percent or in degrees.

"SOAP" means Small Operator Assistance Program.

"Soil Horizons" means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The four major soil horizons are"

A HORIZON - The uppermost mineral layer, often called the surface soil. It is the part of the soil in which organic matter is most abundant, and leaching of soluble or suspended particles is typically the greatest.

E HORIZON - The layer commonly near the surface below an A horizon and above a B horizon. An E horizon is most commonly differentiated from an overlying A horizon by lighter color and generally has measurably less organic matter than the A horizon. An E horizon is most commonly differentiated from an underlying B horizon in the same sequum by color of higher value or lower chroma, by coarser

texture, or by a combination of these properties.

B HORIZON - The layer that typically is immediately beneath the E horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A, E, or C horizons.

C HORIZON - The deepest layer of soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

"Soil Survey" means a field and other investigations resulting in a map showing the geographic distribution of different kinds of soils and an accompanying report that describes, classifies, and interprets such soils for use. Soil surveys must meet the standards of the National Cooperative Soil Survey as incorporated by reference in R645-302-314.100.

"Spoil" means overburden that has been removed during coal mining and reclamation operations.

"Stabilize" means to control movement of soil, spoil piles, or areas of disturbed earth by modifying the geometry of the mass, or by otherwise modifying physical or chemical properties, such as by providing a protective surface coating.

"State Program" means the program established by the state of Utah and approved by the Secretary of the Department of the Interior pursuant to the Federal Act and the Act to regulate coal mining and reclamation operations on non-Indian and non-federal lands within Utah, according to the Federal Act, the Act and the R645 Rules. Pursuant to the cooperative agreement between the state of Utah and the Office, the State Program applies to federal lands in accordance with the terms of the cooperative agreement.

"Steep Slope" means any slope of more than 20 degrees or such lesser slope as may be designated by the Division after consideration of soil, climate, and other characteristics of a region or Utah.

"Subirrigation" means, with respect to ALLUVIAL VALLEY FLOORS, the supplying of water to plants from underneath or from a semisaturated or saturated subsurface zone where water is available for use by vegetation.

"Substantial Legal and Financial Commitments in a Coal Mining and Reclamation Operation" means, for the purposes of R645-103-300, significant investments that have been made on the basis of a long-term coal contract in power plants, railroads, coal-handling, preparation, extraction or storage facilities, and other capital-intensive activities. An example would be an existing mine not actually producing coal, but in a substantial stage of development prior to production. Costs of acquiring the coal in place or the right to mine it without an existing mine, as described in the above example, alone are not sufficient to constitute substantial legal and financial commitments.

"Substantially Disturb" means, for purposes of COAL EXPLORATION, to significantly impact land or water resources by blasting; by removal of vegetation, topsoil, or overburden; by construction of roads or other access routes; by placement of excavated earth or waste material on the natural land surface or by other such activities; or to remove more than 250 tons of coal.

"Successor in Interest" means any person who succeeds to rights granted under a permit, by transfer, assignment, or sale of those rights.

"Surety Bond" means an indemnity agreement in a sum certain payable to the Division, executed by the permittee as principal and which is supported by the performance guarantee of a corporation licensed to do business as a surety in Utah.

"Surface Operations and Impacts Incident to an Underground Coal Mine" means all operations involved in or related to UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES which are either conducted on the surface of the land, produce changes in the land surface or disturb the surface, air, or water resources of the area including all activities listed in 40-10-3(18) of the Act and the definition of underground mining activities appearing herein.

"SURFACE COAL MINING AND RECLAMATION ACTIVITIES" means those coal mining and reclamation operations incident to the extraction of coal from the earth by removing the materials over a coal seam, before recovering the coal, by auger coal mining, or by recovery of coal from a deposit that is not in its original geologic location.

"Suspended Solids or Nonfilterable Residue, Expressed as Milligrams Per Liter" means organic or inorganic materials carried or held in suspension in water which are retained by a standard glass fiber filter in the procedure outlined by the Environmental Protection Agency's regulation for waste water and analyses (40 CFR Part 136).

"Tangible Net Worth" means net worth minus intangibles such as goodwill and rights to patents or royalties.

"Temporary Diversion" means a diversion of a stream, or overland flow, which is used during coal exploration or coal mining and reclamation operations and not approved by the Division to remain after reclamation as part of the approved postmining land use.

"Temporary Impoundment" means an impoundment used during coal mining and reclamation operations, but not approved by the Division to remain as part of the approved postmining land use.

"Ton" means 2,000 pounds avoirdupois (.90718 metric ton).

"Topsoil" means the A and E soil horizon layers of the four major soil horizons.

"Toxic-Forming Materials" means earth materials or wastes which, if acted upon by air, water, weathering, or microbiological processes are likely to produce chemical or physical conditions in soils or water that are detrimental to biota or uses of water.

"Toxic Mine Drainage" means water that is discharged from active or abandoned mines or other areas affected by coal exploration or coal mining and reclamation operations which contains a substance that through chemical action or physical effects is likely to kill, injure, or impair biota commonly present in the area that might be exposed to it.

"Transfer, Assignment, or Sale of Permit Rights" means a change in ownership or other effective control over the right to conduct coal mining and reclamation operations under a permit issued by the Division.

"UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES" means coal mining and

reclamation operations incident to the extraction of coal by underground methods including a combination of (a) underground extraction of coal or in situ processing, construction use, maintenance, and reclamation of roads, above-ground repair areas, storage areas, processing areas, shipping areas, areas upon which are sited support facilities including hoist and ventilating ducts, areas utilized for the disposal and storage of waste, and areas on which materials incident to underground mining operations are placed; and (b) underground operations such as underground construction, operation, and reclamation of shafts, adits, underground support facilities, in situ processing, and underground mining, hauling, storage, and blasting.

"Underground Development Waste" means waste-rock mixtures of coal, shale, claystone, siltstone, sandstone, limestone, or related materials that are excavated, moved, and disposed of from underground workings in connection with UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES.

"Undeveloped Rangeland" means, for purposes of ALLUVIAL VALLEY FLOORS, lands where the use is not specifically controlled and managed.

"Unwarranted Failure to Comply" means the failure of the permittee to prevent the occurrence of any violation of the State Program or any permit condition due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit of the Act due to indifference, lack of diligence, or lack of reasonable care.

"Upland Areas" means, with respect to ALLUVIAL VALLEY FLOORS, those geomorphic features located outside the floodplain and terrace complex such as isolated higher terraces, alluvial fans, pediment surfaces, landslide deposits, and surfaces covered with residuum, mud flows, or debris flows, as well as highland areas underlain by bedrock and covered by residual weathered material or debris deposited by sheetwash, rillwash, or windblown material.

"Valid Existing Rights" means (a) for haul roads" (i) a recorded right of way, recorded easement, or a permit for a coal haul road recorded as of August 3, 1977, or (ii) any other road in existence as of August 3, 1977; (b) a person possesses valid existing rights if the person proposing to conduct coal mining and reclamation operations can demonstrate that property rights to the coal had been acquired prior to August 3, 1977 and that the coal is both needed for, and immediately adjacent to, an ongoing coal mining and reclamation operation which existed on August 3, 1977. A determination that coal is "needed for" will be based upon a finding that the extension of mining is essential to make the coal mining and reclamation operation as a whole economically viable; (c) where an area comes under the protection of 40-10-24 of the Act after August 3, 1977, valid existing rights will be found if on the date the protection comes into existence, a validly authorized coal mining and reclamation operation exists on that area; and (d) interpretation of the terms of the document relied upon to establish the rights to which the standard of portions (a) and (c) of this definition applies will be based either upon applicable Utah statutory or case law concerning interpretation of documents conveying mineral rights or, where no applicable Utah law exists, upon the usage and custom at the time and place it came into existence.

"Valley Fill" means a fill structure consisting of any material, other than organic material, that is placed in a valley where side slopes of the existing valley, measured at the steepest point, are greater than 20 degrees, or where the average slope of the profile of the valley from the toe of the fill to the top of the fill is greater than ten degrees.

"Violation, Failure, or Refusal" means for the purposes of R645-402, (1) A violation of a condition of a permit issued under the State Program, or (2) A failure or refusal to comply with any order issued under UCA 40-10-22, or any order incorporated in a final decision issued under UCA 40-10-20(2) or R645-104-500.

"Violation Notice" means any written notification from a governmental entity of a violation of law, whether by letter, memorandum, legal or administrative pleading, or other written communication.

"Water Table" means the upper surface of a zone of saturation where the body of ground water is not confined by an overlying impermeable zone.

"Willfully" means for the purposes of R645-402, that an individual acted (1) either intentionally, voluntarily, or consciously, and (2) with intentional disregard or plain indifference to legal requirements in authorizing, ordering, or carrying out a corporate permittee's action or omission that constituted a violation, failure, or refusal.

"Willful Violation" means an act or omission which violates the State Program or any permit condition, committed by a person who intends the result which actually occurs.

R645-100-300. Responsibility.

310. The Division is responsible for the regulation of coal mining and reclamation operations and coal exploration under the approved State Program on non-federal and non-Indian lands in accordance with the procedures in the R645 Rules.

320. The Division, through a cooperative agreement, exercises certain authority relating to the regulation of coal mining and reclamation operations on federal lands in accordance with 30 CFR Part 745.

R645-100-400. Applicability.

410. Except as provided under R645-100-420, the R645 Rules apply to all coal exploration and coal mining and reclamation operations, except:

411. The extraction of coal by a landowner for his or her own noncommercial use from land owned or leased by him or her. Noncommercial use does not include the extraction of coal by one unit of an integrated company or other business or nonprofit entity which uses the coal in its own manufacturing or power plants;

412. The extraction of 250 tons of coal or less by a person conducting coal mining and reclamation operations. A person who intends to remove more than 250 tons is not exempted;

413. The extraction of coal as an incidental part of federal, state or local government-financed highway or other construction in accordance with R645-102.

414. The extraction of coal incidental to the extraction of other minerals where coal does not exceed 16-2/3 percent of the mineral tonnage removed for commercial use or sale in accordance with R645-106; or

415. Coal exploration on lands subject to the requirements of 43 CFR Parts 3480-3487.

420. Existing Structure Exemption. Each structure used in connection with or to facilitate coal exploration or coal mining and reclamation operations will comply with the performance standards and design requirements of R645-301 and R645-302, except that:

421. An existing structure which meets the performance standards but does not meet the design requirements of R645-301 and R645-302 may be exempted from meeting those design requirements by the Division. The Division may grant this exemption only as part of the permit application process after obtaining the information required by R645-301-526.110 through R645-301-526.115.4 and after making the findings required by R645-300-130.

422. If the performance standard of the MC Rules (Interim Program Rules) is at least as stringent as the comparable performance standard of the R645 Rules, an existing structure which meets the performance standards of the MC Rules may be exempted by the Division from meeting the design requirements of the R645 Rules. The Division may grant this exemption only as part of the permit application process after obtaining the information required by R645-301-526.110 through R645-301-526.115.4 and after making the findings required by R645-300-130.

423. An existing structure which meets a performance standard of the MC Rules which is less stringent than the comparable performance standard in the R645 Rules will be modified or reconstructed to meet the design standard of the R645 Rules pursuant to a compliance plan approved by the Division only as part of the permit application as required in R645-301-526.110 through R645-301-526.115.4 and according to the findings required by R645-300-130.

424. An existing structure which does not meet the performance standards of the MC Rules and which the applicant proposes to use, in connection with or to facilitate the coal exploration or coal mining and reclamation operation, will be modified or reconstructed to meet the performance design standards of R645-301 and R645-302 prior to issuance of the permit.

430. The exemptions provided in paragraphs R645-100-421 and R645-100-422 will not apply to:

431. The requirements for existing and new coal mine waste disposal facilities; and

432. The requirements to restore the approximate original contour of the land.

440. Regulatory Determination of Exemption. The Division may, on its own initiative, and will, within a reasonable time of a request from any person who intends to conduct coal mining and reclamation operations, make a written determination whether the operation is exempt under R645-100-400. The Division will give reasonable notice of the request to interested persons. Prior to the time a determination is made, any person may submit, and the Division will consider, any written information relevant to the determination. A person requesting that an activity be declared exempt will have the burden of establishing the exemption. If a written determination of exemption is reversed through subsequent administrative or judicial action, any person who, in good faith, has made a complete and accurate request for an exemption, and relied upon the determination, will not be cited for violations which occurred prior to the date of the reversal.

450. Termination of Jurisdiction.

451. The Division may terminate its jurisdiction under the regulatory program over the reclaimed site of a completed coal mining and reclamation operation, or increment thereof, when:

451.100. The Division determines in writing that under the initial program all requirements imposed under the MC rules have been successfully completed; or

451.200. The Division determines in writing that under the permanent program all requirements imposed under the applicable regulatory program have been successfully completed or, where a performance bond was required, the Division has made a final decision in accordance with the State program to release the performance bond fully.

452. Following a termination under R645-100-451, the Division will reassert jurisdiction under the regulatory program over a site if it is demonstrated that the bond release or written determination referred to under R645-100-451 was based upon fraud, collusion, or misrepresentation of a material fact.

R645-100-500. Petition to Initiate Rulemaking.

Persons other than the Division or Board may petition to initiate rulemaking pursuant to the R641 Rules and the Utah Administrative Rulemaking Act, U.C.A. 63-46a-1, et seq.

R645-100-600. Notice of Citizen Suits.

A person who intends to initiate a civil action in his or her own behalf under 40-10-21 of the Act will give notice of intent to do so in accordance with R645-100-600.

610. Notice will be given by certified mail to the Director, if a complaint involves or relates to Utah.

620. Notice will be given by certified mail to the alleged violator, if the complaint alleges a violation of the Act or any rule, order, or permit issued under the Act.

630. Service of notice under R645-100-600 is complete upon mailing to the last known address of the person being notified.

640. A person giving notice regarding an alleged violation will state, to the extent known:

641. Sufficient information to identify the provision of the Act, rule, order, or permit allegedly violated;

642. The act or omission alleged to constitute a violation;

643. The name, address, and telephone number of the person or persons responsible for the alleged violation;

644. The date, time, and location of the alleged violation;

645. The name, address, and telephone number of the person giving notice; and

646. The name, address, and telephone number of legal

counsel, if any, of the person giving notice.

650. A person giving notice of an alleged failure by the Director to perform a mandatory act or duty under the Act will state, to the extent known:

651. The provision of the Act containing the mandatory act or duty allegedly not performed;

652. Sufficient information to identify the omission alleged to constitute the failure to perform a mandatory act or duty under the Act;

653. The name, address, and telephone number of the person giving notice; and

654. The name, address, and telephone number of legal counsel, if any, of the person giving notice.

R645-100-700. Availability of Records.

710. Records required by the Act to be made available locally to the public will be retained at the Division office closest to the area involved.

720. Other nonconfidential records or documents in the possession of the Division may be requested from the Division.

730. Information received which is required to be held confidential by the terms of the Act will not be available for public inspection.

R645-100-800. Computation of Time.

810. Except as otherwise provided, computation of time under the R645 Rules is based on calendar days.

820. In computing any period of prescribed time, the day on which the designated period of time begins is not included. The last day of the period is included unless it is a Saturday, Sunday, or a legal holiday on which the Division is not open for business, in which event the period runs until the end of the next day which is not Saturday, Sunday, or a legal holiday.

830. Intermediate Saturdays, Sundays, and legal holidays are excluded from the computation when the period or prescribed time is seven days or less.

KEY: reclamation, coal mines
December 12, 1997 **40-10-1 et seq.**
Notice of Continuation June 6, 1997

R645. Natural Resources; Oil, Gas and Mining; Coal.
R645-301. Coal Mine Permitting: Permit Application Requirements.
R645-301-100. General Contents.

The rules in R645-301-100 present the requirements for the entitled information which should be included in each permit application.

110. Minimum Requirements for Legal, Financial, Compliance and Related Information.

111. Introduction.

111.100. Objectives. The objectives of R645-301-100 are to insure that all relevant information on the ownership and control of persons who conduct coal mining and reclamation operations, the ownership and control of the property to be affected by the operation, the compliance status and history of those persons, and other important information is provided in the application to the Division.

111.200. Responsibility. It is the responsibility of the permit applicant to provide to the Division all of the information required by R645-301-100.

111.300. Applicability. The requirements of R645-301-100 apply to any person who applies for a permit to conduct coal mining and reclamation operations.

111.400. The applicant shall submit the information required by R645-301-112 and R645-301-113 in a format prescribed by OSM rules governing the Applicant Violator System information needs.

112. Identification of Interests. An application will contain the following:

112.100. A statement as to whether the applicant is a corporation, partnership, single proprietorship, association, or other business entity;

112.200. The name, address, telephone number and, as applicable, social security number and employer identification number of the:

112.210. Applicant;

112.220. Applicant's resident agent; and

112.230. Person who will pay the abandoned mine land reclamation fee.

112.300. For each person who owns or controls the applicant under the definition of "owned or controlled" and "owns or controls" in R645-100-200 of this chapter, as applicable:

112.310. The person's name, address, social security number and employer identification number;

112.320. The person's ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure;

112.330. The title of the person's position, date position was assumed, and when submitted under R645-300-147, date of departure from the position;

112.340. Each additional name and identifying number, including employer identification number, Federal or State permit number, and MSHA number with date of issuance, under which the person owns or controls, or previously owned or controlled, a coal mining and reclamation operation in the United States within five years preceding the date of the application; and

112.350. The application number or other identifier of, and the regulatory authority for, any other pending coal mine operation permit application filed by the person in any State in the United States.

112.400. For any coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant under the definition of "owned or controlled" and "owns or controls" in R645-100-200 the operation's:

112.410. Name, address, identifying numbers, including employer identification number, Federal or State permit number and MSHA number, the date of issuance of the MSHA number, and the regulatory authority; and

112.420. Ownership or control relationship to the applicant, including percentage of ownership and location in

organizational structure.

112.500. The name and address of each legal or equitable owner of record of the surface and mineral property to be mined, each holder of record of any leasehold interest in the property to be mined, and any purchaser of record under a real estate contract for the property to be mined;

112.600. The name and address of each owner of record of all property (surface and subsurface) contiguous to any part of the proposed permit area;

112.700. The MSHA numbers for all mine-associated structures that require MSHA approval; and

112.800. A statement of all lands, interest in lands, options, or pending bids on interests held or made by the applicant for lands contiguous to the area described in the permit application. If requested by the applicant, any information required by R645-301-112.800 which is not on public file pursuant to Utah law will be held in confidence by the Division as provided under R645-300-124.320.

112.900. After an applicant is notified that his or her application is approved, but before the permit is issued, the applicant shall, as applicable, update, correct or indicate that no change has occurred in the information previously submitted under R645-301-112.100 through R645-301-112.800.

113. Violation Information. An application will contain the following:

113.100. A statement of whether the applicant or any subsidiary, affiliate, or persons controlled by or under common control with the applicant has:

113.110. Had a federal or state permit to conduct coal mining and reclamation operations suspended or revoked in the five years preceding the date of submission of the application; or

113.120. Forfeited a performance bond or similar security deposited in lieu of bond;

113.200. A brief explanation of the facts involved if any such suspension, revocation, or forfeiture referred to under R645-301-113.110 and R645-301-113.120 has occurred, including:

113.210. Identification number and date of issuance of the permit, and the date and amount of bond or similar security;

113.220. Identification of the authority that suspended or revoked the permit or forfeited the bond and the stated reasons for the action;

113.230. The current status of the permit, bond, or similar security involved;

113.240. The date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture; and

113.250. The current status of the proceedings; and

113.300. For any violation of a provision of the Act, or of any law, rule or regulation of the United States, or of any derivative State reclamation law, rule or regulation enacted pursuant to Federal law, rule or regulation pertaining to air or water environmental protection incurred in connection with any coal mining and reclamation operation, a list of all violation notices received by the applicant during the three year period preceding the application date, and a list of all unabated cessation orders and unabated air and water quality violation notices received prior to the date of the application by any coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant. For each violation notice or cessation order reported, the lists shall include the following information, as applicable:

113.310. Any identifying numbers for the operation, including the Federal or State permit number and MSHA number, the dates of issuance of the violation notice and MSHA number, the name of the person to whom the violation notice was issued, and the name of the issuing regulatory authority, department or agency;

113.320. A brief description of the violation alleged in the notice;

113.330. The date, location, and type of any administrative or judicial proceedings initiated concerning the violation, including, but not limited to, proceedings initiated by any person identified in R645-301-113.300 to obtain administrative or judicial review of the violation;

113.340. The current status of the proceedings and of the violation notice; and

113.350. The actions, if any, taken by any person identified in R645-301-113.300 to abate the violation.

113.400. After an applicant is notified that his or her application is approved, but before the permit is issued, the applicant shall, as applicable, update, correct or indicate that no change has occurred in the information previously submitted under R645-301-113.

114. Right-of-Entry Information.

114.100. An application will contain a description of the documents upon which the applicant bases their legal right to enter and begin coal mining and reclamation operations in the permit area and will state whether that right is the subject of pending litigation. The description will identify the documents by type and date of execution, identify the specific lands to which the document pertains, and explain the legal rights claimed by the applicant.

114.200. Where the private mineral estate to be mined has been severed from the private surface estate, an applicant will also submit:

114.210. A copy of the written consent of the surface owner for the extraction of coal by certain coal mining and reclamation operations;

114.220. A copy of the conveyance that expressly grants or reserves the right to extract coal by certain coal mining and reclamation operations; or

114.230. If the conveyance does not expressly grant the right to extract the coal by certain coal mining and reclamation operations, documentation that under applicable Utah law, the applicant has the legal authority to extract the coal by those operations.

114.300. Nothing given under R645-301-114.100 through R645-301-114.200 will be construed to provide the Division with the authority to adjudicate property rights disputes.

115. Status of Unsuitability Claims.

115.100. An application will contain available information as to whether the proposed permit area is within

an area designated as unsuitable for coal mining and reclamation operations or is within an area under study for designation in an administrative proceeding under R645-103-300, R645-103-400, or 30 CFR Part 769.

115.200. An application in which the applicant claims the exemption described in R645-103-333 will contain information supporting the assertion that the applicant made substantial legal and financial commitments before January 4, 1977, concerning the proposed coal mining and reclamation operations.

115.300. An application in which the applicant proposes to conduct coal mining and reclamation operations within 300 feet of an occupied dwelling or within 100 feet of a public road will contain the necessary information and meet the requirements of R645-103-230 through R645-103-238.

116. Permit Term.

116.100. Each permit application will state the anticipated or actual starting and termination date of each phase of the coal mining and reclamation operation and the anticipated number of acres of land to be affected during each phase of mining over the life of the mine.

116.200. If the applicant requires an initial permit term in excess of five years in order to obtain necessary financing for equipment and the opening of the operation, the application will:

116.210. Be complete and accurate covering the specified longer term; and

116.220. Show that the proposed longer term is reasonably needed to allow the applicant to obtain financing for equipment and for the opening of the operation with the need confirmed, in writing, by the applicant's proposed source of financing.

117. Insurance, Proof of Publication and Facilities or Structures Used in Common.

117.100. A permit application will contain either a certificate of liability insurance or evidence of self-insurance in compliance with R645-301-800.

117.200. A copy of the newspaper advertisements of the application for a permit, significant revision of a permit, or renewal of a permit, or proof of publication of the advertisements which is acceptable to the Division will be filed with the Division and will be made a part of the application not later than 4 weeks after the last date of publication as required by R645-300-121.100.

117.300. The plans of a facility or structure that is to be shared by two or more separately permitted coal mining and reclamation operations may be included in one permit application and referenced in the other applications. In accordance with R645-301-800, each permittee will bond the facility or structure unless the permittees sharing it agree to another arrangement for assuming their respective responsibilities. If such agreement is reached, then the application will include a copy of the agreement between or among the parties setting forth the respective bonding responsibilities of each party for the facility or structure. The agreement will demonstrate to the satisfaction of the Division that all responsibilities under the R645 Rules for the facility or structure will be met.

118. Filing Fee. Each permit application to conduct coal mining and reclamation operations pursuant to the State Program will be accompanied by a fee of $5.00.

120. Permit Application Format and Contents.

121. The permit application will:

121.100. Contain current information, as required by R645-200, R645-300, R645-301 and R645-302.

121.200. Be clear and concise; and

121.300. Be filed in the format required by the Division.

122. If used in the permit application, referenced materials will either be provided to the Division by the applicant or be readily available to the Division. If provided, relevant portions of referenced published materials will be presented briefly and concisely in the application by photocopying or abstracting and with explicit citations.

123. Applications for permits; permit changes; permit renewals; or transfers, sales or assignments of permit rights will contain the notarized signature of a responsible official of the applicant, that the information contained in the application is true and correct to the best of the official's information and belief.

130. Reporting of Technical Data.

131. All technical data submitted in the permit application will be accompanied by the names of persons or organizations that collected and analyzed the data, dates of the collection and analysis of the data, and descriptions of the methodology used to collect and analyze the data.

132. Technical analyses will be planned by or under the direction of a professional qualified in the subject to be analyzed.

140. Maps and Plans.

141. Maps submitted with permit applications will be presented in a consolidated format, to the extent possible, and will include all the types of information that are set forth on U.S. Geological Survey of the 1:24,000 scale series. Maps of the permit area will be at a scale of 1:6,000 or larger. Maps of the adjacent area will clearly show the lands and waters within those areas and be at a scale determined by the Division, but in no event smaller than 1:24,000.

142. All maps and plans submitted with the permit application will distinguish among each of the phases during which coal mining and reclamation operations were or will be conducted at any place within the life of operations. At a minimum, distinctions will be clearly shown among those portions of the life of operations in which coal mining and reclamation operations occurred:

142.100 Prior to August 3, 1977;

142.200 After August 3, 1977, and prior to either:

142.210. May 3, 1978; or

142.220 In the case of an applicant or operator which obtained a small operator's exemption in accordance with the Interim Program rules (MC Rules), January 1, 1979;

142.300 After May 3, 1978 (or January 1, 1979, for persons who received a small operator's exemption) and prior to the approval of the State Program; and

142.400 After the estimated date of issuance of a permit by the Division under the State Program.

150. Completeness. An application for a permit to conduct coal mining and reclamation operations will be complete and will include at a minimum information required

under R645-301 and, if applicable, R645-302.

R645-301-200. Soils.

The regulations in R645-301-200 present the minimum requirements for information on soil resources which will be included in each permit application.

210. Introduction.

211. The applicant will present a description of the premining soil resources as specified under R645-301-221. Topsoil and subsoil to be saved under R645-301-232 will be separately removed and segregated from other material.

212. After removal, topsoil will be immediately redistributed in accordance with R645-301-242, stockpiled pending redistribution under R645-301-234, or if demonstrated that an alternative procedure will provide equal or more protection for the topsoil, the Division may, on a case-by-case basis, approve an alternative.

220. Environmental Description.

221. Prime Farmland Investigation. All permit applications, whether or not Prime Farmland is present, will include the results of a reconnaissance inspection of the proposed permit area to indicate whether Prime Farmland exists as given under R645-302-313.

222. Soil Survey. The applicant will provide adequate soil survey information for those portions of the permit area to be affected by surface operations incident to UNDERGROUND COAL MINING and RECLAMATION ACTIVITIES and for the permit area of SURFACE COAL MINING and RECLAMATION ACTIVITIES consisting of the following:

222.100. A map delineating different soils;

222.200. Soil identification;

222.300. Soil description; and

222.400. Present and potential productivity of existing soils.

223. Soil Characterization. The survey will meet the standards of the National Cooperative Soil Survey as incorporated by reference in R645-302-314.100.

224. Substitute Topsoil. Where the applicant proposes to use selected overburden materials as a supplement or substitute for topsoil, the application will include results of analyses, trials, and tests as described under R645-301-232.100 through R645-301-232.600, R645-301-234, R645-301-242, and R645-301-243. The Division may also require the results of field-site trials or greenhouse tests as required under R645-301-233.

230. Operation Plan.

231. General Requirements. Each permit application will include a:

231.100. Description of the methods for removing and storing topsoil, subsoil, and other materials;

231.200. Demonstration of the suitability of topsoil substitutes or supplements;

231.300. Testing plan for evaluating the results of topsoil handling and reclamation procedures related to revegetation; and

231.400. Narrative that describes the construction, modification, use and maintenance of topsoil handling and storage areas.

232. Topsoil and Subsoil Removal.

232.100. All topsoil will be removed as a separate layer from the area to be disturbed, and segregated.

232.200. Where the topsoil is of insufficient quantity or poor quality for sustaining vegetation, the materials approved by the Division in accordance with R645-301-233.100 will be removed as a separate layer from the area to be disturbed, and segregated.

232.300. If topsoil is less than six inches thick, the operator may remove the topsoil and the unconsolidated materials immediately below the topsoil and treat the mixture as topsoil.

232.400. The Division may not require the removal of topsoil for minor disturbances which:

232.410. Occur at the site of small structures, such as power poles, signs, or fence lines; or

232.420. Will not destroy the existing vegetation and will not cause erosion.

232.500. Subsoil Segregation. The Division may require that the B horizon, C horizon, or other underlying strata, or portions thereof, be removed and segregated, stockpiled, and redistributed as subsoil in accordance with the requirements of R645-301-234 and R645-301-242 if it finds that such subsoil layers are necessary to comply with the revegetation requirements of R645-301-353 through R645-301-357.

232.600. Timing. All material to be removed under R645-301-232 will be removed after the vegetative cover that would interfere with its salvage is cleared from the area to be disturbed, but before any drilling, blasting, mining, or other surface disturbance takes place.

232.700. Topsoil and subsoil removal under adverse conditions. An exception to the requirements of R645-301-232 to remove topsoil or subsoils in a separate layer from an area to be disturbed by surface operations may be granted by the Division where the operator can demonstrate;

232.710. The removal of soils in a separate layer from the area by the use of conventional machines would be unsafe or impractical because of the slope or other condition of the terrain or because of the rockiness or limited depth of the soils; and

232.720. That the requirements of R645-301-233 have been or will be fulfilled with regard to the use of substitute soil materials unless no available substitute material can be made suitable for achieving the revegetation standards of R645-301-356, in which event the operator will, as a condition of the permit, be required to import soil material of the quality and quantity necessary to achieve such revegetation standards.

233. Topsoil Substitutes and Supplements.

233.100. Selected overburden materials may be substituted for, or used as a supplement to topsoil if the operator demonstrates to the Division that the resulting soil medium is equal to, or more suitable for sustaining vegetation on nonprime farmland areas than the existing topsoil, has a greater productive capacity than that which existed prior to mining for prime farmland reconstruction, and results in a soil medium that is the best available in the permit area to support revegetation.

233.200. The suitability of topsoil substitutes and supplements will be determined on the basis of analysis of the thickness of soil horizons, total depth, texture, percent coarse fragments, pH, and areal extent of the different kinds of soils. The Division may require other chemical and physical analyses, field-site trials, or greenhouse tests if determined to be necessary or desirable to demonstrate the suitability of topsoil substitutes or supplements.

233.300. Results of physical and chemical analyses of overburden and topsoil to demonstrate that the resulting soil medium is equal to or more suitable for sustaining revegetation than the available topsoil, provided that field-site trials, and greenhouse tests are certified by an approved laboratory in accordance with any one or a combination of the following sources:

233.310. NRCS published data based on established soil series;

233.320. NRCS Technical Guides;

233.330. State agricultural agency, university, Tennessee Valley Authority, Bureau of Land Management of U.S. Department of Agriculture Forest Service published data based on soil series properties and behavior; or

233.340. Results of physical and chemical analyses, field-site trials, or greenhouse tests of the topsoil and overburden materials (soil series) from the permit area.

233.400. If the operator demonstrates through soil survey or other data that the topsoil and unconsolidated material are insufficient and substitute materials will be used, only the substitute materials must be analyzed in accordance with R645-301-233.300.

234. Topsoil Storage.

234.100. Materials removed under R645-301-232.100, R645-301-232.200, and R645-301-232.300 will be segregated and stockpiled when it is impractical to redistribute such materials promptly on regraded areas.

234.200. Stockpiled materials will:

234.210. Be selectively placed on a stable site within the permit area;

234.220. Be protected from contaminants and unnecessary compaction that would interfere with revegetation;

234.230. Be protected from wind and water erosion through prompt establishment and maintenance of an effective, quick growing vegetative cover or through other measures approved by the Division; and

234.240. Not be moved until required for redistribution unless approved by the Division.

234.300. Where long-term disturbed areas will result from facilities and preparation plants and where stockpiling of materials removed under R645-301-232.100 would be detrimental to the quality or quantity of those materials, the Division may approve the temporary distribution of the soil materials so removed to an approved site within the permit area to enhance the current use of that site until needed for later reclamation, provided that:

234.310. Such action will not permanently diminish the capability of the topsoil of the host site; and

234.320. The material will be retained in a condition more suitable for redistribution than if stockpiled.

240. Reclamation Plan.

241. General Requirements. Each permit application will include plans for redistribution of soils, use of soil nutrients and amendments and stabilization of soils.

242. Soil Redistribution.

242.100. Topsoil materials removed under R645-301-232.100, R645-301-232.200, and R645-301-232.300 and stored under R645-301-234 will be redistributed in a manner that:

242.110. Achieves an approximately uniform, stable thickness consistent with the approved postmining land use, contours, and surface-water drainage systems;

242.120. Prevents excess compaction of the materials; and

242.130. Protects the materials from wind and water erosion before and after seeding and planting.

242.200. Before redistribution of the materials removed under R645-301-232 the regraded land will be treated if necessary to reduce potential slippage of the redistributed material and to promote root penetration. If no harm will be caused to the redistributed material and reestablished vegetation, such treatment may be conducted after such material is replaced.

242.300. The Division may not require the redistribution of topsoil or topsoil substitutes on the approved postmining embankments of permanent impoundments or roads if it determines that:

242.310. Placement of topsoil or topsoil substitutes on such embankments is inconsistent with the requirement to use the best technology currently available to prevent sedimentation, and

242.320. Such embankments will be otherwise stabilized.

243. Soil Nutrients and Amendments. Nutrients and soil amendments will be applied to the initially redistributed material when necessary to establish the vegetative cover.

244. Soil Stabilization.

244.100. All exposed surface areas will be protected and stabilized to effectively control erosion and air pollution attendant to erosion.

244.200. Suitable mulch and other soil stabilizing practices will be used on all areas that have been regraded and covered by topsoil or topsoil substitutes. The Division may waive this requirement if seasonal, soil, or slope factors result in a condition where mulch and other soil stabilizing practices are not necessary to control erosion and to promptly establish an effective vegetative cover.

244.300. Rills and gullies, which form in areas that have been regraded and topsoiled and which either:

244.310. Disrupt the approved postmining land use or the reestablishment of the vegetative cover, or

244.320. Cause or contribute to a violation of water quality standards for receiving streams will be filled, regraded, or otherwise stabilized; topsoil will be replaced; and the areas will be reseeded or replanted.

250. Performance Standards.

251. All topsoil, subsoil and topsoil substitutes or supplements will be removed, maintained and redistributed according to the plan given under R645-301-230 and R645-

301-240.

252. All stockpiled topsoil, subsoil and topsoil substitutes or supplements will be located, maintained and redistributed according to plans given under R645-301-230 and R645-301-240.

R645-301-300. Biology.

310. Introduction. Each permit application will include descriptions of the:

311. Vegetative, fish, and wildlife resources of the permit area and adjacent areas as described under R645-301-320;

312. Potential impacts to vegetative, fish and wildlife resources and methods proposed to minimize these impacts during coal mining and reclamation operations as described under R645-301-330 and R645-301-340; and

313. Proposed reclamation designed to restore or enhance vegetative, fish, and wildlife resources to a condition suitable for the designated postmining land use as described under R645-301-340.

320. Environmental Description.

321. Vegetation Information. The permit application will contain descriptions as follows:

321.100. If required by the Division, plant communities within the proposed permit area and any reference area for SURFACE COAL MINING AND RECLAMATION ACTIVITIES and areas affected by surface operations incident to an underground mine for UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES. This description will include information adequate to predict the potential for reestablishing vegetation; and

321.200. The productivity of the land before mining within the proposed permit area for SURFACE COAL MINING AND RECLAMATION ACTIVITIES and areas affected by surface operations incident to an underground mine for UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, expressed as average yield of food, fiber, forage, or wood products from such lands obtained under high levels of management. The productivity will be determined by yield data or estimates for similar sites based on current data from the U. S. Department of Agriculture, state agricultural universities, or appropriate state natural resource or agricultural agencies.

322. Fish and Wildlife Information. Each application will include fish and wildlife resource information for the permit area and adjacent areas.

322.100. The scope and level of detail for such information will be determined by the Division in consultation with state and federal agencies with responsibilities for fish and wildlife and will be sufficient to design the protection and enhancement plan required under R645-301-333.

322.200. Site-specific resource information necessary to address the respective species or habitats will be required when the permit area or adjacent area is likely to include:

322.210. Listed or proposed endangered or threatened species of plants or animals or their critical habitats listed by the Secretary under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.), or those species or habitats protected by similar state statutes;

322.220. Habitats of unusually high value for fish and wildlife such as important streams, wetlands, riparian areas, cliffs supporting raptors, areas offering special shelter or protection, migration routes, or reproduction and wintering areas; or

322.230. Other species or habitats identified through agency consultation as requiring special protection under state or federal law.

322.300. Fish and Wildlife Service review. Upon request, the Division will provide the resource information required under R645-301-322 and the protection and enhancement plan required under R645-301-333 to the U.S. Fish and Wildlife Service Regional or Field Office for their review. This information will be provided within 10 days of receipt of the request from the Service.

323. Maps and Aerial Photographs. Maps or aerial photographs of the permit area and adjacent areas will be provided which delineate:

323.100. The location and boundary of any proposed reference area for determining the success of revegetation;

323.200. Elevations and locations of monitoring stations used to gather data for fish and wildlife, and any special habitat features;

323.300. Each facility to be used to protect and enhance fish and wildlife and related environmental values; and

323.400. If required, each vegetative type and plant community, including sample locations. Sufficient adjacent areas will be included to allow evaluation of vegetation as important habitat for fish and wildlife for those species identified under R645-301-322.

330. Operation Plan. Each application will contain a plan for protection of vegetation, fish, and wildlife resources throughout the life of the mine. The plan will provide:

331. A description of the measures taken to disturb the smallest practicable area at any one time and through prompt establishment and maintenance of vegetation for interim stabilization of disturbed areas to minimize surface erosion. This may include part or all of the plan for final revegetation as described in R645-301-341.100 and R645-301-341.200;

332. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES a description of the anticipated impacts of subsidence on renewable resource lands identified in R645-301-320, and how such impact will be mitigated;

333. A description of how, to the extent possible, using the best technology currently available, the operator will minimize disturbances and adverse impacts to fish and wildlife and related environmental values during coal mining and reclamation operations, including compliance with the Endangered Species Act of 1973 during coal mining and reclamation operations, including the location and operation of haul and access roads and support facilities so as to avoid or minimize impacts on important fish and wildlife species or other species protected by state or federal law; and how enhancement of these resources will be achieved, where practicable. This Description will:

333.100. Be consistent with the requirements of R645-301-358;

333.200. Apply, at a minimum, to species and habitats identified under R645-301-322; and

333.300. Include protective measures that will be used during the active mining phase of operation. Such measures may include the establishment of buffer zones, the selective location and special design of haul roads and powerlines, and the monitoring of surface water quality and quantity.

340. Reclamation Plan.

341. Revegetation. Each application will contain a reclamation plan for final revegetation of all lands disturbed by coal mining and reclamation operations, except water areas and the surface of roads approved as part of the postmining land use, as required in R645-301-353 through R645-301-357, showing how the applicant will comply with the biological protection performance standards of the State Program. The plan will include, at a minimum:

341.100. A detailed schedule and timetable for the completion of each major step in the revegetation plan;

341.200. Descriptions of the following:

341.210. Species and amounts per acre of seeds and/or seedlings to be used. If fish and wildlife habitat will be a postmining land use, the criteria of R645-301-342.300 apply.

341.220. Methods to be used in planting and seeding;

341.230. Mulching techniques, including type of mulch and rate of application;

341.240. Irrigation, if appropriate, and pest and disease control measures, if any; and

341.250. Measures proposed to be used to determine the success of revegetation as required in R645-301-356.

341.300. The Division may require greenhouse studies, field trials, or equivalent methods of testing proposed or potential revegetation materials and methods to demonstrate that revegetation is feasible pursuant to R645-300-133.710.

342. Fish and Wildlife. Each application will contain a fish and wildlife plan for the reclamation and postmining phase of operation consistent with R645-301-330, the performance standards of R645-301-358 and include the following:

342.100. Enhancement measures that will be used during the reclamation and postmining phase of operation to develop aquatic and terrestrial habitat. Such measures may include restoration of streams and other wetlands, retention of ponds and impoundments, establishment of vegetation for wildlife food and cover, and the replacement of perches and nest boxes. Where the plan does not include enhancement measures, a statement will be given explaining why enhancement is not practicable.

342.200. Where fish and wildlife habitat is to be a postmining land use, the plant species to be used on reclaimed areas will be selected on the basis of the following criteria:

342.210. Their proven nutritional value for fish or wildlife;

342.220. Their use as cover for fish or wildlife; and

342.230. Their ability to support and enhance fish or wildlife habitat after the release of performance bonds. The selected plants will be grouped and distributed in a manner which optimizes edge effect, cover, and other benefits to fish and wildlife.

342.300. Where cropland is to be the postmining land use, and where appropriate for wildlife- and crop-management practices, the operator will intersperse the fields with trees, hedges, or fence rows throughout the harvested area to break up large blocks of monoculture and to diversify habitat types for birds and other animals.

342.400. Where residential, public service, or industrial uses are to be the postmining land use, and where consistent with the approved postmining land use, the operator will intersperse reclaimed lands with greenbelts utilizing species of grass, shrubs, and trees useful as food and cover for wildlife.

350. Performance Standards.

351. General Requirements. All coal mining and reclamation operations will be carried out according to plans provided under R645-301-330 through R645-301-340.

352. Contemporaneous Reclamation. Revegetation on all land that is disturbed by coal mining and reclamation operations, will occur as contemporaneously as practicable with mining operations, except when such mining operations are conducted in accordance with a variance for combined SURFACE and UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES issued under R645-302-280. The Division may establish schedules that define contemporaneous reclamation.

353. Revegetation: General Requirements. The permittee will establish on regraded areas and on all other disturbed areas, except water areas and surface areas of roads that are approved as part of the postmining land use, a vegetative cover that is in accordance with the approved permit and reclamation plan.

353.100. The vegetative cover will be:

353.110. Diverse, effective, and permanent;

353.120. Comprised of species native to the area, or of introduced species where desirable and necessary to achieve the approved postmining land use and approved by the Division;

353.130. At least equal in extent of cover to the natural vegetation of the area; and

353.140. Capable of stabilizing the soil surface from erosion.

353.200. The reestablished plant species will:

353.210. Be compatible with the approved postmining land use;

353.220. Have the same seasonal characteristics of growth as the original vegetation;

353.230. Be capable of self-regeneration and plant succession;

353.240. Be compatible with the plant and animal species of the area; and

353.250. Meet the requirements of applicable Utah and federal seed, poisonous and noxious plant; and introduced species laws or regulations.

353.300. The Division may grant exception to the requirements of R645-301-353.220 and R645-301-353.230 when the species are necessary to achieve a quick-growing, temporary, stabilizing cover, and measures to establish permanent vegetation are included in the approved permit and reclamation plan.

353.400. When the approved postmining land use is

cropland, the Division may grant exceptions to the requirements of R645-301-353.110, R645-301-353.130, R645-301-353.220 and R645-301-353.230. The requirements of R645-302-317 apply to areas identified as prime farmland.

354. Revegetation: Timing. Disturbed areas will be planted during the first normal period for favorable planting conditions after replacement of the plant-growth medium. The normal period for favorable planting is that planting time generally accepted locally for the type of plant materials selected.

355. Revegetation: Mulching and Other Soil Stabilizing Practices. Suitable mulch and other soil stabilizing practices will be used on all areas that have been regraded and covered by topsoil or topsoil substitutes. The Division may waive this requirement if seasonal, soil, or slope factors result in a condition where mulch and other soil stabilizing practices are not necessary to control erosion and to promptly establish an effective vegetative cover.

356. Revegetation: Standards for Success.

356.100. Success of revegetation will be judged on the effectiveness of the vegetation for the approved postmining land use, the extent of cover compared to the extent of cover of the reference area or other approved success standard, and the general requirements of R645-301-353.

356.110. Standards for success, statistically valid sampling techniques for measuring success, and approved methods are identified in the Division's "Vegetation Information Guidelines, Appendix A."

356.120. Standards for success will include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of ground cover, production, or stocking. Ground cover, production, or stocking will be considered equal to the approved success standard when they are not less than 90 percent of the success standard. The sampling techniques for measuring success will use a 90-percent statistical confidence interval (i.e., one-sided test with a 0.10 alpha error).

356.200. Standards for success will be applied in accordance with the approved postmining land use and, at a minimum, the following conditions:

356.210. For areas developed for use as grazing land or pasture land, the ground cover and production of living plants on the revegetated area will be at least equal to that of a reference area or such other success standards approved by the Division.

356.220. For areas developed for use as cropland, crop production on the revegetated area will be at least equal to that of a reference area or such other success standards approved by the Division. The requirements of R645-302-310 through R645-302-317 apply to areas identified as prime farmland.

356.230. For areas to be developed for fish and wildlife habitat, recreation, shelter belts, or forest products, success of vegetation will be determined on the basis of tree and shrub stocking and vegetative ground cover. Such parameters are described as follows:

356.231. Minimum stocking and planting arrangements will be specified by the Division on the basis of local and regional conditions and after consultation with and approval by Utah agencies responsible for the administration of forestry and wildlife programs. Consultation and approval will be on a permit specific basis and will be performed in accordance with the "Vegetation Information Guidelines" of the division.

356.232. Trees and shrubs that will be used in determining the success of stocking and the adequacy of plant arrangement will have utility for the approved postmining land use. At the time of bond release, such trees and shrubs will be healthy, and at least 80 percent will have been in place for at least 60 percent of the applicable minimum period of responsibility. No trees and shrubs in place for less than two growing seasons will be counted in determining stocking adequacy.

356.233. Vegetative ground cover will not be less than that required to achieve the approved postmining land use.

356.240. For areas to be developed for industrial, commercial, or residential use less than two years after regrading is completed, the vegetative ground cover will not be less than that required to control erosion.

356.250. For areas previously disturbed by mining that were not reclaimed to the requirements of R645-200 through R645-203 and R645-301 through R645-302 and that are remined or otherwise redisturbed by coal mining and reclamation operations, at a minimum, the vegetative ground cover will be not less than the ground cover existing before redisturbance and will be adequate to control erosion.

356.300. Siltation structures will be maintained until removal is authorized by the Division and the disturbed area has been stabilized and revegetated. In no case will the structure be removed sooner than two years after the last augmented seeding.

356.400. When a siltation structure is removed, the land on which the siltation structure was located will be revegetated in accordance with the reclamation plan and R645-301-353 through R645-301-357.

357. Revegetation: Extended Responsibility Period.

357.100. The period of extended responsibility for successful vegetation will begin after the last year of augmented seeding, fertilization, irrigation, or other work, excluding husbandry practices that are approved by the Division in accordance with paragraph R645-301-357.300.

357.200. Vegetation parameters identified in R645-301-356.200 will equal or exceed the approved success standard during the growing seasons for the last two years of the responsibility period. The period of extended responsibility will continue for five or ten years based on precipitation data reported pursuant to R645-301-724.411, as follows:

357.210. In areas of more than 26.0 inches average annual precipitation, the period of responsibility will continue for a period of not less than five full years.

357.220. In areas of 26.0 inches or less average annual precipitation, the period of responsibility will continue for a period of not less than ten full years.

357.300. Husbandry Practices - General Information

357.301. The Division may approve certain selective husbandry practices without lengthening the extended responsibility period. Practices that may be approved are

identified in R645-301-357.310 through R645-301-357.365. The operator may propose to use additional practices, but they would need to be approved as part of the Utah Program in accordance with 30 CFR 732.17. Any practices used will first be incorporated into the mining and reclamation plan and approved in writing by the Division. Approved practices are normal conservation practices for unmined lands within the region which have land uses similar to the approved postmining land use of the disturbed area. Approved practices may continue as part of the postmining land use, but discontinuance of the practices after the end of the bond liability period will not jeopardize permanent revegetation success. Augmented seeding, fertilization, or irrigation will not be approved without extending the period of responsibility for revegetation success and bond liability for the areas affected by said activities and in accordance with R645-301-820.330.

357.302. The Permittee will demonstrate that husbandry practices proposed for a reclaimed area are not necessitated by inadequate grading practices, adverse soil conditions, or poor reclamation procedures.

357.303. The Division will consider the entire area that is bonded within the same increment, as defined in R645-301-820.110, when calculating the extent of area that may be treated by husbandry practices.

357.304. If it is necessary to seed or plant in excess of the limits set forth under R645-301-357.300, the Division may allow a separate extended responsibility period for these reseeded or replanted areas in accordance with R645-301-820.330.

357.310. Reestablishing trees and shrubs

357.311. Trees or shrubs may be replanted or reseeded at a rate of up to a cumulative total of 20% of the required stocking rate through 40% of the extended responsibility period.

357.312. If shrubs are to be established by seed in areas of established vegetation, small areas will be scalped. The number of shrubs to be counted toward the tree and shrub density standard for success from each scalped area is limited to one.

357.320. Weed Control and Associated Revegetation. Weed control through chemical, mechanical, and biological means discussed in R645-301-357.321 through R645-301-357.323 is allowed through the entire extended responsibility period for noxious weeds and through the first 20% of the responsibility period for other weeds. Any revegetation necessitated by the following weed control methods will be performed according to the seeding and transplanting parameters set forth in R645-301-357.324.

357.321. Chemical Weed Control. Weed control through chemical means, following the current Weed Control Handbook (published annually or biannually by the Utah State University Cooperative Extension Service) and herbicide labels, is allowed.

357.322. Mechanical Weed Control. Mechanical practices that may be approved include hand roguing, grubbing and mowing.

357.323. Biological Weed Control. Selective grazing by domestic livestock is allowed. Biological control of weeds through disease, insects, or other biological weed control agents is allowed but will be approved on a case-by-case basis by the Division, and other appropriate agency or agencies which have the authority to regulate the introduction and/or use of biological control agents.

357.324. Where weed control practices damage desirable vegetation, areas treated to control weeds may be reseeded or replanted according to the following limitations. Up to a cumulative total of 15% of a reclaimed area may be reseeded or replanted during the first 20% of the extended responsibility period without restarting the responsibility period. After the first 20% of the responsibility period, no more than 3% of the reclaimed area may be reseeded in any single year without restarting the responsibility period, and no continuous reseeded area may be larger than one acre. Furthermore, no seeding is allowed after the first 60% of the responsibility period or Phase II bond release, whichever comes first. Any seeding outside these parameters is considered to be "augmentative seeding," and will restart the extended responsibility period.

357.330. Control of Other Pests.

357.331. Control of big game (deer, elk, moose, antelope) may be used only during the first 60% of the extended responsibility period or until Phase II bond release, whichever comes first. Any methods used will first be approved by the Division and, as appropriate, the land management agency and the Utah Division of Wildlife Resources. Methods that may be used include fencing and other barriers, repellents, scaring, shooting, and trapping and relocation. Trapping and special hunts or shooting will be approved by the Division of Wildlife Resources. Other control techniques may be allowed but will be considered on a case-by-case basis by the Division and by the Utah Division of Wildlife Resources. Appendix C of the Division's "Vegetation Information Guidelines" includes a non-exhaustive list of publications containing big game control methods.

357.332. Control of small mammals and insects will be approved on a case-by-case basis by the Utah Division of Wildlife Resources and/or the Utah Department of Agriculture. The recommendations of these agencies will also be approved by the appropriate land management agency or agencies. Small mammal control will be allowed only during the first 60% of the extended responsibility period or until Phase II bond release, whichever comes first. Insect control will be allowed through the entire extended responsibility period if it is determined, through consultation with the Utah Department of Agriculture or Cooperative Extension Service, that a specific practice is being performed on adjacent unmined lands.

357.340. Natural Disasters and Illegal Activities Occurring After Phase II Bond Release. Where necessitated by a natural disaster, excluding climatic variation, or illegal activities, such as vandalism, not caused by any lack of planning, design, or implementation of the mining and reclamation plan on the part of the Permittee, the seeding and planting of the entire area which is significantly affected by the disaster or illegal activities will be allowed as an accepted husbandry practice and thus will not restart the extended

responsibility period. Appendix C of the Division's "Vegetation Information Guidelines" references publications that show methods used to revegetate damaged land. Examples of natural disasters that may necessitate reseeding which will not restart the extended responsibility period include wildfires, earthquakes, and mass movements originating outside the disturbed area.

357.341. The extent of the area where seeding and planting will be allowed will be determined by the Division in cooperation with the Permittee.

357.342. All applicable revegetation success standards will be achieved on areas reseeded following a disaster, including R645-301-356.232 for areas with a designated postmining land use of forestry or wildlife.

357.343. Seeding and planting after natural disasters or illegal activities will only be allowed in areas where Phase II bond release has been granted.

357.350. Irrigation. The irrigation of transplanted trees and shrubs, but not of general areas, is allowed through the first 20% of the extended responsibility period. Irrigation may be by such methods as, but not limited to, drip irrigation, hand watering, or sprinkling.

357.360. Highly Erodible Area and Rill and Gully Repair. The repair of highly erodible areas and rills and gullies will not be considered an augmentative practice, and will thus not restart the extended responsibility period, if the affected area as defined in R645-301-357.363 comprises no more than 15% of the disturbed area for the first 20% of the extended responsibility period and if no continuous area to be repaired is larger than one acre.

357.361. After the first 20% of the extended responsibility period but prior to the end of the first 60% of the responsibility period or until Phase II bond release, whichever comes first, highly erodible area and rill and gully repair will be considered augmentative, and will thus restart the responsibility period, if the area to be repaired is greater than 3% of the total disturbed area or if a continuous area is larger than one acre.

357.362. The extent of the affected area will be determined by the Division in cooperation with the Permittee.

357.363. The area affected by the repair of highly erodible areas and rills and gullies is defined as any area that is reseeded as a result of the repair. Also included in the affected areas are interspacial areas of thirty feet or less between repaired rills and gullies. Highly erodible areas are those areas which cannot usually be stabilized by ordinary conservation treatments and if left untreated can cause severe erosion or sediment damage.

357.364. The repair and/or treatment of rills and gullies which result from a deficient surface water control or grading plan, as defined by the recurrence of rills and gullies, will be considered an augmentative practice and will thus restart the extended responsibility period.

357.365. The Permittee shall demonstrate by specific plans and designs the methods to be used for the treatment of highly erodible areas and rills and gullies. These will be based on a combination of treatments recommended in the Soil Conservation Service Critical Area Planting recommendations, literature recommendations including those found in Appendix C of the Division's "Vegetation Information Guidelines", and other successful practices used at other reclamation sites in the State of Utah. Any treatment practices used will be approved by the Division.

358. Protection of Fish, Wildlife, and Related Environmental Values. The operator will, to the extent possible using the best technology currently available, minimize disturbances and adverse impacts on fish, wildlife, and related environmental values and will achieve enhancement of such resources where practicable.

358.100. No coal mining and reclamation operation will be conducted which is likely to jeopardize the continued existence of endangered or threatened species listed by the Secretary or which is likely to result in the destruction or adverse modification of designated critical habitats of such species in violation of the Endangered Species Act of 1973. The operator will promptly report to the Division any state- or federally-listed endangered or threatened species within the permit area of which the operator becomes aware. Upon notification, the Division will consult with appropriate state and federal fish and wildlife agencies and, after consultation, will identify whether, and under what conditions, the operator may proceed.

358.200. No coal mining and reclamation operations will be conducted in a manner which would result in the unlawful taking of a bald or golden eagle, its nest, or any of its eggs. The operator will promptly report to the Division any golden or bald eagle nest within the permit area of which the operator becomes aware. Upon notification, the Division will consult with the U.S. Fish and Wildlife Service and the Utah Division of Wildlife Resources and, after consultation, will identify whether, and under what conditions, the operator may proceed.

358.300. Nothing in the R645 Rules will authorize the taking of an endangered or threatened species or a bald or golden eagle, its nest, or any of its eggs in violation of the Endangered Species Act of 1973 or the Bald Eagle Protection Act, as amended, 16 U.S.C. 668 et seq.

358.400. The operator conducting coal mining and reclamation operations will avoid disturbances to, enhance where practicable, restore, or replace, wetlands and riparian vegetation along rivers and streams and bordering ponds and lakes. Coal mining and reclamation operations will avoid disturbances to, enhance where practicable, or restore, habitats of unusually high value for fish and wildlife.

358.500. Each operator will, to the extent possible using the best technology currently available:

358.510. Ensure that electric powerlines and other transmission facilities used for, or incidental to, coal mining and reclamation operations on the permit area are designed and constructed to minimize electrocution hazards to raptors, except where the Division determines that such requirements are unnecessary;

358.520. Design fences, overland conveyers, and other potential barriers to permit passage for large mammals, except where the Division determines that such requirements are unnecessary; and

358.530. Fence, cover, or use other appropriate methods to exclude wildlife from ponds which contain hazardous

concentrations of toxic-forming materials.

R645-301-400. Land Use and Air Quality.

The rules in R645-301-400 present the requirements for information related to Land Use and Air Quality which are to be included in each permit application.

410. Land Use. Each permit application will include a descriptions of the premining and proposed postmining land use(s).

411. Environmental Description.

411.100. Premining Land-Use Information. The application will contain a statement of the condition and capability of the land which will be affected by coal mining and reclamation operations within the proposed permit area, including:

411.110. A map and supporting narrative of the uses of the land existing at the time of the filing of the application. If the premining use of the land was changed within five years before the anticipated date of beginning the proposed operations, the historic use of the land will also be described;

411.120 A narrative of land capability which analyzes the land-use description in conjunction with other environmental resources information required under R645-301-411.100, and R645-301 and R645-302. The narrative will provide analyses of the capability of the land before any coal mining and reclamation operations to support a variety of uses, giving consideration to soil and foundation characteristics, topography, vegetative cover and the hydrology of the area proposed to be affected by coal mining and reclamation operations; and

411.130. A description of the existing land uses and land-use classifications under local law, if any, of the proposed permit and adjacent areas.

411.140. Cultural and Historic Resources Information. The application will contain maps as described under R645-301-411.141 and a supporting narrative which describe the nature of cultural and historic resources listed or eligible for listing in the National Register of Historic Places and known archeological sites within the permit and adjacent areas. The description will be based on all available information, including, but not limited to, information from the State Historic Preservation Officer and from local archeological, historic, and cultural preservation agencies.

411.141. Cultural and Historic Resources Maps. These maps will clearly show:

411.141.1. The boundaries of any public park and locations of any cultural or historical resources listed or eligible for listing in the National Register of Historic Places and known archeological sites within the permit and adjacent areas;

411.141.2. Each cemetery that is located in or within 100 feet of the proposed permit area; and

411.141.3. Any land within the proposed permit area which is within the boundaries of any units of the National System of Trails or the Wild and Scenic Rivers System, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act.

411.142. Coordination with the State Historic Preservation Officer (SHPO). The narrative presented under R645-301-411.140 will also describe coordination efforts with and present evidence of clearances by the SHPO. For any publicly owned parks or places listed on the National Register of Historic Places that may be adversely affected by the proposed coal mining and reclamation operations, each plan will describe the measures to be used:

411.142.1. To prevent adverse impacts; or

411.142.2. If valid existing rights exist or joint agency approval is to be obtained under R645-103-236, to minimize adverse impacts.

411.143. The Division may require the applicant to identify and evaluate important historic and archeological resources that may be eligible for listing on the national Register of Historic Places through:

411.143.1. Collection of additional information;

411.143.2. Conducting field investigations; or

411.143.3. Other appropriate analyses.

411.144. The Division may require the applicant to protect historic or archeological properties listed on or eligible for listing on the National Register of Historic Places through appropriate mitigation and treatment measures. Appropriate mitigation and treatment measures may be required to be taken after permit issuance provided that the required measures are completed before the properties are affected by any mining operation.

411.200. Previous Mining Activity. The application will state whether the proposed permit area has been previously mined, and, if so, the following information, if available:

411.210. The type of mining method used;

411.220. The coal seams or other mineral strata mined;

411.230. The extent of coal or other minerals removed;

411.240. The approximate dates of past mining; and

411.250. The uses of the land preceding mining.

412. Reclamation Plan.

412.100. Postmining Land-Use Plan. Each application will contain a detailed description of the proposed use, following reclamation, of the land within the proposed permit area, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses, and the relationship of the proposed use to existing land-use policies and plans. The plan will explain:

412.110. How the proposed postmining land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use;

412.120. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES, where range or grazing is the proposed postmining use, the detailed management plans to be implemented;

412.130. Where a land use different from the premining land use is proposed, all materials needed for approval of the alternative use under R645-301-413.100 through R645-301-413.334, R645-302-270, R645-302-271.100 through R645-302-271.400, R645-302-271.600, R645-302-271.800, and R645-302-271.900; and

412.140. The consideration which has been given to making all of the proposed coal mining and reclamation operations consistent with surface owner plans and applicable Utah and local land-use plans and programs.

412.200. Land Owner or Surface Manager Comments. The description will be accompanied by a copy of the comments concerning the proposed use by the legal or equitable owner of record of the surface of the proposed permit area and Utah and local government agencies which would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation.

412.300. Suitability and Compatibility. Assure that final fills containing excess spoil are suitable for reclamation and revegetation and are compatible with the natural surroundings and the approved postmining land use.

413. Performance Standards.

413.100. Postmining Land Use. All disturbed areas will be restored in a timely manner to conditions that are capable of supporting:

413.110. The uses they were capable of supporting before any mining; or

413.120. Higher or better uses.

413.200. Determining Premining Uses of Land.

413.210. The premining uses of land to which the postmining land use is compared will be those uses which the land previously supported, if the land has not been previously mined and has been properly managed.

413.220. The postmining land use for land that has been previously mined and not reclaimed will be judged on the basis of the land use that existed prior to any mining: provided that, if the land cannot be reclaimed to the land use that existed prior to any mining because of the previously mined condition, the postmining land use will be judged on the basis of the highest and best use that can be achieved which is compatible with surrounding areas and does not require the disturbance of areas previously unaffected by mining.

413.300. Criteria for Alternative Postmining Land Uses. Higher or better uses may be approved by the Division as alternative postmining land uses after consultation with the landowner or the land management agency having jurisdiction over the lands, if the proposed uses meet the following criteria:

413.310. There is a reasonable likelihood for achievement of the use;

413.320. The use does not present any actual or probable hazard to public health or safety, or threat of water diminution or pollution; and

413.330. The use will not:

413.331. Be impractical or unreasonable;

413.332. Be inconsistent with applicable land-use policies or plans;

413.333. Involve unreasonable delay in implementation; or

413.334. Cause or contribute to violation of federal, Utah, or local law.

414. Interpretation of R645-301-412 and R645-301-413.100 through R645-301-413.334, R645-302-270, R645-302-271.100 through R645-302-271.400, R645-302-271.600, R645-302-271.800, and R645-302-271.900 for the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, Reclamation Plan: Postmining Land Use. The requirements of R645-301-412-130, for approval of an alternative postmining land use, may be met by requesting approval through the permit revision procedures of R645-303-220 rather than requesting such approval in the original permit application. The original permit application, however, must demonstrate that the land will be returned to its premining land-use capability as required by R645-301-413.100. An application for a permit revision of this type:

414.100. Must be submitted in accordance with the filing deadlines of R645-303-220;

414.200. Will constitute a significant alteration from the mining operations contemplated by the original permit; and

414.300. Will be subject to the requirements of R645-300-120 through R645-300-155 and R645-300-200.

420. Air Quality.

421. Coal mining and reclamation operations will be conducted in compliance with the requirements of the Clean Air Act (42 U.S.C. Sec. 7401 et seq.) and any other applicable Utah or federal statutes and regulations containing air quality standards.

422. The application will contain a description of coordination and compliance efforts which have been undertaken by the applicant with the Utah Bureau of Air Quality.

423. For all SURFACE COAL MINING AND RECLAMATION ACTIVITIES with projected production rates exceeding 1,000,000 tons of coal per year, the application will contain an air pollution control plan which includes the following:

423.100 An air quality monitoring program to provide sufficient data to evaluate the effectiveness of the fugitive dust control practices proposed under R645-301-423.200 to comply with federal and Utah air quality standards; and

423.200 A plan for fugitive dust control practices as required under R645-301-244.100 and R645-301-244.300.

424. All plans for SURFACE COAL MINING AND RECLAMATION ACTIVITIES with projected production rates of 1,000,000 tons of coal per year or less, will include a plan for fugitive dust control practices as required under R645-301-244 and R645-301-244.300.

425. All plans for SURFACE COAL MINING AND RECLAMATION ACTIVITIES with projected production rates of 1,000,000 tons or less will include an air quality monitoring program, if required by the division, to provide sufficient data to judge the effectiveness of the fugitive dust control plan required under R645-301-424.

R645-301-500. Engineering.

The rules in R645-301-500 present the requirements for engineering information which is to be included in a permit application.

510. Introduction. The engineering section of the permit application is divided into the operation plan, reclamation plan, design criteria, and performance standards. All of the activities associated with the coal mining and reclamation operations must be designed, located, constructed, maintained, and reclaimed in accordance with the operation and reclamation plan. All of the design criteria associated with the operation and reclamation plan must be

met.

511. General Requirements. Each permit application will include descriptions of:

511.100. The proposed coal mining and reclamation operations with attendant maps, plans, and cross sections;

511.200. The proposed mining operation and its potential impacts to the environment as well as methods and calculations utilized to achieve compliance with design criteria; and

511.300. Reclamation.

512. Certification.

512.100. Cross Sections and Maps. Certain cross sections and maps required to be included in a permit application will be prepared by, or under the direction of, and certified by a qualified, registered, professional engineer or land surveyor, with assistance from experts in related fields such as hydrology, geology and landscape architecture, and will be updated as required by the Division. The following cross sections and maps will be certified:

512.110. Mine workings to the extent known as described under R645-301-521.110;

512.120. Surface facilities and operations as described under R645-301-521.124, R645-301-521.164, R645-301-521.165 and R645-301-521.167;

512.130. Surface configurations as described under R645-301-542.300 and R645-302-200;

512.140. Hydrology as described under R645-301-722, and as appropriate, R645-301-731.700 through R645-301-731.740; and

512.150. Geologic cross sections and maps as described under R645-301-622.

512.200. Plans and Engineering Designs. Excess spoil, durable rock fills, coal mine waste, impoundments, primary roads and variances from approximate original contour require certification by a qualified registered professional engineer.

512.210. Excess Spoil. The professional engineer experienced in the design of earth and rock fills will certify the design according to R645-301-535.100.

512.220. Durable Rock Fills. The professional engineer experienced in the design of earth and rock fills must certify that the durable rock fill design will ensure the stability of the fill and meet design requirements according to R645-301-535.100 and R645.301-535.300.

512.230. Coal Mine Waste. The professional engineer experienced in the design of similar earth and waste structures must certify the design of the disposal facility according to R645-301-536.

512.240. Impoundments. The professional engineer will use current, prudent, engineering practices and will be experienced in the design and construction of impoundments and certify the design of the impoundment according to R645-301-743.

512.250. Primary Roads. The professional engineer will certify the design and construction or reconstruction of primary roads as meeting the requirements of R645-301-534.200 and R645-301-742.420.

512.260. Variance From Approximate Original Contour. The professional engineer will certify the design for the proposed variance from the approximate original contour, as described under R645-302-270, in conformance with professional standards established to assure the stability, drainage and configuration necessary for the intended use of the site.

513. Compliance With MSHA Regulations and MSHA Approvals.

513.100. Coal processing waste dams and embankments will comply with MSHA, 30 CFR 77.216-1 and 30 CFR 77.216-2 (see R645-301-528.400 and R645-301-536.820).

513.200. Impoundments and sedimentation ponds meeting the size or other qualifying criteria of MSHA, 30 CFR 77.216(a) will comply with the requirements of MSHA, 30 CFR 77.216 (see R645-301-533.600, R645-301-742.222, and R645-301-742.223).

513.300. Underground development waste, coal processing waste and excess spoil may be disposed of in underground mine workings, but only in accordance with a plan approved by MSHA and the Division (see R645-301-528.321).

513.400. Refuse piles will meet the requirements of MSHA, 30 CFR 77.214 and 30 CFR 77.215 (see R645-301-536.900).

513.500. Each shaft, drift, adit, tunnel, exploratory hole, entryway or other opening to the surface from the underground will be capped, sealed, backfilled or otherwise properly managed consistent with MSHA, 30 CFR 75.1771 (see R645-301-551).

513.600. Discharges into an underground mine are prohibited, unless specifically approved by the Division after a demonstration that the discharge will meet the approval of MSHA (see R645-301-731.511.4).

513.700. The nature, timing and sequence of the SURFACE COAL MINING AND RECLAMATION ACTIVITIES that propose to mine closer than 500 feet to an active underground mine are jointly approved by the Division and MSHA (see R645-301-523.220).

513.800. Coal mine waste fires will be extinguished in accordance with a plan approved by MSHA and the Division (see R645-301-528.323.1).

514. Inspections. All engineering inspections, excepting those described under R645-301-514.330, will be conducted by a qualified registered professional engineer or other qualified professional specialist under the direction of the professional engineer.

514.100. Excess Spoil. The professional engineer or specialist will be experienced in the construction of earth and rock fills and will periodically inspect the fill during construction. Regular inspections will also be conducted during placement and compaction of fill materials.

514.110. Such inspections will be made at least quarterly throughout construction and during critical construction periods. Critical construction periods will include at a minimum:

514.111. Foundation preparation, including the removal of all organic material and topsoil;

514.112. Placement of underdrains and protective filter systems;

514.113. Installation of final surface drainage systems;

and

514.114. The final graded and revegetated fill.

514.120. The qualified registered professional engineer will provide a certified report to the Division promptly after each inspection that the fill has been constructed and maintained as designed and in accordance with the approved plan and the R645-301 and R645-302 Rules. The report will include appearances of instability, structural weakness, and other hazardous conditions.

514.130. Certified reports on Drainage System and Protective Filters.

514.131. The certified report on the drainage system and protective filters will include color photographs taken during and after construction, but before underdrains are covered with excess spoil. If the underdrain system is constructed in phases, each phase will be certified separately.

514.132. Where excess durable rock spoil is placed in single or multiple lifts such that the underdrain system is constructed simultaneously with excess spoil placement by the natural segregation of dumped materials, in accordance with R645-301-535.300 and R645-301-745.300, color photographs will be taken of the underdrain as the underdrain system is being formed.

514.133. The photographs accompanying each certified report will be taken in adequate size and number with enough terrain or other physical features of the site shown to provide a relative scale to the photographs and to specifically and clearly identify the site.

514.140. Inspection Reports. A copy of each inspection report will be retained at or near the mine site.

514.200. Refuse Piles. The professional engineer or specialist experienced in the construction of similar earth and waste structures will inspect the refuse pile during construction.

514.210. Regular inspections by the engineer or specialist will also be conducted during placement and compaction of coal mine waste materials. More frequent inspections will be conducted if a danger of harm exists to the public health and safety or the environment. Inspections will continue until the refuse pile has been finally graded and revegetated or until a later time as required by the Division.

514.220. Such inspection will be made at least quarterly throughout construction and during the following critical construction periods:

514.221. Foundation preparation including the removal of all organic material and topsoil;

514.222. Placement of underdrains and protective filter systems;

514.223. Installation of final surface drainage systems; and

514.224. The final graded and revegetated facility.

514.230. The qualified registered professional engineer will provide a certified report to the Division promptly after each inspection that the refuse pile has been constructed and maintained as designed and in accordance with the approved plan and R645 Rules. The report will include appearances of instability, structural weakness, and other hazardous conditions.

514.240. The certified report on the drainage system and protective filters will include color photographs taken during and after construction, but before underdrains are covered with coal mine waste. If the underdrain system is constructed in phases, each phase will be certified separately. The photographs accompanying each certified report will be taken in adequate size and number with enough terrain or other physical features of the site shown to provide a relative scale to the photographs and to specifically and clearly identify the site.

514.250. A copy of each inspection report will be retained at or near the mine site.

514.300. Impoundments.

514.310. Certified Inspection. The professional engineer or specialist experienced in the construction of impoundments will inspect the impoundment.

514.311. Inspections will be made regularly during construction, upon completion of construction, and at least yearly until removal of the structure or release of the performance bond.

514.312. The qualified registered professional engineer will promptly, after each inspection, provide to the Division, a certified report that the impoundment has been constructed and maintained as designed and in accordance with the approved plan and the R645 Rules. The report will include discussion of any appearances of instability, structural weakness or other hazardous conditions, depth and elevation of any impounded waters, existing storage capacity, any existing or required monitoring procedures and instrumentation and any other aspects of the structure affecting stability.

514.313. A copy of the report will be retained at or near the mine site.

514.320. Weekly Inspections. Impoundments subject to MSHA, 30 CFR 77.216 must be examined in accordance with 30 CFR 77.216-3.

514.330. Quarterly Inspections. Other impoundments, not subject to MSHA, 30 CFR 77.216, will be examined at least quarterly by a qualified person designated by the operator for appearance of structural weakness and other hazardous conditions.

515. Reporting and Emergency Procedures.

515.100. The permit application will incorporate a description of the procedure for reporting a slide. The requirements for the description are: At any time a slide occurs which may have a potential adverse effect on public, property, health, safety, or the environment, the permittee who conducts the coal mining and reclamation operations will notify the Division by the fastest available means and comply with any remedial measures required by the Division.

515.200. Impoundment Hazards. The permit application will incorporate a description of notification when potential impoundment hazards exist. The requirements for the description are: If any examination or inspection discloses that a potential hazard exists, the person who examined the impoundment will promptly inform the Division of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the Division will be notified immediately. The Division will

then notify the appropriate agencies that other emergency procedures are required to protect the public.

515.300. The permit application will incorporate a description of procedures for temporary cessation of operations as follows:

515.310. Temporary abandonment will not relieve a person of his or her obligation to comply with any provisions of the approved permit.

515.311. Each person who conducts UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES will effectively support and maintain all surface access openings to underground operations, and secure surface facilities in areas in which there are no current operations, but operations are to be resumed under an approved permit.

515.312. Each person who conducts SURFACE COAL MINING AND RECLAMATION ACTIVITIES will effectively secure surface facilities in areas in which there are no current operations, but in which operations are to be resumed under an approved permit.

515.320. Before temporary cessation of coal mining and reclamation operations for a period of 30 days or more, or as soon as it is known that a temporary cessation will extend beyond 30 days, each person who conducts coal mining and reclamation operations will submit to the Division a notice of intention to cease or abandon operations. This notice will include:

515.321. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, a statement of the exact number of surface acres and the horizontal and vertical extent of subsurface strata which have been in the permit area prior to cessation or abandonment, the extent and kind of reclamation of surface area which will have been accomplished, and identification of the backfilling, regrading, revegetation, environmental monitoring, underground opening closures and water treatment activities that will continue during the temporary cessation.

515.322. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES, a statement of the exact number of acres which will have been affected in the permit area prior to such temporary cessation, the extent and kind of reclamation of those areas which will have been accomplished, and identification of the backfilling, regrading, revegetation, environmental monitoring, and water treatment activities that will continue during the temporary cessation.

516. Prevention of Slides in SURFACE COAL MINING AND RECLAMATION ACTIVITIES. An undisturbed natural barrier will be provided beginning at the elevation of the lowest coal seam to be mined and extending from the outslope for such distance as may be determined by the Division as is needed to assure stability. The barrier will be retained in place to prevent slides and erosion.

520. Operation Plan.

521. General. The applicant will include a plan, with maps, cross sections, narrative, descriptions, and calculations indicating how the relevant requirements are met. The permit application will describe and identify the lands subject to coal mining and reclamation operations over the estimated life of the operations and the size, sequence, and timing of the subareas for which it is anticipated that individual permits for mining will be sought.

521.100. Cross Sections and Maps. The application will include cross sections, maps and plans showing all the relevant information required by the Division, to include, but not be limited to:

521.110. Previously Mined Areas. These maps will clearly show:

521.111. The location and extent of known workings of active, inactive, or abandoned underground mines, including mine openings to the surface within the proposed permit and adjacent areas. The map will be prepared and certified according to R645-301-512; and

521.112. The location and extent of existing or previously surface-mined areas within the proposed permit area. The maps will be prepared and certified according to R645-301-512.

521.120. Existing Surface and Subsurface Facilities and Features. These maps will clearly show:

521.121. The location of all buildings in and within 1000 feet of the proposed permit area, with identification of the current use of the buildings;

521.122. The location of surface and subsurface man-made features within, passing through, or passing over the proposed permit area, including, but not limited to, major electric transmission lines, pipelines, and agricultural drainage tile fields;

521.123. Each public road located in or within 100 feet of the proposed permit area;

521.124. The location and size of existing areas of spoil, waste, coal development waste, and noncoal waste disposal, dams, embankments, other impoundments, and water treatment and air pollution control facilities within the proposed permit area. The map will be prepared and certified according to R645-301-512; and

521.125. The location of each sedimentation pond, permanent water impoundment, coal processing waste bank and coal processing waste dam and embankment in accordance with R645-301-512.100, R645-301-512.230, R645-301-521.143, R645-301-521.169, R645-301-528.340, R645-301-531, R645-301-533.600, R645-301-533.700, R645-301-535.140 through R645-301-535.152, R645-301-536.600, R645-301-536.800, R645-301-542.500, R645-301-732.210, and R645-301-733.100.

521.130. Landowners and Right of Entry and Public Interest Maps. These maps and cross sections will clearly show:

521.131. All boundaries of lands and names of present owners of record of those lands, both surface and subsurface, included in or contiguous to the permit area;

521.132. The boundaries of land within the proposed permit area upon which the applicant has the legal right to enter and begin coal mining and reclamation operations; and

521.133. The measures to be used to ensure that the interests of the public and landowners affected are protected if, under R645-103-234, the applicant seeks to have the Division approve:

521.133.1. Conducting the proposed coal mining and reclamation operations within 100 feet of the right-of-way line of any public road, except where mine access or haul

roads join that right-of-way; or

521.133.2. Relocating a public road.

521.140. Mine Maps and Permit Area Maps. These maps and/or cross-section drawings will clearly indicate:

521.141. The boundaries of all areas proposed to be affected over the estimated total life of the coal mining and reclamation operations, with a description of size, sequence and timing of the mining of subareas for which it is anticipated that additional permits will be sought; the coal mining and reclamation operations to be conducted, the lands to be affected throughout the operation, and any change in a facility or feature to be caused by the proposed operations;

521.142. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, the underground workings and the location and extent of areas in which planned-subsidence mining methods will be used and which includes all areas where the measures will be taken to prevent, control, or minimize subsidence and subsidence-related damage (refer to R645-301-525); and

521.143. The proposed disposal sites for placing underground mine development waste and excess spoil generated at surface areas affected by surface operations and facilities for the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES and the proposed disposal site and design of the spoil disposal structures for purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES according to R645-301-211, R645-301-212, R645-301-412.300, R645-301-512.210, R645-301-512.220, R645-301-514.100, R645-301-528.310, R645-301-535.100 through R645-301-535.130, R645-301-535.300 through R645-301-535.500, R645-536.300, R645-301-542.720, R645-301-553.240, R645-301-745.100, R645-301-745.300, and R645-301-745.400.

521.150. Land Surface Configuration Maps. These maps will clearly indicate sufficient slope measurements or surface contours to adequately represent the existing land surface configuration of the proposed permit area for the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES and the area affected by surface operations and facilities for the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES measured and recorded according to the following:

521.151. Each measurement will consist of an angle of inclination along the prevailing slope extending 100 linear feet above and below or beyond the coal outcrop or the area to be disturbed, or, where this is impractical, at locations specified by the Division. Maps will be prepared and certified according to R645-301-512; and

521.152. Where the area has been previously mined, the measurements will extend at least 100 feet beyond the limits of mining disturbances, or any other distance determined by the Division to be representative of the premining configuration of the land. Maps will be prepared and certified according to R645-301-512.

521.160. Maps and Cross Sections of the Proposed Features for the Proposed Permit Area. These maps and cross sections will clearly show:

521.161. Buildings, utility corridors, and facilities to be used;

521.162. The area of land to be affected within the proposed permit area, according to the sequence of mining and reclamation;

521.163. Each area of land for which a performance bond or other equivalent guarantee will be posted under R645-301-800;

521.164. Each coal storage, cleaning and loading area. The map will be prepared and certified according to R645-301-512;

521.165. Each topsoil, spoil, coal preparation waste, underground development waste, and noncoal waste storage area. The map will be prepared and certified according to R645-301-512;

521.166. Each source of waste and each waste disposal facility relating to coal processing or pollution control;

521.167. Each explosive storage and handling facility;

521.168. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES, each air pollution collection and control facility; and

521.169. Each proposed coal processing waste bank, dam, or embankment. The map will be prepared and certified according to R645-301-512.

521.170. Transportation Facilities Maps. Each permit application will describe each road, conveyor, and rail system to be constructed, used, or maintained within the proposed permit area. The description will include a map, appropriate cross sections, and specifications for each road width, road gradient, road surface, road cut, fill embankment, culvert, bridge, drainage ditch, drainage structure, and each stream ford that is used as a temporary route.

521.180. Support facilities. Each permit applicant will submit a description, plans, and drawings for each support facility to be constructed, used, or maintained within the proposed permit area. The plans and drawings will include a map, appropriate cross sections, design drawings, and specifications to demonstrate compliance with R645-301-526.220 through R645-301-526.222 for each facility.

521.190. Other relevant information required by the Division.

521.200. Signs and Markers Specifications. Signs and markers will:

521.210. Be posted, maintained, and removed by the person who conducts the coal mining and reclamation operations;

521.220. Be a uniform design that can be easily seen and read; be made of durable material; and conform to local laws and regulations;

521.230. Be maintained during all activities to which they pertain;

521.240. Mine and Permit Identification Signs.

521.241. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, identification signs will be displayed at each point of access from public roads to areas of surface operations and facilities on permit areas;

521.242. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES, identification signs will be displayed at each point of access

to the permit area from public roads;

521.243. Show the name, business address, and telephone number of the permittee who conducts coal mining and reclamation operations and the identification number of the permanent program permit authorizing coal mining and reclamation operations; and

521.244. Be retained and maintained until after the release of all bonds for the permit area;

521.250. Perimeter Markers.

521.251. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, the perimeter of all areas affected by surface operations or facilities before beginning mining activities will be clearly marked; or

521.252. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES, the perimeter of a permit area will be clearly marked before the beginning of surface mining activities;

521.260. Buffer Zone Markers.

521.261. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, signs will be erected to mark buffer zones as required under R645-301-731.600 and will be clearly marked to prevent disturbance by surface operations and facilities; or

521.262. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES, buffer zones will be marked along their boundaries as required under R645-301-731.600; and

521.270. Topsoil Markers. Markers will be erected to mark where topsoil or other vegetation-supporting material is physically segregated and stockpiled as required under R645-301-234.

522. Coal Recovery. The permit application will include a description of the measures to be used to maximize the use and conservation of the coal resource. The description will assure that coal mining and reclamation operations are conducted so as to maximize the utilization and conservation of the coal, while utilizing the best technology currently available to maintain environmental integrity, so that reaffecting the land in the future through coal mining and reclamation operations is minimized.

523. Mining Method(s). Each application will include a description of the mining operation proposed to be conducted during the life of the mine within the proposed permit area, including, at a minimum, a narrative description of the type and method of coal mining procedures and proposed engineering techniques, anticipated annual and total production of coal, by tonnage and the major equipment to be used for all aspects of those operations.

523.100. SURFACE COAL MINING AND RECLAMATION ACTIVITIES proposed to be conducted within the permit area within 500 feet of an underground mine will be described to indicate compliance with R645-301-523.200.

523.200. No SURFACE COAL MINING AND RECLAMATION ACTIVITIES will be conducted closer than 500 feet to any point of either an active or abandoned underground mine, except to the extent that:

523.210. The operations result in improved resource recovery, abatement of water pollution, or elimination of hazards to the health and safety of the public; and

523.220. The nature, timing, and sequence of the activities that propose to mine closer than 500 feet to an active underground mine are jointly approved by the Division and MSHA.

524. Blasting and Explosives. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES, each permit application will contain a blasting plan for the proposed permit area explaining how the applicant will comply with R645-301-524. This plan will include, at a minimum, information setting forth the limitations the operator will meet with regard to ground vibration and airblast, the bases for those limitations, and the methods to be applied in controlling the adverse effects of blasting operations. Each blasting plan will also contain a description of any system to be used to monitor compliance with the standards of R645-301.524.600 including the type, capability, and sensitivity of any blast-monitoring equipment and proposed procedures and locations of monitoring. Blasting operations conducted within 500 feet of active underground mines require approval of MSHA. Blasts that use more than five pounds of explosive or blasting agent will be conducted according to the schedule required under R645-301-524.400. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, R645-301-524.100 through R645-301-524.700 apply to surface blasting activities incident to underground coal mining, including, but not limited to, initial rounds of slopes and shafts.

524.100. Blaster Certification. The steps taken to achieve compliance with the blaster certification program must be described in the permit application.

524.110. After July 28, 1987, all surface blasting operations incident to underground mining in Utah will be conducted under the direction of a certified blaster.

524.120. Certificates of blaster certification will be carried by blasters or will be on file at the permit area during blasting operations.

524.130. A blaster and at least one other person will be present at the firing of a blast.

524.140. Persons responsible for blasting operations at a blasting site will be familiar with the blasting plan and site-specific performance standards and give on-the-job training to persons who are not certified and who are assigned to the blasting crew or assist in the use of explosives.

524.200. Unless approved by the Division under R645-301-524.220, the blast design must be described in the permit application. The design requirements are:

524.210. An anticipated blast design will be submitted for all blasts if blasting operations will be conducted within:

524.211. 1,000 feet of any building used as a dwelling, public building, school, church, or community or institutional building outside the permit area; or

524.212. 500 feet of an active or abandoned underground mine;

524.220. The blast design may be presented as part of a permit application or at a time, before the blast, if approved by the Division;

524.230. The blast design will contain sketches of the

drill patterns, delay periods, and decking and will indicate the type and amount of explosives to be used, critical dimensions, and the location and general description of structures to be protected, as well as a discussion of design factors to be used, which protect the public and meet the applicable airblast, flyrock, and ground-vibration standards in R645-301-524.600;

524.240. The blast design will be prepared and signed by a certified blaster; and

524.250. The Division may require changes to the design submitted.

524.300. The preblasting survey must be described in the permit application. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES preblasting surveys are required for blasts that use more than five pounds of blasting agent or explosives. The requirements are:

524.310. At least 30 days before initiation of blasting, the operator will notify, in writing, all residents or owners of dwellings or other structures located within one-half mile of the permit area how to request a preblasting survey;

524.320. A resident or owner of a dwelling or structure within one-half mile of any part of the permit area may request a preblasting survey. This request will be made, in writing, directly to the operator or to the Division, who will promptly notify the operator. The operator will promptly conduct a preblasting survey of the dwelling or structure and promptly prepare a written report of the survey. An updated survey of any additions, modifications, or renovations will be performed by the operator if requested by the resident or owner;

524.330. The operator will determine the condition of the dwelling or structure and will document any preblasting damage and other physical factors that could reasonably be affected by the blasting. Structures such as pipelines, cables, transmission lines, and cisterns, wells, and other water systems warrant special attention; however, the assessment of these structures may be limited to surface conditions and other readily available data;

524.340. The written report of the survey will be signed by the person who conducted the survey. Copies of the report will be promptly provided to the Division and to the person requesting the survey. If the person requesting the survey disagrees with the contents and/or recommendations contained therein, he or she may submit to both the operator and the Division a detailed description of the specific areas of disagreement; and

524.350. Any surveys requested more than ten days before the planned initiation of blasting will be completed by the operator before the initiation of blasting.

524.400. The schedule of blasts will be described in the permit application:

524.410. Unscheduled blasts may be conducted only where public or operator health and safety so requires and for emergency blasting actions. When an operator conducts an unscheduled surface blast incidental to coal mining and reclamation operations, the operator, using audible signals, will notify residents within one-half mile of the blasting site and document the reason in accordance with R645-301-524.760;

524.420. All blasting will be conducted between sunrise and sunset unless nighttime blasting is approved by the Division based upon a showing by the operator that the public will be protected from adverse noise and other impacts. The Division may specify more restrictive time periods for blasting;

524.430. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, the operator will notify, in writing, residents within one-half mile of the blasting site and local governments of the proposed times and locations of blasting operations. Such notice of times that blasting is to be conducted may be announced weekly, but in no case less than 24 hours before blasting will occur;

524.440. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES, the operator will conduct blasting operations at times approved by the Division and announced in the blasting schedule. The Division may limit the area covered, timing, and sequence of blasting as listed in the schedule, if such limitations are necessary and reasonable in order to protect the public health and safety or welfare;

524.450. Blasting Schedule Publication and Distribution. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES the operator will:

524.451. Publish the blasting schedule in a newspaper of general circulation in the locality of the blasting site at least ten days, but not more than 30 days, before beginning a blasting program;

524.452. Distribute copies of the schedule to local governments and public utilities and to each local residence within one-half mile of the proposed blasting site described in the schedule; and

524.453. Republish and redistribute the schedule at least every 12 months and revise and republish the schedule at least ten days, but not more than 30 days, before blasting whenever the area covered by the schedule changes or actual time periods for blasting significantly differ from the prior announcement; and

524.460. Blasting Schedule Contents. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES the blasting schedule will contain, at a minimum:

524.461. Name, address, and telephone number of operator;

524.462. Identification of the specific areas in which blasting will take place;

524.463. Dates and time periods when explosives are to be detonated;

524.464. Methods to be used to control access to the blasting area; and

524.465. Type and patterns of audible warning and all-clear signals to be used before and after blasting.

524.500. The blasting signs, warnings, and access control must be described in the permit application.

524.510. Blasting Signs. Blasting signs will meet the specifications of R645-301-521.200. The operator will:

524.511. Conspicuously place signs reading "Blasting

Area" along the edge of any blasting area that comes within 100 feet of any public-road right-of-way, and at the point where any other road provides access to the blasting area; and

524.512. At all entrances to the permit area from public roads or highways, place conspicuous signs which state "Warning! Explosives in Use", which clearly list and describe the meaning of the audible blast warning and all-clear signals that are in use, and which explain the marking of blasting areas and charged holes awaiting firing within the permit area.

524.520. Warnings. Warning and all-clear signals of different character or pattern that are audible within a range of one-half mile from the point of the blast will be given. Each person within the permit area and each person who resides or regularly works within one-half mile of the permit area will be notified of the meaning of the signals in the blasting schedule for the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES and blasting notification required by R645-301-524.430 for the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES.

524.530. Access Control. Access within the blasting areas will be controlled to prevent presence of livestock or unauthorized persons during blasting and until an authorized representative of the operator has reasonably determined that:

524.531. No unusual hazards, such as imminent slides or undetonated charges, exist; and

524.532. Access to and travel within the blasting area can be safely resumed.

524.600. The control of adverse blasting effects must be described in the permit application. The requirements are:

524.610. General Requirements. Blasting will be conducted to prevent injury to persons, damage to public or private property outside the permit area, adverse impacts on any underground mine, and change in the course, channel, or availability of surface or ground water outside the permit area.

524.620. Airblast Limits.

524.621. Airblast will not exceed the maximum limits listed below at the location of any dwelling, public building, school, church, or community or institutional building outside the permit area, except as provided in R645-301-524.690.

TABLE

Lower Frequency Limit of Measuring System, HZ(+3dB)	Maximum Level dB
0.1 Hz or lower - flat response(1)	134 peak
2 Hz or lower - flat response	133 peak
6 Hz or lower - flat response	129 peak
C-weighted - slow response(1)	105 peak dBC

(1)Only when approved by the Division.

524.622. If necessary to prevent damage, the Division may specify lower maximum allowable airblast levels than those of R645-301-524.621 for use in the vicinity of a specific blasting operation.

524.630. Monitoring.

524.631. The operator will conduct periodic monitoring to ensure compliance with the airblast standards. The Division may require airblast measurement of any or all blasts and may specify the locations at which such measurements are taken.

524.632. The measuring systems used will have an upper-end flat-frequency response of at least 200 Hz.

524.633. Flyrock. Flyrock traveling in the air or along the ground will not be cast from the blasting site - more than one-half the distance to the nearest dwelling or other occupied structure; beyond the area of control required under R645-301-524.530; or beyond the permit boundary.

524.640. Ground Vibration.

524.641. General. In all blasting operations, except as otherwise authorized in R645-301-524.690, the maximum ground vibration will not exceed the values approved by the Division. The maximum ground vibration for protected structures listed in R645-301-524.642 will be established in accordance with either the maximum peak-particle-velocity limits of R645-301-524.642 and R645-301-524.643, the scaled-distance equation of R645-301-524.650, the blasting-level chart of R645-301-524.660, or by the Division under R645-301-524.670. All structures in the vicinity of the blasting area, not listed in R645-301-524.642, such as water towers, pipelines and other utilities, tunnels, dams, impoundments, and underground mines will be protected from damage by establishment of a maximum allowable limit on the ground vibration, submitted by the operator and approved by the Division before the initiation of blasting.

524.642. Maximum Peak-Particle Velocity. The maximum ground vibration will not exceed the following limits at the location of any dwelling, public building, school, church, or community or institutional building outside the permit area:

TABLE

EXPLOSIVES

Distance (D) from Blast Site in feet	Maximum allowable Particle Velocity (Vmax) for ground vibration, in inches/second(1)	Scaled distance factor to be applied without seismic monitoring(2) (Ds)
0 to 300	1.25	50
301 to 5,000	1.00	55
5,001 and beyond	0.75	65

(1)Ground vibration will be measured as the particle velocity. Particle velocity will be recorded in three mutually perpendicular directions. The maximum allowable peak particle velocity will apply to each of the three measurements.

(2)Applicable in the scaled-distance equation of R645-301-524.651.

524.643. A seismographic record will be provided for each blast.

524.650. Scaled-distance equation.

524.651. An operator may use the scaled-distance equation, $W=(D/Ds)^2$, to determine the allowable charge weight of explosives to be detonated in any eight-millisecond period, without seismic monitoring: where W=the maximum weight of explosives, in pounds: D=the distance, in feet, from the blasting site to the nearest protected structure: and Ds=the

scaled-distance factor, which may initially be approved by the Division using the values for scaled-distance factor listed in R645-301-524.642.

524.652. The development of a modified scaled-distance factor may be authorized by the Division on receipt of a written request by the operator, supported by seismographic records of blasting at the mine site. The modified scaled-distance factor will be determined such that the particle velocity of the predicted ground vibration will not exceed the prescribed maximum allowable peak particle velocity of R645-301-524.642, at a 95-percent confidence level.

524.660. Blasting-Level-Chart.

524.661. An operator may use the ground-vibration limits in Figure 1 to determine the maximum allowable ground vibration.

(Figure 1, showing maximum allowable ground particle velocity at specified frequencies, is incorporated by reference. Figure 1 may be viewed at 30 CFR 817.67 or at the Division of Oil, Gas and Mining State Office.)

524.662. If the Figure 1 limits are used, a seismographic record including both particle velocity and vibration-frequency levels will be provided for each blast. The method for the analysis of the predominant frequency contained in the blasting records will be approved by the Division before application of this alternative blasting criterion.

524.670. The maximum allowable ground vibration will be reduced by the Division beyond the limits otherwise provided R645-301-524.640, if determined necessary to provide damage protection.

524.680. The Division may require an operator to conduct seismic monitoring of any or all blasts and may specify the location at which the measurements are taken and the degree of detail necessary in the measurement.

524.690. The maximum airblast and ground-vibration standards of R645-301-524.620 through R645-301-524.632 and R645-301-524.640 through R645-301-524.680 will not apply at the following locations: At structures owned by the permittee and not leased to another person; and at structures owned by the permittee and leased to another person, if a written waiver by the lessee is submitted to the Division before blasting.

524.700. Records of Blasting Operations. The permit application will incorporate a description of the blasting records to be maintained at the mine site for at least three years and upon request, make blasting records available for inspection by the Division or the public. Blasting records will contain the following information:

524.710. A record, including:

524.711. Name of the operator conducting the blast;

524.712. Location, date, and time of the blast; and

524.713. Name, signature, and certification number of the blaster conducting the blast; and

524.720. Identification, direction, and distance, in feet, from the nearest blast hole to the nearest dwelling, public building, school, church, community or institutional building outside the permit area, except those described in R645-301-524.690;

524.730. Weather conditions, including those which may cause possible adverse blasting effects;

524.740. A record of the blast, including:

524.741. Type of material blasted;

524.742. Sketches of the blast pattern including number of holes, burden, spacing, decks, and delay pattern;

524.743. Diameter and depth of holes;

524.744. Types of explosives used;

524.745. Total weight of explosives used per hole;

524.746. The maximum weight of explosives detonated in an eight-millisecond period;

524.747. Initiation system;

524.748. Type and length of stemming; and

524.749. Mats or other protections used;

524.750. If required, a record of seismographic and airblast information, which will include:

524.751. Type of instrument, sensitivity, and calibration signal or certification of annual calibration;

524.752. Exact location of instrument and the date, time, and distance from the blast;

524.753. Name of the person and firm taking the reading;

524.754. Name of the person and firm analyzing the seismographic record; and

524.755. The vibration and/or airblast level recorded; and

524.760. The reasons and conditions for each unscheduled blast.

524.800. Each operator will comply with all appropriate Utah and federal laws and regulations in the use of explosives.

525. Subsidence. The requirements of R645-301-525 pertain to permit applications for UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES.

525.100. Subsidence Control Plan. The permit application will include a survey which will show whether structures and renewable resource lands exist within the proposed permit area and adjacent area and whether subsidence, if it occurred, could cause material damage and diminution of reasonably foreseeable use of such structures or renewable resource lands. If the survey shows that no such structures or renewable resource lands exist, or no such material damage or diminution could be caused in the event of mine subsidence, and if the Division agrees with such conclusion, no further information need be provided in the application under R645-301-525. In the event the survey shows that such structures or renewable resource lands exist, or that subsidence could cause material damage or diminution of value of foreseeable use of the land, or if the Division determines that such damage or diminution could occur, the application will include a subsidence control plan which will contain the following information:

525.110. A description of the method of coal removal, such as longwall mining, room-and-pillar removal, hydraulic mining, or other extraction methods, including the size, sequence, and timing for the development of underground workings;

525.120. A description of the physical conditions, such as depth of cover, seam thickness, and lithology, which affect the likelihood or extent of subsidence and subsidence-related damage;

525.130. Except for those areas where planned subsidence is projected to be used, a detailed description of the subsidence control measures that will be taken to prevent or minimize subsidence and subsidence-related damage, including, but not limited to:

525.131. Backstowing or backfilling of voids;

525.132. Leaving support pillars of coal;

525.133. Leaving areas in which no coal is removed, including a description of the overlying area to be protected by leaving the coal in place;

525.134. Taking measures on the surface to prevent material damage or lessening of the value or reasonably foreseeable use of the surface;

525.140. Monitoring, if any, to determine the commencement and degree of subsidence so that other appropriate measures can be taken to prevent or reduce material damage; and

525.150. A description of the anticipated effects of planned subsidence, if any;

525.160. A description of the measures to be taken in accordance with R645-301-525.230 to mitigate or remedy any subsidence-related material damage to, or diminution in value or reasonably foreseeable use of the land or structures or facilities; and

525.170. Other information specified by the Division as necessary to demonstrate that the operation will be conducted in accordance with R645-301-525.200.

525.200. Subsidence Control.

525.210. The operator will either adopt measures consistent with known technology which prevent subsidence from causing material damage to the extent technologically and economically feasible, maximize mine stability, and maintain the value and reasonably foreseeable use of surface lands; or adopt mining technology which provides for planned subsidence in a predictable and controlled manner. Nothing in this part will be construed to prohibit the standard method of room-and-pillar mining.

525.220. The operator will comply with all provisions of the approved subsidence control plan.

525.230. The operator will:

525.231. Correct any material damage resulting from subsidence caused to surface lands, to the extent technologically and economically feasible, by restoring the land to a condition capable of maintaining the value and reasonably foreseeable uses which it was capable of supporting before the subsidence; and

525.232. Either correct material damage resulting from subsidence caused to any structures or facilities by repairing the damage or compensate the owner of such structures or facilities in the full amount of the diminution in value resulting from the subsidence. Repair of damage includes rehabilitation, restoration, or replacement of damaged structures or facilities. Compensation may be accomplished by the purchase prior to mining of a noncancellable premium-prepaid insurance policy.

525.240. Unless excepted by R645-301-525.243, UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES will not be conducted beneath or adjacent to:

525.241. Public buildings and facilities;

525.242. Churches, schools, and hospitals;

525.243. Impoundments with a storage capacity of 20 acre-feet or more or bodies of water with a volume of 20 acre-feet or more, unless the subsidence control plan demonstrates that subsidence will not cause material damage to, or reduce the reasonably foreseeable use of, such features or facilities; and

525.244. If the Division determines that it is necessary in order to minimize the potential for material damage to the features or facilities described above or to any aquifer or body of water that serves as a significant water source for any public water supply system, it may limit the percentage of coal extracted under or adjacent thereto.

525.250. If subsidence causes material damage to any of the features or facilities covered by R645-301-525.240, the Division may suspend mining under or adjacent to such features or facilities until the subsidence control plan is modified to ensure prevention of further material damage to such features or facilities.

525.260. The Division will suspend coal mining and reclamation operations under urbanized areas, cities, towns, and communities, and adjacent to industrial or commercial buildings, major impoundments, or perennial streams, if imminent danger is found to inhabitants of the urbanized areas, cities, towns, or communities.

525.270. Within a schedule approved by the Division, the operator will submit a detailed plan of the underground workings. The detailed plan will include maps and descriptions, as appropriate, of significant features of the underground mine, including the size, configuration, and approximate location of pillars and entries, extraction ratios, measure taken to prevent or minimize subsidence and related damage, areas of full extraction, and other information required by the Division. Upon request of the operator, information submitted with the detailed plan may be held as confidential, in accordance with the requirements of R645-300-124.

525.300. Public Notice of Proposed Mining. At least six months prior to mining, or within that period if approved by the Division, the underground mine operator will mail a notification to all owners and occupants of surface property and structures above the underground workings. The notification will include, at a minimum, identification of specific areas in which mining will take place, dates that specific areas will be undermined, and the location or locations where the operator's subsidence control plan may be examined.

526. Mine Facilities. The permit application will include a narrative explaining the construction, modification, use, maintenance and removal of the following facilities (unless retention of such facility is necessary for the postmining land use as specified under R645-301-413.100 through R645-301-413.334, R645-302-270, R645-302-271.100 through R645-302-271.400, R645-302-271.600, R645-302-271.800, and R645-302-271.900:

526.100. Mine Structures and Facilities.

526.110. Existing Structures. A description of each existing structure proposed to be used in connection with or to facilitate the coal mining and reclamation operation. The

description will include:

526.111. Location;

526.112. Plans or photographs of the structure which describe or show its current condition;

526.113. Approximate dates on which construction of the existing structure was begun and completed;

526.114. A showing, including relevant monitoring data or other evidence, how the structure meets the requirements of R645-301;

526.115. A compliance plan for each existing structure proposed to be modified or reconstructed for use in connection with or to facilitate coal mining and reclamation operations. The compliance plan will include:

526.115.1. Design specifications for the modification or reconstruction of the structure to meet the design standards of R645-301;

526.115.2. A construction schedule which shows dates for beginning and completing interim steps and final reconstruction;

526.115.3. A schedule for monitoring the structure during and after modification or reconstruction to ensure that the requirements of R645-301 are met; and

526.115.4. A showing that the risk of harm to the environment or to public health or safety is not significant during the period of modification or reconstruction; and

526.116. The measures to be used to ensure that the interests of the public and landowners affected are protected if the applicant seeks to have the Division approve:

526.116.1. Conducting the proposed coal mining and reclamation operations within 100 feet of the right-of-way line of any public road, except where mine access or haul roads join that right-of-way; or

526.116.2. Relocating a public road;

526.200. Utility Installation and Support Facilities.

526.210. The utility installations description must state that all coal mining and reclamation operations will be conducted in a manner which minimizes damage, destruction, or disruption of services provided by oil, gas, and water wells; oil, gas, and coal-slurry pipelines, railroads; electric and telephone lines; and water and sewage lines which pass over, under, or through the permit area, unless otherwise approved by the owner of those facilities and the Division.

526.220. The support facilities description must state that support facilities will be operated in accordance with a permit issued for the mine or coal preparation plant to which it is incident or from which its operation results. Plans and drawings for each support facility to be constructed, used, or maintained within the proposed permit area will include a map, appropriate cross sections, design drawings, and specifications sufficient to demonstrate how each facility will comply with applicable performance standards. In addition to the other provisions of R645-301, support facilities will be located, maintained, and used in a manner that:

526.221. Prevents or controls erosion and siltation, water pollution, and damage to public or private property; and

526.222. To the extent possible using the best technology currently available - minimizes damage to fish, wildlife, and related environmental values; and minimizes additional contributions of suspended solids to streamflow or runoff outside the permit area. Any such contributions will not be in excess of limitations of Utah or Federal law;

526.300. Water pollution control facilities; and

526.400. For SURFACE COAL MINING AND RECLAMATION ACTIVITIES, air pollution control facilities.

527. Transportation Facilities.

527.100. The plan must classify each road.

527.110. Each road will be classified as either a primary road or an ancillary road.

527.120. A primary road is any road which is:

527.121. Used for transporting coal or spoil;

527.122. Frequently used for access or other purposes for a period in excess of six months; or

527.123. To be retained for an approved postmining land use.

527.130. An ancillary road is any road not classified as a primary road.

527.200. The plan must include a detailed description of each road, conveyor, and rail system to be constructed, used, or maintained within the proposed permit area. The description will include a map, appropriate cross sections, and the following:

527.210. Specifications for each road width, road gradient, road surface, road cut, fill embankment, culvert, bridge, drainage ditch, and drainage structure;

527.220. Measures to be taken to obtain Division approval for alteration or relocation of a natural drainageway under R645-301-358, R645-301-512.250, R645-301-527.100, R645-301-527.230, R645-301-527.240, R645-301-534.100, R645-301-534.300, R645-301-542.600, R645-301-742.410, R645-301-742.420, and R645-301-752.200;

527.230. A maintenance plan describing how roads will be maintained throughout their life to meet the design standards throughout their use.

527.240. A commitment that if a road is damaged by a catastrophic event, such as a flood or earthquake, the road will be repaired as soon as practical after the damage has occurred.

527.250. A report of appropriate geotechnical analysis, where approval of the Division is required for alternative specifications, or for steep cut slopes.

528. Handling and Disposal of Coal, Overburden, Excess Spoil, and Coal Mine Waste. The permit application will include a narrative explaining the construction, modification, use, maintenance, and removal of the following facilities (unless retention of such facility is necessary for the postmining land use as specified under R645-301-413.100 through R645-301-413.334, R645-302-270, R645-302-271.100 through R645-302-271.400, R645-302-271.600, R645-302-271.800, and R645-302-271.900):

528.100. Coal removal, handling, storage, cleaning, and transportation areas and structures;

528.200. Overburden;

528.300. Spoil, coal processing waste, mine development waste, and noncoal waste removal, handling, storage, transportation, and disposal areas and structures;

528.310. Excess Spoil. Excess spoil will be placed in designated disposal areas within the permit area, in a

controlled manner to ensure mass stability and prevent mass movement during and after construction. Excess spoil will meet the design criteria of R645-301-535. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES, the permit application must include a description of the proposed disposal site and the design of the spoil disposal structures according to R645-301-211, R645-301-212, R645-301-412.300, R645-301-512.210, R645-301-512.220, R645-301-514.100, R645-301-528.310, R645-301-535.100 through R645-301-535.130, R645-301-535.300 through R645-301-535.500, R645-536.300, R645-301-542.720, R645-301-553.240, R645-301-745.100, R645-301-745.300, and R645-301-745.400.

528.320. Coal Mine Waste. All coal mine waste will be placed in new or existing disposal areas within a permit area which are approved by the Division for this purpose. Coal mine waste will meet the design criteria of R645-301-536, however, placement of coal mine waste by end or side dumping is prohibited.

528.321. Return of Coal Processing Waste to Abandoned Underground Workings. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, each plan will describe the design, operation and maintenance of any proposed coal processing waste disposal facility, including flow diagrams and any other necessary drawings and maps, for the approval of the Division and MSHA under R645-301-536.520 and meet the design criteria of R645-301-536.700.

528.322. Refuse Piles. Each pile will meet the requirements of MSHA, 30 CFR 77.214 and 30 CFR 77.215, meet the design criteria of R645-301-210, R645-301-512.230, R645-301-513.400, R645-301-514.200, R645-301-515.200, R645-301-528.320, R645-301-536 through R645-301-536.200, R645-301-536.500, R645-301-536.900, R645-301-542.730, R645-301-553.250, R645-301-746.100, R645-301-746.200, and any other applicable requirements.

528.323. Burning and Burned Waste Utilization.

528.323.1. Coal mine waste fires will be extinguished by the person who conducts coal mining and reclamation operations, in accordance with a plan approved by the Division and MSHA. The plan will contain, at a minimum, provisions to ensure that only those persons authorized by the operator, and who have an understanding of the procedures to be used, will be involved in the extinguishing operations.

528.323.2. No burning or burned coal mine waste will be removed from a permitted disposal area without a removal plan approved by the Division. Consideration will be given to potential hazards to persons working or living in the vicinity of the structure.

528.330. Noncoal Mine Waste.

528.331. Noncoal mine wastes including, but not limited to, grease, lubricants, paints, flammable liquids, garbage, abandoned mining machinery, lumber and other combustible materials generated during mining activities will be placed and stored in a controlled manner in a designated portion of the permit area.

528.332. Final disposal of noncoal mine wastes will be in a designated disposal site in the permit area or a State-approved solid waste disposal area. Disposal sites in the permit area will be designed and constructed to ensure that leachate and drainage from the noncoal mine waste area does not degrade surface or underground water. Wastes will be routinely compacted and covered to prevent combustion and wind-borne waste. When the disposal is completed, a minimum of two feet of soil cover will be placed over the site, slopes, stabilized, and revegetation accomplished in accordance with R645-301-244.200 and R645-301-353 through R645-301-357. Operation of the disposal site will be conducted in accordance with all local, Utah, and Federal requirements.

528.333. At no time will any noncoal mine waste be deposited in a refuse pile or impounding structure, nor will any excavation for a noncoal mine waste disposal site be located within eight feet of any coal outcrop or coal storage area.

528.334. Notwithstanding any other provision to the R645 Rules, any noncoal mine waste defined as "hazardous" under 3001 of the Resource Conservation and Recovery Act (RCRA) (Pub. L. 94-580, as amended) and 40 CFR Part 261 will be handled in accordance with the requirements of Subtitle C of RCRA and any implementing regulations.

528.340. Underground Development Waste. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES the permit application must include a description of the proposed disposal methods for placing underground development waste and excess spoil generated at surface areas affected by surface operations and facilities according to R645-301-211, R645-301-212, R645-301-412.300, R645-301-512.210, R645-301-512.220, R645-301-514.100, R645-301-528.310, R645-301-535.100 through R645-301-535.130, R645-301-535.300 through R645-301-535.500, R645-536.300, R645-301-536.600, R645-301-542.720, R645-301-553.240, R645-301-745.100, R645-301-745.300, and R645-301-745.400.

528.350. The permit application will include a description of measures to be employed to ensure that all debris, acid-forming and toxic-forming materials, and materials constituting a fire hazard are disposed of in accordance with R645-301-528.330, R645-301-537.200, R645-301-542.740, R645-301-553.100 through R645-301-553.600, R645-301-553.900, and R645-301-747 and a description of the contingency plans which have been developed to preclude sustained combustion of such materials; and

528.400. Dams, embankments and other impoundments.

529. Management of Mine Openings. The permit application will include a description of the measures to be used to seal or manage mine openings within the proposed permit area.

529.100. Each shaft or other exposed underground opening will be cased, lined, or otherwise managed as approved by the Division. If these openings are uncovered or exposed by coal mining and reclamation operations within the permit area they will be permanently closed unless approved for water monitoring or otherwise managed in a manner approved by the Division.

529.200. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES:

529.210. Each mine entry which is temporarily inactive, but has a further projected useful service under the approved permit application, will be protected by barricades or other covering devices, fenced, and posted with signs, to prevent access into the entry and to identify the hazardous nature of the opening. These devices will be periodically inspected and maintained in good operating condition by the person who conducts the activity.

529.220. Each shaft and underground opening which has been identified in the approved permit application for use to return underground development waste, coal processing waste or water to underground workings will be temporarily sealed until actual use.

529.300. R645-301-529 does not apply to holes drilled and used for blasting, in the area affected by surface operations.

529.400. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES, each exposed underground opening which has been identified in the approved permit application for use to return coal processing waste to underground workings will be temporarily sealed before use and protected during use by barricades, fences, or other protective devices approved by the Division. These devices will be periodically inspected and maintained in good operating condition by the person who conducts the activity.

530. Operational Design Criteria and Plans.

531. General. Each permit application will include a general plan for each proposed sediment pond, water impoundment, and coal processing waste bank, dam or embankment within the proposed permit area. Each general plan will describe the potential effect on the structure from subsidence of the subsurface strata resulting from past underground mining operations, if underground mining has occurred.

532. Sediment Control. The permit application will describe designs for sediment control. Sediment control measures include practices carried out within and adjacent to the disturbed area. The sedimentation storage capacity of practices in and downstream from the disturbed areas will reflect the degree to which successful mining and reclamation techniques are applied to reduce erosion and control sediment. Sediment control measures consist of the utilization of proper mining and sediment control practices, singly or in combination. Sediment control methods include but are not limited to:

532.100. Disturbing the smallest practicable area at any one time during the mining operation through progressive backfilling, grading, and prompt revegetation as required in R645-301-353.200; and

532.200. Stabilizing the backfilled material to promote a reduction of the rate and volume of runoff in accordance with the requirements of R645-301-537.200, R645-301-552 through R645-301-553.230, R645-301-553.260 through R645-301-553.420, R645-301-553.600, and R645-301-553.900.

533. Impoundments.

533.100. An impoundment meeting the size or other criteria of 30 CFR 77.216(a) or located where failure would be expected to cause loss of life or serious property damage will have a minimum static safety factor of 1.5 for a normal pool with steady state seepage saturation conditions, and a seismic safety factor of at least 1.2. Impoundments not meeting the size or other criteria of 30 CFR 77.216(a), except for coal mine waste impounding structure, and located where failure would not be expected to cause loss of life or serious property damage will have a minimum static safety factor of 1.3 for normal pool with steady state seepage saturation conditions or meet the requirements of R645-301-733.210.

533.200. Foundation for temporary and permanent impoundments must be designed so that:

533.210. Foundation and abutments for the impounding structure will be stable under all conditions of construction and operation of the impoundment. Sufficient foundation investigations and laboratory testing will be performed in order to determine the design requirements for foundation stability; and

533.220. All vegetative and organic materials will be removed and foundations excavated and prepared to resist failure. Cutoff trenches will be installed if necessary to ensure stability.

533.300. Slope protection will be provided to protect against surface erosion at the site and protect against sudden drawdown.

533.400. Faces of embankments and surrounding areas will be vegetated except that faces where water is impounded may be riprapped or otherwise stabilized in accordance with accepted design practices.

533.500. The vertical portion of any remaining highwall will be located far enough below the low-water line along the full extent of highwall to provide adequate safety and access for the proposed water users.

533.600. Impoundments meeting the criteria of MSHA, 30 CFR 77.216(a) will comply with the requirements of MSHA, 30 CFR 77.216 and R645-301-512.240, R645-301-514.300, R645-301-515.200, R645-301-533.100 through R645-301-533.600, R645-301-733.220 through R645-301-733.224, and R645-301-743. The plan required to be submitted to the District Manager of MSHA under 30 CFR 77.216 will also be submitted to the Division as part of the permit application.

533.610. Each detailed design plan for a structure that meets or exceeds the size or other criteria of MSHA, 30 CFR 77.216(a) will include any geotechnical investigation, design, and construction requirements for the structure. The operation and maintenance requirements for each structure will be described.

533.620. If the structure is 20 feet or higher or impounds more than 20 acre-feet, each plan under R645-301-536.800, R645-301-732.210, and R645-301-733.210 will include a stability analysis of each structure. The stability analysis will include, but not be limited to, strength parameters, pore pressures, and long-term seepage conditions. The plan will also contain a description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.

533.700. Each detailed design plan for a structure that

does not meet the size or other criteria of MSHA, 30 CFR 77.216(a) will include any design and construction requirements for the structure, including any required geotechnical information. The operation and maintenance requirements for each structure will be described.

534. Roads. The permit application will describe designs for roads.

534.100. Roads will be located, designed, constructed, reconstructed, used, maintained, and reclaimed so as to:

534.110. Prevent or control damage to public or private property;

534.120. Use nonacid- or nontoxic-forming substances in road surfacing; and

534.130. Have, at a minimum, a static safety factor of 1.3 for all embankments.

534.140. Have a schedule and plan to remove and reclaim each road that would not be retained under an approved postmining land use.

534.150. Control or prevent erosion, siltation and the air pollution attendant to erosion by vegetating or otherwise stabilizing all exposed surfaces in accordance with current, prudent engineering practices.

534.200. To ensure environmental protection and safety appropriate for their planned duration and use, including consideration of the type and size of equipment used, the design and reconstruction of roads will incorporate appropriate limits for grade, width, surface materials, and any necessary design criteria established by the Division.

534.300. Primary Roads. Primary roads will meet the requirements of R645-301-358, R645-301-527.100, R645-301-527.230, R645-301-534.100, R645-301-534.200, R645-301-542.600, R645-301-542.600, and R645-301-762, any necessary design criteria established by the Division, and the following requirements. Primary roads will:

534.310. Be located, insofar as practical, on the most stable available surfaces;

534.320. Be surfaced with rock, crushed gravel, asphalt, or other material approved by the Division as being sufficiently durable for the anticipated volume of traffic and the weight and speed of vehicles using the road;

534.330. Be routinely maintained to include repairs to the road surface, blading, filling potholes and adding replacement gravel or asphalt. It will also include revegetation, brush removal, and minor reconstruction of road segments as necessary; and

534.340. Have culverts that are designed, installed, and maintained to sustain the vertical soil pressure, the passive resistance of the foundation, and the weight of vehicles using the road.

535. Spoil. The permit application will describe designs for spoil placement and disposal.

535.100. Disposal of Excess Spoil. Excess spoil will be placed in designated disposal areas within the permit area in a controlled manner. The fill and appurtenant structures will be designed using current, prudent engineering practices and will meet any design criteria established by the Division.

535.110. The fill will be designed to attain a minimum long-term static safety factor of 1.5. The foundation and abutments of the fill must be stable under all conditions of construction. The fill will:

535.111. Be located on the most moderately sloping and naturally stable areas available, as approved by the Division, and be placed, where possible, upon or above a natural terrace, bench, or berm, if such placement provides additional stability and prevents mass movement;

535.112. Be the subject of sufficient foundation investigations. Any necessary laboratory testing of foundation material, will be performed in order to determine the design requirements for foundation stability. The analyses of foundation conditions will take into consideration the effect of underground mine workings, if any, upon the stability of the fill and appurtenant structures; and

535.113. Incorporate keyway cuts (excavations to stable bedrock) or rock toe buttresses to ensure stability where the slope in the disposal area is in excess of 2.8h:1v (36 percent), or such lesser slope as may be designated by the Division based on local conditions. Where the toe of the spoil rests on a downslope, stability analyses will be performed in accordance with R645-301-535.150 to determine the size of rock toe buttresses and keyway cuts.

535.120. Excess spoil may be disposed of in underground mine workings, but only in accordance with a plan approved by the Division and MSHA under R645-301-232.100 through R645-301-232.600, R645-301-234, R645-301-242, and R645-301-243.

535.130. Placement of Excess Spoil. Excess spoil will be transported and placed in a controlled manner in horizontal lifts not exceeding four feet in thickness; concurrently compacted as necessary to ensure mass stability and to prevent mass movement during and after construction; graded so that surface and subsurface drainage is compatible with the natural surroundings: and covered with topsoil or substitute material in accordance with R645-301-232.100 through R645-301-232.600, R645-301-234, R645-301-242, and R645-301-243. The Division may approve a design which incorporates placement of excess spoil in horizontal lifts other than four feet in thickness when it is demonstrated by the operator and certified by a qualified registered professional engineer that the design will ensure the stability of the fill and will meet all other applicable requirements.

535.140. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES the design of the spoil disposal structure will include the results of geotechnical investigations as follows:

535.141. The character of bedrock and any adverse geologic conditions in the disposal area;

535.142. A survey identifying all springs, seepage, and ground water flow observed or anticipated during wet periods in the area of the disposal site;

535.143. A survey of the potential effects of subsidence of the subsurface strata due to past and future mining operations;

535.144. A technical description of the rock materials to be utilized in the construction of those disposal structures containing rock chimney cores or underlain by a rock drainage blanket; and

535.145. A stability analysis including, but not limited to, strength parameters, pore pressures and long-term seepage

conditions. These data will be accompanied by a description of all engineering design assumptions and calculations and the alternatives considered in selecting the specific design specifications and methods.

535.150. If for the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES, under R645-301-535.112 and R645-301-535.113, rock-toe buttresses or key-way cuts are required, the application will include the following:

535.151. The number, location, and depth of borings or test pits which will be determined with respect to the size of the spoil disposal structure and subsurface conditions; and

535.152. Engineering specifications utilized to design the rock-toe buttress or key-way cuts which will be determined in accordance with R645-301-535.145.

535.200. Disposal of Excess Spoil: Valley Fills/Head-of-Hollow Fills. Valley fills and head-of-hollow fills will meet the requirements of R645-301-211, R645-301-212, R645-301-412.300, R645-301-512.210, R645-301-514.100, R645-301-528.310, R645-301-535.100 through R645-301-535.130, R645-301-535.500, R645-301-536.300, R645-301-542.720, R645-301-553.240, and R645-301-745.100, and these additional requirements.

535.210. Rock-core chimney drains may be used in a head-of-hollow fill, instead of the underdrain and surface diversion system normally required, as long as the fill is not located in an area containing intermittent or perennial streams. A rock-core chimney drain may be used in a valley fill if the fill does not exceed 250,000 cubic yards of material and upstream drainage is diverted around the fill.

535.220. The alternative rock-core chimney drain system will be incorporated into the design and construction of the fill as follows:

535.221. The fill will have along the vertical projection of the main buried channel or rill a vertical core of durable rock at least 16 feet thick which will extend from the toe of the fill to the head of the fill, and from the base of the fill to the surface of the fill. A system of lateral rock underdrains will connect this rock core to each area of potential drainage or seepage in the disposal area. The underdrain system and rock core will be designed to carry the anticipated seepage of water due to rainfall away from the excess spoil fill and from seeps and springs in the foundation of the disposal area. Rocks used in the rock core and underdrains will meet the requirements of R645-301-211, R645-301-212, R645-301-412.300, R645-301-512.210, R645-301-512.220, R645-301-514.100, R645-301-528.310, R645-301-535.100 through R645-301-535.130, R645-301-535.300 through R645-301-535.500, R645-301-536.300, R645-301-542.720, R645-301-553.240, R645-301-745.100, R645-301-745.300, and R645-301-745.400;

535.222. A filter system to ensure the proper long-term functioning of the rock core will be designed and constructed using current, prudent engineering practices; and

535.223. Grading may drain surface water away from the outslope of the fill and toward the rock core. In no case, however, may intermittent or perennial streams be diverted into the rock core. The maximum slope of the top of the fill will be 33h:1v (three percent). A drainage pocket may be maintained at the head of the fill during and after construction, to intercept surface runoff and discharge the runoff through or over the rock drain, if stability of the fill is not impaired. In no case will this pocket or sump have a potential capacity for impounding more than 10,000 cubic feet of water. Terraces on the fill will be graded with a three to five percent grade toward the fill and a one percent slope toward the rock core.

535.300. Disposal of Excess Spoil: Durable Rock Fills. The Division may approve the alternative method of disposal of excess durable rock spoil by gravity placement in single or multiple lifts, provided that:

535.310. Except as provided under R645-301-211, R645-301-212, R645-301-412.300, R645-301-512.210, R645-301-512.220, R645-301-514.100, R645-301-528.310, R645-301-535.100 through R645-301-535.130, R645-301-535.300 through R645-301-535.500, R645-301-536.300, R645-301-542.720, R645-301-553.240, R645-301-745.100, R645-301-745.300, and R645-301-745.400 are met;

535.320. The excess spoil consists of at least 80 percent, by volume, durable, nonacid- and nontoxic-forming rock (e.g., sandstone or limestone) that does not slake in water and will not degrade to soil material. Where used, noncemented clay shale, clay spoil, soil or other nondurable excess spoil material will be mixed with excess durable rock spoil in a controlled manner such that no more than 20 percent of the fill volume, as determined by tests performed by a registered engineer and approved by the Division, is not durable rock;

535.330. The fill is designed to attain a minimum long-term static safety factor of 1.5, and an earthquake safety factor of 1.1; and

535.340. The underdrain system may be constructed simultaneously with excess spoil placement by the natural segregation of dumped materials, provided the resulting underdrain system is capable of carrying anticipated seepage of water due to rainfall away from the excess spoil fill and from seeps and springs in the foundation of the disposal area and the other requirements for drainage control are met.

535.400. Disposal of Excess Spoil: Preexisting Benches. Disposal of excess spoil on preexisting benches may be approved by the Division provided that R645-301-211, R645-301-212, R645-301-412.300, R645-301-512.210, R645-301-514.100, R645-301-535.100, R645-301-535.112 through R645-301-535.130, R645-301-535.400, R645-301-536.300, R645-301-542.720, R645-301-553.240, R645-301-745.100, and R645-301-745.400 are met, and the following requirements:

535.410. Excess spoil will be placed only on the solid portion of the preexisting bench;

535.420. The fill will be designed, using current, prudent engineering practices, to attain a long-term static safety factor of 1.3 for all portions of the fill;

535.430. The preexisting bench will be backfilled and graded to: Achieve the most moderate slope possible which does not exceed the angle of repose, and eliminate the highwall to the maximum extent technically practical; and

535.440. Disposal of excess spoil from an upper actively mined bench to a lower preexisting bench by means of gravity transport may be approved by the Division provided that:

535.441. The gravity transport courses are determined on a site-specific basis by the operator as part of the permit application and approved by the Division to minimize hazards to health and safety and to ensure that damage will be minimized between the benches, outside the set course, and downslope of the lower bench should excess spoil accidentally move;

535.442. All gravity transported excess spoil, including that excess spoil immediately below the gravity transport courses and any preexisting spoil that is disturbed, is rehandled and placed in horizontal lifts in a controlled manner, concurrently compacted as necessary to ensure mass stability and to prevent mass movement, and graded to allow surface and subsurface drainage to be compatible with the natural surroundings and to ensure a minimum long-term static safety factor of 1.3. Excess spoil on the bench prior to the current mining operation that is not disturbed need not be rehandled except where necessary to ensure stability of the fill;

535.443. A safety berm is constructed on the solid portion of the lower bench prior to gravity transport of the excess spoil. Where there is insufficient material on the lower bench to construct a safety berm, only that amount of excess spoil necessary for the construction of the berm may be gravity transported to the lower bench prior to construction of the berm; and

535.444. Excess spoil will not be allowed on the downslope below the upper bench except on designated gravity transport courses properly prepared according to R645-301-232.100 through R645-301-232.600, R645-301-234, R645-301-242, and R645-301-243. Upon completion of the fill, no excess spoil will be allowed to remain on the designated gravity transport course between the two benches and each transport course will be reclaimed in accordance with the requirements of R645-301 and R645-302.

535.500. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, spoil resulting from faceup operations for underground coal mine development may be placed at drift entries as part of a cut and fill structure, if the structure is less than 400 feet in horizontal length, and designed in accordance with R645-301-211, R645-301-212, R645-301-412.300, R645-301-512.210, R645-301-512.220, R645-301-514.100, R645-301-528.310, R645-301-535.100 through R645-301-535.130, R645-301-535.500, R645-301-536.300, R645-301-542.720, R645-301-553.240, R645-301-745.100, R645-301-745.300, and R645-301-745.400.

536. Coal Mine Waste. The permit application will include designs for placement of coal mine waste in new or existing disposal areas within approved portions of the permit area. Coal mine waste will be placed in a controlled manner and have a design certification as described under R645-301-512.

536.100. The disposal facility will be designed using current prudent engineering practices and will meet design criteria established by the Division.

536.110. The disposal facility will be designed to attain a minimum long-term static safety factor of 1.5. The foundation and abutments must be stable under all conditions of construction.

536.120. Sufficient foundation investigations, as well as any necessary laboratory testing of foundation material, will be performed in order to determine the design requirements for foundation stability. The analyses of the foundation conditions will take into consideration the effect of underground mine workings, if any, upon the stability of the disposal facility.

536.200. Coal mine waste will be placed in a controlled manner to:

536.210. Ensure mass stability and prevent mass movement during and after construction;

536.220. Not create a public hazard; and

536.230. Prevent combustion.

536.300. Coal mine waste may be disposed of in excess spoil fills if approved by the Division and, if such waste is:

536.310. Placed in accordance with applicable portions of R645-301-210, R645-301-513.400, R645-301-514.200, R645-301-528.322, R645-301-536.900, R645-301-553.250, and R645-301-746.200;

536.320. Nontoxic and nonacid forming; and

536.330. Of the proper characteristics to be consistent with the design stability of the fill.

536.400. New and existing impounding structures constructed of coal mine waste or intended to impound coal mine waste will meet the requirements of R645-301-512.230, R645-301-515.200, R645-301-528.320, R645-301-536 through R645-301-536.200, R645-301-536.500, R645-301-542.730, and R645-301-746.100.

536.410. Coal mine waste will not be used for construction of impounding structures unless it has been demonstrated to the Division that the stability of such a structure conforms to the requirements of R645-301 and R645-302.

536.420. The stability of the structure will be discussed in detail in the design plan submitted to the Division in accordance with R645-301-512.100, R645-301-512.230, R645-301-521.169, R645-301-531, R645-301-533.600, R645-301-533.700, R645-301-536.800, R645-301-542.500, R645-301-732.210, and R645-301-733.100.

536.500. Disposal of Coal Mine Waste in Special Areas.

536.510. Coal mine waste materials from activities located outside a permit area may be disposed of in the permit area only if approved by the Division. Approval will be based upon a showing that such disposal will be in accordance with R645-301-512.230, R645-301-515.200, R645-301-528.320, R645-301-536 through R645-301-536.200, R645-301-536.500, R645-301-542.730, and R645-301-746.100.

536.520. Underground Disposal. Coal mine waste may be disposed of in underground mine workings, but only in accordance with a plan approved by the Division and MSHA under R645-301-513.300, R645-301-528.321, R645-301-536.700, and R645-301-746.400.

536.600. Underground Development Waste. Each plan will describe the geotechnical investigation, design, construction, operation, maintenance and removal, if appropriate, of the structures and be prepared according to R645-301-211, R645-301-212,R645-301-412.300, R645-

301-512.210, R645-301-512.220,R645-301-514.100, R645-301-528.310, R645-301-535.100,through R645-301-535.130, R645-301-535.300 through R645-301-535.500, R645-301-536.300, R645-301-542.720, R645-301-553.240, R645-301-745.100, R645-301-745.300, and R645-301-745.400.

536.700. Coal Processing Waste. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, each plan for returning coal processing waste to abandoned underground workings will describe the source and quality of waste to be stowed, area to be backfilled, percent of the mine void to be filled, method of constructing underground retaining walls, influence of the backfilling operation on active underground mine operations, surface area to be supported by the backfill, and the anticipated occurrence of surface effects following backfilling.

536.800. Coal processing waste banks, dams, and embankments will be designed to comply with:

536.810 R645-301-210, R645-301-512.230, R645-301-513.400, R645-301-514.200, R645-301-515.200, R645-301-528.322, R645-301-528.320, R645-301-536 through R645-301-536.200, R645-301-536.400, R645-301-536.500, R645-301-536.900, R645-301-542.730, R645-301-553.250, and R645-301-746.100 through R645-301-746.300.

536.820. Coal processing waste dams and embankments will comply with the requirements of MSHA, 30 CFR 77.216-1 and 30 CFR 77.216-2, and will contain the results of a geotechnical investigation of the proposed dam or embankment foundation area, to determine the structural competence of the foundation which will support the proposed dam or embankment structure and the impounded material. The geotechnical investigation will be planned and supervised by an engineer or engineering geologist, according to the following:

536.821. The number, location, and depth of borings and test pits will be determined using current prudent engineering practice for the size of the dam or embankment, quantity of material to be impounded, and subsurface conditions;

536.822. The character of the overburden and bedrock, the proposed abutment sites, and any adverse geotechnical conditions, which may affect the particular dam, embankment, or reservoir site will be considered;

536.823. All springs, seepage, and ground water flow observed or anticipated during wet periods in the area of the proposed dam or embankment will be identified on each plan; and

536.824. Consideration will be given to the possibility of mudflows, rock-debris falls, or other landslides into the dam, embankment, or impounded material.

536.900. Refuse Piles. Refuse piles will meet the requirements of R645-301-210, R645-301-512.230, R645-301-513.400, R645-301-514.200, R645-301-515.200, R645-301-528.322, R645-301-528.320, R645-301-536 through R645-301-536.200, R645-301-536.500, R645-301-536.900, R645-301-542.730, R645-301-553.250, R645-301-746.100 through R645-301-746.200, and the requirements of MSHA, 30 CFR 77.214 and 30 CFR 77.215.

537. Regraded Slopes.

537.100. Each application will contain a report of appropriate geotechnical analysis, where approval of the Division is required for alternative specifications or for steep cut slopes under R645-301-358, R645-301-512.250, R645-301-527.100, R645-301-527.230, R645-301-534.100, R645-301-534.200, R645-301-534.300, R645-301-542.600, R645-301-742.410, R645-301-742.420, R645-301-752.200, and R645-301-762.

537.200. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, regrading of settled and revegetated fills to achieve approximate original contour at the conclusion of mining operations will not be required if the following conditions are met.

537.210. Settled and revegetated fills will be composed of spoil or nonacid- or nontoxic-forming underground development waste.

537.220. The spoil or underground development waste will not be located so as to be detrimental to the environment, to the health and safety of the public, or to the approved postmining land use.

537.230. Stability of the spoil or underground development waste will be demonstrated through standard geotechnical analysis to be consistent with backfilling and grading requirements for material on the solid bench (1.3 static safety factor) or excess spoil requirements for material not placed on a solid bench (1.5 static safety factor).

537.240. The surface of the spoil or underground development waste will be vegetated according to R645-301-356 and R645-301-357, and surface runoff will be controlled in accordance with R645-301-742.300.

537.250. If it is determined by the Division that disturbance of the existing spoil or underground development waste would increase environmental harm or adversely affect the health and safety of the public, the Division may allow the existing spoil or underground development waste pile to remain in place. The Division may require stabilization of such spoil or underground development waste in accordance with the requirements of R645-301-537.210 through R645-301-537.240.

540. Reclamation Plan.

541. General.

541.100. Persons who cease coal mining and reclamation operations permanently will close or backfill or otherwise permanently reclaim all affected areas, in accordance with the R645 Rules and the permit approved by the Division.

541.200. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES, all underground openings, equipment, structures, or other facilities not required for monitoring, unless approved by the Division as suitable for the postmining land use or environmental monitoring, will be removed and the affected land reclaimed.

541.300. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, all surface equipment, structures, or other facilities not required for continued underground mining activities and monitoring, unless approved by the Division as suitable for the postmining land use or environmental monitoring will be removed and the affected lands reclaimed.

541.400. Each application will include a plan for the reclamation of the lands within the proposed permit area which shows how the applicant will comply with R645-301, and the environmental protection performance standards of the State Program.

542. Narratives, Maps and Plans. The reclamation plan for the proposed permit area will include:

542.100. A detailed timetable for the completion of each major step in the reclamation plan;

542.200. A plan for backfilling, soil stabilization, compacting and grading, with contour maps or cross sections that show the anticipated final surface configuration of the proposed permit area, in accordance with R645-301-537.200, R645-301-552 through R645-301-553.230, R645-301-553.260 through R645-301-553.900, and R645-302-234;

542.300. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, final surface configuration maps with cross sections (at intervals specified by the Division) that indicate:

542.310. The anticipated final surface configuration to be achieved for the affected areas. The maps and cross sections will be prepared and certified as described under R645-301-512; and

542.320. Location of each facility that will remain on the proposed permit area as a permanent feature, after the completion of coal mining and reclamation operations;

542.400. Before abandoning a permit area or seeking bond release, a description ensuring all temporary structures are removed and reclaimed, and all permanent sedimentation ponds, impoundments and treatment facilities that meet the requirements of the R645 Rules for permanent structures, have been maintained properly and meet the requirements of the approved reclamation plan for permanent structures and impoundments. The operator will renovate such structures if necessary to meet the requirements of the R645 Rules and to conform to the approved reclamation plan;

542.500. A timetable, and plans to remove each proposed sedimentation pond, water impoundment, and coal processing waste bank, dam, or embankment, if appropriate;

542.600. Roads. A road not to be retained for use under an approved postmining land use will be reclaimed immediately after it is no longer needed for mining and reclamation operations, including:

542.610. Closing the road to traffic;

542.620. Removing all bridges and culverts; unless approved as part of the postmining land use.

542.630. Scarifying or ripping of the roadbed and replacing topsoil and revegetating disturbed surfaces in accordance with R645-301-232.100 through R645-301-232.600, R645-301-234, R645-301-242, R645-301-243, R645-301-244.200 and R645-301-353 through R645-301-357.

542.640. Removing or otherwise disposing of road-surfacing materials that are incompatible with the postmining land use and revegetation requirements.

542.700. Final Abandonment of Mine Openings and Disposal Areas.

542.710. A description, including appropriate cross sections and maps, of the measures to be used to seal or manage mine openings, and to plug, case or manage other openings within the proposed permit area, in accordance with R645-301-529, R645-301-551, R645-301-631, R645-301-738, and R645-301-765.

542.720. Disposal of Excess Spoil. Excess spoil will be placed in designated disposal areas within the permit area, in a controlled manner to ensure that the final fill is suitable for reclamation and revegetation compatible with the natural surroundings and the approved postmining land use. Excess spoil that is combustible will be adequately covered with noncombustible material to prevent sustained combustion. The reclamation of excess spoil will comply with the design criteria under R645-301-553.240.

542.730. Disposal of Coal Mine Waste. Coal mine waste will be placed in a controlled manner to ensure that the final disposal facility will be suitable for reclamation and revegetation compatible with the natural surroundings and the approved postmining land use.

542.740. Disposal of Noncoal Mine Wastes.

542.741. Noncoal mine wastes including, but not limited to grease, lubricants, paints, flammable liquids, garbage, abandoned mining machinery, lumber and other combustible materials generated during mining activities will be placed and stored in a controlled manner in a designated portion of the permit area. Placement and storage will ensure that fires are prevented, and that the area remains stable and suitable for reclamation and revegetation compatible with the natural surroundings.

542.742. Final disposal of noncoal mine wastes will be in a designated disposal site in the permit area or a state-approved solid waste disposal area. Wastes will be routinely compacted and covered to prevent combustion and wind-borne waste. When the disposal is completed, a minimum of two feet of suitable cover will be placed over the site, slopes stabilized, and revegetation accomplished in accordance with R645-301-244.200 and R645-301-353 through R645-301-357, inclusive. Operation of the disposal site will be conducted in accordance with all local, Utah, and federal requirements.

542.800. The reclamation plan for the proposed coal mining and reclamation operations will also include a detailed estimate of reclamation costs as described in R645-301-830.100 - R645-301-830.300.

550. Reclamation Design Criteria and Plans. Each permit application will include site specific plans that incorporate the following design criteria for reclamation activities.

551. Casing and Sealing of Underground Openings. When no longer needed for monitoring or other use approved by the Division upon a finding of no adverse environmental or health and safety effects, each shaft, drift, adit, tunnel, or other opening to the surface from underground will be capped, sealed and backfilled, or otherwise properly managed, as required by the Division and consistent with MSHA, 30 CFR 75.1771. Permanent closure measures will be designed to prevent access to the mine workings by people, livestock, fish and wildlife, machinery and to keep acid or other toxic drainage from entering ground or surface waters.

552. Permanent Features.

552.100. Small depressions may be constructed if they are needed to retain moisture, minimize erosion, create and enhance wildlife habitat, or assist revegetation.

552.200. Permanent impoundments may be approved if they meet the requirements of R645-301-512.240, R645-301-514.300, R645-301-515.200, R645-301-533.100 through R645-301-533.600, R645-301-542.400, R645-301-733.220 through R645-301-733.224, R645-301-743, and if they are suitable for the approved postmining land use.

553. Backfilling and Grading. Backfilling and grading design criteria will be described in the permit application. Nothing in R645-301-553 will prohibit the placement of material in road and portal pad embankments located on the downslope, so long as the material used and the embankment design comply with the applicable requirements of R645-301-500 and R645-301-700 and the material is moved and placed in a controlled manner. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES rough backfilling and grading will follow coal removal by not more than 60 days or 1500 linear feet. The Division may grant additional time for rough backfilling and grading if the permittee can demonstrate, through a detailed written analysis under R645-301-542.200, that additional time is necessary.

553.100. Disturbed Areas. Disturbed areas will be backfilled and graded to:

553.110 Achieve the approximate original contour (AOC), except as provided in R645-301-553.500 through R645-301-553.540 (previously mined areas (PMA's), continuously mined areas (CMA's) and areas subject to the AOC provisions), R645-301-553.600 through R645-301-553.612 (PMA's and CMA's), R645-302-270 (non-mountaintop removal on steep slopes), R645-302-220 (mountaintop removal mining), R645-301-553.700 (thin overburden) and R645-301-553.800 (thick overburden);

553.120 Eliminate all highwalls, spoil piles, and depressions, except as provided in R645-301-552.100 (small depressions); R645-301-553.500 through R645-301-553.540 (PMA's, CMA's and areas subject to approximate original contour (AOC) provisions; R645-301-553.600 through R645-301-553.612 (PMA's and CMA's); and in R645-301-553.650 (highwall management under the (AOC) provisions);

553.130 Achieve a postmining slope that does not exceed either the angle of repose or such lesser slope as is necessary to achieve a minimum long-term static safety factor of 1.3 and prevents slides, except as provided in R645-301-553.530;

553.140 Minimize erosion and water pollution both on and off the site; and

553.150 Support the approved post mining land use.

553.200 Spoil and Waste. Spoil and waste materials will be compacted where advisable to ensure stability or to prevent leaching of toxic materials.

553.210 Spoil, except as provided in R645-301-537.200 (Settled and Revegetated Fills), for the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, and except where excess spoil is disposed of in accordance with R645-301-211, R645-301-212, R645-301-412.300, R645-301-512.210, R645-301-512.220, R645-301-514.100, R645-301-528.310, R645-301-535.100 through R645-301-535.130, R645-301-535.300 through R645-301-535.500, R645-301-536.300, R645-301-542.720, R645-301-553.240, R645-301-745.100, R645-301-745.300, and R645-301-745.400 will be returned to the mined out surface areas (UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES) or mined area (SURFACE COAL MINING AND RECLAMATION ACTIVITIES).

553.220 Spoil may be placed on the area outside the mined-out surface area (UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES) or in the mined-out area (SURFACE COAL MINING AND RECLAMATION ACTIVITIES) in non-steep slope areas to restore the approximate original contour by blending the spoil into the surrounding terrain if the following requirements are met:

553.221 All vegetative and organic material will be removed from the area;

553.222 The topsoil on the area will be removed, segregated, stored, and redistributed in accordance with R645-301-232.100 through R645-301-232.600, R645-301-234, R645-301-242, and R645-301-243; and

553.223 The spoil will be backfilled and graded on the area in accordance with R645-301-537.200, R645-301-552 through R645-301-553.230, R645-301-553.260 through R645-301-553.420, R645-301-553.600, and R645-301-553.900.

553.230 Preparation of final graded surfaces will be conducted in a manner that minimizes erosion and provides a surface for replacement of topsoil that will minimize slippage.

553.240 The final configuration of the fill (excess spoil) will be suitable for the approved postmining land use. Terraces may be constructed on the outslope of the fill if required for stability, control of erosion, to conserve soil moisture, or to facilitate the approved postmining land use. The grade of the outslope between terrace benches will not be steeper than 2h:1v (50 percent).

553.250 Refuse Piles.

553.251 The final configuration for the refuse pile will be suitable for the approved postmining land use. Terraces may be constructed on the outslope of the refuse pile if required for stability, control of erosion, conservation of soil moisture, or facilitation of the approved postmining land use. The grade of the outslope between terrace benches will not be steeper than 2h:1v (50 percent).

553.252 Following final grading of the refuse pile, the coal mine waste will be covered with a minimum of four feet of the best available, nontoxic and noncombustible material, in a manner that does not impede drainage from the underdrains. The Division may allow less than four feet of cover material based on physical and chemical analyses which show that the requirements of R645-301-244.200 and R645-301-353 through R645-301-357 are met.

553.260 Disposal of coal processing waste and underground development waste in the mined-out surface area (UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES) or mined-out area (SURFACE COAL MINING AND RECLAMATION ACTIVITIES) will be in accordance with R645-301-210, R645-301-512.230, R645-301-513.400, R645-301-514.200,

R645-301-515.200, R645-301-528.322, R645-301-528.320, R645-301-536 through R645-301-536.200, R645-301-536.500, R645-301-536.900, R645-301-542.730, R645-301-553.250, and R645-301-746.100 through R645-301-746.200, except that a long-term static safety factor of 1.3 will be achieved.

553.300 Exposed coal seams, acid- and toxic-forming materials, and combustible materials exposed, used, or produced during mining will be adequately covered with nontoxic and noncombustible materials, or treated, to control the impact on surface and ground water in accordance with R645-301-731.100 through R645-301-731.522 and R645-301-731.800, to prevent sustained combustion, and to minimize adverse effects on plant growth and on the approved postmining land use.

553.400 Cut-and-fill terraces may be allowed by the Division where:

553.410 Needed to conserve soil moisture, ensure stability, and control erosion on final-graded slopes, if the terraces are compatible with the approved postmining land use; or

553.420 Specialized grading, foundation conditions, or roads are required for the approved postmining land use, in which case the final grading may include a terrace of adequate width to ensure the safety, stability, and erosion control necessary to implement the postmining land-use plan.

553.500 Previously Mined Areas (PMA's), Continuously Mined Areas (CMA's), and Areas with remaining Highwalls Subject to the Approximate Original Contour (AOC) Provisions.

553.510 Remining operations on PMA's, CMA's, or on areas with remaining highwalls subject to the AOC Provisions will comply with the requirements of R645-301-537.200, R645-301-552 through R645-301-553.230, R645-301-553.260 through R645-301-553.900, and R645-302-234, except as provided in R645-301-553.500, R645-301-553.600 and R645-301-553.650.

553.520 The backfill of all remaining highwalls will be graded to a slope which is compatible with the approved postmining land use and which provides adequate drainage and long-term stability.

553.530 Any remaining highwall will be stable and not pose a hazard to the public health and safety or to the environment. The operator will demonstrate, to the satisfaction of the Division, that the remaining highwall achieves a minimum long-term static safety factor of 1.3 and prevents slides, or provide an alternative criterion to establish that the remaining highwall is stable and does not pose a hazard to the public health and safety or to the environment; and

553.540 Spoil placed on the outslope during previous mining operations will not be disturbed if such disturbances will cause instability of the remaining spoil or otherwise increase the hazard to the public health and safety or to the environment.

553.600 Previously Mined Areas (PMA's) and Continuously Mined Areas (CMA's). For PMA's and CMA's the special compliance measures include:

553.610 The requirements of R645-301-553.110 and R645-301-553.120, addressing the elimination of highwalls, will not apply to PMA's or CMA's where the volume of all reasonably available spoil is demonstrated in writing to the Division to be insufficient to completely backfill the reaffected or enlarged highwall. The highwall will be eliminated to the maximum extent technically practical in accordance with the following requirements:

553.611 All spoils generated by the remining operation or CMA and any other reasonably available spoil will be used to backfill the area;

553.612 Reasonably available spoil in the immediate vicinity of the remining operation or CMA will be included within the permit area.

553.650 Highwall Management Under the Approximate Original Contour Provisions. For situations where a permittee seeks approval for a remaining highwall under the AOC provisions, the permittee will establish, and the Division will find in writing that the remaining highwall will achieve the stability requirements of R645-301-553.530, that the remaining highwall will meet the approximate original contour criteria of R645-301-553.510 and R645-301-553.520, and that the proposal meets the following criteria:

553.650.100 The remaining highwall will not be greater in height or length than the cliffs and cliff-like escarpments that were replaced or disturbed by the mining operations;

553.650.200 The remaining highwall will replace a preexisting cliff or similar natural premining feature and will resemble the structure, composition, and function of the natural cliff it replaces;

553.650.300 The remaining highwall will be modified, if necessary, as determined by the Division to restore cliff-type habitats used by the flora and fauna existing prior to mining;

553.650.400 The remaining highwall will be compatible with the post mining land use and the visual attributes of the area; and

553.650.500 The remaining highwall will be compatible with the geomorphic processes of the area.

553.700. Backfilling and Grading: Thin Overburden. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES, this section applies only where the final thickness is less than 0.8 of the initial thickness. Initial thickness is the sum of the overburden thickness and coal thickness prior to removal of coal. Final thickness is the product of the overburden thickness prior to removal of coal, times the bulking factor to be determined for each permit area. The provisions of this section apply only when SURFACE COAL MINING AND RECLAMATION ACTIVITIES cannot be carried out to comply with the requirements of R645-301-537.200, R645-301-552 through R645-301-553.230, R645-301-553.260 through R645-301-553.420, R645-301-553.600, and R645-301-553.900 to achieve the approximate original contour. The operator will, at a minimum:

553.710. Use all available spoil and waste materials to attain the lowest practicable grade, but not more than the angle of repose; and

553.720. Meet the requirements of R645-301-211, R645-301-212, R645-301-412.300, R645-301-512.210,

R645-301-514.100, R645-301-535.100, R645-301-535.112 through R645-301-535.130, R645-301-536.300, R645-301-542.720, R645-301-553.240, and R645-301-745.100.

553.800. Backfilling and Grading: Thick Overburden. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES, this section applies only where the final thickness is greater than 1.2 of the initial thickness. Initial thickness is the sum of the overburden thickness and coal thickness prior to removal of coal. Final thickness is the product of the overburden thickness prior to removal of coal, times the bulking factor to be determined for each permit area. The provisions of this section apply only when SURFACE COAL MINING AND RECLAMATION ACTIVITIES cannot be carried out to comply with the requirements of R645-301-537.200, R645-301-552 through R645-301-553.230, R645-301-553.260 through R645-301-553.420, R645-301-553.600, and R645-301-553.900 to achieve the approximate original contour. In addition the operator will, at a minimum:

553.810. Use the spoil and waste materials to attain the lowest practicable grade, but not more than the angle of repose;

553.820. Meet the requirements of R645-301-211, R645-301-212, R645-301-412.300, R645-301-512.210, R645-301-514.100, R645-301-535.100, R645-301-535.112 through R645-301-535.130, R645-301-536.300, R645-301-542.720, R645-301-553.240, and R645-301-745.100; and

553.830. Dispose of any excess spoil in accordance with R645-301-211, R645-301-212, R645-301-412.300, R645-301-512.210, R645-301-512.220, R645-301-514.100, R645-301-528.310, R645-301-535.100 through R645-301-535.130, R645-301-535.300 through R645-301-535.500, R645-301-536.300, R645-301-542.720, R645-301-553.240, R645-301-745.100, R645-301-745.300, and R645-301-745.400.

553.900. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, regrading of settled and revegetated fills at the conclusion of coal mining and reclamation operations will not be required if the conditions of R645-301-537.200 are met;

560. Performance Standards. Coal mining and reclamation operations will be conducted in accordance with the approved permit and requirements of R645-301-510 through R645-301-553.

R645-301-600. Geology.

The rules in R645-301-600 present the requirements for information related to geology which is to be included in each permit application.

610. Introduction.

611. General Requirements. Each permit application will include descriptions of:

611.100. The geology within and adjacent to the permit area as given under R645-301-621 through R645-301-627; and

611.200. Proposed operations given under R645-301-630.

612. All cross sections, maps and plans as required by R645-301-622 will be prepared and certified as described under R645-301-512.100

620. Environmental Description.

621. General Requirements. Each permit application will include a description of the geology within the proposed permit and adjacent areas that may be affected or impacted by the proposed coal mining and reclamation operation.

622. Cross Sections, Maps and Plans. The application will include cross sections, maps and plans showing:

622.100. Elevations and locations of test borings and core samplings;

622.200. Nature, depth, and thickness of the coal seams to be mined, any coal or rider seams above the seam to be mined, each stratum of the overburden, and the stratum immediately below the lowest coal seam to be mined;

622.300. All coal crop lines and the strike and dip of the coal to be mined within the proposed permit area; and

622.400. Location, and depth if available, of gas and oil wells within the proposed permit area.

623. Each application will include geologic information in sufficient detail to assist in:

623.100. Determining all potentially acid- or toxic-forming strata down to and including the stratum immediately below the coal seam to be mined;

623.200. Determining whether reclamation as required by R645-301 and R645-302 can be accomplished; and

623.300. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES preparing the subsidence control plan described under R645-301-525 and R645-521-142.

624. Geologic information will include, at a minimum, the following:

624.100. A description of the geology of the proposed permit and adjacent areas down to and including the deeper of either the stratum immediately below the lowest coal seam to be mined or any aquifer below the lowest coal seam to be mined which may be adversely impacted by mining. This description will include the regional and structural geology of the permit and adjacent areas, and other parameters which influence the required reclamation and it will also show how the regional and structural geology may affect the occurrence, availability, movement, quantity and quality of potentially impacted surface and ground water. It will be based on:

624.110. The cross sections, maps, and plans required by R645-301-622.100 through R645-301-622.400.

624.120. The information obtained under R645-301-624.200, R645-301-624.300 and R645-301-625; and

624.130. Geologic literature and practices.

624.200. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, any portion of a permit area in which the strata down to the coal seam to be mined will be removed or are already exposed, and for the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES, samples will be collected and analyzed from test borings; drill cores; or fresh, unweathered, uncontaminated samples from rock outcrops down to and including the deeper of either the stratum immediately below the lowest coal seam to be mined or any aquifer below the lowest coal seam to be mined which may be adversely impacted by mining. The analyses will result in the following:

624.210. Logs showing the lithologic characteristics including physical properties and thickness of each stratum and location of ground water where occurring;

624.220. Chemical analyses identifying those strata that may contain acid- or toxic-forming, or alkalinity-producing materials and to determine their content except that the Division may find that the analysis for alkalinity-producing material is unnecessary; and

624.230. Chemical analysis of the coal seam for acid- or toxic-forming materials, including the total sulfur and pyritic sulfur, except that the Division may find that the analysis of pyritic sulfur content is unnecessary.

624.300. For lands within the permit and adjacent areas of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES where the strata above the coal seam to be mined will not be removed, samples will be collected and analyzed from test borings or drill cores to provide the following data:

624.310. Logs of drill holes showing the lithologic characteristics, including physical properties and thickness of each stratum that may be impacted, and location of ground water where occurring;

624.320. Chemical analyses for acid- or toxic-forming or alkalinity-producing materials and their content in the strata immediately above and below the coal seam to be mined;

624.330. Chemical analyses of the coal seam for acid- or toxic-forming materials, including the total sulfur and pyritic sulfur, except that the Division may find that the analysis of pyrite sulfur content is unnecessary; and

624.340. For standard room and pillar mining operations, the thickness and engineering properties of clays of soft rock such as clay shale, if any, in the stratum immediately above and below each coal seam to be mined.

625. If determined to be necessary to protect the hydrologic balance, to minimize or prevent subsidence, or to meet the performance standards of R645-301 and R645-302, the Division may require the collection, analysis and description of geologic information in addition to that required by R645-301-624.

626. An applicant may request the Division to waive in whole or in part the requirements of R645-301-624.200 and R645-301-624.300. The waiver may be granted only if the Division finds in writing that the collection and analysis of such data is unnecessary because other information having equal value or effect is available to the Division in a satisfactory form.

627. An application for a permit to conduct UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES will include, at a minimum, a description of overburden thickness and lithology.

630. Operation Plan.

631. Casing and Sealing of Exploration Holes and Boreholes. Each permit application will include a description of the methods used to backfill, plug, case, cap, seal or otherwise manage exploration holes or boreholes to prevent acid or toxic drainage from entering water resources, minimize disturbance to the prevailing hydrologic balance and to ensure the safety of people, livestock, fish and wildlife, and machinery in the permit and adjacent area. Each exploration hole or borehole that is uncovered or exposed by coal mining and reclamation operations within the permit area will be permanently closed, unless approved for water monitoring or otherwise managed in a manner approved by the Division. Use of an exploration borehole as a monitoring or water well must meet the provisions of R645-301-731. The requirements of R645-301-631 do not apply to boreholes drilled for the purpose of blasting.

631.100. Temporary Casing and Sealing of Drilled Holes. Each exploration borehole, other drill hole or borehole which has been identified in the approved permit application for use to return underground development waste, coal processing waste or water to underground workings or to be used to monitor ground water conditions will be temporarily sealed before use and for the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES, protected during use by barricades, or fences, or other protective devices approved by the Division. These protective devices will be periodically inspected and maintained in good operating condition by the operator conducting surface coal mining and reclamation activities.

631.200. Permanent Casing and Sealing of Exploration Holes and Boreholes. When no longer needed for monitoring or other use approved by the Division upon a finding of no adverse environmental or health and safety effect, or unless approved for transfer as a water well under R645-301-731.400, each exploration hole or borehole will be plugged, capped, sealed, backfilled or otherwise properly managed under R645-301-631 and consistent with 30 CFR 75.1711. Permanent closure methods will be designed to prevent access to the mine workings by people, livestock, fish and wildlife, and machinery and to keep acid or other toxic drainage from entering water resources.

632. Subsidence Monitoring. Each application for a permit to conduct UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES will, except where planned subsidence is projected to be used, include as part of the subsidence monitoring plan described under R645-301-525:

632.100. A determination of the commencement and degree of subsidence so other appropriate measures can be taken to prevent or reduce material damage; and

632.200. A map showing the locations of subsidence monitoring points within and adjacent to the permit area.

640. Performance Standards.

641. All exploration holes and boreholes will be permanently cased and sealed according to the requirements of R645-301-631 and R645-301-631.200.

642. All monuments and surface markers used as subsidence monitoring points and identified under R645-301-632.200 will be reclaimed in accordance with R645-301-521.210.

R645-301-700. Hydrology.

710. Introduction.

711. General Requirements. Each permit application will include descriptions of:

711.100. Existing hydrologic resources as given under R645-301-720.

711.200. Proposed operations and potential impacts to the hydrologic balance as given under R645-301-730.

711.300. The methods and calculations utilized to achieve compliance with hydrologic design criteria and plans given under R645-301-740.

711.400. Applicable hydrologic performance standards as given under R645-301-750.

711.500. Reclamation activities as given under R645-301-760.

712. Certification. All cross sections, maps and plans required by R645-301-722 as appropriate, and R645-301-731.700 will be prepared and certified according to R645-301-512.

713. Inspection. Impoundments will be inspected as described under R645-301-514.300.

720. Environmental Description.

721. General Requirements. Each permit application will include a description of the existing, premining hydrologic resources within the proposed permit and adjacent areas that may be affected or impacted by the proposed coal mining and reclamation operation.

722. Cross Sections and Maps. The application will include cross sections and maps showing:

722.100. Location and extent of subsurface water, if encountered, within the proposed permit or adjacent areas. For UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, location and extent will include, but not limited to areal and vertical distribution of aquifers, and portrayal of seasonal differences of head in different aquifers on cross-sections and contour maps;

722.200. Location of surface water bodies such as streams, lakes, ponds and springs, constructed or natural drains, and irrigation ditches within the proposed permit and adjacent areas;

722.300. Elevations and locations of monitoring stations used to gather baseline data on water quality and quantity in preparation of the application;

722.400. Location and depth, if available, of water wells in the permit area and adjacent area; and

722.500. Sufficient slope measurements or contour maps to adequately represent the existing land surface configuration of proposed disturbed areas for UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES and the proposed permit area for SURFACE COAL MINING AND RECLAMATION ACTIVITIES will be measured and recorded to take into account natural variations in slope, to provide accurate representation of the range of natural slopes and reflect geomorphic differences of the area to be disturbed.

723. Sampling and Analysis. All water quality analyses performed to meet the requirements of R645-301-723 through R645-301-724.300, R645-301-724.500, R645-301-725 through R645-301-731, and R645-301-731.210 through R645-301-731.223 will be conducted according to the methodology in the current edition of "Standard Methods for the Examination of Water and Wastewater" or the methodology in 40 CFR Parts 136 and 434. Water quality sampling performed to meet the requirements of R645-301-723 through R645-301-724.300, R645-301-724.500, R645-301-725 through R645-301-731, and R645-301-731.210 through R645-301-731.223 will be conducted according to either methodology listed above when feasible. "Standard Methods for the Examination of Water and Wastewater" is a joint publication of the American Public Health Association, the American Water Works Association, and the Water Pollution Control Federation and is available from the American Public Health Association, 1015 Fifteenth Street, NW, Washington, D. C. 20036.

724. Baseline Information. The application will include the following baseline hydrologic, geologic and climatologic information, and any additional information required by the Division.

724.100. Ground Water Information. The location and ownership for the permit and adjacent areas of existing wells, springs and other ground-water resources, seasonal quality and quantity of ground water, and usage. Water quality descriptions will include, at a minimum, total dissolved solids or specific conductance corrected to 25 degrees C, pH, total iron and total manganese. Ground-water quantity descriptions will include, at a minimum, approximate rates of discharge or usage and depth to the water in the coal seam, and each water-bearing stratum above and potentially impacted stratum below the coal seam.

724.200. Surface water information. The name, location, ownership and description of all surface-water bodies such as streams, lakes and impoundments, the location of any discharge into any surface-water body in the proposed permit and adjacent areas, and information on surface-water quality and quantity sufficient to demonstrate seasonal variation and water usage. Water quality descriptions will include, at a minimum, baseline information on total suspended solids, total dissolved solids or specific conductance corrected to 25 degrees C, pH, total iron and total manganese. Baseline acidity and alkalinity information will be provided if there is a potential for acid drainage from the proposed mining operation. Water quantity descriptions will include, at a minimum, baseline information on seasonal flow rates.

724.300. Geologic Information. Each application will include geologic information in sufficient detail, as given under R645-301-624, to assist in:

724.310. Determining the probable hydrologic consequences of the operation upon the quality and quantity of surface and ground water in the permit and adjacent areas, including the extent to which surface- and ground-water monitoring is necessary; and

724.320. Determining whether reclamation as required by the R645 Rules can be accomplished and whether the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area.

724.400. Climatological Information.

724.410. When requested by the Division, the permit application will contain a statement of the climatological factors that are representative of the proposed permit area, including:

724.411. The average seasonal precipitation;

724.412. The average direction and velocity of prevailing winds; and

724.413. Seasonal temperature ranges.

724.420. The Division may request such additional data as deemed necessary to ensure compliance with the requirements of R645-301 and R645-302.

724.500. Supplemental information. If the determination of the PHC required by R645-301-728 indicates that adverse impacts on or off the proposed permit area may occur to the hydrologic balance, or that acid-forming or toxic-forming material is present that may result in the contamination of ground-water or surface-water supplies, then information supplemental to that required under R645-301-724.100 and R645-301-724.200 will be provided to evaluate such probable hydrologic consequences and to plan remedial and reclamation activities. Such supplemental information may be based upon drilling, aquifer tests, hydrogeologic analysis of the water-bearing strata, flood flows, or analysis of other water quality or quantity characteristics.

724.600. Survey of Renewable Resource Lands. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, the applicant will provide a survey that shows whether aquifers or areas for the recharge of aquifers exist within the permit and adjacent area and whether subsidence, if it occurred, could cause material damage or diminution of reasonably foreseeable use of aquifers or areas for the recharge of aquifers. Renewable resource survey information will be incorporated into the subsidence control plan listed under R645-301-525.

724.700. Each permit application that proposes to conduct coal mining and reclamation operations within a valley holding a stream or in a location where the permit area or adjacent area includes any stream will meet the requirements of R645-302-320.

725. Baseline Cumulative Impact Area Information.

725.100. Hydrologic and geologic information for the cumulative impact area necessary to assess the probable cumulative hydrologic impacts of the proposed coal mining and reclamation operation and all anticipated coal mining and reclamation operations on surface- and ground-water systems as required by R645-301-729 will be provided to the Division if available from appropriate federal or state agencies.

725.200. If this information is not available from such agencies, then the applicant may gather and submit this information to the Division as part of the permit application.

725.300. The permit will not be approved until the necessary hydrologic and geologic information is available to the Division.

726. Modeling. The use of modeling techniques, interpolation or statistical techniques may be included as part of the permit application, but actual surface- and ground-water information may be required by the Division for each site even when such techniques are used.

727. Alternative Water Source Information. If the probable hydrologic consequences determination required by R645-301-728 indicates that the proposed SURFACE COAL MINING AND RECLAMATION ACTIVITY may proximately result in contamination, diminution, or interruption of an underground or surface source of water within the proposed permit or adjacent areas which is used for domestic, agricultural, industrial or other legitimate purpose, then the application will contain information on water availability and alternative water sources, including the suitability of alternative water sources for existing premining uses and approved postmining land uses.

728. Probable Hydrologic Consequences (PHC) Determination.

728.100. The permit application will contain a determination of the PHC of the proposed coal mining and reclamation operation upon the quality and quantity of surface and ground water under seasonal flow conditions for the proposed permit and adjacent areas.

728.200. The PHC determination will be based on baseline hydrologic, geologic and other information collected for the permit application and may include data statistically representative of the site.

728.300. The PHC determination will include findings on:

728.310. Whether adverse impacts may occur to the hydrologic balance;

728.320. Whether acid-forming or toxic-forming materials are present that could result in the contamination of surface- or ground-water supplies;

728.330. What impact the proposed coal mining and reclamation operation will have on:

728.331. Sediment yield from the disturbed area;

728.332. Acidity, total suspended and dissolved solids and other important water quality parameters of local impact;

728.333. Flooding or streamflow alteration;

728.334. Ground-water and surface-water availability; and

728.335. Other characteristics as required by the Division; and

728.340. Whether the proposed SURFACE COAL MINING AND RECLAMATION ACTIVITY will proximately result in contamination, diminution or interruption of an underground or surface source of water within the proposed permit or adjacent areas which is used for domestic, agricultural, industrial or other legitimate purpose.

728.400. An application for a permit revision will be reviewed by the Division to determine whether a new or updated PHC determination will be required.

729. Cumulative Hydrologic Impact Assessment (CHIA).

729.100. The Division will provide an assessment of the probable cumulative hydrologic impacts of the proposed coal mining and reclamation operation and all anticipated coal mining and reclamation operations upon surface- and ground-water systems in the cumulative impact area. The CHIA will be sufficient to determine, for purposes of permit approval whether the proposed coal mining and reclamation operation has been designed to prevent material damage to the hydrologic balance outside the permit area. The Division may allow the applicant to submit data and analyses relevant to the CHIA with the permit application.

729.200. An application for a permit revision will be reviewed by the Division to determine whether a new or updated CHIA will be required.

730. Operation Plan.

731. General Requirements. The permit application will include a plan, with maps and descriptions, indicating how the relevant requirements of R645-301-730, R645-301-740, R645-301-750 and R645-301-760 will be met. The plan will be specific to the local hydrologic conditions. It will contain the steps to be taken during coal mining and reclamation operations through bond release to minimize disturbance to the hydrologic balance within the permit and adjacent areas; to prevent material damage outside the permit area; to support approved postmining land use in accordance with the terms and conditions of the approved permit and performance standards of R645-301-750; to comply with the Clean Water Act (33 U.S.C. 1251 et seq.); and to meet applicable federal and Utah water quality laws and regulations. The plan will include the measures to be taken to: avoid acid or toxic drainage; prevent to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow; provide water treatment facilities when needed; and control drainage. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES the plan will include measures to be taken to protect or replace water rights and restore approximate premining recharge capacity. The plan will specifically address any potential adverse hydrologic consequences identified in the PHC determination prepared under R645-301-728 and will include preventative and remedial measures.

The Division may require additional preventative, remedial or monitoring measures to assure that material damage to the hydrologic balance outside the permit area is prevented. Coal mining and reclamation operations that minimize water pollution and changes in flow will be used in preference to water treatment.

731.100. Hydrologic-Balance Protection.

731.110. Ground-Water Protection. In order to protect the hydrologic balance, coal mining and reclamation operations will be conducted according to the plan approved under R645-301-731 and the following:

731.111. Ground-water quality will be protected by handling earth materials and runoff in a manner that minimizes acidic, toxic or other harmful infiltration to ground-water systems and by managing excavations and other disturbances to prevent or control the discharge of pollutants into the ground water; and

731.112. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES ground-water quantity will be protected by handling earth materials and runoff in a manner that will restore approximate premining recharge capacity of the reclaimed area as a whole, excluding coal mine waste disposal areas and fills, so as to allow the movement of water to the ground-water system.

731.120. Surface-Water Protection. In order to protect the hydrologic balance, coal mining and reclamation operations will be conducted according to the plan approved under R645-301-731 and the following:

731.121. Surface-water quality will be protected by handling earth materials, ground-water discharges and runoff in a manner that minimizes the formation of acidic or toxic drainage; prevents, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow outside the permit area; and, otherwise prevent water pollution. If drainage control, restabilization and revegetation of disturbed areas, diversion of runoff, mulching or other reclamation and remedial practices are not adequate to meet the requirements of R645-301-731.100 through R645-301-731.522, R645-301-731.800 and R645-301-751, the operator will use and maintain the necessary water treatment facilities or water quality controls; and

731.122. Surface-water quantity and flow rates will be protected by handling earth materials and runoff in accordance with the steps outlined in the plan approved under R645-301-731.

731.200. Water Monitoring.

731.210. Ground-Water Monitoring. Ground-water monitoring will be conducted according to the plan approved under R645-301-731.200 and the following:

731.211. The permit application will include a ground-water monitoring plan based upon the PHC determination required under R645-301-728 and the analysis of all baseline hydrologic, geologic and other information in the permit application. The plan will provide for the monitoring of parameters that relate to the suitability of the ground water for current and approved postmining land uses and to the objectives for protection of the hydrologic balance set forth in R645-301-731. It will identify the quantity and quality parameters to be monitored, sampling frequency and site locations. It will describe how these data may be used to determine the impacts of the operation upon the hydrologic balance. At a minimum, total dissolved solids or specific conductance corrected to 25 degrees C, pH, total iron, total manganese and water levels will be monitored;

731.212. Ground-water will be monitored and data will be submitted at least every three months for each monitoring location. Monitoring submittals will include analytical results from each sample taken during the approved reporting period. When the analysis of any ground-water sample indicates noncompliance with the permit conditions, then the operator will promptly notify the Division and immediately take the actions provided for in R645-300-145 and R645-301-731;

731.213. If an applicant can demonstrate by the use of the PHC determination and other available information that a particular water-bearing stratum in the proposed permit and adjacent areas is not one which serves as an aquifer which significantly ensures the hydrologic balance within the cumulative impact area, then monitoring of that stratum may be waived by the Division;

731.214. Ground-water monitoring will proceed through mining and continue during reclamation until bond release. Consistent with the procedures of R645-303-220 through R645-303-228, the Division may modify the monitoring requirements including the parameters covered and the sampling frequency if the operator demonstrates, using the monitoring data obtained under R645-301-731.214 that:

731.214.1. The coal mining and reclamation operation has minimized disturbance to the prevailing hydrologic balance in the permit and adjacent areas and prevented

material damage to the hydrologic balance outside the permit area; water quantity and quality are suitable to support approved postmining land uses and the SURFACE COAL MINING AND RECLAMATION ACTIVITY has protected or replaced the water rights of other users; or

731.214.2. Monitoring is no longer necessary to achieve the purposes set forth in the monitoring plan approved under R645-301-731.211.

731.215. Equipment, structures and other devices used in conjunction with monitoring the quality and quantity of ground water on-site and off-site will be properly installed, maintained and operated and will be removed by the operator when no longer needed.

731.220. Surface-Water Monitoring. Surface-water monitoring will be conducted according to the plan approved under R645-301-731.220 and the following:

731.221. The permit application will include a surface-water monitoring plan based upon the PHC determination required under R645-301-728 and the analysis of all baseline hydrologic, geologic and other information in the permit application. The plan will provide for the monitoring of parameters that relate to the suitability of the surface water for current and approved postmining land uses and to the objectives for protection of the hydrologic balance as set forth in R645-301-731 as well as the effluent limitations found in R645-301-751;

731.222. The plan will identify the surface water quantity and quality parameters to be monitored, sampling frequency and site locations. It will describe how these data may be used to determine the impacts of the operation upon the hydrologic balance:

731.222.1. At all monitoring locations in streams, lakes and impoundments, that are potentially impacted or into which water will be discharged and at upstream monitoring locations, the total dissolved solids or specific conductance corrected to 25 degrees C, total suspended solids, pH, total iron, total manganese and flow will be monitored; and

731.222.2. For point-source discharges, monitoring will be conducted in accordance with 40 CFR Parts 122 and 123, R645-301-751 and as required by the Utah Division of Environmental Health for National Pollutant Discharge Elimination System (NPDES) permits;

731.223. Surface-water monitoring data will be submitted at least every three months for each monitoring location. Monitoring submittals will include analytical results from each sample taken during the approved reporting period. When the analysis of any surface water sample indicates noncompliance with the permit conditions, the operator will promptly notify the Division and immediately take the actions provided for in R645-300-145 and R645-301-731. The reporting requirements of this paragraph do not exempt the operator from meeting any National Pollutant Discharge Elimination System (NPDES) reporting requirements;

731.224. Surface-water monitoring will proceed through mining and continue during reclamation until bond release. Consistent with R645-303-220 through R645-303-228, the Division may modify the monitoring requirements, except those required by the Utah Division of Environmental Health, including the parameters covered and sampling frequency if the operator demonstrates, using the monitoring data obtained under R645-301-731.224 that:

731.224.1. The operator has minimized disturbance to the hydrologic balance in the permit and adjacent areas and prevented material damage to the hydrologic balance outside the permit area; water quantity and quality are suitable to support approved postmining land uses and the SURFACE COAL MINING AND RECLAMATION ACTIVITY has protected or replaced the water rights of other users; or

731.224.2. Monitoring is no longer necessary to achieve the purposes set forth in the monitoring plan approved under R645-301-731.221.

731.225. Equipment, structures and other devices used in conjunction with monitoring the quality and quantity of surface water on-site and off-site will be properly installed, maintained and operated and will be removed by the operator when no longer needed.

731.300. Acid- and Toxic-Forming Materials.

731.310. Drainage from acid- and toxic-forming materials and underground development waste into surface water and ground water will be avoided by:

731.311. Identifying and burying and/or treating, when necessary, materials which may adversely affect water quality, or be detrimental to vegetation or to public health and safety if not buried and/or treated; and

731.312. Storing materials in a manner that will protect surface water and ground water by preventing erosion, the formation of polluted runoff and the infiltration of polluted water. Storage will be limited to the period until burial and/or treatment first become feasible, and so long as storage will not result in any risk of water pollution or other environmental damage.

731.320. Storage, burial or treatment practices will be consistent with other material handling and disposal provisions of R645 Rules.

731.400. Transfer of Wells. Before final release of bond, exploratory or monitoring wells will be sealed in a safe and environmentally sound manner in accordance with R645-301-631, R645-301-738, and R645-301-765. With the prior approval of the Division, wells may be transferred to another party for further use. However, at a minimum, the conditions of such transfer will comply with Utah and local laws and the permittee will remain responsible for the proper management of the well until bond release in accordance with R645-301-529, R645-301-551, R645-301-631, R645-301-738, and R645-301-765.

731.500. Discharges.

731.510. Discharges into an underground mine.

731.511. Discharges into an underground mine are prohibited, unless specifically approved by the Division after a demonstration that the discharge will:

731.511.1. Minimize disturbance to the hydrologic balance on the permit area, prevent material damage outside the permit area and otherwise eliminate public hazards resulting from coal mining and reclamation operations;

731.511.2. Not result in a violation of applicable water quality standards or effluent limitations;

731.511.3. Be at a known rate and quality which will meet the effluent limitations of R645-301-751 for pH and

total suspended solids, except that the pH and total suspended solids limitations may be exceeded, if approved by the Division; and

731.511.4. Meet with the approval of MSHA.

731.512. Discharges will be limited to the following:

731.512.1. Water;

731.512.2. Coal processing waste;

731.512.3. Fly ash from a coal fired facility;

731.512.4. Sludge from an acid-mine-drainage treatment facility;

731.512.5. Flue-gas desulfurization sludge;

731.512.6. Inert materials used for stabilizing underground mines; and

731.512.7. Underground mine development wastes.

731.513. Water from the underground workings of an UNDERGROUND COAL MINING AND RECLAMATION ACTIVITY may be diverted into other underground workings according to the requirements of R645-301-731.100 through R645-301-731.522 and R645-301-731.800.

731.520. Gravity Discharges from UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES.

731.521. Surface entries and accesses to underground workings will be located and managed to prevent or control gravity discharge of water from the mine. Gravity discharges of water from an underground mine, other than a drift mine subject to R645-301-731.522, may be allowed by the Division if it is demonstrated that the untreated or treated discharge complies with the performance standards of R645-301 and R645-302 and any additional NPDES permit requirements.

731.522. Notwithstanding anything to the contrary in R645-301-731.521, the surface entries and accesses of drift mines first used after January 21, 1981 and located in acid-producing or iron-producing coal seams will be located in such a manner as to prevent any gravity discharge from the mine.

731.600. Stream Buffer Zones.

731.610. No land within 100 feet of a perennial stream or an intermittent stream will be disturbed by coal mining and reclamation operations, unless the Division specifically authorizes coal mining and reclamation operations closer to, or through, such a stream. The Division may authorize such activities only upon finding that:

731.611. Coal mining and reclamation operations will not cause or contribute to the violation of applicable Utah or federal water quality standards and will not adversely affect the water quantity and quality or other environmental resources of the stream; and

731.612. If there will be a temporary or permanent stream channel diversion, it will comply with R645-301-742.300.

731.620. The area not to be disturbed will be designated as a buffer zone, and the operator will mark it as specified in R645-301-521.260.

731.700. Cross Sections and Maps. Each application will contain for the proposed permit area:

731.710. A map showing the locations of water supply intakes for current users of surface water flowing into, out of and within a hydrologic area defined by the Division, and those surface waters which will receive discharges from affected areas in the proposed permit area;

731.720. A map showing the locations of each water diversion, collection, conveyance, treatment, storage and discharge facility to be used. The map will be prepared and certified according to R645-301-512;

731.730. A map showing locations and elevations of each station to be used for water monitoring during coal mining and reclamation operations. The map will be prepared and certified according to R645-301-512;

731.740. A map showing the locations of each existing and proposed sedimentation pond, impoundment and coal processing waste bank, dam or embankment. The map will be prepared and certified according to R645-301-512;

731.750. Cross sections for each existing and proposed sedimentation pond, impoundment and coal processing waste bank, dam or embankment. The cross sections will be prepared and certified according to R645-301-512.200; and

731.760. Other relevant cross sections and maps required by the Division depending on the structures and facilities located in the permit area.

731.800. Water Rights and Replacement. Any person who conducts SURFACE COAL MINING AND RECLAMATION ACTIVITIES will replace the water supply of an owner of interest in real property who obtains all or part of his or her supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source, where the water supply has been adversely impacted by contamination, diminution, or interruption proximately resulting from the surface mining activities. Baseline hydrologic information required in R645-301-624.100 through R645-301-624.200, R645-301-625, R645-301-626, R645-301-723 through R645-301-724.300, R645-301-724.500, R645-301-725 through R645-301-731, and R645-301-731.210 through R645-301-731.223 will be used to determine the extent of the impact of mining upon ground water and surface water.

732. Sediment Control Measures.

732.100. Siltation Structures. Siltation structures will be constructed and maintained to comply with R645-301-742.214. Any siltation structure that impounds water will be constructed and maintained to comply with R645-301-512.240, R645-301-514.300, R645-301-515.200, R645-301-533.100 through R645-301-533.600, R645-301-733.220 through R645-301-733.224, and R645-301-743.

732.200. Sedimentation Ponds.

732.210. Sedimentation ponds whether temporary or permanent, will be designed in compliance with the requirements of R645-301-356.300, R645-301-356.400, R645-301-513.200, R645-301-742.200 through R645-301-742.240, and R645-301-763. Any sedimentation pond or earthen structure which will remain on the proposed permit area as a permanent water impoundment will also be constructed and maintained to comply with the requirements of R645-301-743, R645-301-533.100 through R645-301-533.600, R645-301-512.240, R645-301-514.310 through R645-301-514.321 and R645-301-515.200.

732.220. Each plan will, at a minimum, comply with the MSHA requirements given under R645-301-513.100 and R645-301-513.200.

732.300. Diversions. All diversions will be constructed and maintained to comply with the requirements of R645-301-742.100 and R645-301-742.300.

732.400. Road Drainage. All roads will be constructed, maintained and reconstructed to comply with R645-301-742.400.

732.410. The permit application will contain a description of measures to be taken to obtain Division approval for alteration or relocation of a natural drainageway under R645-301-358, R645-301-512.250, R645-301-527.100, R645-301-527.230, R645-301-534.100, R645-301-534.200, R645-301-534.300, R645-301-542.600, R645-301-742.410, R645-301-742.420, R645-301-752.200, and R645-301-762.

732.420. The permit application will contain a description of measures, other than use of a rock headwall, to be taken to protect the inlet end of a ditch relief culvert, for Division approval under R645-301-358, R645-301-512.250, R645-301-527.100, R645-301-527.230, R645-301-534.100, R645-301-534.200, R645-301-534.300, R645-301-542.600, R645-301-742.410, R645-301-742.420, R645-301-752.200, and R645-301-762.

733. Impoundments.

733.100. General Plans. Each permit application will contain a general plan for each proposed water impoundment within the proposed permit area. Each general plan will:

733.110. Be prepared and certified as described under R645-301-512;

733.120. Contain maps and cross sections;

733.130. Contain a narrative that describes the structure;

733.140. Contain the results of a survey as described under R645-301-531;

733.150. Contain preliminary hydrologic and geologic information required to assess the hydrologic impact of the structure; and

733.160. Contain a certification statement which includes a schedule setting forth the dates when any detailed design plans for structures that are not submitted with the general plan will be submitted to the Division. The Division will have approved, in writing, the detailed design plan for a structure before construction of the structure begins.

733.200. Permanent and Temporary Impoundments.

733.210. Permanent and temporary impoundments will be designed to comply with the requirements of R645-301-512.240, R645-301-514.300, R645-301-515.200, R645-301-533.100 through R645-301-533.600, R645-301-733.220 through R645-301-733.226, R645-301-743.240, and R645-301-743. Each plan for an impoundment meeting the size or other criteria of the Mine Safety and Health Administration will comply with the requirements of 30 CFR 77.216-1 and 30 CFR 77.216-2. The plan required to be submitted to the District Manager of MSHA under 30 CFR 77.216 will be submitted to the Division as part of the permit application package. For an impoundment not meeting the size criteria of 30 CFR 77.216(a) and located where failure would not be expected to cause loss of life or serious property damage, the Division may establish through the Utah State program approval process engineering design standards that ensure stability comparable to a 1.3 minimum static safety factor in lieu of engineering tests to establish compliance with the minimum static safety factor of 1.3 specified in R645-301-533.100.

733.220. A permanent impoundment of water may be created, if authorized by the Division in the approved permit based upon the following demonstration:

733.221. The size and configuration of such impoundment will be adequate for its intended purposes;

733.222. The quality of impounded water will be suitable on a permanent basis for its intended use and, after reclamation, will meet applicable Utah and federal water quality standards, and discharges from the impoundment will meet applicable effluent limitations and will not degrade the quality of receiving water below applicable Utah and federal water quality standards;

733.223. The water level will be sufficiently stable and be capable of supporting the intended use;

733.224. Final grading will provide for adequate safety and access for proposed water users;

733.225. The impoundment will not result in the diminution of the quality and quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational or domestic uses; and

733.226. The impoundment will be suitable for the approved postmining land use.

733.230. The Division may authorize the construction of temporary impoundments as part of coal mining and reclamation operations.

733.240. If any examination or inspection discloses that a potential hazard exists, the person who examined the impoundment will promptly inform the Division according to R645-301-515.200.

734. Discharge Structures. Discharge structures will be constructed and maintained to comply with R645-301-744.

735. Disposal of Excess Spoil. Areas designated for the disposal of excess spoil and excess spoil structures will be constructed and maintained to comply with R645-301-745.

736. Coal Mine Waste. Areas designated for the disposal of coal mine waste and coal mine waste structures will be constructed and maintained to comply with R645-301-746.

737. Noncoal Mine Waste. Noncoal mine waste will be stored and final disposal of noncoal mine waste will comply with R645-301-747.

738. Temporary Casing and Sealing of Wells. Each well which has been identified in the approved permit application to be used to monitor ground water conditions will comply with R645-301-748 and be temporarily sealed before use and for the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES protected during use by barricades, or fences, or other protective devices approved by the Division. These devices will be periodically inspected and maintained in good operating condition by the operator conducting SURFACE COAL MINING AND RECLAMATION ACTIVITIES.

740. Design Criteria and Plans.

741. General Requirements. Each permit application will include site-specific plans that incorporate minimum design criteria as set forth in R645-301-740 for the control of

drainage from disturbed and undisturbed areas.

742. Sediment Control Measures.

742.100. General Requirements.

742.110. Appropriate sediment control measures will be designed, constructed and maintained using the best technology currently available to:

742.111. Prevent, to the extent possible, additional contributions of sediment to stream flow or to runoff outside the permit area;

742.112. Meet the effluent limitations under R645-301-751; and

742.113. Minimize erosion to the extent possible.

742.120. Sediment control measures include practices carried out within and adjacent to the disturbed area. The sedimentation storage capacity of practices in and downstream from the disturbed areas will reflect the degree to which successful mining and reclamation techniques are applied to reduce erosion and control sediment. Sediment control measures consist of the utilization of proper mining and reclamation methods and sediment control practices, singly or in combination. Sediment control methods include, but are not limited to:

742.121. Retaining sediment within disturbed areas;

742.122. Diverting runoff away from disturbed areas;

742.123. Diverting runoff using protected channels or pipes through disturbed areas so as not to cause additional erosion;

742.124. Using straw dikes, riprap, check dams, mulches, vegetative sediment filters, dugout ponds and other measures that reduce overland flow velocities, reduce runoff volumes or trap sediment;

742.125. Treating with chemicals; and

742.126. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, treating mine drainage in underground sumps.

742.200. Siltation Structures.

742.210. General Requirements.

742.211. Additional contributions of suspended solids and sediment to streamflow or runoff outside the permit area will be prevented to the extent possible using the best technology currently available.

742.212. Siltation structures for an area will be constructed before beginning any coal mining and reclamation operations in that area and, upon construction, will be certified by a qualified registered professional engineer to be constructed as designed and as approved in the reclamation plan.

742.213. Any siltation structures which impounds water will be designed, constructed and maintained in accordance with R645-301-512.240, R645-301-514.300, R645-301-515.200, R645-301-533.100 through R645-301-533.600, R645-301-733.220 through R645-301-733.224, and R645-301-743.

742.214. For the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, any point-source discharge of water from underground workings to surface waters which does not meet the effluent limitations of R645-301-751 will be passed through a siltation structure before leaving the permit area.

742.220. Sedimentation Ponds.

742.221. Sedimentation ponds, when used, will:

742.221.1. Be used individually or in series;

742.221.2. Be located as near as possible to the disturbed area and out of perennial streams unless approved by the Division; and

742.221.3. Be designed, constructed, and maintained to:

742.221.31. Provide adequate sediment storage volume;

742.221.32. Provide adequate detention time to allow the effluent from the ponds to meet Utah and federal effluent limitations;

742.221.33. Contain or treat the 10-year, 24-hour precipitation event ("design event") unless a lesser design event is approved by the Division based on terrain, climate, or other site-specific conditions and on a demonstration by the operator that the effluent limitations of R645-301-751 will be met;

742.221.34. Provide a nonclogging dewatering device adequate to maintain the detention time required under R645-301-742.221.32.

742.221.35. Minimize, to the extent possible, short circuiting;

742.221.36. Provide periodic sediment removal sufficient to maintain adequate volume for the design event;

742.221.37. Ensure against excessive settlement;

742.221.38. Be free of sod, large roots, frozen soil, and acid- or toxic forming coal-processing waste; and

742.221.39. Be compacted properly.

742.222. Sedimentation ponds meeting the size or other qualifying criteria of the MSHA, 30 CFR 77.216(a) will comply with all the requirements of that section, and will have a single spillway or principal and emergency spillways that in combination will safely pass a 100-year, 6-hour precipitation event or greater event as demonstrated to be necessary by the Division.

742.223. Sedimentation ponds not meeting the size or other qualifying criteria of the MSHA, 30 CFR 77.216(a) will provide a combination of principal and emergency spillways that will safely discharge a 25-year, 6-hour precipitation event or greater event as demonstrated to be needed by the Division. Such ponds may use a single open channel spillway if the spillway is:

742.223.1. Of nonerodible construction and designed to carry sustained flows; or

742.223.2. Earth- or grass-lined and designed to carry short-term infrequent flows at non-erosive velocities where sustained flows are not expected.

742.224. In lieu of meeting the requirements of R645-301-742.223.1 and 742.223.2 the Division may approve a sedimentation pond that relies primarily on storage to control the runoff from the design precipitation event when it is demonstrated by the operator and certified by a qualified registered professional engineer in accordance with R645-301-512.200 that the sedimentation pond will safely control the design precipitation event. The water will be removed from the pond in accordance with current, prudent, engineering practices and any sediment pond so used will not be located where failure would be expected to cause loss of life or serious property damage.

742.225. An exception to the sediment pond location guidance in R645-301-742.224 may be allowed:

742.225.1. In the case of a sedimentation pond meeting the size or other criteria of 30 CFR 77.216(a), if the pond is designed to control the precipitation of the probable maximum precipitation of a 6 hour event or greater event if specified by the Division; or (30 CFR 816.46(c)(2)(ii)(A))

742.225.2. In the case of a sedimentation pond not meeting the size or other criteria of 30 CFR 77.216(a), if the pond is designed to control the precipitation of a 100 year 6 hour event or greater event if demonstrated to be needed by the Division.

742.230. Other Treatment Facilities.

742.231. Other treatment facilities will be designed to treat the 10-year, 24-hour precipitation event unless a lesser design event is approved by the Division based on terrain, climate, other site-specific conditions and a demonstration by the operator that the effluent limitations of R645-301-751 will be met.

742.232. Other treatment facilities will be designed in accordance with the applicable requirements of R645-301-742.220.

742.240. Exemptions. Exemptions to the requirements of R645-301-742.200 and R645-301-763 may be granted if the disturbed drainage area within the total disturbed area is small and the operator demonstrates that siltation structures and alternate sediment control measures are not necessary for drainage from the disturbed areas to meet the effluent limitations under R645-301-751 or the applicable Utah and federal water quality standards for the receiving waters.

742.300. Diversions.

742.310. General Requirements.

742.311. With the approval of the Division, any flow from mined areas abandoned before May 3, 1978, and any flow from undisturbed areas or reclaimed areas, after meeting the criteria of R645-301-356.300, R645-301-356.400, R645-301-513.200, R645-301-742.200 through R645-301-742.240, and R645-301-763 for siltation structure removal, may be diverted from disturbed areas by means of temporary or permanent diversions. All diversions will be designed to minimize adverse impacts to the hydrologic balance within the permit and adjacent areas, to prevent material damage outside the permit area and to assure the safety of the public. Diversions will not be used to divert water into underground mines without approval of the Division in accordance with R645-301-731.510.

742.312. The diversion and its appurtenant structures will be designed, located, constructed, maintained and used to:

742.312.1. Be stable;

742.312.2. Provide protection against flooding and resultant damage to life and property;

742.312.3. Prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow outside the permit area; and

742.312.4. Comply with all applicable local, Utah, and federal laws and regulations.

742.313. Temporary diversions will be removed when no longer needed to achieve the purpose for which they were authorized. The land disturbed by the removal process will be restored in accordance with R645-301 and R645-302. Before diversions are removed, downstream water-treatment facilities previously protected by the diversion will be modified or removed, as necessary, to prevent overtopping or failure of the facilities. This requirement will not relieve the operator from maintaining water-treatment facilities as otherwise required. A permanent diversion or a stream channel reclaimed after the removal of a temporary diversion will be designed and constructed so as to restore or approximate the premining characteristics of the original stream channel including the natural riparian vegetation to promote the recovery and the enhancement of the aquatic habitat.

742.314. The Division may specify additional design criteria for diversions to meet the requirements of R645-301-742.300.

742.320. Diversion of Perennial and Intermittent Streams.

742.321. Diversion of perennial and intermittent streams within the permit area may be approved by the Division after making the finding relating to stream buffer zones under R645-301-731.600.

742.322. The design capacity of channels for temporary and permanent stream channel diversions will be at least equal to the capacity of the unmodified stream channel immediately upstream and downstream from the diversion.

742.323. The requirements of R645-301-742.312.2 will be met when the temporary and permanent diversion for perennial and intermittent streams are designed so that the combination of channel, bank and floodplain configuration is adequate to pass safely the peak runoff of a 10-year, 6-hour precipitation event for a temporary diversion and a 100-year, 6-hour precipitation event for a permanent diversion.

742.324. The design and construction of all stream channel diversions of perennial and intermittent streams will be certified by a qualified registered professional engineer as meeting the performance standards of R645-301 and R645-302 and any design criteria set by the Division.

742.330. Diversion of Miscellaneous Flows.

742.331. Miscellaneous flows, which consist of all flows except for perennial and intermittent streams, may be diverted away from disturbed areas if required or approved by the Division. Miscellaneous flows will include ground-water discharges and ephemeral streams.

742.332. The design, location, construction, maintenance, and removal of diversions of miscellaneous flows will meet all of the performance standards set forth in R645-301-742.310.

742.333. The requirements of R645-301-742.312.2 will be met when the temporary and permanent diversions for miscellaneous flows are designed so that the combination of channel, bank and floodplain configuration is adequate to pass safely the peak runoff of a 2-year, 6-hour precipitation event for a temporary diversion and a 10-year, 6-hour precipitation event for a permanent diversion.

742.400. Road Drainage.

742.410. All Roads.

742.411. To ensure environmental protection and safety

appropriate for their planned duration and use, including consideration of the type and size of equipment used, the design and construction or reconstruction of roads will incorporate appropriate limits for surface drainage control, culvert placement, culvert size, and any necessary design criteria established by the Division.

742.412. No part of any road will be located in the channel of an intermittent or perennial stream unless specifically approved by the Division in accordance with applicable parts of R645-301-731 through R645-301-742.300.

742.413. Roads will be located to minimize downstream sedimentation and flooding.

742.420. Primary Roads.

742.421. To minimize erosion, a primary road is to be located, insofar as practical, on the most stable available surfaces.

742.422. Stream fords by primary roads are prohibited unless they are specifically approved by the Division as temporary routes during periods of construction.

742.423. Drainage Control.

742.423.1. Each primary road will be designed, constructed or reconstructed and maintained to have adequate drainage control, using structures such as, but not limited to, bridges, ditches, cross drains, and ditch relief drains. The drainage control system will be designed to pass the peak runoff safely from a 10-year, 6-hour precipitation event, or an alternative event of greater size as demonstrated to be needed by the Division.

742.423.2. Drainage pipes and culverts will be constructed to avoid plugging or collapse and erosion at inlets and outlets.

742.423.3. Drainage ditches will be designed to prevent uncontrolled drainage over the road surface and embankment. Trash racks and debris basins will be installed in the drainage ditches where debris from the drainage area may impair the functions of drainage and sediment control structures.

742.423.4. Natural stream channels will not be altered or relocated without the prior approval of the Division in accordance with R645-301-731.100 through R645-301-731.522, R645-301-731.600, R645-301-731.800, R645-301-742.300, and R645-301-751.

742.423.5. Except as provided in R645-301-742.422, drainage structures will be used for stream channel crossings, made using bridges, culverts or other structures designed, constructed and maintained using current, prudent engineering practice.

743. Impoundments.

743.100. General Requirements. The requirements of R645-301-743 apply to both temporary and permanent impoundments.

743.110. Impoundments meeting the criteria of the MSHA, 30 CFR 77.216(a) will comply with the requirements of 77.216 and R645-301-512.240, R645-301-514.300, R645-301-515.200, R645-301-533.100 through R645-301-533.600, R645-301-733.220 through R645-301-733.224, and R645-301-743. The plan required to be submitted to the District Manager of MSHA under 30 CFR 77.216 will also be submitted to the Division as part of the permit application.

743.120. The design of impoundments will be prepared and certified as described under R645-301-512. Impoundments will have adequate freeboard to resist overtopping by waves and by sudden increases in storage volume.

743.130. Impoundments will include either a combination of principal and emergency spillways or a single spillway as specified in 743.131 which will be designed and constructed to safely pass the design precipitation event or greater event specified in R645-301-743.200 or R645-301-743.300.

743.131. The Division may approve a single-open channel spillway that is:

743.131.1. Of nonerodible construction and designed to carry sustained flows; or

743.131.2. Earth-or grass lined and designed to carry short-term, infrequent flows at non-erosive velocities where sustained flows are not expected.

743.132 In lieu of meeting the requirements of 743.131 the Division may approve an impoundment which meets the requirements of the sediment pond criteria of R645-301-742.224 and 742.225.

743.140. Impoundments will be inspected as described under R645-301-514.300.

743.200. The design precipitation event for the spillways for a permanent impoundment meeting the size or other criteria of MSHA rule 30 CFR 77.216(a) is a 100-year, 6-hour precipitation event, or such larger event as demonstrated to be needed by the Division.

743.300. The design precipitation event for the spillways for an impoundment not meeting the size or other criteria of MSHA rule 30 CFR 77.216(a) is a 25-year, 6-hour precipitation event, or such larger event as demonstrated to be needed by the Division.

744. Discharge Structures.

744.100. Discharge from sedimentation ponds, permanent and temporary impoundments, coal processing waste dams and embankments, and diversions will be controlled, by energy dissipators, riprap channels and other devices, where necessary to reduce erosion to prevent deepening or enlargement of stream channels, and to minimize disturbance of the hydrologic balance.

744.200. Discharge structures will be designed according to standard engineering design procedures.

745. Disposal of Excess Spoil.

745.100. General Requirements.

745.110. Excess spoil will be placed in designated disposal areas within the permit area, in a controlled manner to:

745.111. Minimize the adverse effects of leachate and surface water runoff from the fill on surface and ground waters;

745.112. Ensure permanent impoundments are not located on the completed fill. Small depressions may be allowed by the Division if they are needed to retain moisture or minimize erosion, create and enhance wildlife habitat or assist revegetation, and if they are not incompatible with the stability of the fill; and

745.113. Adequately cover or treat excess spoil that is

acid- and toxic-forming with nonacid nontoxic material to control the impact on surface and ground water in accordance with R645-301-731.300 and to minimize adverse effects on plant growth and the approved postmining land use.

745.120. Drainage control. If the disposal area contains springs, natural or manmade water courses, or wet weather seeps, the fill design will include diversions and underdrains as necessary to control erosion, prevent water infiltration into the fill and ensure stability.

745.121. Diversions will comply with the requirements of R645-301-742.300.

745.122. Underdrains will consist of durable rock or pipe, be designed and constructed using current, prudent engineering practices and meet any design criteria established by the Division. The underdrain system will be designed to carry the anticipated seepage of water due to rainfall away from the excess spoil fill and from seeps and springs in the foundation of the disposal area and will be protected from piping and contamination by an adequate filter. Rock underdrains will be constructed of durable, nonacid-, nontoxic-forming rock (e.g., natural sand and gravel, sandstone, limestone or other durable rock) that does not slake in water or degrade to soil materials and which is free of coal, clay or other nondurable material. Perforated pipe underdrains will be corrosion resistant and will have characteristics consistent with the long-term life of the fill.

745.200. Valley Fills and Head-of-Hollow Fills.

745.210. Valley fills and head-of-hollow fills will meet the applicable requirements of R645-301-211, R645-301-212, R645-301-412.300, R645-301-512.210, R645-301-514.100, R645-301-528.310, R645-301-535.100 through R645-301-535.130, R645-301-535.500, R645-301-536.300, R645-301-542.720, R645-301-553.240, and R645-301-745.100 and the requirements of R645-301-745.200 and R645-301-535.200.

745.220. Drainage Control.

745.221. The top surface of the completed fill will be graded such that the final slope after settlement will be toward properly designed drainage channels. Uncontrolled surface drainage may not be directed over the outslope of the fill.

745.222. Runoff from areas above the fill and runoff from the surface of the fill will be diverted into stabilized diversion channels designed to meet the requirements of R645-301-742.300 and to safely pass the runoff from a 100-year, 6-hour precipitation event.

745.300. Durable Rock Fills. The Division may approve disposal of excess durable rock spoil provided the following conditions are satisfied:

745.310. Except as provided in R645-301-745.300, the requirements of R645-301-211, R645-301-212, R645-301-412.300, R645-301-512.210, R645-301-514.100, R645-301-528.310, R645-301-535.100 through R645-301-535.130, R645-301-535.500, R645-301-536.300, R645-301-542.720, R645-301-553.240, and R645-301-745.100 are met;

745.320. The underdrain system may be constructed simultaneously with excess spoil placement by the natural segregation of dumped materials, provided the resulting underdrain system is capable of carrying anticipated seepage of water due to rainfall away from the excess spoil fill and from seeps and springs in the foundation of the disposal area and the other requirements for drainage control are met; and

745.330. Surface water runoff from areas adjacent to and above the fill is not allowed to flow onto the fill and is diverted into stabilized diversion channels designed to meet the requirements of R645-301-742.300 and to safely pass the runoff from a 100-year, 6-hour precipitation event.

745.400. Preexisting Benches. The Division may approve the disposal of excess spoil through placement on preexisting benches, provided that the requirements of R645-301-211, R645-301-212, R645-301-412.300, R645-301-512.210, R645-301-512.220, R645-301-514.100, R645-301-535.100, R645-301-535.112 through R645-301-535.130, R645-301-535.300 through R645-301-536.300, R645-301-542.720, R645-301-553.240, R645-301-745.100, R645-301-745.300, and R645-301-745.400 and the requirements of R645-301-535.400 are met.

746. Coal Mine Waste.

746.100. General Requirements.

746.110. All coal mine waste will be placed in new or existing disposal areas within a permit area which are approved by the Division.

746.120. Coal mine waste will be placed in a controlled manner to minimize adverse effects of leachate and surface water runoff on surface and ground water quality and quantity.

746.200. Refuse Piles.

746.210. Refuse piles will meet the requirements of R645-301-512.230, R645-301-515.200, R645-301-528.320, R645-301-536 through R645-301-536.200, R645-301-536.500, R645-301-542.730, and R645-301-746.100 and the additional requirements of R645-301-210, R645-301-513.400, R645-301-514.200, R645-301-528.322, R645-301-536.900, R645-301-553.250, and R645-301-746.200 and the requirements of the MSHA, 30 CFR 77.214 and 77.215.

746.211. If the disposal area contains springs, natural or manmade water courses, or wet weather seeps, the design will include diversions and underdrains as necessary to control erosion, prevent water infiltration into the disposal facility and ensure stability.

746.212. Uncontrolled surface drainage may not be diverted over the outslope of the refuse pile. Runoff from areas above the refuse pile and runoff from the surface of the refuse pile will be diverted into stabilized diversion channels designed to meet the requirements of R645-301-742.300 to safely pass the runoff from a 100-year, 6-hour precipitation event. Runoff diverted from undisturbed areas need not be commingled with runoff from the surface of the refuse pile.

746.213. Underdrains will comply with the requirements of R645-301-745.122.

746.220. Surface Area Stabilization.

746.221. Slope protection will be provided to minimize surface erosion at the site. All disturbed areas, including diversion channels that are not riprapped or otherwise protected, will be revegetated upon completion of construction.

746.222. No permanent impoundments will be allowed on the completed refuse pile. Small depressions may be allowed by the Division if they are needed to retain moisture, minimize erosion, create and enhance wildlife habitat, or

assist revegetation, and if they are not incompatible with stability of the refuse pile.

746.300. Impounding structures. New and existing impounding structures constructed of coal mine waste or intended to impound coal mine waste will meet the requirements of R645-301-512.230, R645-301-515.200, R645-301-528.320, R645-301-536 through R645-301-536.200, R645-301-536.500, R645-301-542.730, and R645-301-746.100.

746.310. Coal mine waste will not be used for construction of impounding structures unless it has been demonstrated to the Division that the use of coal mine waste will not have a detrimental effect on downstream water quality or the environment due to acid seepage through the impounding structure. The potential impact of acid mine seepage through the impounding structure will be discussed in detail.

746.311. Each impounding structure constructed of coal mine waste or intended to impound coal mine waste will be designed, constructed and maintained in accordance with R645-301-512.240, R645-301-513.200, R645-301-514.310 through R645-301-514.330, R645-301-515.200, R645-301-533.100 through R645-301-533.500, R645-301-733.230, R645-301-733.240, R645-301-743.100, and R645-301-743.300. Such structures may not be retained permanently as part of the approved postmining land use.

746.312 Each impounding structure constructed of coal mine waste or intended to impound coal mine waste that meets the criteria of 30 CFR 77.216(a) will have sufficient spillway capacity to safely pass, adequate storage capacity to safely contain, or a combination of storage capacity and spillway capacity to safely control the probable maximum precipitation of a 6-hour precipitation event, or greater event as demonstrated to be needed by the Division.

746.320. Spillways and outlet works will be designed to provide adequate protection against erosion and corrosion. Inlets will be protected against blockage.

746.330. Drainage control. Runoff from areas above the disposal facility or runoff from the surface of the facility that may cause instability or erosion of the impounding structure will be diverted into stabilized diversion channels designed to meet the requirements of R645-301-742.300 and designed to safely pass the runoff from a 100-year, 6-hour design precipitation event.

746.340. Impounding structures constructed of or impounding coal mine waste will be designed and operated so that at least 90 percent of the water stored during the design precipitation event will be removed within a 10-day period following that event.

746.400. Return of Coal Processing Waste to Abandoned Underground Workings. Each permit application to conduct UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES will, if appropriate, include a plan of proposed methods for returning coal processing waste to abandoned underground workings as follows:

746.410. The plan will describe the source of the hydraulic transport mediums, method of dewatering the placed backfill, retainment of water underground, treatment of water if released to surface streams and the effect on the hydrologic regime;

746.420. The plan will describe each permanent monitoring well to be located in the backfilled areas, the stratum underlying the mined coal and gradient from the backfilled area; and

746.430. The requirements of R645-301-513.300, R645-301-528.321, R645-301-536.700, R645-301-746.410 and R645-746.420 will also apply to pneumatic backfilling operations, except where the operations are exempted by the Division from requirements specifying hydrologic monitoring.

747. Disposal of Noncoal Mine Waste.

747.100. Noncoal mine waste, including but not limited to grease, lubricants, paints, flammable liquids, garbage, machinery, lumber and other combustible materials generated during coal mining and reclamation operations will be placed and stored in a controlled manner in a designated portion of the permit area or state-approved solid waste disposal area.

747.200. Placement and storage of noncoal mine waste within the permit area will ensure that leachate and surface runoff do not degrade surface or ground water.

747.300. Final disposal of noncoal mine waste within the permit area will ensure that leachate and drainage does not degrade surface or underground water.

748. Casing and Sealing of Wells. Each water well will be cased, sealed, or otherwise managed, as approved by the Division, to prevent acid or other toxic drainage from entering ground or surface water, to minimize disturbance to the hydrologic balance, and to ensure the safety of people, livestock, fish and wildlife, and machinery in the permit and adjacent area. If a water well is exposed by coal mining and reclamation operations, it will be permanently closed unless otherwise managed in a manner approved by the Division. Use of a drilled hole or borehole or monitoring well as a water well must comply with the provision of R645-301-731.100 through R645-301-731.522 and R645-301-731.800.

750. Performance Standards.

All coal mining and reclamation operations will be conducted to minimize disturbance to the hydrologic balance within the permit and adjacent areas, to prevent material damage to the hydrologic balance outside the permit area and support approved postmining land uses in accordance with the terms and conditions of the approved permit and the performance standards of R645-301 and R645-302. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES, operations will be conducted to assure the protection or replacement of water rights in accordance with the terms and conditions of the approved permit and the performance standards of R645-301 and R645-302.

751. Water Quality Standards and Effluent Limitations. Discharges of water from areas disturbed by coal mining and reclamation operations will be made in compliance with all Utah and federal water quality laws and regulations and with effluent limitations for coal mining promulgated by the U.S. Environmental Protection Agency set forth in 40 CFR Part 434.

752. Sediment Control Measures. Sediment control measures must be located, maintained, constructed and

reclaimed according to plans and designs given under R645-301-732, R645-301-742 and R645-301-760.

752.100. Siltation structures and diversions will be located, maintained, constructed and reclaimed according to plans and designs given under R645-301-732, R645-301-742 and R645-301-763.

752.200. Road Drainage. Roads will be located, designed, constructed, reconstructed, used, maintained and reclaimed according to R645-301-732.400, R645-301-742.400 and R645-301-762 and to achieve the following:

752.210. Control or prevent erosion, siltation and the air pollution attendant to erosion by vegetating or otherwise stabilizing all exposed surfaces in accordance with current, prudent engineering practices;

752.220. Control or prevent additional contributions of suspended solids to stream flow or runoff outside the permit area;

752.230. Neither cause nor contribute to, directly or indirectly, the violation of effluent standards given under R645-301-751;

752.240. Minimize the diminution to or degradation of the quality or quantity of surface- and ground-water systems; and

752.250. Refrain from significantly altering the normal flow of water in streambeds or drainage channels.

753. Impoundments and Discharge Structures. Impoundments and discharge structures will be located, maintained, constructed and reclaimed to comply with R645-301-733, R645-301-734, R645-301-743, R645-301-745 and R645-301-760.

754. Disposal of Excess Spoil, Coal Mine Waste and Noncoal Mine Waste. Disposal areas for excess spoil, coal mine waste and noncoal mine waste will be located, maintained, constructed and reclaimed to comply with R645-301-735, R645-301-736, R645-301-745, R645-301-746, R645-301-747 and R645-301-760.

755. Casing and Sealing of Wells. All wells will be managed to comply with R645-301-748 and R645-301-765. Water monitoring wells will be managed on a temporary basis according to R645-301-738.

760. Reclamation.

761. General Requirements. Before abandoning a permit area or seeking bond release, the operator will ensure that all temporary structures are removed and reclaimed, and that all permanent sedimentation ponds, diversions, impoundments and treatment facilities meet the requirements of R645-301 and R645-302 for permanent structures, have been maintained properly and meet the requirements of the approved reclamation plan for permanent structures and impoundments. The operator will renovate such structures if necessary to meet the requirements of R645-301 and R645-302 and to conform to the approved reclamation plan.

762. Roads. A road not to be retained for use under an approved postmining land use will be reclaimed immediately after it is no longer needed for coal mining and reclamation operations, including:

762.100. Restoring the natural drainage patterns;

762.200. Reshaping all cut and fill slopes to be compatible with the postmining land use and to complement the drainage pattern of the surrounding terrain.

763. Siltation Structures.

763.100. Siltation structures will be maintained until removal is authorized by the Division and the disturbed area has been stabilized and revegetated. In no case will the structure be removed sooner than two years after the last augmented seeding.

763.200. When the siltation structure is removed, the land on which the siltation structure was located will be regraded and revegetated in accordance with the reclamation plan and R645-301-358, R645-301-356, and R645-301-357. Sedimentation ponds approved by the Division for retention as permanent impoundments may be exempted from this requirement.

764. Structure Removal. The application will include the timetable and plans to remove each structure, if appropriate.

765. Permanent Casing and Sealing of Wells. When no longer needed for monitoring or other use approved by the Division upon a finding of no adverse environmental or health and safety effects, or unless approved for transfer as a water well under R645-301-731.100 through R645-301-731.522 and R645-301-731.800, each well will be capped, sealed, backfilled, or otherwise properly managed, as required by the Division in accordance with R645-301-529.400, R645-301-631.100, and R645-301-748. Permanent closure measures will be designed to prevent access to the mine workings by people, livestock, fish and wildlife, machinery and to keep acid or other toxic drainage from entering ground or surface waters.

R645-301-800. Bonding and Insurance.

The rules in R645-301-800 set forth the minimum requirements for filing and maintaining bonds and insurance for coal mining and reclamation operations under the State Program.

810. Bonding Definitions and Division Responsibilities.

811. Terms used in R645-301-800 may be found defined in R645-100-200.

812. Division Responsibilities -- Bonding.

812.100. The Division will prescribe and furnish forms for filing performance bonds.

812.200. The Division will prescribe by regulation terms and conditions for performance bonds and insurance.

812.300. The Division will determine the amount of the bond for each area to be bonded, in accordance with R645-301-830. The Division will also adjust the amount as acreage in the permit area is revised, or when other relevant conditions change according to the requirements of R645-301-830.400.

812.400. The Division may accept a self-bond if the permittee meets the requirements of R645-301-860.300 and any additional requirements in the State or Federal program.

812.500. The Division will release liability under a bond or bonds in accordance with R645-301-880 through R645-301-880.800.

812.600. If the conditions specified in R645-301-880.900 occur, the Division will take appropriate action to cause all or part of a bond to be forfeited in accordance with

procedures of that Section.

812.700. The Division will require in the permit that adequate bond coverage be in effect at all times. Except as provided in R645-301-840.520, operating without a bond is a violation of a condition upon which the permit is issued.

820. Requirement to File a Bond.

820.100. After a permit application under R645-301 has been approved, but before a permit is issued, the applicant will file with the Division, on a form prescribed and furnished by the Division, a bond or bonds for performance made payable to the Division and conditioned upon the faithful performance of all the requirements of the State Program, the permit and the reclamation plan.

820.110. Areas to be covered by the Performance Bond are:

820.111. The bond or bonds will cover the entire permit area, or an identified increment of land within the permit area upon which the operator will initiate and conduct coal mining and reclamation operations during the initial term of the permit.

820.112. As coal mining and reclamation operations on succeeding increments are initiated and conducted within the permit area, the permittee will file with the Division an additional bond or bonds to cover such increments in accordance with R645-830.400.

820.113. The operator will identify the initial and successive areas or increments for bonding on the permit application map submitted for approval as provided in the application, and will specify the bond amount to be provided for each area or increment.

820.114. Independent increments will be of sufficient size and configuration to provide for efficient reclamation operations should reclamation by the Division become necessary pursuant to R645-301-880.900.

820.120. An operator will not disturb any surface areas, succeeding increments, or extend any underground shafts, tunnels, or operations prior to acceptance by the Division of the required performance bond.

820.130. The applicant will file, with the approval of the Division, a bond or bonds under one of the following schemes to cover the bond amounts for the permit area as determined in accordance with R645-301-830:

820.131. A performance bond or bonds for the entire permit area;

820.132. A cumulative bond schedule and the performance bond required for full reclamation of the initial area to be disturbed; or

820.133. An incremental-bond schedule and the performance bond required for the first increment in the schedule.

820.200. Form of the Performance Bond.

820.210. The Division will prescribe the form of the performance bond.

820.220. The Division may allow for:

820.221. A surety bond;

820.222. A collateral bond;

820.223. A self-bond; or

820.224. A combination of any of these bonding methods.

820.300. Period of Liability.

820.310. Performance bond liability will be for the duration of the coal mining and reclamation operations and for a period which is coincident with the operator's period of extended responsibility for successful revegetation provided in R645-301-356 or until achievement of the reclamation requirements of the State Program and permit, whichever is later.

820.320. With the approval of the Division, a bond may be posted and approved to guarantee specific phases of reclamation within the permit area provided the sum of phase bonds posted equals or exceeds the total amount required under R645-301-830 and 830.400. The scope of work to be guaranteed and the liability assumed under each phase bond will be specified in detail.

820.330. Isolated and clearly defined portions of the permit area requiring extended liability may be separated from the original area and bonded separately with the approval of the Division. Such areas will be limited in extent and not constitute a scattered, intermittent, or checkerboard pattern of failure. Access to the separated areas for remedial work may be included in the area under extended liability if deemed necessary by the Division.

820.340. If the Division approves a long-term, intensive agricultural postmining land-use, in accordance with R645-301-413, the applicable five- or ten-year period of liability will commence at the date of initial planting for such long-term agricultural use.

820.350. General.

820.351. The bond liability of the permittee will include only those actions which he or she is obligated to take under the permit, including completion of the reclamation plan, so that the land will be capable of supporting the postmining land use approved under R645-301-413.

820.352. Implementation of an alternative postmining land-use approved under R645-301-413.300 which is beyond the control of the permittee need not be covered by the bond. Bond liability for prime farmland will be as specified in R645-301-880.320.

830. Determination of Bond Amount.

830.100. The amount of the bond required for each bonded area will:

830.110. Be determined by the Division;

830.120. Depend upon the requirements of the approved permit and reclamation plan;

830.130. Reflect the probable difficulty of reclamation, giving consideration to such factors as topography, geology, hydrology and revegetation potential; and

830.140. Be based on, but not limited to, the detailed estimated cost, with supporting calculations for the estimates, submitted by the permit applicant.

830.200. The amount of the bond will be sufficient to assure the completion of the reclamation plan if the work has to be performed by the Division in the event of forfeiture, and in no case will the total bond initially posted for the entire area under one permit be less than $10,000.

830.300. An additional inflation factor will be added to the subtotal for the permit term. This inflation factor will be based upon an acceptable Costs Index.

830.400. Adjustment of Amount.

830.410. The amount of the bond or deposit required and the terms of the acceptance of the applicant's bond will be adjusted by the Division from time to time as the area requiring bond coverage is increased or decreased or where the cost of future reclamation changes. The Division may specify periodic times or set a schedule for reevaluating and adjusting the bond amount to fulfill this requirement.

830.420. The Division will:

830.421. Notify the permittee, the surety, and any person with a property interest in collateral who has requested notification under R645-301-860.260 of any proposed adjustment to the bond amount; and

830.422. Provide the permittee an opportunity for an informal conference on the adjustment.

830.430. A permittee may request reduction of the amount of the performance bond upon submission of evidence to the Division providing that the permittee's method of operation or other circumstances reduces the estimated cost for the Division to reclaim the bonded area. Bond adjustments which involve undisturbed land or revision of the cost estimate of reclamation are not considered bond release subject to procedures of R645-301-880.100 through R645-301-880.800.

830.440. In the event that an approved permit is revised in accordance with the R645 rules, the Division will review the bond for adequacy and, if necessary, will require adjustment of the bond to conform to the permit as revised.

830.500. An operator's financial responsibility under R645-301-525.230 for repairing material damage resulting from subsidence may be satisfied by the liability insurance policy required under R645-301-890.

840. General Terms and Conditions of the Bond.

840.100. The performance bond will be in an amount determined by the Division as provided in R645-301-830.

840.200. The performance bond will be payable to the Division.

840.300. The performance bond will be conditioned upon faithful performance of all the requirements of the State Program and the approved permit, including completion of the reclamation plan.

840.400. The duration of the bond will be for the time period provided in R645-301-820.300.

840.500. General.

840.510. The bond will provide a mechanism for a bank or surety company to give prompt notice to the Division and the permittee of any action filed alleging the insolvency or bankruptcy of the surety company, the bank, or the permittee, or alleging any violations which would result in suspension or revocation of the surety or bank charter or license to do business.

840.520. Upon the incapacity of a bank or surety company by reason of bankruptcy, insolvency, or suspension or revocation of a charter or license, the permittee will be deemed to be without bond coverage and will promptly notify the Division. The Division, upon notification received through procedures of R645-301-840.510 or from the permittee, will, in writing, notify the operator who is without bond coverage and specify a reasonable period, not to exceed 90 days, to replace bond coverage. If an adequate bond is not posted by the end of the period allowed, the operator will cease coal extraction and will comply with the provisions of R645-301-541.100 through R645-301-541.400 as applicable and will immediately begin to conduct reclamation operations in accordance with the reclamation plan. Mining operations will not resume until the Division has determined that an acceptable bond has been posted.

850. Bonding Requirements for UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES and Associated Long-Term Coal-Related Surface Facilities and Structures.

850.100. Responsibilities. The Division will require bond coverage, in an amount determined under R645-301-830, for long-term surface facilities and structures, and for areas disturbed by surface impacts incident to UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, for which a permit is required. Specific reclamation techniques required for underground mines and long-term facilities will be considered in determining the amount of bond to complete the reclamation.

850.200. Long-term period of liability.

850.210. The period of liability for every bond covering long-term surface disturbances will commence with the issuance of a permit, except that to the extent that such disturbances will occur on a succeeding increment to be bonded, such liability will commence upon the posting of the bond for that increment before the initial surface disturbance of that increment. The liability period will extend until all reclamation, restoration, and abatement work under the permit has been completed and the bond is released under the provisions of R645-301-880.100 through R645-301-880.800 or until the bond has been replaced or extended in accordance with R645-301-850.230.

850.220. Long-term surface disturbances will include long-term coal-related surface facilities and structures, and surface impacts incident to underground coal mining activities which disturb an area for a period that exceeds five years. Long-term surface disturbances include, but are not limited to: surface features of shafts and slope facilities; coal refuse areas; powerlines; boreholes; ventilation shafts; preparation plants; machine shops, roads and loading and treatment facilities.

850.230. To achieve continuous bond coverage for long-term surface disturbances, the bond will be conditioned upon extension, replacement or payment in full, 30 days prior to the expiration of the bond term.

850.240. Continuous bond coverage will apply throughout the period of extended responsibility for successful revegetation and until the provisions of R645-301-880.100 through R645-301-880.800 inclusive have been met.

850.300. Bond Forfeiture. The Division will take action to forfeit a bond pursuant to R645-301-850 if 30 days prior to bond expiration the operator has not filed:

850.310. The performance bond for a new term as required for continuous coverage; or

850.320. A performance bond providing coverage for the period of liability, including the period of extended responsibility for successful revegetation.

860. Forms of Bonds.

860.100. Surety Bonds.

860.110. A surety bond will be executed by the operator and a corporate surety licensed to do business in Utah.

860.120. Surety bonds will be noncancellable during their terms, except that surety bond coverage for lands not disturbed may be canceled with the prior consent of the Division. The Division will advise the surety, within 30 days after receipt of a notice to cancel bond, whether the bond may be canceled on an undisturbed area.

860.200. Collateral Bonds.

860.210. Collateral bonds, except for letters of credit, cash accounts and real property, will be subject to the following conditions:

860.211. The Division will keep custody of collateral deposited by the applicant until authorized for release or replacement as provided in R645-301-870 and R645-301-880;

860.212. The Division will value collateral at its current market value, not at face value;

860.213. The Division will require that certificates of deposit be made payable to or assigned to the Division both in writing and upon the records of the bank issuing the certificates. If assigned, the Division will require the banks issuing these certificates to waive all rights of setoff or liens against those certificates;

860.214. The Division will not accept an individual certificate of deposit in an amount in excess of $100,000 or the maximum insurable amount as determined by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

860.220. Letters of credit will be subject to the following conditions:

860.221. The letter may be issued only by a bank organized or authorized to do business in the United States;

860.222. Letters of credit will be irrevocable during their terms. A letter of credit used as security in areas requiring continuous bond coverage will be forfeited and will be collected by the Division if not replaced by other suitable bond or letter of credit at least 30 days before its expiration date;

860.223. The letter of credit will be payable to the Division upon demand, in part or in full, upon receipt from the Division of a notice of forfeiture issued in accordance with R645-301-880.900.

860.230. Real property posted as a collateral bond will meet the following conditions:

860.231. The applicant will grant the Division a first mortgage, first deed of trust, or perfected first lien security interest in real property with a right to sell or otherwise dispose of the property in the event of forfeiture under state law;

860.232. In order for the Division to evaluate the adequacy of the real property offered to satisfy collateral requirements, the applicant will submit a schedule of the real property which will be mortgaged or pledged to secure the obligations under the indemnity agreement. The list will include:

860.232.1. A description of the property;

860.232.2. The fair market value as determined by an independent appraisal conducted by a certified appraiser approved by the Division; and

860.232.3. Proof of possession and title to the real property;

860.233. The property may include land which is part of the permit area; however, land pledged as collateral for a bond under this section will not be disturbed under any permit while it is serving as security under this section.

860.240. Cash accounts will be subject to the following conditions:

860.241. The Division may authorize the operator to supplement the bond through the establishment of a cash account in one or more federally insured or equivalently protected accounts made payable upon demand to, or deposited directly with, the Division. The total bond including the cash account will not be less than the amount required under terms of performance bonds including any adjustments, less amounts released in accordance with R645-301-880;

860.242. Any interest paid on a cash account will be retained in the account and applied to the bond value of the account unless the Division has approved the payment of interest to the operator;

860.243. Certificates of deposit may be substituted for a cash account with the approval of the Division; and

860.244. The Division will not accept an individual cash account in an amount in excess of $100,000 or the maximum insurable amount as determined by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

860.250. Bond Value of Collateral.

860.251. The estimated bond value of all collateral posted as assurance under this section will be subject to a margin which is the ratio of bond value to market values, as determined by the Division. The margin will reflect legal and liquidation fees, as well as value depreciation, marketability and fluctuations which might affect the net cash available to the Division to complete reclamation.

860.252. The bond value of collateral may be evaluated at any time, but it will be evaluated as part of the permit renewal and, if necessary, the performance bond amount increased or decreased. In no case will the bond value of collateral exceed the market value.

860.260. Persons with an interest in collateral posted as a bond, and who desire notification of actions pursuant to the bond, will request the notification in writing to the Division at the time collateral is offered.

860.300. Self-Bonding.

860.310. Definitions. Terms used in self-bonding are defined under R645-100-200.

860.320. The Division may accept a self bond from an applicant for a permit if all of the following conditions are met by the applicant or its parent corporation guarantor:

860.321. The applicant designates a suitable agent, resident within the state of Utah, to receive service of process;

860.322. The applicant has been in continuous operation as a business entity for a period of not less than five years. Continuous operation will mean that business was

conducted over a period of five years immediately preceding the time of application:

860.322.1. The Division may allow a joint venture or syndicate with less than five years of continuous operation to qualify under this requirement if each member of the joint venture or syndicate has been in continuous operation for at least five years immediately preceding the time of application;

860.322.2. When calculating the period of continuous operation, the Division may exclude past periods of interruption to the operation of the business entity that were beyond the applicant's control and that do not affect the applicant's likelihood of remaining in business during the proposed coal mining and reclamation operations;

860.323. The applicant submits financial information in sufficient detail to show that the applicant meets one of the following criteria:

860.323.1. The applicant has a current rating for its most recent bond issuance of "A" or higher as issued by either Moody's Investor Service or Standard and Poor's Corporation;

860.323.2. The applicant has a tangible net worth of at least $10 million, a ratio of total liabilities to net worth of 2.5 times or less and a ratio of current assets to current liabilities of 1.2 times or greater; or

860.323.3. The applicant's fixed assets in the United States total at least $20 million and the applicant has a ratio of total liabilities to net worth of 2.5 times or less and a ratio of current assets to current liabilities of 1.2 times or greater; and

860.324. The applicant submits:

860.324.1. Financial statements for the most recently completed fiscal year accompanied by a report prepared by an independent certified public accountant in conformity with generally accepted accounting principles and containing the accountant's audit opinion or review opinion of the financial statements with no adverse opinion;

860.324.2. Unaudited financial statements for completed quarters in the current fiscal year;

860.324.3. Additional unaudited information as requested by the Division; and

860.324.4. Annual reports for the five years immediately preceding the time of application.

860.330. The Division may accept a written guarantee for an applicant's self bond from a parent corporation guarantor, if the guarantor meets the conditions of R645-301-860.321 through R645-301-860.324 as if it were the applicant. Such a written guarantee will be referred to as a "corporate guarantee." The terms of the corporate guarantee will provide for the following:

860.331. If the applicant fails to complete the reclamation plan, the guarantor will do so or the guarantor will be liable under the indemnity agreement to provide funds to the Division sufficient to complete the reclamation plan, but not to exceed the bond amount;

860.332. The corporate guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the applicant and to the Division at least 90 days in advance of the cancellation date, and the Division accepts the cancellation; and

860.333. The cancellation may be accepted by the Division if the applicant obtains a suitable replacement bond before the cancellation date or if the lands for which the self bond, or portion thereof, was accepted have not been disturbed.

860.340. The Division may accept a written guarantee for an applicant's self bond from any corporate guarantor, whenever the applicant meets the conditions of R645-301-860.321, R645-301-860.322, and R645-301-860.324 and the guarantor meets the conditions of R645-301-860.321 through R645-301-860.324 as if it were the applicant. Such a written guarantee will be referred to as a "nonparent corporate guarantee." The terms of this guarantee will provide for compliance with the conditions of R645-301-860.331 through R645-301-860.333. The Division may require the applicant to submit any information specified in R645-301-860-323 in order to determine the financial capabilities of the applicant.

860.350. For the Division to accept an applicant's self bond, the total amount of the outstanding and proposed self bonds of the applicant for coal mining and reclamation operations will not exceed 25 percent of the applicant's tangible net worth in the United States. For the Division to accept a corporate guarantee, the total amount of the parent corporation guarantor's present and proposed self bonds and guaranteed self bonds for surface coal mining and reclamation operations will not exceed 25 percent of the guarantor's tangible net worth in the United States. For the Division to accept a nonparent corporate guarantee, the total amount of the nonparent corporate guarantor's present and proposed self bonds and guaranteed self bonds will not exceed 25 percent of the guarantor's tangible net worth in the United States.

860.360. If the Division accepts an applicant's self bond, an indemnity agreement will be submitted subject to the following requirements:

860.361. The indemnity agreement will be executed by all persons and parties who are to be bound by it, including the parent corporation guarantor, and will bind each jointly and severally;

860.362. Corporations applying for a self bond, and parent and nonparent corporations guaranteeing an applicant's self bond shall submit an indemnity agreement signed by two corporate officers who are authorized to bind their corporations. A copy of such authorization shall be provided to the Division along with an affidavit certifying that such an agreement is valid under all applicable federal and Utah laws. In addition, the guarantor shall provide a copy of the corporate authorization demonstrating that the corporation may guarantee the self bond and execute the indemnity agreement.

860.363. If the applicant is a partnership, joint venture or syndicate, the agreement will bind each partner or party who has a beneficial interest, directly or indirectly, in the applicant;

860.364. Pursuant to R645-301-880.900, the applicant, parent or nonparent corporate guarantor shall be required to complete the approved reclamation plan for the lands in default or to pay to the Division an amount necessary to complete the approved reclamation plan, not to exceed the bond amount.

860.365. The indemnity agreement when under forfeiture will operate as a judgment against those parties

liable under the indemnity agreement.

860.370. The Division may require self-bonded applicants, parent and nonparent corporate guarantors to submit an update of the information required under R645-301-860.323 and R645-301-860-324 within 90 days after the close of each fiscal year following the issuance of the self bond or corporate guarantee.

860.380. If at any time during the period when a self bond is posted, the financial conditions of the applicant, parent, or nonparent corporate guarantor change so that the criteria of R645-301-860.323 and R645-301-860.340 are not satisfied, the permittee will notify the Division immediately and will within 90 days post an alternate form of bond in the same amount as the self bond. Should the permittee fail to post an adequate substitute bond, the provisions of R645-301-840.500 will apply.

870. Replacement of Bonds.

870.100. The Division may allow a permittee to replace existing bonds with other bonds that provide equivalent coverage.

870.200. The Division will not release existing performance bonds until the permittee has submitted, and the Division has approved, acceptable replacement performance bonds. Replacement of a performance bond pursuant to this section will not constitute a release of bond under R645-301-880.100 through R645-301-880.800.

880. Requirement to Release Performance Bonds.

880.100. Bond release application.

880.110. The permittee may file an application with the Division for the release of all or part of a performance bond. Applications may be filed only at times or during seasons authorized by the Division in order to properly evaluate the completed reclamation operations. The times or seasons appropriate for the evaluation of certain types of reclamation will be identified in the approved mining and reclamation plan.

880.120. Within 30 days after an application for bond release has been filed with the Division, the operator will submit a copy of an advertisement placed at least once a week for four successive weeks in a newspaper of general circulation in the locality of the coal mining and reclamation operations. The advertisement will be considered part of any bond release application and will contain the permittee's name, permit number and approval date, notification of the precise location of the land affected, the number of acres, the type and amount of the bond filed and the portion sought to be released, the type and appropriate dates of reclamation work performed, a description of the results achieved as they relate to the operator's approved reclamation plan and the name and address of the Division to which written comments, objections, or requests for public hearings and informal conferences on the specific bond release may be submitted pursuant to R645-301-880.600 and R645-301-880.800. In addition, as part of any bond release application, the applicant will submit copies of letters which he or she has sent to adjoining property owners, local governmental bodies, planning agencies, sewage and water treatment authorities, and water companies in the locality in which the coal mining and reclamation operation took place, notifying them of the intention to seek release from the bond.

880.200. Inspection by the Division.

880.210. Upon receipt of the bond release application, the Division will, within 30 days, or as soon thereafter as weather conditions permit, conduct an inspection and evaluation of the reclamation work involved. The evaluation will consider, among other factors, the degree of difficulty to complete any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of future occurrence of such pollution and the estimated cost of abating such pollution. The surface owner, agent or lessee will be given notice of such inspection and may participate with the Division in making the bond release inspection. The Division may arrange with the permittee to allow access to the permit area, upon request of any person with an interest in bond release, for the purpose of gathering information relevant to the proceeding.

880.220. Within 60 days from the filing of the bond release application, if no public hearing is held pursuant to R645-301-880.600, or, within 30 days after a public hearing has been held pursuant to R645-301-880.600, the Division will notify in writing the permittee, the surety or other persons with an interest in bond collateral who have requested notification under R645-301-860.260 and the persons who either filed objections in writing or objectors who were a party to the hearing proceedings, if any, if its decision to release or not to release all or part of the performance bond.

880.300. The Division may release all or part of the bond for the entire permit area if the Division is satisfied that all the reclamation or a phase of the reclamation covered by the bond or portion thereof has been accomplished in accordance with the following schedules for reclamation of Phases I, II and III:

880.310. At the completion of Phase I, after the operator completes the backfilling and regrading (which may include the replacement of topsoil) and drainage control of a bonded area in accordance with the approved reclamation plan, 60 percent of the bond or collateral for the applicable area;

880.320. At the completion of Phase II, after revegetation has been established on the regraded mined lands in accordance with the approved reclamation plan, an additional amount of bond. When determining the amount of bond to be released after successful revegetation has been established, the Division will retain that amount of bond for the revegetated area which would be sufficient to cover the cost of reestablishing revegetation if completed by a third party and for the period specified for operator responsibility in UCA 40-10-17(t) of the Act for reestablishing revegetation. No part of the bond or deposit will be released under this paragraph so long as the lands to which the release would be applicable are contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements set by UCA 40-10-17(j) of the Act and by R645-301-751 or until soil productivity for prime farmlands has returned to the equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey performed pursuant to UCA 40-10-11(4) of the Act and R645-301-200.

Where a silt dam is to be retained as a permanent impoundment pursuant to R645-301-700, the Phase II portion of the bond may be released under this paragraph so long as provisions for sound future maintenance by the operator or the landowner have been made with the Division; and

880.330. At the completion of Phase III, after the operator has completed successfully all surface coal mining and reclamation operations, the release of the remaining portion of the bond, but not before the expiration of the period specified for operator responsibility in R645-301-357. However, no bond will be fully released under provisions of this section until reclamation requirements of the Act and the permit are fully met.

880.400. If the Division disapproves the application for release of the bond or portion thereof, the Division will notify the permittee, the surety, and any person with an interest in collateral as provided for in R645-301-860.260, in writing, stating the reasons for disapproval and recommending corrective actions necessary to secure the release and allowing an opportunity for a public hearing.

880.500. When an application for total or partial bond release is filed with the Division, the Division will notify the municipality in which the coal mining and reclamation activities are located by certified mail at least 30 days prior to the release of all or a portion of the bond.

880.600. Any person with a valid legal interest which might be adversely affected by release of the bond, or the responsible officer or head of any federal, state, or local governmental agency which has jurisdiction by law or special expertise with respect to any environmental, social or economic impact involved in the operation or which is authorized to develop and enforce environmental standards with respect to such operations, will have the right to file written objections to the proposed release from bond with the Division within 30 days after the last publication of the notice required by R645-301-880.120. If written objections are filed and a hearing is requested, the Division will inform all the interested parties of the time and place of the hearing and will hold a public hearing within 30 days after receipt of the request for the hearing. The date, time and location of the public hearing will be advertised by the Division in a newspaper of general circulation in the locality for two consecutive weeks. The public hearing will be held in the locality of the coal mining and reclamation operations from which bond release is sought, or at the location of the Division office, at the option of the objector.

880.700. For the purpose of the hearing under R645-301-880.600, the Division will have the authority to administer oaths, subpoena witnesses or written or printed material, compel the attendance of witnesses or the production of materials and take evidence including, but not limited to, inspection of the land affected and other surface coal mining operations carried on by the applicant in the general vicinity. A verbatim record of each public hearing will be made and a transcript will be made available on the motion of any party or by order of the Division.

880.800. Without prejudice to the right of an objector or the applicant, the Division may hold an informal conference as provided in UCA 40-10-13(a) of the Act to resolve such written objections. The Division will make a record of the informal conference unless waived by all parties, which will be accessible to all parties. The Division will also furnish all parties of the informal conference with a written finding of the Division based on the informal conference and the reasons for said finding.

880.900. Forfeiture of Bonds.

880.910. If an operator refuses or is unable to conduct reclamation of an unabated violation, if the terms of the permit are not met, or if the operator defaults on the conditions under which the bond was accepted, the Division will take the following action to forfeit all or part of a bond or bonds for any permit area or an increment of a permit area:

880.911. Send written notification by certified mail, return receipt requested, to the permittee and the surety on the bond, if any, informing them of the determination to forfeit all or part of the bond including the reasons for the forfeiture and the amount to be forfeited. The amount will be based on the estimated total cost of achieving the reclamation plan requirements;

880.912. Advise the permittee and surety, if applicable, of the conditions under which forfeiture may be avoided. Such conditions may include, but are not limited to:

880.912.1. Agreement by the permittee or another party to perform reclamation operations in accordance with a compliance schedule which meets the conditions of the permit, the reclamation plan and the State Program and a demonstration that such party has the ability to satisfy the conditions; or

880.912.2. The Division may allow a surety to complete the reclamation plan, or the portion of the reclamation plan applicable to the bonded phase or increment, if the surety can demonstrate an ability to complete the reclamation in accordance with the approved reclamation plan. Except where the Division may approve partial release authorized under R645-301-880.100 through R645-301-880.800, no surety liability will be released until successful completion of all reclamation under the terms of the permit, including applicable liability periods of R645-301-820.300.

880.920. In the event forfeiture of the bond is required by this section, the Division will:

880.921. Proceed to collect the forfeited amount as provided by applicable laws for the collection of defaulted bonds or other debts if actions to avoid forfeiture have not been taken, or if rights of appeal, if any, have not been exercised within a time established by the Division, or if such appeal, if taken, is unsuccessful; and

880.922. Use funds collected from bond forfeiture to complete the reclamation plan, or portion thereof, on the permit area or increment, to which bond coverage applies.

880.930. Upon default, the Division may cause the forfeiture of any and all bonds deposited to complete reclamation for which the bonds were posted. Bond liability will extend to the entire permit area under conditions of forfeiture.

880.931. In the event the estimated amount forfeited is insufficient to pay for the full cost of reclamation, the operator will be liable for remaining costs. The Division may complete, or authorize completion of, reclamation of the

bonded area and may recover from the operator all costs of reclamation in excess of the amount forfeited.

880.932. In the event the amount of performance bond forfeited was more than the amount necessary to complete reclamation, the unused funds will be returned by the Division to the party from whom they were collected.

890. Terms and Conditions for Liability Insurance.

890.100. The Division will require the applicant to submit as part of its permit application a certificate issued by an insurance company authorized to do business in Utah certifying that the applicant has a public liability insurance policy in force for the coal mining and reclamation activities for which the permit is sought. Such policy will provide for personal injury and property damage protection in an amount adequate to compensate any persons injured or property damaged as a result of the coal mining and reclamation operations, including the use of explosives and who are entitled to compensation under the applicable provisions of state law. Minimum insurance coverage for bodily injury and property damage will be $300,000 for each occurrence and $500,000 aggregate.

890.200. The policy will be maintained in full force during the life of the permit or any renewal thereof, including the liability period necessary to complete all reclamation operations under this chapter.

890.300. The policy will include a rider requiring that the insurer notify the Division whenever substantive changes are made in the policy including any termination or failure to renew.

890.400. The Division may accept from the applicant, in lieu of a certificate for a public liability insurance policy, satisfactory evidence from the applicant that it satisfies applicable state self-insurance requirements approved as part of the State Program and the requirements of R645-301-890.100 through R645-301-890.300.

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R645. Natural Resources; Oil, Gas and Mining; Coal.
R645-302. Coal Mine Permitting: Special Categories and Areas of Mining.
R645-302-100. General.

110. Introduction. The rules given under R645-302-200 through R645-302-300 establish the minimum requirements for approval to conduct coal mining and reclamation operations under designated special categories and areas of mining. All provisions of R645-301 apply to the designated special categories and areas of mining, unless otherwise specifically provided under R645-302.

120. Objective. The objective of R645-302 is to ensure that special categories and areas of mining are approved only after the Division receives information that shows the coal mining and reclamation operations will be conducted according to the applicable requirements of the Act, R645-301 and any other applicable portions of the State Program.

130. Applicability. Special categories and areas of mining that occur within an approved permit area will be evaluated and approved by the Division within the context of the attendant permit or permit application. Special categories and areas of mining that occur external to an approved permit area will require a discrete permit application for review by the Division. Special categories and areas of mining include all those types and areas of mining described in R645-302-200 through R645-302-320.

R645-302-200. Special Categories of Mining.

The rules in R645-302-200 present the requirements for information to be included in the permit application to conduct coal mining and reclamation operations for designated special categories of mining and present procedures to process said permit applications.

210. Experimental Practices Mining.

211. Experimental practices provide a variance from environmental protection performance standards of the Act, of R645-301, and the State Program for experimental or research purposes, or to allow an alternative postmining land use, and may be undertaken if they are approved by the Division and the Office and if they are incorporated in a permit or permit change issued in accordance with the requirements of R645-200, R645-300, R645-301, R645-302-100 through R645-302-280, R645-302-310, R645-302-320, or R645-303.

212. An application for an experimental practice will contain descriptions, maps, plans, and data which show:

212.100. The nature of the experimental practice, including a description of the performance standards for which variances are requested, the duration of the experimental practice, and any special monitoring which will be conducted;

212.200. How use of the experimental practice encourages advances in mining and reclamation technology or allows a postmining land use for industrial, commercial, residential, or public use (including recreation facilities) on an experimental basis;

212.300. That the experimental practice:

212.310. Is potentially more, or at least as, environmentally protective, during and after coal mining and reclamation operations, as would otherwise be required by standards promulgated under R645-301 and R645-302; and

212.320. Will not reduce the protection afforded public health and safety below that provided by the requirements of R645-301 and R645-302; and

212.400. That the applicant will conduct monitoring of the effects of the experimental practice. The monitoring program will ensure the collection, analysis, and reporting of reliable data that are sufficient to enable the Division and the Office to:

212.410. Evaluate the effectiveness of the experimental practice; and

212.420. Identify, at the earliest possible time, potential risk to the environment and public health and safety which may be caused by the experimental practice during and after coal mining and reclamation operations.

213. Applications for experimental practices will

comply with the public notice requirements of R645-300-120.

214. No application for an experimental practice under R645-302-210 will be approved until the Division first finds in writing and the Office then concurs that:

214.100. The experimental practice encourages advances in coal mining and reclamation technology or allows a postmining land use for industrial, commercial, residential, or public use (including recreational facilities) on an experimental basis;

214.200. The experimental practice is potentially more, or at least as, environmentally protective, during and after coal mining and reclamation operations, as would otherwise be required by standards promulgated under R645-301 and R645-302;

214.300. The coal mining and reclamation operations approved for a particular land use or other purpose are not larger or more numerous than necessary to determine the effectiveness and economic feasibility of the experimental practice; and

214.400. The experimental practice does not reduce the protection afforded public health and safety below that provided by standards promulgated under R645-301 and R645-302.

215. Experimental practices granting variances from the special environmental protection performance standards of Sections 515 and 516 of the Federal Act applicable to prime farmlands will be approved only after consultation with the NRCS.

216. Each person undertaking an experimental practice will conduct the periodic monitoring, recording and reporting program set forth in the application, and will satisfy such additional requirements as the Division or the Office may impose to ensure protection of the public health and safety and the environment.

217. Each experimental practice will be reviewed by the Division at a frequency set forth in the approved permit, but no less frequently than every two and one-half years. After review, the Division may require such reasonable modifications of the experimental practice as are necessary to ensure that the activities fully protect the environment and the public health and safety. Copies of the decision of the Division will be sent to the permittee and will be subject to the provisions for administrative and judicial review of R645-300-200.

218. Revisions or amendments to an experimental practice will be processed in accordance with the requirements of R645-303-220 and approved by the Division. Any revisions which propose significant alterations in the experimental practice will, at a minimum, be subject to notice, hearing, and public participation requirements of R645-300-120 and concurrence by the Office. Revisions that do not propose significant alterations in the experimental practice will not require concurrence by the Office.

220. Mountaintop Removal Mining.

221. R645-302-220 applies to any person who conducts or intends to conduct SURFACE COAL MINING AND RECLAMATION ACTIVITIES by mountaintop removal mining.

222. Mountaintop removal mining means SURFACE COAL MINING AND RECLAMATION ACTIVITIES, where the mining operation removes an entire coal seam or seams running through the upper fraction of a mountain, ridge, or hill, except as provided for in R645-302-227.500, by removing substantially all of the overburden off the bench and creating a level plateau or a gently rolling contour, with no highwalls remaining, and capable of supporting postmining land uses in accordance with the requirements of R645-302-220.

223. The Division may issue approval to conduct mountaintop removal mining, without regard to the requirements of R645-301-537.200, R645-301-552 through R645-301-553.230, R645-301-553.260 through R645-301-553.900, and R645-302-234 to restore the lands disturbed by such mining to their approximate original contour, if it first finds, in writing, on the basis of a complete application, that the following requirements are met:

223.100. The proposed postmining land use of the lands to be affected will be an industrial, commercial, agricultural, residential, or public facility (including recreational facilities) use and, if:

223.110. After consultation with the appropriate land-use planning agencies, if any, the proposed land use is deemed by the Division to constitute an equal or better economic or public use of the affected land compared with the premining use;

223.120. The applicant demonstrates compliance with the requirements for acceptable alternative postmining land uses of R645-301-413.100 through R645-301-413.300;

223.130. The applicant has presented specific plans for the proposed postmining land use and appropriate assurances that such use will be:

223.131. Compatible with adjacent land uses;

223.132. Obtainable according to data regarding expected need and market;

223.133. Assured of investment in necessary public facilities;

223.134. Supported by commitments from public agencies where appropriate;

223.135. Practicable with respect to private financial capability for completion of the proposed use;

223.136. Planned pursuant to a schedule attached to the reclamation plan so as to integrate the mining operation and reclamation with the postmining land use; and

223.137. Designed by a registered engineer in conformance with professional standards established to assure the stability, drainage, and configuration necessary for the intended use of the site.

223.140. The proposed use would be consistent with adjacent land uses and existing Utah and local land use plans and programs; and

223.150. The Division has provided, in writing, an opportunity of not more than 60 days to review and comment on such proposed use to the governing body of general purpose government in whose jurisdiction the land is located and to any Utah or federal agency which the Division, in its discretion, determines to have an interest in the proposed use;

223.200. The applicant demonstrates that in place of restoration of the land to be affected to the approximate

original contour under R645-301-537.200, R645-301-552 through R645-301-553.230, R645-301-553.260 through R645-301-553.900, and R645-302-234, the SURFACE COAL MINING AND RECLAMATION ACTIVITY will be conducted in compliance with the requirements of R645-302-227.

223.300. The requirements of R645-302-227 are made a specific condition of the permit;

223.400. All other requirements of the State Program are met by the proposed operations; and

223.500. The application to conduct SURFACE COAL MINING AND RECLAMATION ACTIVITIES clearly identifies mountaintop removal mining.

224. Any permits incorporating a variance issued under R645-302-220 will be reviewed by the Division to evaluate the progress and development of the SURFACE COAL MINING AND RECLAMATION ACTIVITIES to establish that the operator is proceeding in accordance with the terms of the variance:

224.100. Within the sixth month preceding the third year from the date of its issuance;

224.200. Before each permit renewal; and

224.300. Not later than the middle of each permit term.

225. Any review required under R645-302-224 need not be held if the permittee has demonstrated and the Division finds, in writing, within three months before the scheduled review, that all SURFACE COAL MINING AND RECLAMATION ACTIVITIES under the permit are proceeding and will continue to be conducted in accordance with the terms of the permit and requirements of the State Program.

226. The terms and conditions of a permit that includes mountaintop removal mining may be modified at any time by the Division, if it determines that more stringent measures are necessary to insure that the operation involved is conducted in compliance with the requirements of the State Program.

227. Performance Standards. Under the State Program, SURFACE COAL MINING AND RECLAMATION ACTIVITIES may be conducted under a variance from the requirement of R645-301 and R645-302 for restoring affected areas to their approximate original contour, if:

227.100. The Division grants the variance under a permit to conduct SURFACE COAL MINING AND RECLAMATION ACTIVITIES, in accordance with R645-302-220;

227.200. The activities involve the mining of an entire coal seam running through the upper fraction of a mountain, ridge, or hill, by removing all of that overburden and creating a level plateau or gently rolling contour with no highwalls remaining;

227.300. An industrial, commercial, agricultural, residential, or public facility (including recreational facilities) use is proposed and approved for the affected land;

227.400. The alternative land use requirements of R645-301-413.100 through R645-301-413.300 and all applicable requirements of R645-301 and R645-302 and the State Program, other than the requirement to restore affected areas to their approximate original contour, are met;

227.500. An outcrop barrier of sufficient width, consisting of the toe of the lowest coal seam, and its associated overburden, are retained to prevent slides and erosion, except that the Division may allow an exemption to the retention of the coal barrier requirement if the following conditions are satisfied:

227.510. The proposed mine site was mined prior to May 3, 1978, and the toe of the lowest seam has been removed; or

227.520. A coal barrier adjacent to a head-of-hollow fill may be removed after the elevation of a head-of-hollow fill attains the elevation of the coal barrier if the head-of-hollow fill provides the stability otherwise ensured by the retention of a coal barrier;

227.600. The final graded slopes on the mined area are less than 1v:5h, so as to create a level plateau or gently rolling configuration, and the outslopes of the plateau do not exceed 1v:2h except where engineering data substantiates, and the Division finds, in writing, and includes in the permit to conduct SURFACE COAL MINING AND RECLAMATION ACTIVITIES under R645-302-220 that a minimum static safety factor of 1.5 will be attained;

227.700. The resulting level or gently rolling contour is graded to drain inward from the outslope, except at specified points where it drains over the outslope in stable and protected channels. The drainage will not be through or over a valley or head-of-hollow fill and natural watercourses below the lowest coal seam mined will not be damaged;

227.800. All waste and acid-forming or toxic-forming materials, including the strata immediately below the coal seam, are covered with nontoxic spoil to prevent pollution and achieve the approved postmining land use; and

227.900. Spoil is placed on the mountaintop bench as necessary to achieve the postmining land use approved under R645-302-227.300 and R645-302-227.400. All excess spoil material not retained on the mountaintop will be placed in accordance with applicable requirements of R645-301-211, R645-301-212, R645-301-412.300, R645-301-512.210, R645-301-512.220, R645-301-514.100, R645-301-528.310, R645-301-535.100 through R645-301-535.130, R645-301-535.300 through R645-301-535.500, R645-301-536.300, R645-301-542.720, R645-301-553.240, R645-301-731.100 through R645-301-731.522, R645-301-731.800, R645-301-742.300, R645-301-745.100, R645-301-745.300, and R645-301-745.400.

230. Steep Slope Mining.

231. The rules in R645-302-230 apply to any person who conducts or intends to conduct steep slope coal mining and reclamation operations, except:

231.100. Where an operator proposes to conduct coal mining and reclamation operations on flat or gently rolling terrain, leaving a plain or predominantly flat area, but on which an occasional steep slope is encountered as the coal mining and reclamation operation proceeds;

231.200. Where a person obtains a permit under the provisions of R645-302-220; or

231.300. To the extent that a person obtains a permit incorporating a variance under R645-302-270.

232. Any application for a permit to conduct coal mining and reclamation operations covered by R645-302-230

will contain sufficient information to establish that the operations will be conducted in accordance with the requirements of R645-302-234.

233. No permit will be issued for any coal mining and reclamation operations covered by R645-302-230, unless the Division finds, in writing, that in addition to meeting all other requirements of R645-301 and R645-302, the operation will be conducted in accordance with the requirements of R645-302-234.

234. Backfilling and Grading.

234.100. Coal mining and reclamation operations on steep slopes will be conducted so as to meet the requirements of R645-301-537.200, R645-301-552 through R645-301-553.230, R645-301-553.260 through R645-301-553.900, except where mining is conducted on flat or gently rolling terrain with an occasional steep slope through which the mining proceeds and leaves a plain or predominantly flat area or where operations are conducted in accordance with R645-302-227.

234.200. The following materials will not be placed on the downslope except as provided for UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES under R645-301-553:

234.210. Spoil;

234.220. Waste materials of any type;

234.230. Debris, including that from clearing and grubbing; and

234.240. Abandoned or disabled equipment.

234.300. Land above the highwall will not be disturbed unless the Division finds that this disturbance will facilitate compliance with the environmental protection standards of R645-301 and R645-302 and the disturbance is limited to that necessary to facilitate compliance.

234.400. Woody materials will not be buried in the backfilled area unless the Division determines that the proposed method for placing woody material within the backfill will not deteriorate the stable condition of the backfilled area.

240. Auger Mining.

241. The Rules given under R645-302-240 apply to any person who conducts or intends to conduct coal mining and reclamation operations utilizing augering operations.

242. Any application for a permit that includes operations covered by R645-302-240 will contain, in the mining and reclamation plan, a description of the augering methods to be used and the measures to be used to comply with R645-302-244 and R645-302-245.

243. No permit will be issued for any operations covered by R645-302-240 unless the Division finds, in writing, that in addition to meeting all other applicable requirements of R645-200, R645-300, R645-301, R645-302-100 through R645-302-290, R645-302-310, R645-302-320, and R645-303, the operation will be conducted in compliance with R645-302-244 and R645-302-245.

244. The Division may prohibit auger mining, if necessary, to:

244.100. Maximize the utilization, recoverability, or conservation of the solid-fuel resource; or

244.200. Protect against adverse water-quality impacts.

245. Performance Standards.

245.100. Coal Recovery.

245.110. Auger mining will be conducted so as to maximize the utilization and conservation of the coal in accordance with R645-301-522.

245.120. Auger mining will be planned and conducted to maximize recoverability of mineral reserves remaining after coal mining and reclamation operations are completed.

245.130. Each person who conducts auger mining operations will leave areas of undisturbed coal, as approved by the Division, to provide access for future underground coal mining and reclamation activities to coal reserves remaining after augering is completed, unless it is established that the coal reserves have been depleted or are so limited in thickness or extent that it will not be practicable to recover the remaining coal. This determination will be made by the Division upon presentation of appropriate technical evidence by the operator.

245.200. Hydrologic Balance.

245.210. Auger mining will be planned and conducted to minimize disturbances to the prevailing hydrologic balance in accordance with the requirements of R645-301-731.100 through R645-301-731.522, R645-301-731.800, and R645-301-751.

245.220. All auger holes, except as provided in R645-302-245.230, will be:

245.221. Sealed within 72 hours after completion with an impervious and noncombustible material, if the holes are discharging water containing acid- or toxic-forming material. If sealing is not possible within 72 hours, the discharge will be treated commencing within 72 hours after completion to meet applicable effluent limitations and water-quality standards until the holes are sealed; and

245.222. Sealed with an impervious noncombustible material, as contemporaneously as practicable with the augering operation, as approved by the Division, if the holes are not discharging water containing acid- or toxic-forming material.

245.230. Auger holes need not be sealed with an impervious material so as to prevent drainage if the Division determines that:

245.231. The resulting impoundment of water may create a hazard to the environment or public health and safety; and

245.232. The drainage from the auger holes will:

245.232.1. Not pose a threat of pollution to surface water; and

245.232.2. Comply with the requirements of R645-301-731.100 through R645-301-731.522, R645-301-731.800, and R645-301-751 .

245.300. Subsidence Protection. Auger mining will be conducted in accordance with the requirements of R645-301-525.210 and R645-301-525.230.

245.400. Backfilling and Grading.

245.410. General. Auger mining will be conducted in accordance with the backfilling and grading requirements of R645-301-537.200 and R645-301-553.

245.420. Remining. Where auger mining operations affect previously mined areas that were not reclaimed to the

standards of the R645 Rules and the volume of all reasonably available spoil is demonstrated in writing to the Division to be insufficient to completely backfill the highwall, the highwall will be eliminated to the maximum extent technically practical in accordance with the following criteria:

245.421. The person who conducts the auger mining operation will demonstrate to the Division that the backfill, designed by a qualified registered professional engineer, has a minimum static safety factor for the stability of the backfill of at least 1.3;

245.422. All spoil generated by the auger mining operation and any associated SURFACE COAL MINING AND RECLAMATION ACTIVITIES, and any other reasonably available spoil will be used to backfill the area. Reasonably available spoil will include spoil generated by the mining operation and other spoil located in the permit area that is accessible and available for use and that when rehandled will not cause a hazard to the public safety or significant damage to the environment. For this purpose, the permit area will include spoil in the immediate vicinity of the auger mining operation;

245.423. The coal seam mined will be covered with a minimum of four feet of nonacid-, nontoxic-forming material and the backfill graded to a slope which is compatible with the approved postmining land use and which provides adequate drainage and long-term stability;

245.424. Any remnant of the highwall will be stable and not pose a hazard to the public health and safety or to the environment; and

245.425. Spoil placed on the outslope during previous mining operations will not be disturbed if such disturbances will cause instability of the remaining spoil or otherwise increase the hazard to the public health and safety or to the environment.

245.500. Protection of Underground Mining. Auger holes will not extend closer than 500 feet (measured horizontally) to any abandoned or active underground mine workings, except as approved in accordance with R645-301-513.700 and R645-301-523.200.

250. In Situ Processing Activities.

251. R645-302-250 applies to any person who conducts or intends to conduct coal mining and reclamation operations utilizing in situ processing activities.

252. Any application for a permit that includes operations covered by R645-302-250 will address all requirements of R645-200, R645-300, R645-301, R645-302-100 through R645-302-290, R645-302-310, R645-302-320, and R645-303 applicable to coal mining and reclamation operations. In addition, the mining and reclamation operations plan for operations involving in situ processing activities will contain information establishing how those operations will be conducted in compliance with the requirements of R645-302-254, including:

252.100. Delineation of proposed holes and wells and production zone for approval of the Division;

252.200. Specifications of drill holes and casings proposed to be used;

252.300. A plan for treatment, confinement or disposal of all acid-forming, toxic-forming or radioactive gases, solids, or liquids constituting a fire, health, safety or environmental hazard caused by the mining and recovery process; and

252.400. Plans for monitoring surface and ground water and air quality as required by the Division.

253. No permit will be issued for operations covered by R645-302-250, unless the Division first finds, in writing, upon the basis of a complete application made in accordance with R645-302-252, that the operation will be conducted in compliance with all requirements of R645-200, R645-300, R645-301, R645-302-100 through R645-302-290, R645-302-310, R645-302-320, and R645-303.

254. Performance Standards.

254.100. The person who conducts in situ processing activities will comply with R645-301 and R645-302-254.

254.200. In situ processing activities will be planned and conducted to minimize disturbance to the prevailing hydrologic balance by:

254.210. Avoiding discharge of fluids into holes or wells, other than as approved by the Division;

254.220. Injecting process recovery fluids only into geologic zones or intervals approved as production zones by the Division;

254.230. Avoiding annular injection between the wall of the drill hole and the casing; and

254.240. Preventing discharge of process fluid into surface waters.

254.300. Each person who conducts in situ processing activities will submit for approval as part of the application for permit under R645-302-250, and follow after approval, a plan that ensures that all acid-forming, toxic-forming, or radioactive gases, solids, or liquids constituting a fire, health, safety, or environmental hazard and caused by the mining and recovery process are promptly treated, confined, or disposed of, in a manner that prevents contamination of ground and surface waters, damage to fish, wildlife and related environmental values, and threats to the public health and safety.

254.400. Each person who conducts in situ processing activities will prevent flow of the process recovery fluid:

254.410. Horizontally beyond the affected area identified in the permit; and

254.420. Vertically into overlying or underlying aquifers.

254.500. Each person who conducts in situ processing activities will restore the quality of affected ground water in the permit area and adjacent area, including ground water above and below the production zone, to the approximate premining levels or better, to ensure that the potential for use of the ground water is not diminished.

254.600. Monitoring.

254.610. Each person who conducts in situ processing activities will monitor the quality and quantity of surface and ground water and the subsurface flow and storage characteristics, in a manner approved by the Division under R645-301-731.100 through R645-301-731.522 and R645-301-731.800, to measure changes in the quantity and quality of water in surface and ground water systems in the permit area and in adjacent areas.

254.620. Air and water quality monitoring will be

conducted in accordance with monitoring programs approved by the Division as necessary according to appropriate federal and Utah air and water quality standards.

260. Coal Processing Plants Not Located Within the Permit Area of a Mine.

261. R645-302-260 applies to any person who operates or intends to operate a coal processing plant outside the permit area of any coal mining and reclamation operation, other than such plants which are located at the site of ultimate coal use. Any person who operates such a processing plant will obtain a permit from the Division in accordance with the requirements of R645-302-260.

262. Any application for a permit that includes operations covered by R645-302-260 will contain an operation and reclamation plan which specifies plans, including descriptions, maps, and cross sections, of the construction, operation, maintenance, and removal of the processing plant and support facilities operated incident thereto or resulting therefrom. The plan will demonstrate that those operations will be conducted in compliance with R645-302-264.

263. No permit will be issued for any operation covered by R645-302-260, unless the Division finds in writing that, in addition to meeting all other applicable requirements of R645-200, R645-300, R645-301, R645-302-100 through R645-302-290, R645-302-310, R645-302-320, and R645-303, the operations will be conducted in compliance with the requirements of R645-302-264.

264. Performance Standards. Construction, operation, maintenance, modification, reclamation, and removal activities at coal processing plants will comply with the requirements listed below.

264.100. Signs and markers for the coal processing plant, coal processing waste disposal area, and water-treatment facilities will comply with R645-301-521.200.

264.200. Surface drainage will be controlled according to the following:

264.210. Any stream channel diversion will comply with R645-301-742.300;

264.220. Drainage from any disturbed area related to the coal processing plant will comply with R645-301-356.300, R645-301-356.400, R645-301-513.300, R645-301-532, R645-301-742.100 through R645-301-742.240, R645-301-744, and R645-301-763.200 and all discharges from these areas will meet the requirements of R645-301-731.100 through R645-301-731.522, R645-301-731.800, and R645-301-751 and any other applicable Utah or federal law; and

264.230. Permanent impoundments associated with coal processing plants will meet the requirements of R645-301-512.240, R645-301-514.300, R645-301-515.200, R645-301-533.100 through R645-301-533.600, R645-301-542.400, R645-301-733.220 through R645-301-733.224, and R645-301-743. Dams constructed of or impounding coal processing waste will comply with R645-301-536.400 and R645-301-746.300.

264.300. Disposal of coal processing waste, noncoal mine waste, and excess spoil will comply with R645-301-210 through R645-301-212, R645-301-412.300, R645-301-512.210 through R645-301-512.230, R645-301-513.400, R645-301-513.800, R645-301-514.100, R645-301-514.200, R645-301-515.200, R645-301-528.310, R645-301-528.322 through R645-301-528.323, R645-301-528.320, R645-301-528.330, R645-301-535.100 through R645-301-535.130, R645-301-535.300 through R645-301-535.500, R645-301-536 through R645-301-536.200, R645-301-536.300 through R645-301-536.500, R645-301-536.900, R645-301-542.720 through R645-301-542.740, R645-301-553.240 through R645-301-553.250, R645-301-745.100, R645-301-745.300 through R645-301-745.400, R645-301-746.100 through R645-301-746.300, and R645-301-747.

264.400. Fish, wildlife, and related environmental values will be protected in accordance with R645-301-333, R645-301-342, and R645-301-358.

264.500. Support facilities related to the coal processing plant will comply with R645-301-526.220 and roads will comply with R645-301-358, R645-301-512.250, R645-301-527.100, R645-301-527.230, R645-301-534.100, R645-301-532.200, R645-301-534.300, R645-301-542.600, R645-301-742.410, R645-301-742.420, R645-301-752.200, and R645-301-762.

264.600. Cessation of operations will be in accordance with R645-301-515.300 and R645-301-541.100 through R645-301-541.300.

264.700. Erosion and air pollution attendant to erosion will be controlled in accordance with R645-301-244.100 and R645-301-244.300.

264.800. Adverse effects upon, or resulting from, nearby underground coal mining activities will be minimized by appropriate measures including, but not limited to, compliance with R645-301-513.700 and R645-301-523.200.

264.900. Reclamation will follow proper topsoil handling, backfilling and grading, revegetation, and postmining land use procedures in accordance with R645-301-232 through R645-301-233.100, R645-301-234, R645-301-242, R645-301-244.200, R645-301-352 through R645-301-357, R645-301-413, R645-301-512.260, R645-301-537.200, R645-301-553, and R645-302-271.

270. Variances from Approximate Original Contour Restoration Requirements.

271. The Division may issue approval or, if applicable, a permit for nonmountaintop removal mining in steep slope areas which includes a variance from the requirements of R645-301-537.200, R645-301-552 through R645-301-553.230, R645-301-553.260 through R645-301-553.420, R645-301-553.600 through R645-301-553.900, and R645-302-234 to restore the disturbed areas to their approximate original contour. The permit may contain such a variance only if the Division finds, in writing, that the applicant has demonstrated, on the basis of a complete application, that the following requirements are satisfied:

271.100. The alternative postmining land use requirements of R645-301-413.300 are met;

271.200. All applicable requirements of the State Program, other than the requirements to restore disturbed areas to their appropriate original contour are met;

271.300. After consultation with the appropriate land use agencies, if any, the potential use is shown to constitute an equal or better economic or public use;

271.400. Federal, Utah and local government agencies with an interest in the proposed land use have had an adequate period of time in which to review and comment on the proposed use;

271.500. After reclamation, the lands to be affected by the variance within the permit area will be suitable for an industrial, commercial, residential or public postmining land use (including recreational facilities);

271.600. The surface landowner of the lands within the permit area has knowingly requested, in writing, as part of the permit application, that a variance be granted so as to render the land, after reclamation, suitable for an industrial, commercial, residential or public use (including recreational facilities). The request will be made separately from any surface owner consent given for the operations under R645-301-114 and will show an understanding that the variance could not be granted without the owner's request;

271.700. The watershed of lands within the proposed permit and adjacent areas will be improved by the coal mining and reclamation operations when compared with the condition of the watershed before mining or with its condition if the approximate original contour were to be restored. The watershed will be deemed improved only if:

271.710. The amount of total suspended solids or other pollutants discharged to ground or surface water from the permit area will be reduced, so as to improve the public or private uses or the ecology of such water, or flood hazards within the watershed containing the permit area will be reduced by reduction of the peak flow discharge from precipitation events or thaws; and

271.720. The total volume of flow from the proposed permit area, during every season of the year, will not vary in a way that adversely affects the ecology of any surface water or any existing or planned use of surface or ground water;

271.800. Engineering. The proposed design plan for the variance will be prepared and certified as described under R645-301-512.260. The proposed design plan will also meet the following requirements:

271.810. Unless the highwall is determined to be retained under R645-301-553.650, the highwall will be completely backfilled with spoil material, in a manner which results in a static factor of safety at least 1.3, using standard geotechnical analysis; and

271.820. Only the amount of spoil as is necessary to achieve the postmining land use, ensure the stability of spoil retained on the bench, and meet all other requirements of the Act and R645 Rules will be placed on the mine bench. All spoil not retained on the bench will be placed in accordance with R645-301-211, R645-301-212, R645-301-412.300, R645-301-512.210, R645-301-512.220, R645-301-514.100, R645-301-528.310, R645-301-535.100 through R645-301-535.130, R645-301-535.300 through R645-301-535.500, R645-301-536.300, R645-301-542.720, R645-301-553.240, R645-301-745.100, R645-301-745.300, and R645-301-745.400; and

271.900. After Division approval, the watershed of the permit and adjacent areas is shown to be improved.

272. If a variance is granted under R645-302-270:

272.100. The requirements of R645-302-270 will be included as a specific condition of the permit; and

272.200. The permit will be specifically marked as containing a variance from approximate original contour.

273. A permit incorporating a variance under R645-302-270 will be reviewed by the Division at least every 30 months following the issuance of the permit to evaluate the progress and development of the coal mining and reclamation operations to establish that the operator is proceeding in accordance with the terms of the variance.

274. If the permittee demonstrates to the Division that the coal mining and reclamation operation has been, and continues to be, conducted in compliance with the terms and conditions of the permit, the requirements of the Act, the R645 Rules, and the State Program, the review specified in R645-302-273 need not be held.

275. The terms and conditions of a permit incorporating a variance under R645-302-270 may be modified at any time by the Division, if it determines that more stringent measures are necessary to ensure that the operations involved are conducted in compliance with the requirements of the State Program.

280. Variances for Delay in Contemporaneous Reclamation Requirement in Combined SURFACE and UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES.

281. Applicability. R645-302-280 applies to any person or persons conducting or intending to conduct combined SURFACE and UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES where a variance is requested from the contemporaneous reclamation requirements of R645-301-352.

282. Application Contents for Variances. Any person desiring a variance under R645-302-280 will file with the Division complete applications for both the SURFACE COAL MINING AND RECLAMATION ACTIVITIES and UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES which are to be combined. The reclamation and operation plans for these permits will contain appropriate narratives, maps, and plans, which:

282.100. Show why the proposed UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES are necessary or desirable to assure maximum practical recovery of the coal;

282.200. Show how multiple future disturbances of surface lands or waters will be avoided;

282.300. Identify the specific surface areas for which a variance is sought and the sections of the State Program from which a variance is being sought;

282.400. Show how the activities will comply with R645-301-513.700 and R645-301-523.200 and other applicable requirements of the State Program;

282.500. Show why the variance sought is necessary for the implementation of the proposed UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES;

282.600. Provide an assessment of the adverse environmental consequences and damages, if any, that will result if the reclamation of disturbed areas is delayed; and

282.700. Show how off-site storage of spoil will be conducted to comply with the requirements of the Act, R645-

301-211, R645-301-212, R645-301-412.300, R645-301-512.210, R645-301-512.220, R645-301-514.100, R645-301-528.310, R645-301-535.100 through R645-301-535.130, R645-301-535.300 through R645-301-535.500, R645-301-536.300, R645-301-542.720, R645-301-553.240, R645-301-745.100, R645-301-745.300, R645-301-745.400, and the State Program.

283. Issuance of Permit. A permit incorporating a variance under R645-302-280 may be issued by the Division if it first finds, in writing, upon the basis of a complete application filed in accordance with R645-302-280, that:

283.100. The applicant has presented, as part of the permit application, specific, feasible plans for the proposed UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES;

283.200. The proposed UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES are necessary or desirable to assure maximum practical recovery of the mineral resource and will avoid multiple future disturbances of surface land or waters;

283.300. The applicant has satisfactorily demonstrated that the applications for the SURFACE COAL MINING AND RECLAMATION ACTIVITIES and UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES conform to the requirements of the State Program;

283.400. The disturbed area proposed for the variance has been shown by the applicant to be necessary for implementing the proposed UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES;

283.500. No substantial adverse environmental damage, either on-site or off-site, will result from the delay in completion of reclamation otherwise required by R645-301, R645-302, and the State Program;

283.600. The operations will, insofar as a variance is authorized, be conducted in compliance with the requirements of R645-301-513.700, R645-301-532.200, and the State Program;

283.700. Provisions for off-site storage of spoil will comply with the requirements of R645-301-211, R645-301-212, R645-301-412.300, R645-301-512.210, R645-301-512.220, R645-301-514.100, R645-301-528.310, R645-301-535.100 through R645-301-535.130, R645-301-535.300 through R645-301-535.500, R645-301-536.300, R645-301-542.720, R645-301-553.240, R645-301-745.100, R645-301-745.300, R645-301-745.400, and the State Program;

283.800. Liability under the performance bond required to be filed by the applicant with the Division pursuant to R645-301-800 and the State Program will be for the duration of the UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES and until all requirements of R645-301-800 and the State Program have been complied with; and

283.900. The permit for the coal mining and reclamation operation contains specific conditions:

283.910. Delineating the particular surface areas for which a variance is authorized;

283.920. Identifying the applicable provisions of R645 Rules and the State Program; and

283.930. Providing a detailed schedule for compliance with the provisions of R645-302-280.

284. Review of Permits Containing Variances. Permits to conduct coal mining and reclamation operations that contain variances granted under R645-302-280 will be reviewed by the Division no later than three years from the dates of issuance of the permit and any permit renewals.

290. Small Operator Assistance Program (SOAP).

291. General Information on SOAP. The rules in R645-302-290 describe the Small Operator Assistance Program (SOAP) and govern the procedures for providing assistance to eligible small mine operators who request assistance under Section 40-10-10(3) of the Act, for:

291.100. The determination of the probable hydrologic consequences of mining and reclamation, under Section 40-10-10(2)(c) of the Act; and

291.200. The statement of physical and chemical analyses of test borings or core samples, under Section 40-10-10(2)(d) of the Act.

292. Objectives. The objectives of this part are to meet the intent of Section 40-10-10(3) of the Act by:

292.100. Providing financial and other necessary assistance to qualified small operators; and

292.200. Assuring that the Division will have sufficient information to make a reasonable assessment of the probable cumulative impacts of all anticipated mining upon the hydrology of the area and particularly upon water availability.

293. Financial Assistance. The Division will provide financial and other assistance under Section 40-10-10(3) of the Act, contingent upon receipt of funding.

293.100. Assistance Funding.

293.110. Use of Funds. Funds specifically authorized for SOAP will be used to provide the services specified in R645-302-299 and will not be used to cover administrative expenses.

293.120. Allocation of Funds. The Division Mined Land Reclamation Program Administrator, hereinafter referred to as the "Program Administrator", will establish a formula for allocating funds to provide services for eligible small operators if available funds are less than those required to provide the services pursuant to R645-302-290.

293.200. Applicant Liability.

293.210. The applicant will reimburse the Division for the cost of the laboratory services performed pursuant to R645-302-290 if:

293.211. The applicant submits false information, fails to submit a permit application within one year from the date of receipt of the approved laboratory report, or fails to mine after obtaining a permit;

293.212. The program administrator finds that the applicant's actual and attributed annual production of coal for all locations exceeds 100,000 tons during any consecutive 12-month period either during the term of the permit for which assistance is provided or during the first five years after issuance of the permit whichever is shorter; or

293.213. The permit is sold, transferred, or assigned to another person and the transferee's total actual and attributed production exceeds the 100,000 ton annual production limit during any consecutive 12-month period of the remaining term of the permit. Under R645-302-293.213 the applicant

and its successor are jointly and severally obligated to reimburse the Division.

293.220. The Division may waive the reimbursement obligation if it finds that the applicant at all times acted in good faith.

294. Responsibilities of the Division. The Division will:

294.100. Review requests for assistance and determine qualified operators;

294.200. Develop and maintain a list of qualified laboratories, and select and pay laboratories for services rendered;

294.300. Conduct periodic on-site evaluations of SOAP activities with the operator;

294.400. Participate with the Office in data coordination activities with the U.S. Geological Survey, U.S. Environmental Protection Agency, and other appropriate agencies or institutions; and

294.500. Insure that applicable equal opportunity in employment provisions are included within any contract or other procurement documents.

295. Qualified Laboratories.

295.100. Basic Qualifications. To be designated a qualified laboratory, a firm will demonstrate that it:

295.110. Is staffed with experienced, professional or technical personnel in the fields applicable to the work to be performed;

295.120. Has adequate space for material preparation and cleaning and sterilizing equipment and has stationary equipment, storage, and space to accommodate workloads during peak periods;

295.130. Meets applicable Federal or Utah safety and health requirements;

295.140. Has analytical, monitoring and measuring equipment capable of meeting applicable standards;

295.150. Has the capability of collecting necessary field samples and making hydrologic field measurements and analytical laboratory determinations by acceptable hydrologic, geologic, or analytical methods in accordance with the requirements of R645-301-623 through R645-301-623.200, R645-301-624 through R645-301-626, R645-301-723, R645-301-724.100 through R645-301-724.320, R645-301-724.500, R645-301-725 through R645-301-729.200, R645-301-731, R645-301-731.210 through R645-301-731.213, R645-301-731.220 through R645-301-731.223, and any other applicable provisions of the R645 Rules. Other appropriate methods or guidelines for data acquisition may be approved by the program administrator; and

295.160. Has the capability of performing services for either the determination or statement referenced in R645-302-299.200.

295.200. Subcontractors. Subcontractors may be used to provide some of the required services provided their use is identified at the time a determination is made that a firm is qualified and they meet requirements specified by the Division.

296. Eligibility for Assistance.

296.100. Applicants are eligible for assistance if they:

296.110. Intend to apply for a permit pursuant to the State Program;

296.120. Establish that their probable total actual and attributed production from all locations during any consecutive 12-month period either during the term of their permit or during the first five years after issuance of their permit, whichever period is shorter, will not exceed 100,000 tons. Production from the following operations will be attributed to the applicant:

296.121. The pro rata share, based upon percentage of ownership of applicant, of coal produced by operations in which the applicant owns more than a five percent interest;

296.122. The pro rata share, based upon percentage of ownership of applicant, of coal produced in other operations by persons who own more than five percent of the applicant's operation;

296.123. All coal produced by operations owned by persons who directly or indirectly control the applicant by reason of direction of the management; and

296.124. All coal produced by operations owned by members of the applicant's family and the applicant's relatives, unless it is established that there is no direct or indirect business relationship between or among them;

296.130. Are not restricted in any manner from receiving a permit under the State Program; and

296.140. Do not organize or reorganize their company solely for the purpose of obtaining assistance under the SOAP.

296.200. The Division may provide alternate criteria or procedures for determining the eligibility of an operator for assistance under SOAP, provided that such criteria may not be used as a basis for grant requests in excess of that which would be authorized under the criteria of R645-302-296.100.

297. Filing for Assistance. Each application for assistance will include the following information:

297.100. A statement of the operator's intent to file a permit application;

297.200. The names and addresses of:

297.210. The permit applicant; and

297.220. The operator if different from the applicant;

297.300. A schedule of the estimated total production of coal from the proposed permit area and all other locations from which production is attributed to the applicant under R645-302-296. The schedule will include for each location:

297.310. The operator or company name under which coal is or will be mined;

297.320. The permit number and MSHA number;

297.330. The actual coal production during the year preceding the year for which the applicant applies for assistance and production that may be attributed to the applicant under R645-302-296; and

297.340. The estimated coal production and any production which may be attributed to the applicant for each year of the proposed permit;

297.400. A description of:

297.410. The proposed method of coal mining;

297.420. The anticipated starting and termination dates of coal mining and reclamation operations;

297.430. The number of acres of land to be affected by the proposed coal mining and reclamation operation; and

297.440. A general statement on the probable depth and thickness of the coal resource including a statement of reserves in the permit area and the method by which they were calculated.

297.500. A U.S. Geological Survey topographic map at a scale of 1:24,000 or larger or other topographic map of equivalent detail which clearly shows:

297.510. The area of land to be affected;

297.520. The location of any existing or proposed test borings; and

297.530. The location and extent of known workings of any underground mines; and

297.600. Copies of documents which show that:

297.610. The applicant has a legal right to enter and commence mining within the permit area; and

297.620. A legal right of entry has been obtained for the program administrator and laboratory personnel to inspect the lands to be mined and adjacent areas to collect environmental data or to install necessary instruments.

298. Application Approval and Notice.

298.100. If the program administrator finds the applicant eligible, then the applicant will be informed in writing that the application is approved.

298.200. If the program administrator finds the applicant ineligible, then the applicant will be informed in writing that the application is denied. The notice of denial will state the reasons for denial.

299. Program Services and Data Requirements.

299.100. To the extent possible with available funds, the program administrator will select and pay a qualified laboratory to make the determination and statement referenced in R645-302-299.200 for eligible operators who request assistance.

299.200. The program administrator will determine the data needed for each applicant or group of applicants. Data collected and the results provided to the program administrator will be sufficient to satisfy the requirements for:

299.210. The determination of the probable hydrologic consequences of the coal mining and reclamation operations in the proposed permit area and adjacent areas in accordance with R645-301-728 and any other applicable provisions of the R645 Rules; and

299.220. The statement of the results of test borings or core samplings for the proposed permit area in accordance with R645-301-624 and any other applicable provisions of the R645 Rules.

299.300. Data collection and analysis may proceed concurrently with the development of mining and reclamation plans by the operator.

299.400. Data collected under this program will be made publicly available in accordance with R645-300-124.

R645-302-300. Special Areas of Mining.

The rules in R645-302-300 present the minimum requirements for information to be included in the permit application to conduct coal mining and reclamation operations for mining in designated special areas and present procedures to process said permit applications.

310. Prime Farmland. R645-302-300 applies to any person who conducts or intends to conduct coal mining and reclamation operations on prime farmlands historically used for cropland.

311. The rules given under R645-302-300 do not apply to:

311.100. Lands on which coal mining and reclamation operations are conducted pursuant to any permit issued prior to August 3, 1977; or

311.200. Lands on which coal mining and reclamation operations are conducted pursuant to any renewal or revision of a permit issued prior to August 3, 1977; or

311.300. Lands included in any existing coal mining and reclamation operations for which a permit was issued for all or any part thereof prior to August 3, 1977, provided that:

311.310. Such lands are part of a single continuous coal mining and reclamation operation begun under a permit issued before August 3, 1977; and

311.320. The permittee had a legal right to mine the lands prior to August 3, 1977, through ownership, contract, or lease but not including an option to buy, lease, or contract; and

311.330. The lands contain part of a continuous recoverable coal seam that was being mined in a single continuous mining pit (or multiple pits if the lands are proven to be part of a single continuous surface coal mining and reclamation activity) begun under a permit issued prior to August 3, 1977.

312. For purposes of R645-302-300:

312.100. A pit will be deemed to be a single continuous mining pit even if portions of the pit are crossed by a road, pipeline, railroad, or powerline or similar crossing; and

312.200. A single continuous SURFACE COAL MINING AND RECLAMATION ACTIVITY is presumed to consist only of a single continuous mining pit under permit issued prior to August 3, 1977, but may include noncontiguous parcels if the operator can prove by clear and convincing evidence that, prior to August 3, 1977, the noncontiguous parcels were part of a single permitted operation. Clear and convincing evidence includes, but is not limited to, contracts, leases, deeds or other properly executed legal documents (not including options) that specifically treat physically separate parcels as one SURFACE COAL MINING AND RECLAMATION ACTIVITY.

313. Application Contents--Reconnaissance Inspection. All permit applications, whether or not prime farmland is present, will include the results of a reconnaissance inspection of the proposed permit area to indicate whether prime farmland exists. The Division in consultation with the NRCS will determine the nature and extent of the required reconnaissance inspection.

313.100. If the reconnaissance inspection establishes that no land within the proposed permit area is prime farmland historically used for cropland, the applicant will submit a statement that no prime farmland is present. The statement will identify the basis upon which such a conclusion was reached.

313.200. If the reconnaissance inspection indicates that land within the proposed permit area may be prime farmland historically used for cropland, the applicant will determine if

a soil survey exists for those lands and whether soil mapping units in the permit area have been designated as prime farmland. If no soil survey exists, the applicant will have a soil survey made of the lands within the permit area which the reconnaissance inspection indicates could be prime farmland. Soil surveys of the detail used by the NRCS for operational conservation planning will be used to identify and locate prime farmland soils.

313.210. If the soil survey indicates that no prime farmland soils are present within the proposed permit area, R645-302-313.100 will apply.

313.220. If the soil survey indicates that prime farmland soils are present within the proposed permit area, R645-302-314 will apply.

314. Application Contents--Prime Farmland. All permit applications for areas in which prime farmland has been identified within the proposed permit area will include the following:

314.100. A soil survey of the permit area according to the standards of the National Cooperative Soil Survey and in accordance with the procedures set forth in U.S. Department of Agriculture Handbooks 436 "Soil Taxonomy" (U.S. Soil Conservation Service, 1975), as amended on March 22, 1982 and October 5, 1982 and 18, "Soil Survey Manual" (U.S. Soil Conservation Service, 1951) as amended on December 18, 1979, May 7, 1980, May 9, 1980, September 11, 1980, June 9, 1981, June 29, 1981, November 16, 1982. The NRCS establishes the standards of the National Cooperative Soil Survey and maintains a National Soils Handbook which gives current acceptable procedures for conducting soil surveys. This National Soils Handbook is available for review at area and Utah NRCS offices.

314.110. U.S. Department of Agriculture Handbooks 436 and 18 are incorporated by reference as they respectively existed on October 5,1982, and November 16,1982.

314.120. The soil survey will include a description of soil mapping units and a representative soil profile as determined by the NRCS, including, but not limited to, soil-horizon depths, pH, and the range of soil densities for each prime farmland soil unit within the permit area. Other representative soil-profile descriptions from the locality, prepared according to the standards of the National Cooperative Soil Survey, may be used if their use is approved by the State Conservationist, NRCS. The Division may request the operator to provide information on other physical and chemical soil properties as needed to make a determination that the operator has the technological capability to restore the prime farmland within the permit area to the soil-reconstruction standards of R645-302-317.

314.200. A plan for soil reconstruction, replacement, and stabilization for the purpose of establishing the technological capability of the mine operator to comply with the requirements of R645-302-317.

314.300. Scientific data, such as agricultural-school studies, for areas with comparable soils, climate, and management that demonstrate that the proposed method of reclamation, including the use of soil mixtures or substitutes, if any, will achieve, within a reasonable time, levels of yield equivalent to, or higher than, those of nonmined prime farmland in the surrounding area; and

314.400. The productivity prior to mining, including the average yield of food, fiber, forage, or wood products obtained under a high level of management.

315. Consultation with Secretary of Agriculture. The Secretary of Agriculture has responsibilities with respect to prime farmland soils and has assigned the prime farmland responsibilities arising under the Federal Act to the Chief of the NRCS. The NRCS will carry out consultation and review through the State Conservationist located in Utah.

315.100. The State Conservationist will provide to the Division a list of prime farmland soils, their location, physical and chemical characteristics, crop yields, and associated data necessary to support adequate prime farmland soil descriptions.

315.200. The State Conservationist will assist the Division in describing the nature and extent of the reconnaissance inspection required under R645-302-313.

315.300. Before any permit is issued for areas that include prime farmland, the Division will consult with the State Conservationist. The State Conservationist will provide for the review of, and comment on, the proposed method of soil reconstruction in the plan submitted under R645-302-314. If the State Conservationist considers those methods to be inadequate, then revisions will be suggested to the Division which result in more complete and adequate reconstruction.

316. Issuance of Permit. A permit to conduct coal mining and reclamation operations that include mining and reclamation on designated special areas of prime farmland may be granted by the Division, if it first finds, in writing, upon the basis of a complete application, that:

316.100. The approved proposed postmining land use of these prime farmlands will be cropland;

316.200. The permit incorporates as specific conditions the contents of the plan submitted under R645-302-314, after consideration of any revisions to that plan suggested by the State Conservationist under R645-302-315.300;

316.300. The applicant has the technological capability to restore the prime farmland, within a reasonable time, to equivalent or higher levels of yield as nonmined prime farmland in the surrounding area under equivalent levels of management; and

316.400. The proposed coal mining and reclamation operations will be conducted in compliance with the requirements of R645-302-317 and other environmental protection performance and reclamation standards for mining and reclamation of prime farmland of the State Program.

317. Prime Farmland Performance Standards.

317.100. Scope and Purpose. The rules under R645-302-317 set forth special environmental protection performance, reclamation, and design standards for coal mining and reclamation operations on prime farmland.

317.200. Responsibilities of Agencies.

317.210. The NRCS within Utah will establish specifications for prime farmland soil removal, storage, replacement, and reconstruction.

317.220. The Division will use the soil-reconstruction specifications of R645-302-317.210 to carry out its

responsibilities under R645-302-310 through R645-302-316 and R645-301-800.

317.300. Applicability. The requirements of the R645-302-317 will not apply to prime farmland that has been excluded in accordance with R645-302-311 and R645-302-312.

317.400. Soil Removal and Stockpiling.

317.410. Prime farmland soils will be removed from the areas to be disturbed before drilling, blasting, or mining.

317.420. The minimum depth of soil and soil materials to be removed and stored for use in the reconstruction of prime farmland will be sufficient to meet the requirements of R645-302-317.520.

317.430. Soil removal and stockpiling operations on prime farmland will be conducted to:

317.431. Separately remove the topsoil, or remove other suitable soil materials where such other soil materials will create a final soil having a greater productive capacity than that which exists prior to mining. If not utilized immediately, this material will be placed in stockpiles separate from the spoil and all other excavated materials; and

317.432. Separately remove the B or C horizon or other suitable soil material to provide the thickness of suitable soil required by R645-302-317.520. If not utilized immediately, each horizon or other material will be stockpiled separately from the spoil and all other excavated materials. Where combinations of such soil materials created by mixing have been shown to be equally or more favorable for plant growth than the B horizon, separate handling is not necessary.

317.440. Stockpiles will be placed within the permit area where they will not be disturbed or be subject to excessive erosion. If left in place for more than 30 days, stockpiles will meet the requirements of R645-301-232, R645-301-233.100, R645-301-234, R645-301-242, and R645-301-243.

317.500. Soil Replacement.

317.510. Soil reconstruction specifications established by the NRCS will be based upon the standards of the National Cooperative Soil Survey and will include, as a minimum, physical and chemical characteristics of reconstructed soils and soil descriptions containing soil-horizon depths, soil densities, soil pH, and other specifications such that reconstructed soils will have the capability of achieving levels of yield equal to, or higher than, those of nonmined prime farmland in the surrounding area.

317.520. The minimum depth of soil and substitute soil material to be reconstructed will be 48 inches, or a lesser depth equal to the depth to a subsurface horizon in the natural soil that inhibits or prevents root penetration, or a greater depth if determined necessary to restore the original soil productive capacity. Soil horizons will be considered as inhibiting or preventing root penetration if their physical or chemical properties or water-supplying capacities cause them to restrict or prevent penetration by roots of plants common to the vicinity of the permit area and if these properties or capacities have little or no beneficial effect on soil productive capacity.

317.530. The operator will replace and regrade the soil horizons or other root-zone material with proper compaction and uniform depth.

317.540. The operator will replace the B horizon, C horizon, or other suitable material specified in R645-302-317.432 to the thickness needed to meet the requirements of R645-302-317.520.

317.550. The operator will replace the topsoil or other suitable soil materials specified in R645-302-317.431 as the final surface soil layer. This surface soil layer will equal or exceed the thickness of the original surface soil layer, as determined by the soil survey.

317.600. Revegetation and Restoration of Soil Productivity.

317.610. Following prime farmland soil replacement, the soil surface will be stabilized with a vegetative cover or other means that effectively controls soil loss by wind and water erosion.

317.620. Prime farmland soil productivity will be restored in accordance with the following provisions:

317.621. Measurement of soil productivity will be initiated within 10 years after completion of soil replacement;

317.622. Soil productivity will be measured on a representative sample or on all of the mined and reclaimed prime farmland area using the reference crop determined under R645-302-317.626. A statistically valid sampling technique at a 90-percent or greater statistical confidence level will be used as approved by the Division in consultation with the NRCS;

317.623. The measurement period for determining average annual crop production (yield) will be a minimum of three crop years prior to release of the operator's performance bond;

317.624. The level of management applied during the measurement period will be the same as the level of management used on nonmined prime farmland in the surrounding area;

317.625. Restoration of soil productivity will be considered achieved when the average yield during the measurement period equals or exceeds the average yield of the reference crop established for the same period for nonmined soils of the same or similar texture or slope phase of the soil series in the surrounding area under equivalent management practices;

317.626. The reference crop on which restoration of soil productivity is proven will be selected from the crops most commonly produced on the surrounding prime farmland. Where row crops are the dominant crops grown on prime farmland in the area, the row crop requiring the greatest rooting depth will be chosen as one of the reference crops;

317.627. Reference crop yields for a given crop season are to be determined from:

317.627.1. The current yield records of representative local farms in the surrounding area, with concurrence by the NRCS; or

317.627.2. The average county yields recognized by the U.S. Department of Agriculture, which have been adjusted by the NRCS for local yield variation within the county that is associated with differences between nonmined prime farmland soil and all other soils that produce the reference crop; and

317.628. Under either procedure in R645-302-317.627, the average reference crop yield may be adjusted, with the concurrence of the NRCS, for:

317.628.1. Disease, pest, and weather-induced seasonal variations; or

317.628.2. Differences in specific management practices where the overall management practices of the crops being compared are equivalent.

320. Alluvial Valley Floors. R645-302-320 applies to any person who conducts or intends to conduct coal mining and reclamation operations on areas or adjacent to areas designated as alluvial valley floors.

321. Alluvial Valley Floor Determination.

321.100. Before applying for a permit to conduct, or before conducting surface coal mining and reclamation operations within a valley holding a stream or in a location where the adjacent area includes any stream, the applicant shall either affirmatively demonstrate, based on available data, the presence of an alluvial valley floor, or submit to the Division the results of a field investigation of the proposed permit and adjacent area. The field investigations shall include sufficiently detailed geologic, hydrologic, land use, soils, and vegetation studies on areas required to be investigated by the Division, after consultation with the applicant, to enable the Division to make an evaluation regarding the existence of the probable alluvial valley floor in the proposed permit or adjacent area and to determine which areas, if any, require more detailed study in order to allow the Division to make a final determination regarding the existence of an alluvial valley floor.

321.200. Studies performed during the investigation by the applicant or subsequent studies as required of the applicant by the Division shall include an appropriate combination, adapted to site-specific conditions, of:

321.210. Mapping of unconsolidated stream-laid deposits holding streams including, but not limited to, geologic maps of unconsolidated deposits, and stream-laid deposits, maps of streams, delineation of surface watersheds and directions of shallow groundwater flows through and into the unconsolidated deposits, topography showing local and regional terrace levels, and topography of terraces, flood plains and channels showing surface drainage patterns;

321.220. Mapping of all lands included in the area in accordance with R645-302-321 and subject to agricultural activities, showing the area in which different types of agricultural lands, such as flood irrigated lands, pasture lands and undeveloped rangelands, exist, and accompanied by measurements of vegetation in terms of productivity and type;

321.230. Mapping of all lands that are currently or were historically flood irrigated, showing the location of each diversion structure, ditch, dam and related reservoir, irrigated land, and topography of those lands;

321.240. Documentation that areas identified in R645-302-321 are, or are not, subirrigated, based on groundwater monitoring data, representative water quality, soil moisture measurements, and measurements of rooting depth, soil mottling, and water requirements of vegetation;

321.250. Documentation, based on representative sampling, that areas identified under R645-302-321 are, or are not, flood irrigable, based on streamflow, water quality, water yield, soils measurements, and topographic characteristics; and

321.260. Analysis of a series of aerial photographs, including color infrared imagery flown at a time of year to show any late summer and fall differences between upland and valley floor vegetative growth and of a scale adequate for reconnaissance identification of areas that may be alluvial valley floors.

321.300. Based on the investigations conducted under R645-302-321.200, the Division will make a determination of the extent of any alluvial valley floors within the study area and whether any stream in the study area may be excluded from further consideration as lying within an alluvial valley floor. The Division will determine that an alluvial valley floor exists if it finds that:

321.310. Unconsolidated streamlaid deposits holding streams are present; and,

321.320. There is sufficient water to support agricultural activities as evidenced by:

321.321. The existence of flood irrigation in the area in question or its historical use;

321.322. The capability of an area to be flood irrigated, based on streamflow water yield, soils, water quality, and topography; or,

321.323. Subirrigation of the lands in question, derived from the groundwater system of the valley floor.

322. Application Contents for Operations Affecting Designated Alluvial Valley Floors.

322.100. If land within the permit area or adjacent area is identified as an alluvial valley floor and the proposed coal mining and reclamation operation may affect an alluvial valley floor or waters supplied to an alluvial valley floor, the applicant will submit a complete application for the proposed coal mining and reclamation operation to be used by the Division together with other relevant information, including the information required by R645-302-321, as a basis for approval or denial of the permit.

322.200. The complete application will include detailed surveys and baseline data required by the Division for a determination of:

322.210. The characteristics of the alluvial valley floor which are necessary to preserve the essential hydrologic functions throughout the mining and reclamation process;

322.220. The significance of the area to be affected to agricultural activities;

322.230. Whether the operation will cause, or presents an unacceptable risk of causing, material damage to the quantity or quality of surface or groundwaters that supply the alluvial valley floor;

322.240. The effectiveness of proposed reclamation with respect to requirements of the State Program; and

322.250. Specific environmental monitoring required to measure compliance with R645-302-324 during and after coal mining and reclamation operations.

322.300. Information required under R645-302-322 shall include, but not be limited to:

322.310. Geologic data, including geologic structure, and surficial geologic maps, and geologic cross-sections;

322.320. Soils and vegetation data, including a detailed soil survey and chemical and physical analysis of soils, a vegetation map and narrative descriptions of quantitative and qualitative surveys, and land use data, including an evaluation of crop yields;

322.330. Surveys and data required under R645-302-322 for areas designated as alluvial valley floors because of their flood irrigation characteristics will also include, at a minimum, surface hydrologic data, including streamflow, runoff, sediment yield, and water quality analysis describing seasonal variations over at least one full year, field geomorphic surveys and other geomorphic studies;

322.340. Surveys and data required under R645-302-322 for areas designated as alluvial valley floors because of their subirrigation characteristics, will also include, at a minimum, geohydrologic data including observation well establishment for purposes of water level measurements, groundwater contour maps, testing to determine aquifer characteristics that affect waters supplying the alluvial valley floors, well and spring inventories, and water quality analysis describing seasonal variations over at least one full year, and physical and chemical analysis of overburden to determine the effect of the proposed coal mining and reclamation operations on water quality and quantity;

322.350. Plans showing how the operations will avoid, during mining and reclamation, interruption, discontinuance or preclusion of farming on the alluvial valley floors unless the premining land use has been undeveloped rangeland which is not significant to farming and will not materially damage the quantity or quality of water in surface and groundwater systems that supply alluvial valley floors;

322.360. Maps showing farms that could be affected by the mining and, if any farm includes an alluvial valley floor, statements of the type and quantity of agricultural activity performed on the alluvial valley floor and its relationship to the farm's total agricultural activity including an economic analysis; and

322.370. Such other data as the Division may require.

322.400. The surveys required by R645-302-322 should identify those geologic, hydrologic, and biologic characteristics of the alluvial valley floor necessary to support the essential hydrologic functions of an alluvial valley floor. Characteristics which support the essential hydrologic functions and which must be evaluated in a complete application include, but are not limited to:

322.410. Characteristics supporting the function of collecting water which include, but are not limited to;

322.411. The amount and rate of runoff and water balance analysis, with respect to rainfall, evapotranspiration, infiltration and groundwater recharge;

322.412. The relief, slope, and density of the network of drainage channels;

322.413. The infiltration, permeability, porosity and transmissivity of unconsolidated deposits of the valley floor that either constitute the aquifer associated with the stream or lie between the aquifer and the stream; and

322.414. Other factors that affect the interchange of water between surface streams and groundwater systems, including the depth to groundwater, the direction of groundwater flow, the extent to which the stream and associated alluvial groundwater aquifers provide recharge to, or are recharged by bedrock aquifers;

322.420. Characteristics supporting the function of storing water which include, but are not limited to:

322.421. Roughness, slope, and vegetation of the channel, flood plain, and low terraces that retard the flow of surface waters;

322.422. Porosity, permeability, waterholding capacity, saturated thickness and volume of aquifers associated with streams, including alluvial aquifers, perched aquifers, and other water bearing zones found beneath valley floors; and

322.423. Moisture held in soils or the plant growth medium within the alluvial valley floor, and the physical and chemical properties of the subsoil that provide for sustained vegetation growth or cover during extended periods of low precipitation;

322.430. Characteristics supporting the function of regulating the flow of water which include, but are not limited to:

322.431. The geometry and physical character of the valley, expressed in terms of the longitudinal profile and slope of the valley and the channel, the sinuosity of the channel, the cross-section, slopes and proportions of the channels, flood plains and low terraces, the nature and stability of the stream banks and the vegetation established in the channels and along the stream banks and flood plains;

322.432. The nature of surface flows as shown by the frequency and duration of flows of representative magnitude including low flows and floods; and

322.433. The nature of interchange of water between streams, their associated alluvial aquifers and any bedrock aquifers as shown by the rate and amount of water supplied by the stream to associated alluvial and bedrock aquifers (i.e. recharge) and by the rates and amounts of water supplied by aquifers to the stream (i.e., baseflow); and

322.500. Characteristics which make water available and which include, but are not limited to the presence of land forms including flood plains and terraces suitable for agricultural activities.

323. Findings

323.100. No permit or permit change application for coal mining and reclamation operations in Utah will be approved by the Division unless the application demonstrates and the Division finds in writing, on the basis of information set forth in the application that:

323.110. The proposed operations would not interrupt, discontinue, or preclude farming on an alluvial valley floor unless the premining land use has been undeveloped rangeland which is not significant to farming on the alluvial valley floor, or unless the area of an affected alluvial valley floor is small and provides, or may provide, negligible support for production of one or more farms; provided however, R645-302-323.100 does not apply to those lands which were identified in a reclamation plan approved by the State Program prior to August 3, 1977, for any coal mining and reclamation operation that, in the year preceding August 3, 1977;

323.111. Produced coal in commercial quantities and

was located within or adjacent to alluvial valley floors, or

323.112. Obtained specific permit approval by the Division to conduct coal mining and reclamation operations within an alluvial valley floor;

323.120. The proposed operations would not materially damage the quantity and quality of water in surface and underground water systems that supply those alluvial valley floors or portions of alluvial valley floors which are:

323.121. Included in R645-302-323.110; or

323.122. Outside the permit area of an existing or proposed coal mining and reclamation operation;

323.130. The proposed operations would be conducted in accordance with all applicable requirements of the State Program; and

323.140. Any change in the land use of the lands covered by the proposed permit area from its premining use in or adjacent to alluvial valley floors will not interfere with or preclude the reestablishment of the essential hydrologic functions of the alluvial valley floor.

323.200. The significance of the impact of the proposed operations on farming will be based on the relative importance of the vegetation and water of the developed grazed or hayed alluvial valley floor area to the farm's production, or any more stringent criteria established by the Division as suitable for site-specific protection of agricultural activities in alluvial valley floors. The effect of the proposed operations on farming will be concluded to be significant if they would remove from production, over the life of the mine, a proportion of the farm's production that would decrease the expected annual income from agricultural activities normally conducted at the farm.

323.300. Criteria for determining whether a coal mining and reclamation operation will materially damage the quantity or quality of waters subject to R645-302-323.310 and R645-302-323.320 include, but are not limited to:

323.310. Potential increases in the concentration of total dissolved solids of waters supplied to an alluvial valley floor, as measured by specific conductance in millimhos, to levels above the threshold value at which crop yields decrease, as specified in Maas and Hoffman, "Crop Salt Tolerance - Current Assessment," Table 1, "Salt Tolerance of Agricultural Crops," which is incorporated by reference unless the applicant demonstrates compliance with R645-302-323.320.

323.311. Salt tolerances for agricultural crops have been published by E.V. Maas and G.J. Hoffman, in a paper titled "Crop Salt Tolerance - Current Assessment" contained in The Journal of The Irrigation and Drainage Division, American Society of Civil Engineers, pages 115 through 134, June, 1977. Table 1, giving threshold salinity values is presented on pages 22 through 125.

323.312. The Maas and Hoffman publication is on file and available for inspection and copying at the Division office;

323.320. Potential increases in the concentration of total dissolved solids of waters supplied to an alluvial valley floor in excess of those incorporated by reference in R645-302-323.310 will not be allowed unless the applicant demonstrates, through testing related to the production of crops grown in the locality, that the proposed operations will not cause increases that will result in crop yield decreases;

323.321. For types of vegetation not listed in Maas and Hoffman as specified by the Division, based upon consideration of observed correlation between total dissolved solid concentrations in water and crop yield declines, taking into account the accuracy of the correlations;

323.322. Potential increases in the average depth to water saturated zones (during the growing season) located within the root zone of the alluvial valley floor that would reduce the amount of subirrigation land compared to premining conditions;

323.323. Potential decreases in surface flows that would reduce the amount of irrigable land compared to premining conditions; and

323.324. Potential changes in the surface or groundwater systems that reduce the area available to agriculture as a result of flooding or increased saturation of the root zone.

323.400. For the purposes of R645-302-323, a farm is one or more land units on which agricultural activities are conducted. A farm is generally considered to be the combination of land units with acreage and boundaries in existence prior to August 3, 1977, or, if established after August 3, 1977, with those boundaries based on enhancement of the farm's agricultural productivity and not related to coal mining and reclamation operations.

324. Performance Standards.

324.100. Essential Hydrologic Functions.

324.110. The operator of a coal mining and reclamation operation will minimize disturbances to the hydrologic balance by preserving throughout the mining and reclamation process the essential hydrologic functions of an alluvial valley floor not within the permit area.

324.120. The operator of a coal mining and reclamation operation will minimize disturbances to the hydrologic balance within the permit area by reestablishing throughout the mining and reclamation process the essential hydrologic functions of alluvial valley floors.

324.200. Protection of Agricultural Activities.

324.210. Prohibitions. Coal mining and reclamation operations will not:

324.211. Interrupt, discontinue or preclude farming on alluvial valley floors; or

324.212. Cause material damage to the quantity or quality of water in surface or underground water systems that supply alluvial valley floors.

324.220. Statutory Exclusions. The prohibitions of R645-302-324.210 will not apply:

324.221. Where the premining land use of an alluvial valley floor is undeveloped rangeland which is not significant to farming;

324.222. Where farming on the alluvial valley floor that would be affected by the coal mining and reclamation operation is of such small acreage as to be of negligible impact on the farm's agricultural production;

324.223. To any coal mining and reclamation operation that, in the year preceding August 3, 1977:

324.223.1. Produced coal in commercial quantities and was located within or adjacent to a alluvial valley floor; or

324.223.2. Obtained specific permit approval by the Division to conduct coal mining and reclamation operations within an alluvial valley floor; or

324.224. To any land that is the subject of an application for renewal or revision of a permit issued pursuant to the Act which is an extension of the original permit, insofar as:

324.224.1. The land was previously identified in a reclamation plan submitted under R645-301, and

324.224.2. The original permit area was excluded from the protection of R645-302-324.210 for a reason set forth in R645-302-324.223.

324.300. Monitoring.

324.310. A monitoring system will be installed, maintained, and operated by the permittee on all alluvial valley floors during coal mining and reclamation operations and continued until all bonds are released in accordance with R645-301-800. The monitoring system will provide sufficient information to allow the Division to determine that:

324.311. The essential hydrologic functions of alluvial valley floors are being preserved outside the permit area or reestablished within the permit area throughout the mining and reclamation process in accordance with R645-302-324.100;

324.312. Farming on lands protected under R645-302-324.200 is not being interrupted, discontinued, or precluded; and

324.313. The operation is not causing material damage to the quantity or quality of water in the surface or underground systems that supply alluvial valley floors protected under R645-302-324.200.

324.320. Monitoring will be conducted at adequate frequencies to indicate long-term trends that could affect compliance with R645-302-324.100 and R645-302-324.200.

324.330. All monitoring data collected and analyses thereof will routinely be made available to the Division.

KEY: reclamation, coal mines
December 12, 1997 **40-10-1 et seq.**
Notice of Continuation June 6, 1997

R651. Natural Resources, Parks and Recreation.
R651-611. Fee Schedule.
R651-611-1. Use Fees.

All fees required under this fee schedule are to be paid in advance of occupancy or use of facilities.

A. Fees for services covering one or more months, for docks and dry storage, must be paid in advance for the season as determined by the Division.

B. Fee permits and passes are not refundable or transferable. Duplicate annual permits and special fun tags will be issued only upon completion of an affidavit and payment of the required fee. Inappropriate use of fee permits and passes may result in confiscation by park authorities.

C. Fees shall not be waived, reduced or refunded unless authorized by Division guideline; however, park or unit managers may determine and impose equitable fees for unique events or situations not covered in the current fee schedule. The director has the prerogative to waive or reduce fees.

D. The Multiple Park Permit, Single Park Permit, Special Fun Tag, Heritage Park Pass, Five Day Pass, Camping Permit and Daily Private Vehicle Permit are good for one private vehicle with up to eight occupants, with the exception of any special charges. Multiple Park Permits, Heritage Park Passes, and Five Day Passes are not honored at This Is The Place State Park.

E. No charge for persons five years old and younger.

F. With the exception of the Multiple Park Permit and Five Day Pass, fees are applicable only to the specific park or facility where paid and will not be honored at other parks or facilities.

G. Fees for This Is The Place State Park will be set by the contract operator with approval of the Division Director.

R651-611-2. Day Use Entrance Fees.

Permits the use of all day activity areas in a state park. These fees do not include overnight camping facilities or special use fees.

A. Annual Permits

1. Single Park Permit - Good for one park only.

a. $50.00 for the following parks:

TABLE 1

Anasazi	Antelope Island
Bear Lake/All Areas	Dead Horse Point
Deer Creek	East Canyon
Edge of the Cedars	Fremont
Iron Mission	Jordanelle
Palisade	Quail Creek
Rockport	Scofield
Starvation	Territorial
Utah Fieldhouse of NH	Utah Lake
Willard Bay	

b. $40.00 for all other parks not listed as in a.

2. $60.00 Multiple Park Permit good for all parks.

3. Duplicate Annual Permits may be purchased if originals are lost, destroyed, or stolen, upon a payment of a $10.00 fee and the submittal of a signed affidavit to the Division office. Only one duplicate is allowed.

B. Special Fun Tag - Available free to Utah residents, 62 years and older or disabled, as defined by Special Fun Tag permit affidavit.

C. Daily Permits - Allows access for a specific state park on the date of purchase.

1. $5.00 per private motor vehicle or $2.00 per person for pedestrians, bicycles and motorcycles for the following parks:

TABLE 2

Anasazi	Antelope Island
Bear Lake/Rendevous	Bear Lake Marina
Dead Horse Point	Deer Creek
East Canyon	Edge of the Cedars
Fremont	Iron Mission
Quail Creek	Rockport
Scofield	Starvation
Territorial	Utah Fieldhouse of NH
Utah Lake	Willard Bay

2. $4.00 per private motor vehicle or $1.50 per person for pedestrians, bicycles, and motorcycles for all parks not listed in 1.

3. $2.00 per person for commercial groups or vehicles with nine (9) or more occupants.

D. Five Day Pass - $15.00 permits day use entrance to all state parks for five consecutive days.

E. Group Site Day Use Fee - Advance reservation only. $1.00 per person, age six and over, for sites with basic facilities. Minimum $25.00 fee established for each facility.

F. Educational Groups - No charge for group visits by Utah public or parochial schools with advance notice to park. When special arrangements or interpretive talks are provided, a fee of $.50 per person may be charged at the park manager's discretion.

G. Heritage Park Pass: $20.00 permits up to five (5) visits to any Heritage Park during the calendar year of issue for up to eight (8) people per private motor vehicle.

R651-611-3. Camping Fees.

Permits overnight camping and day use for the day of arrival until 2:00 p.m. of the following day or each successive day. Camp sites must be vacated by 12:00 PM following the last camping night at Dead Horse Point. Camping is limited to 14 days at all campgrounds.

A. Individual Sites -- One vehicle with up to eight occupants and any attached recreational equipment as one independent camp unit. Fees for individual sites are based on the following schedule:

1. $7.00 with pit or vault toilets; $9.00 with flush toilets; $11.00 with flush toilets and showers or electrical hookups; $13.00 with flush toilets, showers and electrical hookups; $15.00 with full hookups.

TABLE 3

Deer Creek	East Canyon
Ft. Buenaventura	Fremont
Goblin Valley	Great Salt Lake
Green River	Huntington
Hyrum	Millsite
Minersville	Otter Creek
Piute	Quail Creek

Red Fleet	Scofield
Starvation	Steinaker
Willard Bay	

2. $7.00 with pit or vault toilets; $10.00 with flush toilets; $12.00 with flush toilets and showers or electrical hookups; $14.00 with flush toilets, showers, and electrical hookups; $16.00 with full hookups.

TABLE 4

Antelope Island	Coral Pink Sand Dunes
Escalante	Kodachrome
Palisade	Rockport
Snow Canyon	Utah Lake
Wasatch Mountain	Yuba

3. $7.00 with pit or vault toilets; $11.00 with flush toilets; $13.00 with flush toilets and showers or electrical hookups; $15.00 with flush toilets, showers and electrical hookups; $17.00 with full hookups.

TABLE 5

a. Bear Lake	b. Dead Horse Point
c. Jordanelle	

4. $5.00 per additional vehicle at all parks and individual camping sites for all additional transportation vehicles that are separate and not attached to the primary vehicle, but are dependent upon that camp unit. No more than one (1) additional vehicle is allowed at any individual camping site.

5. Special Fun Tag holders may receive a $2.00 discount for individual camping sites Monday through Thursday nights, excluding holidays.

B. Group Sites - By advance reservation for groups

1. $1.00 per person, age six and over at sites with vault toilets. Minimum $25.00 fee for each facility.

2. $2.00 per person, age six and over at sites with flush toilets and/or pavilions. Minimum $50.00 fee for each facility.

R651-611-4. Special Fees.

A. Golf Course Fees

1. Jordan River rental and green fees.

a. Nine holes general public - weekends and holidays - $5.50

b. Nine holes weekdays (except holidays) - $4.50

c. Nine holes Jr./Sr. weekdays (except holidays) - $3.50

d. 20 round card pass - $75.00

e. Promotional pass weekdays (except holidays) - $250.00

f. Companion fee - adult - $2.00

g. Companion fee - child - $1.00

h. Motorized cart (9 holes) - Prohibited

i. Pull carts (9 holes) - $1.00

j. Club rental - $3.00

2. Palisade rental and green fees.

a. Nine holes general public - $8.00

b. Nine holes Jr./Sr. weekdays (except holidays) - $6.50

c. 20 round card pass - $130.00

d. Promotional pass - single person (any day) - $375.00

e. Promotional pass - single person (weekdays only) - $275.00

f. Promotional pass - couples (any day) - $650.00

g. Promotional pass - family (any day) - $850.00

h. Companion fee - walking, non-player - $4.00

i. Motorized cart (9 holes) - $8.00

j. Motorized cart (9 holes single rider) - $4.00

k. Pull carts (9 holes) - $2.25

l. Club rental (9 holes) - $5.00

m. School teams - No fee for practice rounds with coach and team roster. Tournaments are $3.00 per player.

n. Driving range - small bucket - $2.25

o. Driving range - large bucket - $3.25

3. Wasatch Mountain rental and green fees.

a. Nine holes general public - $9.00

b. Nine holes general public (weekends and holidays) - $10.00

c. Nine holes Jr./Sr. weekdays (except holidays) - $8.00

d. 20 round card pass - $160.00

e. Companion fee - walking, non-player - $4.00

f. Motorized cart (9 holes - mandatory on Mt. course) - $10.00

g. Motorized cart (9 holes single rider - $5.00)

h. Pull carts (9 holes) - $2.25

i. Club rental (9 holes) - $6.00

j. School teams - No fee for practice rounds with coach and team roster (Wasatch Co. only).

Tournaments are $3.00 per player.

k. Tournament fee (per player) - $2.00

l. Driving range - small bucket - $2.25

m. Driving range - large bucket - $4.50

4. Green River rental and green fees.

a. Nine holes general public - $8.00

b. Nine holes Jr./Sr. weekdays (except holidays) - $7.00

c. Eighteen holes general public - $15.00

d. 20 round card pass - $130.00

e. Promotional pass - single person (any day)- $325.00

f. Promotional pass - single person (Jr/Sr weekdays) - $275.00

g. Promotional pass - couple (any day) - $600.00

h. Promotional pass - family (any day) - $750.00

i. Companion fee - walking, non-player - $4.00

j. Motorized cart (9 holes) - $8.00

k. Motorized cart (9 holes single rider) - $4.00

l. Pull carts (9 holes) - $2.25

m. Club rental (9 holes) - $5.00

n. School teams - No fee for practice rounds with coach and team roster. Tournaments are $3.00 per player.

5. Golf instruction (all parks).

a. Individual - $25.00 per hour

b. Groups - $50.00 per hour

6. Golf course hours are daylight to dark

7. No private, motorized golf carts are allowed, except where authorized by existing contractual agreement.

8. Jr. golfers are 17 years and under. Sr. golfers are 62 and older.

B. Boat Mooring and Dry Storage

1. Mooring Fees:

a. Day Use - $5.00
b. Overnight Boat Parking - $7.00 until 8:00 a.m.
c. Overnight Boat Camping until 2:00 p.m. - $10.00
d. Monthly - $4.00/ft.
e. Monthly with Utilities - $5.00/ft.
f. Monthly (December - February) - $2.00/ft
g. Monthly (December - February with utilities) - $2.50/ft
2. Dry Storage Fees:
a. Overnight (until 2:00 p.m.) - $5.00
b. Monthly (April - October) - $40.00
c. (November - March) - $20.00
C. Meeting Rooms and Buildings
1. Day Use: 1-4 hours between 8:00 a.m. and 6:00 p.m.
a. Up to 50 persons - $50.00
b. 51 to 100 persons - $70.00
c. 101 to 150 persons - $90.00
d. Add 50% for after 6:00 p.m.
e. Fees include day use fee
2. Overnight Use 2:00 p.m. until 2:00 p.m.
Up to 100 people:
a. Monday through Thursday - $100.00
b. Friday through Sunday and Holidays - $150.00
c. November through March - Add 10%
D. Ice and Roller Skating Fees.

TABLE

Public Hours	Territorial Two Hour Sessions	Utah Lake Two Hour Sessions
1. Adults	$2.00	$3.00
2. Children 6 through 11	$1.00	$2.00
3. 20-Skate Card		
a. Adult		$50.00
b. Children under 11		$35.00
4. Skate Rental	$1.00	$1.00
5. Ice Skate Sharpening	$3.00	
6. Group Reservations	$30.00/hr	$75.00/hr

E. Other Miscellaneous Fees.
1. Canoe Rental (includes safety equipment).
a. Up to one hour - $ 5.00
b. Up to four hours - $10.00
c. All day to 6:00 p.m. $20.00
2. Paddleboat Rental (includes safety equipment).
a. Up to one (1) hour $10.00
b. Up to four (4) hours $20.00
c. All day to 6:00 p.m. $30.00
3. Cross Country Skiing Trails.
a. $4.00 per person, 12 and older.
b. $2.00 per person, 6 through 11.
4. Pavilion - 8:00 a.m. - 10:00 p.m. (non-fee areas).
a. $10.00 per day - (single unit).
b. $30.00 per day - (group unit).
5. Recreation Field (non-fee areas) - $25.00.
6. Sports Equipment Rental - $10.00.
7. Day Use Shower Fee - $2.00.
(where facilities can accommodate)
8. Cemetery Fees.
a. $150.00 Veteran or as allowed by Veterans Administration
b. $400.00 Spouse or dependent child (under 18 or handicapped).
c. $150.00 Extra for Saturday burials.
d. $200.00 Extra for Sunday or holiday burials.
e. $200.00 Cleaning deposit for all non-funeral functions.
f. $100.00 Two hour chapel use.
g. $125.00 Two hour chapel use (non-funeral).
h. $50.00 additional charge for chapel use on Saturday, Sunday and holidays.
i. $300.00 Casket disinterments.
j. $150 Cremation disinterments.
9. Application Fees - Non-refundable PLUS Negotiated Costs.
a. Grazing Permit - $20.00
b. Easement - $50.00
c. Construction/Maintenance - $50.00
d. Special Use Permit - $50.00
e. Commercial Filming - $50.00
f. Waiting List - $10.00
10. Assessment and Assignment Fees.
a. Duplicate Document - $10.00
b. Contract Assignment - $20.00
c. Returned checks - $20.00
d. Staff time - $30.00/hr
e. Equipment - $30.00/hr
f. Vehicle - $20.00/hr
g. Researcher - $5.00/hr
h. Photo copy - $ .10/each
i. Fee collection - $10.00

R651-611-5. Reservations.

A. Camping Reservation Fees.
1. Individual family camp site $6.00
2. Group site or building rental $10.00
3. Change or cancellation $6.00

B. All park facilities will be allocated on a first-come, first-serve basis.

C. Selected camp and group sites are reservable in advance by calling 322-3770 or 1-800-322-3770.

D. Applications for reservation of skating rinks, meeting rooms, buildings, mooring docks, dry storage spaces and other sites not covered above, will be accepted by the respective park area beginning on the first business day of February for the next 12 months. Application forms and instructions are available at the park.

E. All unreserved mooring docks, dry storage spaces and camp picnic sites are available on a first-come, first-serve basis.

F. A cleanup deposit may be required by the park manager for any group reservation or special use permit.

G. Golf course reservations for groups of 20 or more and tournaments will be accepted for the calendar year beginning the first Monday of March. No weekend tournaments at Wasatch Mountain. Reservations for up to two starting times (8 persons) may be made for Saturday, Sunday and Monday, the preceding Monday; and for Tuesday through Friday, the preceding Saturday. Reservations will be taken by phone and in person during golf course hours.

H. No park facilities will be reserved by one party for more than 14 consecutive days in any 30-day period.

KEY: parks, fees
January 1, 1998 **63-11-17-(2)**
Notice of Continuation February 10, 1997

R653. Natural Resources, Water Resources.
R653-2. Financial Assistance from the Board of Water Resources.
R653-2-1. Purpose.

Section 73-10-1(7) provides revolving funds to give technical and financial assistance to water users to achieve the highest beneficial use of water resources within the state.

R653-2-2. Description of Funding Program.

The Board of Water Resources (Board) administers three revolving construction funds: the Revolving Construction Fund, the Cities Water Loan Fund, and the Conservation and Development Fund. Funding is available for projects that conserve, protect, or more efficiently use present water supplies, develop new water, or provide flood control. Project facilities may be constructed in another state if project water is to be used within the state of Utah.

A. The Board will fund projects based on the following prioritization system:

1. Projects which involve public health problems, safety problems, or emergencies.

2. Municipal water projects that are required to meet an existing or impending need.

3. Agricultural water projects that provide a significant economic benefit for the local area.

4. Projects which will receive a large portion of their funding from other sources.

5. Projects not included in items 1-4, but which have been authorized by the Board, are funded on a first come first served basis.

As part of the feasibility investigation, the Division of Water Resources (Division) staff will indicate which priority category (1-5) each project falls under.

B. The Board will not fund the following types of projects:

1. Projects that are, in the opinion of the Board, routine or regularly occurring system operation and maintenance.

2. Domestic water systems where less than 50% of the residents live in the project area year-round.

3. Projects sponsored by developers.

C. General guidelines of each of the Board's funding programs are outlined as follows:

1. Revolving Construction Fund (RCF)

a. In the RCF, the Board will accept applications from incorporated groups such as mutual irrigation and water companies.

b. The RCF advances financial assistance to the following types of projects:

(1) Irrigation projects costing less than $500,000.

(2) Rural culinary projects costing less than $250,000 that involve mutual irrigation and water companies.

(3) Dam Safety Studies

c. The staff will recommend repayment terms and interest rates in the feasibility report.

2. Cities Water Loan Fund (CWLF)

a. The Board can provide loans through the CWLF for the construction of culinary water facilities for political subdivisions of the state.

b. The staff will recommend repayment terms and interest rates in the feasibility report.

3. Conservation and Development Fund (CDF)

a. Through the CDF, the Board may finance the construction of water projects sponsored by incorporated groups, political subdivisions of the state, another state, the federal government, or Indian tribes.

b. The staff will recommend repayment terms and interest rates in the feasibility report.

R653-2-3. Application Procedure.

A. Applicants shall submit a completed application form directly to the member of the Board residing in the river district in which the project is located. If the Board member determines the application meets general Board guidelines, the Board member will sign the application and send it to the Division for action.

B. The application must be received at the Division no later than three days prior to the Board meeting.

C. Additional information not specifically requested on the application form should also be furnished when such information would be helpful in appraising the merits of the project.

D. An application form can be obtained from the Division or from a Board member.

R653-2-4. Project Approval Process.

A. After the application for assistance has been completed by the sponsor/applicant and signed by the Board member, a three-step process will be followed to determine those projects which will be funded by the Board.

B. The three steps of the approval process are:

1. Approval for Staff Investigation

a. The Board will determine whether the proposed project falls within its general statutory authority.

b. The project sponsor is not required to attend the Board meeting at which the project application is presented.

c. As a condition of funding the sponsor will be required to prepare a "Water Management and Conservation Plan" (plan). If the project is approved for staff investigation the Division will send a letter to the sponsor outlining the items that the Board suggests be considered in the plan.

2. Authorization

a. A feasibility report will be presented to the Board which takes into consideration the physical, engineering, legal, economic, and environmental factors affecting the project.

b. The Board will consider the project for authorization on the basis of its merits and overall feasibility and the contribution the project will make to the general economy of the area and the state.

c. As part of its decision-making process, the Board considers it important to discuss the merits of the project with the sponsor. Therefore, the project sponsor must attend the Board meeting when the project is considered for authorization.

d. If the project is AUTHORIZED by the Board, a letter outlining the engineering and legal requirements for the project and the conditions of the financial assistance will be sent to the sponsor.

3. Committal of Funds

a. After the sponsor has complied with the Board requirements and conditions, the project will be presented for final review. If the Board finds the project to be in order and ready for construction and IF FUNDS ARE AVAILABLE, the Board will commit funds and authorize its officers to enter into the necessary agreements to secure project financing.

b. Normally, the project sponsor is not required to attend the Board meeting at which funds are to be committed for the project. However, if the project scope or cost estimate has changed substantially, the sponsor may be asked to attend the meeting to discuss the changes with the Board.

R653-2-5. Dam Safety Grants and Loans.

A. After the application for assistance has been completed and signed by the Board member the application will be submitted to the Division for review. The Division staff will review the application for compliance with the Dam Safety Act and requirements, if any, placed on the sponsor by the State Engineer.

B. A report will be prepared by the Division presenting its findings and recommending the amount of the grant and repayment terms for loans.

1. Grants will be considered when money is appropriated by the legislature and will be restricted by limitations placed on the funding by the legislature and Board.

2. The amount of each grant will be based on conditions determined by the legislature on the money appropriated, and/or by analysis of such items as the number of acres irrigated, the number of water users, the size of the reservoir, the use of the waters, and cost of the proposed improvements.

R653-2-6. Financial Arrangements.

A. Project Cost Sharing

1. The Board desires to optimize available funding for the overall water development programs of the state and therefore requires sponsors to share in the cost of the project.

2. The sponsor's financial ability to cost share will be determined in the project investigation. On the basis of the investigation, the Division will recommend to the Board the portion of the project cost to be furnished by the sponsoring organization. Generally, the sponsor will be expected to provide 15%-25% of the project cost.

3. If additional funds become available to the sponsor after the project is authorized and if project costs do not increase, the additional funds will be used to reduce the Board's financial participation.

B. Alternate Financing

The Board will consider alternative project funding methods such as letters of credit, bond insurance, and various methods of interest buydown, instead of directly funding construction of project features.

C. Repayment of Financial Assistance

1. Generally, the repayment period will be less than 25 years.

2. The minimum annual cost of water for municipal projects will be 1.15% of the region or project area annual median adjusted gross income.

3. When annual payments are to be made with revenues from the sale or use of project water, the Board may allow the sponsor one year's use of the project before the first payment is due.

D. Security Arrangements

1. Depending upon the type of organization sponsoring the project and the Board fund involved, financial assistance may be secured either by a purchase agreement or bond issue.

a. Projects financed through the Revolving Construction Fund must be secured by a purchase agreement.

b. Projects financed through the Cities Water Loan Fund or the Conservation and Development Fund be secured either by a purchase agreement or by the sale of a bond.

2. If project financing is secured by a purchase agreement, the following conditions apply:

a. The Board must take title to the project including water rights, easements, deeded land for project facilities, and other assets subject to security interest.

b. An opinion from the sponsor's attorney must be submitted stating the sponsor has complied with its articles and bylaws, state law, and the Board's contractual requirements.

c. Title to the project shall be returned to the sponsor upon the successful completion of the purchase agreement.

3. If project financing is secured by the sale of a bond, the following conditions apply:

a. The procedures for bond approval will be substantially the same as required by the Utah Municipal Bond Act.

b. If the sponsor desires to issue a non-voted revenue bond, the sponsor will be required to:

(1) Hold a public meeting to describe the project and its need, cost, and effect on water rates.

(2) Give written notice describing the proposed project to all water users in the sponsor's service area. The notice shall include a solicitation of response to the proposed project. A copy of all written responses received by the sponsor shall be forwarded to the Division. If the area Board member determines there is substantial opposition to the project, the Board may require the sponsor to hold a bond election before funds will be made available.

R653-2-7. Project Engineering and Construction.

A. Engineering

To expedite projects and facilitate the coordination of project development, sponsors are encouraged to select a design engineer prior to making application to the Board.

B. Staff and Legal Costs

1. Costs incurred by the Division for investigation, administration, engineering, and construction inspection will be paid to the Board according to the terms set by the Board.

2. Costs incurred by the Division during preliminary project investigation will not become a charge to the sponsor if the project is found infeasible, denied by the Board, or if the sponsor withdraws the application.

3. Legal fees incurred in the review of a sponsor's bonding documents will be billed directly to the sponsor by the legal firm doing the review for the Board.

C. Design Standards and Approval

1. All projects funded by the Board shall be designed according to appropriate technical standards and shall be stamped and signed by a Utah registered professional engineer responsible for the work.

2. Prior to soliciting construction bids, plans and specifications must be approved by the Division and all other state and federal agencies which have regulatory or funding involvement in the project.

D. Project Bidding and Construction

1. The Board desires that all project construction be awarded to qualified contractors based on competitive bids. The Board may waive this requirement and allow a sponsor to act as its own contractor on small projects. However, in all cases the sponsor must comply with the laws governing its operation as well as the statutory requirements placed on the Board and Division.

2. The design engineer shall coordinate the project bidding process.

3. Construction inspection will be performed under the direction of the registered professional engineer having responsible charge of project construction.

R653-2-8. Qualifications to Guidelines.

The foregoing guideline statements are meant as a guide for the Board, staff, and sponsor to provide an orderly and effective procedure for preparing projects for construction. The Board reserves the right to consider each project on its own merits and may consider and authorize a project that does not meet all requirements of the guidelines.

KEY: water funding*
February 1, 1996 **73-10-8**
Notice of Continuation December 23, 1997 **73-10-23**

R653. Natural Resources, Water Resources.
R653-3. Selecting Private Consultants.
R653-3-1. Application.

The provisions of this section apply to procurement of services within the scope of the practice of professional engineering as defined in Section 58-22-2 Utah Code Annotated, except as authorized in Section 63-56-24 Utah Code Annotated (Emergency Procurements).

R653-3-2. Policy.

It is the policy of the Division of Water Resources (Division) to:

A. give public notice of all requirements for engineering services (except as noted in R653-3-1 and R653-3-5) and

B. negotiate contracts for such services on the basis of demonstrated competence and qualification for the type of service required, and at fair and reasonable prices.

R653-3-3. Annual Statement of Qualifications and Performance Data.

The State's Chief Procurement Officer will encourage firms engaged in providing engineer services to submit annually a statement of qualifications and performance data which should include, but not be limited to, the following:

A. the name of the firm and the location of all of its offices, specifically indicating the principal place of business,

B. the age of the firm and its average number of employees over the past five years,

C. the education, training, and qualifications of members of the firm and key employees,

D. the experience of the firm reflecting technical capabilities and project experience,

E. the names of five clients who may be contacted, including at least two for whom services were rendered in the last year,

F. any other pertinent information requested by the Procurement Officer.

A standard form or format may be developed for these statements of qualifications and performance data. Firms may amend statements of qualifications and performance data at any time by filing a new statement.

R653-3-4. Billing Rate Survey.

The Consulting Engineers Council of Utah will provide the results of an annual survey on billing rates within their respective disciplines to the Division of Purchasing prior to April 1 of each year. This information will then be made available to all public procurement units.

R653-3-5. Small Purchases of Engineer Services.

When the procurement of engineer services is estimated to be less than $20,000, the Division may select the provider directly from either the list of firms who have submitted annual statements of qualifications and performance data, or from other qualified firms if necessary. If the procurement is estimated to exceed $20,000, then the selection method outlined in the following sections will apply.

R653-3-6. Engineer Selection Committee.

The Division's Procurement Officer, or designee, will designate members of the Engineer Selection Committee. The selection committee will consist of at least three members.

The Division's Procurement Officer, or designee, will designate one member of such committee as chair and to act as the Procurement Officer to coordinate the negotiations of a contract with the most qualified firm.

R653-3-7. Public Notice.

Public notice for engineer services will be given by the Division. Such notice will be published sufficiently in advance in order for firms to have an adequate opportunity to respond to the solicitation. The notice will contain a brief statement of the services required that adequately describes the project, the closing date for submissions, and how specific information on the project may be obtained.

R653-3-8. Request for Statements of Interest.

A request for statements of interest (SOI) will be prepared that outlines the Division's requirements (scope of work) and sets forth the evaluation criteria. It will be distributed upon request and payment of a fee, if any.

The request for SOI will include notice of any conference to be held and the criteria to be used in evaluating the statements of qualifications and performance data and selecting firms, including but not limited to:

A. competence to perform the services as reflected by technical training and education, general experience, experience in providing the required services, and the qualifications and competence of persons who will be assigned to perform the services.

B. ability to perform the services as reflected by workload and the availability of adequate personnel, equipment, and facilities to perform the services expeditiously, and

C. past performance as reflected by the evaluations of private persons and officials of other governmental entities that have retained the services of the firm with respect to such factors as control of costs, quality of work, and an ability to meet deadlines.

R653-3-9. Definition of Scope of Work.

Prior to initiating a request for SOI for engineer services, the Division shall define the scope of such services. The scope section will be sufficient to define the work expected, as detailed as possible and will be the basis for the negotiation process. However the scope may be modified if necessary during final negotiations.

R653-3-10. Evaluation of Statements of Qualifications and Performance Data.

The selection committee will evaluate:

A. statement of qualifications and performance data, and

B. statements that may be submitted in response to the request for SOI for engineer services, including proposals for joint ventures, and

C. supplemental statements of qualifications and performance data, if their submission is required.

All statements and supplemental statements of qualifications and performance data will be evaluated in light of the criteria set forth in the SOI request for engineer services.

R653-3-11. Selection of Firms for Discussions.

The selection committee will select for discussions no fewer than three firms evaluated as being professionally and technically qualified (unless fewer than three firms responded to the SOI request. The Division will notify each firm in writing of the date, time, and place of discussions, and, if necessary, will provide each firm with additional information on the project and the services required. This discussion phase may be waived if the evaluation of the statements of qualification and performance data indicate that one firm is clearly more qualified and if the scope and nature of the services are clearly understood.

R653-3-12. Discussions.

Following evaluation of the statements of interest, qualifications and performance data, the selection committee may hold discussions with the firms selected. The purposes of such discussions will be to:

A. determine each firm's general capabilities and qualifications for performing the contract, and

B. explore the scope and nature of the required services and the relative accuracy, efficiency, time consumption, and cost of the alternative methods proposed to be used.

R653-3-13. Selection of the Most Qualified Firms.

After discussions the selection committee will reevaluate and select, in order of preference, the firms that it deems to be the most highly qualified to provide the required services. The selection committee will document the selection process indicating how the evaluation criteria were applied in determining the selection of the most highly qualified firms. Documents will remain in the division files for one year.

R653-3-14. Negotiation and Award of Contract.

The selection committee or its designee will negotiate a contract with the most qualified firm for the required services at compensation determined to be fair and reasonable to the Division. Contract negotiations will be directed toward:

A. clarifying the firm has an understanding of the scope of the work, specifically, the essential requirements involved in providing the required services,

B. insuring that the firm will make available the necessary personnel and facilities to perform the services within the required time, and

C. agreeing to a compensation that is fair and reasonable, taking into account the estimated value, scope, complexity, and nature of the required services.

R653-3-15. Failure to Negotiate Contract with the Most Qualified Firm.

A. If fair and reasonable compensation, contract requirements, and contract documents cannot be agreed upon with the most qualified firm, the Division will advise the firm in writing of the termination of negotiations.

B. Upon failure to negotiate a contact with the most qualified firm, the Procurement Officer will enter into negotiations with the next most qualified firm. If fair and reasonable compensation, contract requirements, and contract documents can be agreed upon, then the contract will be awarded to that firm. If negotiations again fail, negotiations will be terminated as provided in paragraph (a) of this section and commenced with the next most qualified firm.

R653-3-16. Notice of Award.

Written notice of the award will be sent to the firm with whom the contract is successfully negotiated. Each firm with whom discussions were held will be notified of the award. Notice of the award will be made available to the public.

R653-3-17. Failure to Negotiate Contract With Firms Initially Selected as Most Qualified.

Should the Division be unable to negotiate a contract with any of the firms initially selected as the most highly qualified firms, additional firms will be selected in preferential order based on their respective qualifications, and negotiations shall continue in accordance with section R653-3-15 until an agreement is reached and the contract awarded.

KEY: consultants, government purchasing
1992 **58-22-2**
Notice of Continuation December 23, 1997

R653. Natural Resources, Water Resources.
R653-4. Investigation Account.
R653-4-1. Authority and Purpose for the Account.

A. The Water Resources Investigation Account was established by the legislature in 1953 and is authorized under Section 73-10-8.

B. The Account was set up as part of, and is to be used in conjunction with the Water and Power Board Construction Fund and later amended to include application to the Water Resources Conservation and Development Fund.

C. The purpose of the Account is to provide moneys for special studies, investigations, engineering, inspections, and other expenses relating to the conservation and development of the waters of the State of Utah as provided under Title 73, Chapter 10.

R653-4-2. General Guidelines for Use of the Account.

A. The funds from this Account will be used for projects which the Board of Water Resources deems eligible under the criteria for the Water and Power Board Construction Fund and the Water Resources Conservation and Development Fund. When the Investigation Account is used for this purpose, the Account will be reimbursed from repayment obtained for the project, provided the project is authorized.

B. The Investigation Account may also be used to fund special studies and investigations which relate to the State water planning effort as determined by the Board of Water Resources or the Director of the Division of Water Resources.

C. Investigation Account funds have been and will continue to be used for, hiring consultants, paying salaries and expenses of staff personnel, subsurface investigations of dam sites and wells, hydrologic and water quality data collections, purchasing technical equipment for use in investigations and construction of water projects, working with the Federal Government on various studies requested by it, and performing environmental studies.

KEY: water conservation, water policy*
1992 **73-10-8**
Notice of Continuation December 23, 1997

R653. Natural Resources, Water Resources.
R653-5. Cloud Seeding.
R653-5-1. Definitions.

A. "Act" or "Cloud Seeding Act" means the 1973 CLOUD SEEDING TO INCREASE PRECIPITATION ACT, Title 73, Chapter 15.

B. "Cloud Seeding" or "Weather Modification" means all acts undertaken to artificially distribute or create nuclei in cloud masses for the purposes of altering precipitation, cloud forms, or other meteorological parameters.

C. "Cloud Seeding Project" means a planned project to evaluate meteorological conditions, perform cloud seeding, and evaluate results.

D. "Board" means the Utah Board of Water Resources, which is the policy making body for the Utah Division of Water Resources.

E. "Director" means the Director of the Utah Division of Water Resources.

F. "Utah Division of Water Resources" means the Director and staff of the Utah Division of Water Resources.

G. "License" means a certificate issued by the Utah Division of Water Resources certifying that the holder has met the minimum requirements in cloud seeding technology set forth by the State of Utah, and is qualified to apply for a permit for a cloud seeding project.

H. "Licensed Contractor" means a person or organization duly licensed for cloud seeding activities in the State of Utah.

I. "Permit" means a certification of project approval to conduct a specific cloud seeding project within the State under the conditions and within the limitations required and established under the provision of these Rules.

J. "Sponsor" means the responsible individual or organization that enters into an agreement with a licensed contractor to implement a cloud seeding project.

R653-5-2. General Provisions.

A. Authority: The State of Utah through the Division of Water Resources shall be the only entity, private or public, that shall have authority to authorize, sponsor or develop cloud seeding research, evaluation, or implementation projects to alter precipitation, cloud forms, or meteorological parameters within the State of Utah.

B. Ownership of Water: All water derived as a result of cloud seeding shall be considered as a part of Utah's basic water supply the same as all natural precipitation water supplies have been heretofore, and all statutory provisions that apply to water from natural precipitation shall also apply to water derived from cloud seeding.

C. Notice to State Engineer: The Director of the Utah Division of Water Resources shall, by written communication, notify the Director of the Utah Division of Water Rights of any applications for cloud seeding permits within ten days of receiving such applications.

D. Consultation and Assistance: The Utah Division of Water Resources may contract with the Utah Water Research Laboratory, or any other individual or organization, for consultation or assistance in developing cloud seeding projects or in furthering necessary research of cloud seeding or other factors that may be affected by cloud seeding activities.

E. State and County Cooperation: The Utah Division of Water Resources shall encourage, cooperate, and work with individual counties, multi-county districts for planning and development, and groups of counties in the development of cloud seeding projects and issuance of permits.

F. Statewide or Area-wide Cloud Seeding Project: The State of Utah through the Division of Water Resources reserves the right to develop statewide or area-wide cloud

seeding programs where the Utah Division of Water Resources may contract directly with licensed contractors to increase precipitation. The Utah Division of Water Resources may also work with individual counties, multi-county districts for planning and development, organizations or groups of counties, or private organizations, to develop Statewide or area-wide cloud seeding projects.

G. Liability:

1. Trespass - The mere dissemination of materials and substances into the atmosphere or causing precipitation pursuant to an authorized cloud seeding project, shall not give rise to any presumption that use of the atmosphere or lands constitutes trespass or involves an actionable or enjoinable public or private nuisance.

2. Immunity - Nothing in these Rules shall be construed to impose or accept any liability or responsibility on the part of the State of Utah or any of its agencies, or any State officials or State employees or cloud seeding authorities, for any weather modification activities of any person or licensed contractor as defined in these Rules as provided in Title 63, Chapter 30.

H. Suspension and Waiver of Rules - The Utah Division of Water Resources may suspend or waive R653-5-7(A)(7) and (8) and R653-5-7(B) when, at the discretion of the Director drought conditions are such that suspension or waiver of these Rules is appropriate.

R653-5-3. Utah Board of Water Resources.

A. Review of License and Permit: The Board may review applications for Licenses and Permits and submit recommendations to the Director for his consideration for action on the applications.

B. Policy Recommendations: The Board may advise and make recommendations concerning legislation, policies, administration, research, and other matters related to cloud seeding and weather modification activities to the Director and technical staff of the Utah Division of Water Resources.

R653-5-4. Weather Modification Advisory Committee.

A. Creation of Weather Modification Advisory Committee: An advisory committee may be created by the Director of the Utah Division of Water Resources. Members of this committee shall be appointed by the Director, and serve for a period of time as determined by the Director.

B. Duties of Weather Modification Advisory Committee:

1. Advise the Director and technical staff of the Utah Division of Water Resources on applications for licenses and permits;

2. Advise and make recommendations concerning legislation, policies, administration, research, and other matters related to cloud seeding and weather modification activities to the Director and technical staff of the Utah Division of Water Resources.

R653-5-5. License and Permit Required.

A. License and Permit Required: It is unlawful for any person or organization, not specifically exempted by laws and these Rules, to act or perform services as a weather modifier, without obtaining a license and permit as provided for in the Cloud Seeding Act and these Rules.

B. To Whom License May Be Issued: Licenses to engage in activities for weather modification and control shall be issued to applicants who meet the requirements set out in the Act and Section R653-5-6 of these Rules. If the applicant is an organization, these requirements shall be met by the individual or individuals who are to be in control and in charge of the applicant's weather modification operations.

C. To Whom Permit May be Issued: A permit may be issued to a licensed contractor as prescribed in Section R653-5-7 of these Rules.

D. License and Permit Not Required: Individuals and organizations engaging in the following activities are exempt from the license and permit requirements of these Rules:

1. Research performed wholly within laboratory facilities;

2. Cloud Seeding activities for the suppression of fog;

3. Fire fighting activities where water or chemical preparations are applied directly to fires, without intent to modify the weather;

4. Frost and fog protective measures provided through the application of water or heat by orchard heater, or similar devices, or by mixing of the lower layers of the atmosphere by helicopters or other type of aircraft where no chemicals are dispensed into the atmosphere, other than normal combustion by-products and engine exhaust; and

5. Inadvertent weather modification, namely emissions from industrial stacks.

E. Effective Period of License: Each license shall be issued for a period to expire at the end of the Utah State fiscal year in which it is issued. A licensee may renew an expired license in the manner prescribed by these Rules.

F. Effective Period of Permit: Each permit shall be issued for a period as required by a proposed cloud seeding project, but not exceeding one year.

R653-5-6. Procedures for Acquisition and Renewal of License.

A. Application For License: In order to qualify for a cloud seeding license an applicant must:

1. Submit a properly completed application to the Utah Division of Water Resources, and

2. Submit to the Utah Division of Water Resources evidence of (1) the possession by the applicant of a baccalaureate or higher degree in meteorology or related physical science or engineering and at least five years experience in the field of meteorology, or (2) other training and experience as may be acceptable to the Utah Division of Water Resources as indicative of sufficient competence in the field of meteorology to engage in cloud seeding activities.

B. Renewal of License: A licensee may qualify for a renewal of a license by submitting an application for renewal. If an organization has hired replacement personnel, the organization shall attach to its application for renewal a statement setting forth the names and qualifications of qualified personnel. A licensee should file an application for renewal 30 days prior to the expiration date of his license.

R653-5-7. Procedures for Acquisition of Permit.

A. Application for Permit: In order to qualify for receipt of a cloud seeding permit a licensee must:

1. Submit a properly completed application to the Utah Division of Water Resources;

2. Demonstrate to the satisfaction of the Director his ability to respond in damages for liability which might reasonably arise as a result of the applicant's proposed cloud seeding activities;

3. File a copy of the contract or proposed contract between the sponsor and licensed contractor relating to the project;

4. Submit copies of all pamphlets and promotional material distributed in connection with the project;

5. Submit the plan of operation for the project, including a map showing locations of all equipment to be used as well as equipment descriptions;

6. Receive preliminary approval of the project from the Director before proceeding with notices of intent described in R653-5-7 (7 and 8) of these Rules.

7. File with the Utah Division of Water Resources and the Utah Division of Water Rights a notice of intention for publication which sets forth the following:

a. the name and address of the applicant;

b. the date he received a cloud seeding license, and all dates of renewal;

c. the nature and the object of the intended operation, and the person or organization on whose behalf it is to be conducted;

d. the specific area in which, and the approximate date and time during which the operation will be conducted;

e. the specific area which is intended to be affected by the operation;

f. the materials and methods to be used in conducting the operation; and

g. a statement that persons interested in the permit application should contact the Utah Division of Water Resources.

8. File with the Utah Division of Water Resources, within 15 days from the last date of the publication of notice, proof that the applicant caused the notice of intention to be published at least once a week for three consecutive weeks in a newspaper having a general circulation within each county in which the operation is to be conducted and in which the affected area is located. Publication of notice shall not commence until the applicant has received approval of the form and substance of the notice of intention from the Director.

B. Issuance of a Permit: A permit shall not be issued prior to the expiration of ten days following the last date of publication of the notice of intent.

C. Description of a Permit: A licensee shall comply with all the requirements set out in his permit. A permit shall include the following:

1. The effective period of the permit, which shall not exceed one year;

2. The location of the operation;

3. The methods which may be employed; and

4. Other necessary terms, requirements, and conditions.

D. Authority to Amend a Permit: The Utah Division of Water Resources may amend the terms of a permit after issuance if the Utah Division of Water Resources determines that it is in the public interest.

R653-5-8. Revocation and Suspension of Licenses and Permits.

A. Automatic Suspension of a Permit: Any cloud seeding permit issued under the terms of these Rules shall be suspended automatically if the licensee's cloud seeding license should expire, or in the case of an organization being the licensee, if the person listed on the application for the permit as being in control of, and in charge of, operations for the licensee should become incapacitated, leave the employment of the licensee, or for any other reason be unable to continue to be in control of, and in charge of, the operation in question; and a replacement approved by the Director, has not been obtained.

B. Reinstatement of Permit: A permit which is suspended, may be, at the discretion of the Director, reinstated following renewal of the expired license, or submission of an amended personnel statement nominating a person whose qualifications for controlling and being in charge of the operation are acceptable to the Director.

C. Director's Authority to Suspend or Revoke Licenses and Permits: The Director may suspend or revoke any existing license or permit for the following reasons:

1. If the licensee no longer possesses the qualifications necessary for the issuance of a license or permit;

2. If the licensee has violated any of the provisions of the Cloud Seeding Act;

3. If the licensee has violated any of the provisions of these Rules; or

4. If the licensee has violated any provisions of his license and or permit.

R653-5-9. Record Keeping and Reports.

A. Information to be Recorded: Any individual or organization conducting weather modification operations in Utah shall keep and maintain a record of each operation which he conducts. For the purposes of this Section, the daily log required by Title 15, Chapter IX, Sub-Chapter A, Part 908, Section 908.8 (a), Code of Federal Regulations, November 1, 1972, as amended, and the supplemental information required by Sections 908.8 (b), (c), and (d) will be considered adequate, provided that each applicant for a weather modification permit submit with his application a list containing the name and post office address of each individual who will participate or assist in the operation, and promptly report any changes or additions to this list to the Utah Division of Water Resources.

B. Reports:

1. Each individual and organization conducting weather modification operations in Utah shall submit copies of the daily log and supplemental information for each month, to the Utah Division of Water Resources by the last day of each succeeding month.

2. Information copies of all other reports required by Title 15, Chapter IX, Sub-Chapter A, Part 908, Sections

908.5, 908.6, and 908.7, Code of Federal Regulations, shall be submitted to the Utah Division of Water Resources as soon as practicable, but in no case later than the deadlines set by the Federal Regulation.

3. Copies of all reports, publications, pamphlets, and evaluations made by either the licensed contractor or sponsor regarding a cloud seeding project must be submitted to the Utah Division of Water Resources at the time these are made public.

4. In relation to any evaluations made for cloud seeding effectiveness, both the method of evaluation and the data used shall be submitted to the Utah Division of Water Resources.

KEY: weather modification, water policy*
1992 **73-15-6**
Notice of Continuation December 23, 1997

R653. Natural Resources, Water Resources.
R653-6. Privatization Projects.
R653-6-1. Authority.

The purpose of this rule is to provide a form for the implementation of Section 73-10d-6(2).

R653-6-2. Procedure.

Any political subdivision that establishes ordinances, franchises, or other forms of regulation under the Utah Privatization Act shall complete and file a Privatization Report Form that is provided by the Water Development Coordinating Council. The form is due on a periodic basis coinciding with the date on which the political subdivision is required to file audits with the State Auditor.

KEY: water, privatization
1988 **73-10d-6(2)**
Notice of Continuation December 23, 1997

R653. Natural Resources, Water Resources.
R653-7. Administrative Procedures for Informal Proceedings.
R653-7-1. Authority and Effective Date.

A. These rules establish and govern administrative proceedings before the Utah Division of Water Resources and the Utah Board of Water Resources, respectively, as required by Sections 63-46b-1, et seq.

B. These rules govern all adjudicative proceedings commenced on or after January 1, 1988. Adjudicative proceedings commenced prior to January 1, 1988, are governed by existing procedures.

R653-7-2. Designation of Informal Proceedings.

A. All adjudicative proceedings of the Division of Water Resources and the Board of Water Resources are hereby designated as "informal."

R653-7-3. Definitions.

A. The definitions of the Utah Administrative Procedures Act (UAPA) in Section 63-46b-2 apply in this rule. In addition:

1. "Division" means the Utah Division of Water Resources.

2. "Board" means the Utah Board of Water Resources.

3. "Director" means the Director of the Division of Water Resources.

4. "Staff" means the staff of the Division of Water Resources.

R653-7-4. Construction.

A. These rules shall be construed in accordance with the Utah Administrative Procedures Act and supersede any conflicting provision of procedural rules promulgated by the Division or Board.

B. These rules shall be liberally construed to secure a just and speedy determination of all issues presented to the Division or Board.

C. Deviation from Rules--For good cause, and where no party is prejudiced, the Division or Board may permit deviation from these rules except where precluded by statute.

D. Computation of Time--The time within which any act shall be done shall be computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday, or State holiday, and then it is excluded and the period runs until the end of the next day which is neither a Saturday, Sunday, or State holiday.

R653-7-5. Commencement of Proceedings.

A. Proceedings Commenced by the Division or Board--All informal adjudicative proceedings commenced by the Division or Board shall be initiated as provided by applicable statute, Division rules, and Section 63-46b-3(2)(a).

B. Proceedings Commenced by Persons Other Than the Division or Board--All informal adjudicative proceedings commenced by persons other than the Division or Board shall be commenced by either completing prepared forms on file at the Division requesting agency action, or--if no forms are required to initiate a particular proceeding--by submitting in writing a request for agency action in accordance with Section 63-46b-3(2)(c).

R653-7-6. Answer or Responsive Pleading.

After a notice of agency action or a request for agency action has been issued or filed, any party may file an answer or response.

R653-7-7. Amendments to Pleadings.

The Presiding Officer may allow pleadings to be amended or corrected, and defects which do not affect substantial rights of the parties may be disregarded; provided, however, that documents which are governed by specific statutory provisions shall be amended only as provided by statute.

R653-7-8. Intervention.

Intervention is prohibited except where a federal statute or rule requires that a State permit intervention.

R653-7-9. Hearings.

A. The Division, Board or a Presiding Officer shall hold a hearing if a hearing is required by statute, or if a hearing is permitted by statute and is requested by a party within 30 days of the commencement of the adjudicative proceeding. The Division, Board or a Presiding Officer may at their discretion initiate a hearing to determine matters within their authority.

B. Notice of the hearing will be served on all parties by regular mail at least ten days prior to the hearing.

C. If no hearing is held in a particular adjudicative proceeding, the Presiding Officer shall issue a decision within a reasonable time.

R653-7-10. Pre-Hearing Procedure.

The Presiding Officer may, upon written notice to all parties of record, hold a pre-hearing conference for purposes of formulating or simplifying the issues, obtaining admissions of fact and documents which will avoid unnecessary proof, arranging for the exchange of proposed exhibits, and agreeing to other matters as may expedite the orderly conduct of the proceedings or the settlement thereof.

R653-7-11. Continuance.

If application is made to the Presiding Officer within a reasonable time prior to the date of hearing, upon proper notice to the other parties the Presiding Officer may grant a continuance of the hearing.

R653-7-12. Parties to a Hearing.

A. All persons defined as a "party" are entitled to participate in hearings before the Division or Board.

B. All parties shall be entitled to introduce evidence, examine and cross-examine witnesses, make arguments, and fully participate in the proceeding.

R653-7-13. Appearances and Representation.

A. Taking Appearances--Parties shall enter their appearances at the beginning of a hearing or at a time as may be designated by the Presiding Officer by giving their names and addresses and stating their positions or interests in the proceeding.

B. Representation of Parties

1. An individual who is a party to a proceeding, or an officer designated by a partnership, corporation, association or governmental subdivision or agency which is a party to a proceeding, may represent his or its interest in the proceeding.

2. Any party may be represented by an attorney licensed to practice in the State of Utah.

R653-7-14. Failure to Appear--Default.

When a party or his authorized representative to a proceeding fails to appear at a hearing after due notice has been given, the Presiding Officer may continue the matter or may enter an order of default as provided by Section 63-46b-11, or may proceed to hear the matter in the absence of the defaulting party.

R653-7-15. Discovery, Testimony, Evidence and Argument.

A. Discovery is prohibited and the Division or Board may not issue subpoenas or other discovery orders.

B. All parties shall have access to non-confidential and non-privileged information contained in Division and Board files that are public record and to all materials and information gathered in any investigation, to the extent permitted by law.

C. Testimony--At any hearing, the Presiding Officer shall accept oral or written testimony from any party. Further, the Presiding Officer shall have the right to question and examine any witness called to present testimony. Testimony and statements received at hearings may be under oath.

D. Rules of Evidence--A hearing may be conducted in an informal manner and without adherence to the rules of evidence required in judicial proceedings. Irrelevant, immaterial and unduly repetitious evidence may be excluded. The weight to be given to evidence shall be determined by the Presiding Officer. Hearsay evidence may not be excluded solely because it is hearsay.

E. Documentary Evidence--Documentary evidence may be received in the form of copies or excerpts. However, upon request, parties shall be given an opportunity to compare the copy with the original.

F. Official Notice--The Presiding Officer may take official notice of the following matters:

1. Rules, guidelines, official reports, written decisions, orders or policies of the Board of Water Resources, Division of Water Resources and any other regulatory agency, State or federal;

2. Official documents introduced into the record by proper reference; provided, the documents shall be made available so that parties to the hearing may examine the documents and present rebuttal testimony if they so desire;

3. Matters of common knowledge and generally-recognized technical or scientific facts within the Division's or Board's specialized knowledge and of any factual information which the Presiding Officer may have gathered from a field inspection.

G. Oral Argument and Memoranda--Upon the conclusion of the taking of evidence, the Presiding Officer may, in his discretion, permit the parties to make oral arguments setting forth their positions and also to submit written memoranda within the time specified by the Presiding Officer.

R653-7-16. Record of Hearing.

A. A record of any hearing shall be recorded at the Division's or Board's expense. When a record is made by the Division or Board, it shall be done by means of an automatic recording device. Any party, at his own expense, may have a reporter approved by the Division or Board prepare a transcript from the record of the hearing.

B. If a party desires that the testimony be recorded by means of a court reporter, that party may employ a court reporter at his own expense and shall furnish a transcript of the testimony to the Division or Board free of charge. This transcript shall be available at the Division office to any party to the hearing.

R653-7-17. Decisions and Orders.

A. Report and Order--After the Presiding Officer has reached a final decision upon any adjudicative proceeding, he shall make and enter a signed order in writing stating the decision, the reasons for the decision, a notice of the rights of the parties to request Division or Board review, reconsideration or judicial review, as appropriate, and notice of time limits for filing a request for review, reconsideration or court appeal. The order shall be based on facts appearing in any of the Division's files or records and on facts presented in evidence at any hearings.

B. Service of Decisions--A copy of the Presiding Officer's order shall be mailed by regular mail to each of the parties.

R653-7-18. Request for Reconsideration.

A. Who May File--Any aggrieved party may file a request for reconsideration by following the procedures of Section 63-46b-13. A request is not a prerequisite for judicial review.

B. Action on the Request--The Division Director or Board shall issue a written order granting or denying the request for reconsideration. If an order is not issued within 20 days after the filing of a request, the request for rehearing shall be considered denied. Any order granting rehearing shall be strictly limited to the matter specified in the order.

R653-7-19. Judicial Review.

Any party aggrieved by final agency action may obtain judicial review of the action pursuant to Sections 63-46b-14 and 15, except where judicial review is not permitted. A petition for judicial review shall be filed within 30 days after the date that the order constituting final agency action is issued.

R653-7-20. Declaratory Orders.

Any interested person may file a request for agency action requesting that the Division or Board issue a declaratory order determining the applicability of any statute, rule, or order within the primary jurisdiction of the Division or Board pursuant to Section 63-46b-21. A request for a declaratory order shall be filed in accordance with Section 63-46b-3(2)(c) which request commences an informal adjudicative proceeding. Any request shall set forth in detail the specific statute, rule, or order which is in question; the specific facts for which the order is requested; the manner in which the person making the request claims the statute, rule, or order may affect him; and the specific question(s) for which a declaratory order is requested. Persons may intervene in declaratory proceedings upon filing a timely petition to intervene in accordance with the provision of Section 63-46b-9.

The Division or Board may in their discretion decline to issue declaratory orders where the facts presented are deemed to be conjectural, abstract, insubstantial or where the public interest would best be served by not issuing an order.

R653-7-21. Emergency Orders.

The Division or Board may issue an order on an emergency basis without complying with these rules under the circumstances and procedures set forth in Section 63-46b-20.

KEY: administrative procedure
1992 **63-46b-1**
Notice of Continuation December 22, 1997

R657. Natural Resources, Wildlife Resources.
R657-10. Taking Cougar.
R657-10-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19 of the Utah Code, the Wildlife Board has established this rule for taking and pursuing cougar.

(2) Specific dates, areas, number of permits, limits, and other administrative details which may change annually are published in the proclamation of the Wildlife Board for taking cougar.

R657-10-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Canned hunt" means that a cougar is treed, cornered, held at bay or its ability to escape is otherwise restricted for the purpose of allowing a person who was not a member of the initial hunting party to arrive and take the cougar.

(b) "Cougar" means Felis concolor, commonly known as mountain lion, lion, puma, panther or catamount.

(c) "Cougar/bear pursuit permit" means a permit that authorizes a person to pursue cougar or bear during designated seasons. Information regarding bear pursuit is published in the proclamation of the Wildlife Board for taking bear.

(d) "Evidence of sex" means the sex organs of a cougar, including a penis, scrotum or vulva.

(e) "Green pelt" means the untanned hide or skin of any cougar.

(f) "Kitten" means a cougar less than one year of age.

(g) "Pursue" means to chase, tree, corner or hold a cougar at bay.

(h) "Waiting period" means a specified period of time that a person who has obtained a cougar permit must wait before applying for any other cougar permit.

R657-10-3. Permits for Taking Cougar.

(1) To take a cougar, a person must first obtain an annual Wildlife Habitat Authorization and a valid small game or combination license, and a limited entry cougar permit or a harvest objective cougar permit for a specified management unit as provided in the proclamation of the Wildlife Board for taking cougar.

(2) To pursue cougar, a person must first obtain an annual Wildlife Habitat Authorization and, valid small game or combination license, and a cougar/bear pursuit permit from a division office. A cougar/bear pursuit permit does not allow a person to kill a cougar.

(3) A person may not apply for or obtain more than one cougar permit for the same year, except:

(a) as provided in Subsection R657-10-27(3); or

(b) if the person is unsuccessful in the limited entry drawing, the person may purchase a harvest objective permit.

(4) Any cougar permit purchased after the season opens is not valid until seven days after the date of purchase.

(5) Only residents may obtain cougar/bear pursuit permits.

R657-10-4. Permit Exchanges.

(1)(a) Any person who has obtained a harvest objective cougar permit may exchange that permit for any other harvest objective unit provided the unit objective has not been met and the unit is still open.

(b) Limited entry cougar permits may not be exchanged.

(2)(a) A $5 handling fee will be charged for the exchange of a harvest objective permit.

(b) Any person who exchanges a harvest objective permit must complete a questionnaire at the time the exchange is made.

(3)(a) Any harvest objective permit exchanged is not valid until the day after the exchange is made.

(b) Harvest objective permits may be exchanged only at division offices.

R657-10-5. Purchase of License or Permit by Mail.

(1) A nonresident may purchase a small game license by mail by sending the following information to the Salt Lake division office: full name, complete mailing address, phone number, date of birth, weight, height, sex, color of hair and eyes, driver's license number (if available), proof of hunter education certification, and fee.

(2) A resident or nonresident may purchase a permit by mail by sending the following information to the Salt Lake division office: full name, complete mailing address, phone number, hunting license number, and fee.

(3)(a) Residents may send a personal check, cashier's check, or money order.

(b) Nonresidents must send either a cashier's check or money order.

(c) Checks must be made payable to the Utah Division of Wildlife Resources.

R657-10-6. Hunting Hours.

Cougar may be taken or pursued only between one-half hour before official sunrise through one-half hour after official sunset.

R657-10-7. Firearms and Archery Tackle.

A person may use the following to take cougar:

(1) any firearm not capable of being fired fully automatic; and

(2) a bow and arrows, except a crossbow may not be used.

R657-10-8. Traps and Trapping Devices.

(1) Cougar may not be taken with a trap, snare or any other trapping device, except as authorized by the Division of Wildlife.

(2) Cougar accidentally caught in any trapping device must be released unharmed.

(3)(a) Written permission must be obtained from a division representative to remove the carcass of a cougar from any trapping device.

(b) The carcass shall remain the property of the state of Utah and must be surrendered to the division.

R657-10-9. State Parks.

(1) Hunting of any wildlife is prohibited within the boundaries of all state park areas except those designated by the Division of Parks and Recreation in Section R651-603-5.

(2) Hunting with a rifle, handgun or muzzleloader in park areas designated open is prohibited within one mile of all park facilities including buildings, camp or picnic sites, overlooks, golf courses, boat ramps and developed beaches.

(3) Hunting with shotguns and archery tackle is prohibited within one quarter mile of the above stated areas.

R657-10-10. Prohibited Methods.

(1) Cougar may be taken or pursued only during open seasons and using methods prescribed in this rule and the proclamation of the Wildlife Board for taking cougar. Otherwise, under the Wildlife Resources Code, it is unlawful for any person to possess, capture, kill, injure, drug, rope, trap, snare or in any way harm or transport cougar.

(2) After a cougar has been pursued, chased, treed, cornered or held at bay, a person may not, in any manner, restrict or hinder the animal's ability to escape.

(3) A person may not engage in a canned hunt.

(4) A person may not take any wildlife from an airplane or any other airborne vehicle or device or any motorized terrestrial or aquatic vehicle, including snowmobiles and other recreational vehicles.

R657-10-11. Spotlighting.

(1)(a) Except as provided in Section 23-13-17, a person may not use or cast the rays of any spotlight, headlight or other artificial light to locate protected wildlife while having in possession a firearm or other weapon or device that could be used to take or injure protected wildlife.

(b) The use of a spotlight or other artificial light in a field, woodland or forest where protected wildlife are generally found is prima facie evidence of attempting to locate protected wildlife.

(2) The provisions of this section do not apply to the use of the headlights of a motor vehicle or other artificial light in a usual manner where there is no attempt or intent to locate protected wildlife.

R657-10-12. Party Hunting.

A person may not take a cougar for another person.

R657-10-13. Use of Dogs.

(1) Dogs may be used to take or pursue cougar only during open seasons as provided in the proclamation of the Wildlife Board for taking cougar.

(2) The owner and handler of dogs used to take or pursue cougar must have a valid cougar permit or cougar/bear pursuit permit in possession while engaged in taking or pursuing cougar.

(3) When dogs are used in the pursuit of a cougar, the licensed hunter intending to take the cougar must be present when the dogs are released and must continuously participate in the hunt thereafter until the hunt is completed.

R657-10-14. Tagging Requirements.

(1) The carcass of a cougar must be tagged with a temporary possession tag before the carcass is moved from or the hunter leaves the site of kill as provided in Section 23-20-30.

(2) A person may not hunt or pursue a cougar after any of the notches have been removed from the tag or the tag has been detached from the permit.

(3) The temporary possession tag:

(a) must remain attached to the pelt or unskinned carcass until the permanent possession tag is attached; and

(b) is only valid for 48 hours after the date of kill.

(4) A person may not possess a cougar pelt or unskinned carcass without a valid permanent possession tag affixed to the pelt or unskinned carcass. This provision does not apply to a person in possession of a properly tagged carcass or pelt within 48 hours after the kill, provided the person was issued and is in possession of a valid permit.

R657-10-15. Evidence of Sex and Age.

(1) Evidence of sex must remain attached to the carcass or pelt of each cougar until a permanent tag has been attached by the division.

(2) The pelt and skull must be presented to the division in an unfrozen condition to allow the division to gather management data.

(3) It is mandatory that a tooth (PM1) be removed by the division at the time of permanent tagging to be used for aging purposes.

(4) The division may seize any pelt not accompanied by its skull or not having sufficient evidence of biological sex designation attached.

R657-10-16. Permanent Tag.

(1) Each cougar must be taken by the permit holder to a conservation officer or division office within 48 hours after the date of kill to have a permanent possession tag affixed to the pelt or unskinned carcass and for the removal of a tooth.

(2) A person may not possess a green pelt after the 48-hour check-in period, or ship a green pelt out of Utah, or present a green pelt to a taxidermist if the green pelt does not have a permanent possession tag attached.

R657-10-17. Transporting Cougar.

Cougar which have been legally taken may be transported by the permit holder provided the cougar is properly tagged and the permittee possesses a valid small game or combination license and the appropriate permit.

R657-10-18. Exporting Cougar from Utah.

(1) A person may export a legally taken cougar or its parts if that person has a valid license and permit and the cougar is properly tagged with a permanent possession tag.

(2) A person may not ship or cause to be shipped from Utah, a cougar pelt without first obtaining a shipping permit issued by an authorized division representative.

R657-10-19. Donating.

(1) A person may donate protected wildlife or their parts to another person only at the following places:

(a) the residence of the donor;

(b) the residence of the person receiving protected wildlife or their parts;

(c) a meat locker;

(d) a storage plant; or

(e) a meat processing facility.

(2) A written statement of donation must be kept with the protected wildlife or parts showing:

(a) the number and species of protected wildlife or parts donated;

(b) the date of donation;

(c) the license or permit number of the donor and the permanent possession tag number; and

(d) the signature of the donor.

(3) A green pelt of any cougar donated to another person must have a permanent possession tag affixed.

(4) The written statement of donation must be retained with the pelt.

R657-10-20. Purchasing or Selling.

(1) Legally obtained, tanned cougar hides may be purchased or sold.

(2) A person may not purchase, sell, offer for sale, or barter a tooth, claw, paw, or skull of any cougar.

R657-10-21. Waste of Wildlife.

(1) A person may not waste or permit to be wasted or spoiled any protected wildlife or their parts.

(2) The skinned carcass of a cougar may be left in the field and does not constitute waste of wildlife.

R657-10-22. Livestock Depredation and Human Health and Safety.

(1) If a cougar is harassing, chasing, disturbing, harming, attacking or killing livestock, or has committed such an act within the past 72 hours:

(a) in depredation cases, the livestock owner, an immediate family member or an employee of the owner on a regular payroll, and not hired specifically to take cougar, may kill the cougar;

(b) a landowner or livestock owner may notify the division of the depredation or human health and safety concerns, who shall authorize a local hunter to take the offending cougar or notify a Wildlife Services specialist; or

(c) the livestock owner may notify a Wildlife Services specialist of the depredation who may take the depredating cougar.

(2) Depredating cougar may be taken at any time by a Wildlife Services specialist, supervised by the Wildlife Services program, while acting in the performance of the person's assigned duties and in accordance with procedures approved by the division.

(3) A depredating cougar may be taken with any weapon authorized for taking cougar.

(4)(a) Any cougar taken pursuant to this section must be delivered to a division office or employee within 72 hours.

(b) In accordance with Subsection (1)(a) the cougar shall remain the property of the state, except the division may issue a cougar damage permit to a person who has killed a depredating cougar in accordance with this section, if that person wishes to maintain possession of the cougar.

(c) A person may acquire only one cougar annually.

(5)(a) Hunters interested in taking depredating cougar as provided in Subsection (1)(b) may contact the division.

(b) Hunters will be contacted by the division to take depredating cougar as needed.

R657-10-23. Questionnaire.

Each permittee who receives a questionnaire should return the questionnaire to the division regardless of success. Returning the questionnaire helps the division evaluate population trends, harvest success and other valuable information.

R657-10-24. Taking Furbearers.

(1) Furbearers, including badger, beaver, black-footed ferret, bobcat, fisher, red fox, gray fox, kit fox, lynx, marten, mink, otter, ringtail, skunk, weasel, wolf and wolverine may be taken only in accordance with the furbearer proclamation.

(2) A person may not disturb, remove or possess a trap, trapping device or any wildlife held in a trap without first obtaining written permission from the trap owner.

R657-10-25. Taking Cougar.

(1)(a) A person may take only one cougar during the season and from the area specified on the permit.

(b) Limited entry permits may be obtained by following the application procedures provided in this rule and the proclamation of the Wildlife Board for taking cougar.

(c) Harvest objective permits may be purchased over-the-counter at division offices.

(2) A person may not:

(a) take or pursue a female cougar with kittens; or

(b) repeatedly pursue, chase, tree, corner, or hold at bay, the same cougar during the same day after the cougar has been released.

(3) Any cougar may be taken during the prescribed seasons, except a kitten with spots or any cougar accompanied by young.

(4) The division may authorize hunters who have obtained a limited entry cougar permit to take cougar in a specified area of the state in the interest of protecting wildlife from depredation.

(5) Season dates, closed areas, harvest objective permit areas and limited entry permit areas are published in the proclamation of the Wildlife Board for taking cougar.

R657-10-26. Extended and Preseason Hunts.

(1) An extended or preseason hunt may be authorized by the division on selected cougar management units to control depredation or nuisance problems.

(2) The director may authorize only those hunters who drew a limited entry permit or have purchased a harvest objective permit to hunt on that management unit and participate in a preseason or extended season hunt.

R657-10-27. Cougar/Bear Pursuit.

(1) Cougar may be pursued only by persons who have obtained an annual Wildlife Habitat Authorization, small

game or combination license and a cougar/bear pursuit permit. The cougar/bear pursuit permit does not allow a person to kill a cougar.

(2) A person may not:

(a) take or pursue a female cougar with kittens;

(b) repeatedly pursue, chase, tree, corner or hold at bay, the same cougar during the same day; or

(c) possess a firearm or any device that could be used to kill a cougar while pursuing cougar.

(3) If eligible, a person who has obtained a cougar/bear pursuit permit may also obtain a limited entry cougar permit or harvest objective cougar permit.

(4) Cougar may be pursued only on limited entry units or harvest objective units during the dates provided in the proclamation of the Wildlife Board for taking cougar.

(5) Cougar/bear pursuit permits are valid on a calendar year basis. Nonresidents may not purchase a cougar/bear pursuit permit.

R657-10-28. General Application Information.

(1) A person must obtain or apply for an annual Wildlife Habitat Authorization and either a 1997 or 1998 small game or combination license before the division may issue a cougar permit.

(2) Limited entry cougar permits are valid only for the management unit and for the specified season designated on the permit.

R657-10-29. Waiting Period.

(1) Any person who purchased a limited entry permit valid for the 1997 season, may not apply for a permit in the 1997/1998 season's drawing.

(2) Any person who draws a limited entry permit for the 1997/1998 season may not apply for a permit for the 1998/1999 season.

(3) Waiting periods are not incurred as a result of purchasing harvest objective permits.

R657-10-30. Application Procedure.

(1) Applications are available from license agents and division offices.

(2) Applicants may select up to three choices of areas when applying for limited entry cougar permits. Areas must be listed in order of preference.

(3) Applications must be received through the mail no later than 5 p.m., on the date published in the proclamation of the Wildlife Board for taking cougar. Applications completed incorrectly or received after the date published in the proclamation of the Wildlife Board for taking cougar are rejected.

(4) Applications must be sent to: Utah Cougar Applications, P.O. Box 168888, Salt Lake City, Utah 84116-8888.

(5) Group applications are not accepted. A person may not apply more than once in the current year.

(6)(a) A 1998 Wildlife Habitat Authorization and small game or combination license will be issued upon successfully drawing a permit.

(b) Any person who successfully draws a permit must obtain a 1997 Wildlife Habitat Authorization and small game or combination license if planning to hunt December 14 through December 31, 1997.

R657-10-31. Fees.

(1)(a) Personal checks, cashier's checks, money orders and credit cards are accepted from residents.

(b) Cashier's checks, money orders or credit cards are accepted from nonresidents. Personal checks are not accepted from nonresidents.

(2)(a) Credit cards must be valid at least 30 days after the drawing results are posted.

(b) Handling fees are charged to the credit card when the application is processed. Permit fees are charged after the drawing, if successful.

(3) A handling fee is added to the price of the permit on the application form. The handling fee must be included and is nonrefundable.

(4) An application is voidable if the check is returned unpaid from the bank or the credit card is invalid or refused.

R657-10-32. Drawing.

(1) If more applications are received for limited entry permits than the number of permits available, a drawing will be held. Drawing results will be posted on the date published in the proclamation of the Wildlife Board for taking cougar at division offices, Lee Kay Center for Hunter Education and Cache Valley Hunter Education Center.

(2)(a) Beginning on the date published in the proclamation of the Wildlife Board for taking cougar, any resident limited entry permits remaining after the drawing are available to residents and any nonresident limited entry permits remaining after the drawing are available to nonresidents from the Salt Lake division office by mail-in application. These permits are sold on a first-come, first-served basis.

(b) Beginning on the date published in the proclamation of the Wildlife Board for taking cougar, residents or nonresidents may purchase any of the remaining permits by mail-in application from the Salt Lake division office.

(3) Any limited entry cougar permit purchased after the season opens is not valid until seven days after the date of purchase.

(4) Waiting periods do not apply to purchase permits after the drawing. However, waiting periods are incurred as a result of purchasing permits after the drawing.

R657-10-33. Bonus Points.

(1) A bonus point is awarded for a valid unsuccessful application in the drawing.

(2) Bonus points are forfeited if the person skips three consecutive years in applying or the person obtains a permit.

(3) The purchase of a harvest objective permit will not affect bonus points.

(4) Bonus points are not transferable.

(5) Bonus points are tracked by using the applicant's social security number or division-issued hunter identification number.

R657-10-34. Refunds.

Refunds are mailed within six weeks after the drawing.

R657-10-35. Harvest Objective General Information.

(1) A person must obtain an annual Wildlife Habitat Authorization and a 1997 or 1998 small game or combination license before the division may issue a cougar permit.

(2) Harvest objective permits are valid only for the management unit and for the specified season designated on the permit.

(3) Harvest objective permits are not valid after the harvest objective has been met for the specified management unit.

R657-10-36. Harvest Objective Permit Sales.

(1) Harvest objective permits are available to residents and nonresidents over-the-counter beginning on the date published in the proclamation of the Wildlife Board for taking cougar from division offices.

(2) Any cougar permit purchased after the season opens is not valid until seven days after the date of purchase.

(3) Any harvest objective permit exchanged is not valid until the day after the exchange is made.

R657-10-37. Harvest Objective Unit Closures.

(1) To hunt in a harvest objective unit, a hunter must call 1-888-668-LION to verify that the cougar management unit is still open. The phone line will be updated each day by 8 p.m.

(2) Harvest objective units are open to hunting until:

(a) the female cougar sub-objective for that unit is met;

(b) the cougar harvest objective for that unit is met; or

(c) the end of the hunting season as provided in the proclamation of the Wildlife Board for taking cougar.

(3) Upon closure of a harvest objective unit, a hunter may not take or pursue cougar except as provided in Section R657-10-27.

(4) Any person who obtains a harvest objective cougar permit may exchange that permit as provided in Section R657-10-3.

KEY: wildlife, cougar*, game laws
December 16, 1997 23-14-18
Notice of Continuation August 25, 1997 23-14-19

R657. Natural Resources, Wildlife Resources.
R657-13. Taking Fish and Crayfish.
R657-13-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19 of the Utah Code, the Wildlife Board has established this rule for taking fish and crayfish.

(2) Specific dates, areas, methods of take, requirements and other administrative details which may change annually and are pertinent are published in the proclamation of the Wildlife Board for taking fish and crayfish.

R657-13-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Aggregate" means the combined total of two or more species of fish or two or more size classes of fish which are covered by a limit distinction.

(b) "Angling" means fishing with a rod, pole, tipup, handline, or trollboard that has a single line with legal hooks, baits, or lures attached to it, and is held in the hands of, or within sight (not to exceed 100 feet) of, the person fishing.

(c)(i) "Artificial fly" means a fly made by the method known as fly tying.

(ii) "Artificial fly" does not mean a weighted jig, lure, spinner, attractor blade, or bait.

(c) "Artificial lure" means a device made of rubber, wood, metal, glass, fiber, feathers, hair, or plastic with a hook or hooks attached. Artificial lures, including artificial flies, do not include fish eggs or other chemically treated or processed natural baits or any natural or human-made food, or any lures that have been treated with a natural or artifical fish attractant or feeding stimulant.

(d) "Bag limit" means the maximum limit, in number or amount, of protected wildlife that one person may legally take during one day.

(e) "Bait" means a digestible substance, including worms, cheese, salmon eggs, marshmallows, or manufactured baits including human-made items that are chemically treated with food stuffs, chemical fish attractants or feeding stimulants.

(f) "Chumming" means dislodging or depositing in the water any substance not attached to a hook, line, or trap, which may attract fish.

(g) "Fishing contest" means any organized event or gathering where anglers are awarded prizes, points or money for their catch.

(h) "Float tube" means an inflatable floating device less than 48 inches in any dimension, capable of supporting one person.

(i) "Gaff" means a spear or hook, with or without a handle, used for holding or lifting fish.

(j) "Game fish" means Bonneville cisco; bluegill; bullhead; channel catfish; crappie; green sunfish; largemouth bass; northern pike; Sacramento perch; smallmouth bass; striped bass, trout (rainbow, albino, cutthroat, brown, golden, brook, lake/mackinaw, kokanee salmon, and grayling or any hybrid of the foregoing); tiger muskellunge; walleye; white bass; whitefish; wiper; and yellow perch.

(k) "Handline" means a piece of line held in the hand and not attached to a pole used for taking fish or crayfish.

(l) "Immediately Released" means that the fish should be quickly unhooked and released back into the water where caught. Fish that must be immediately released cannot be held on a stringer, or in a live well or any other container or restraining device.

(m) "Lake" means the standing water level existing at any time within a lake basin. Unless posted otherwise, a stream flowing inside or within the high water mark is not considered part of the lake.

(n) "Length measurement" means the greatest length

between the tip of the head or snout and the tip of the caudal (tail) fin when the fin rays are squeezed together. Measurement is taken in a straight line and not over the curve of the body.

(o) "Motor" means an electric or internal combustion engine.

(p) "Nongame fish" means species of fish not listed as game fish.

(q) "Possession limit" means, for purposes of this rule only, one bag limit, including fish at home, in a cooler, camper, tent, freezer, or any other place of storage.

(r) "Protected aquatic wildlife" means, for purposes of this rule only, all species of fish, crustaceans, or amphibians.

(s) "Reservoir" means the standing water level existing at any time within a reservoir basin. Unless posted otherwise, a stream flowing inside or within the high water mark is not considered part of the reservoir.

(t) "Second pole" means fishing with one additional rod, pole, tipup, handline, or trollboard that has a single line with legal hooks, bait, or lures attached to it and is held in the hands of, or within sight of the person fishing.

(u) "Setline" means a line anchored to a non-moving object and not attached to a fishing pole.

(v) "Single hook" means a hook or multiple hooks having a common shank.

(w) "Snagging" or "gaffing" means to take a fish in a manner that the fish does not take the hook voluntarily into its mouth.

(x) "Tributary" means a stream flowing into a larger stream, lake, or reservoir.

(y)(i) "Trout" means species of the family Salmonidae, including rainbow, albino, cutthroat, brown, golden, brook, tiger, lake (mackinaw), splake, kokanee salmon, and grayling or any hybrid of the foregoing.

(ii) "Trout" does not include whitefish or Bonneville cisco.

(z) "Underwater Spearfishing" means, fishing by a person swimming or diving and using a mechanical device held in the hand which uses a rubberband, spring, or pneumatic power to propel a spear to take fish.

R657-13-3. Free Fishing Day.

A license is not required on free fishing day, Saturday June 6. All other laws and rules apply.

R657-13-4. Fishing Contests.

(1)(a) A certificate of registration from the division is required for fishing contests:

(i) with 50 or more contestants; or

(ii) any fishing contest offering $500 or more in prizes.

(b)(i) Application for certificates of registration are available from division offices and must be submitted at least 60 days prior to the date of the fishing contest.

(ii) The division may take public comment before issuing a certificate of registration if, in the opinion of the division, the proposed fishing contest has potential impacts to the public or substantially impacts a public fishery.

(c) A certificate of registration may cover more than one fishing contest.

(d) The division may deny issuing a certificate of registration or impose stipulations or conditions on the issuance of the certificate of registration in order to adequately protect a fishery or to offset impacts on a fishery or heavy uses of other public resources.

(e) A report must be filed with the division within 30 days after the fishing contest is held. The information required shall be listed on the certificate of registration.

(f)(i) Only one fishing contest may be held on a given water at any time. Each fishing contest is restricted to being held on only one water at a time.

(ii) Fishing contests may not be held on a holiday weekend, state or federal holiday, or free fishing day, except as provided in Subsection (g).

(g) A fishing contest may be held on free fishing day and a certificate of registration is not required if :

(i) contestants are limited to persons 13 years of age or younger; and

(ii) less than $500 are offered in prizes.

(2) Fishing contests conducted for cold water species of fish such as trout and salmon may not be conducted:

(a) if the fishing contest offers $500 or more in total prizes, except on Flaming Gorge Reservoir there is no limit to the amount that may be offered in prizes;

(b) those waters where the Wildlife Board has imposed special harvest rules as provided in the annual proclamation of the Wildlife Board for taking fish and crayfish.

(3) Contests conducted for warm water species of fish must be conducted as follows:

(a) contest rules:

(i) may not allow a person to keep any fish, except for incident mortalities or trophy fish; and

(ii) must encourage the live release of all fish;

(b) Fish brought in to be weighed or measured may not be released within 1/2 mile of a marina, boat ramp, or other weigh-in site and must be released back into suitable habitat for that species; and

(c) If tournament rules allow smaller fish to be entered in the contest than the size allowed for possession under the proclamation of the Wildlife Board for taking fish and crayfish, the fish must be weighed or measured immediately and released where they were caught.

R657-13-5. Interstate Waters.

(1) Lake Powell and Flaming Gorge Reservoir:

(a) The purchase of a reciprocal fishing stamp allows a person to fish across state boundaries of interstate waters.

(b) Reciprocal fishing stamps are offered for Lake Powell and Flaming Gorge Reservoir.

(c) Any person qualifying as an Arizona resident and having in their possession a valid Arizona resident fishing license and a Utah reciprocal fishing stamp for Lake Powell, is permitted to fish within the Utah boundaries of Lake Powell.

(d) Any person possessing a current valid Wyoming fishing license and a Utah reciprocal fishing stamp for Flaming Gorge is permitted to fish within the Utah waters of Flaming Gorge Reservoir.

(e) Utah residents may obtain reciprocal fishing stamps

by contacting the state of Arizona for Lake Powell, and the state of Wyoming for Flaming Gorge.

(f) Nonresidents may obtain reciprocal fishing stamps from division offices and selected license agents.

(g) The reciprocal fishing stamp must be:

(i) signed across the face by the holder as the holder's name appears on the valid fishing or combination license; and

(ii) attached to the fishing or combination license.

(h) Reciprocal fishing stamps are valid on a calendar year basis.

(i) Anglers are subject to the laws and rules of the state in which they are fishing.

(j) Only one bag limit may be taken and held in possession even if licensed in both states.

(2) Bear Lake

(a) The holder of a valid Utah or Idaho fishing or combination license may fish within both the Utah and Idaho boundaries of Bear Lake.

(b) Only one bag limit may be taken and held in possession even if licensed in both states.

R657-13-6. Angling.

(1) While angling, the angler shall be within sight (not to exceed 100 feet) of the equipment being used at all times, except setlines.

(2) Angling with more than one line is unlawful, except while fishing for crayfish without the use of fish hooks and on selected waters with a valid second pole permit. A second pole permit is not required when fishing for crayfish with lines without hooks.

(3) No artificial lure may have more than three hooks.

(4) No line may have attached to it more than two baited hooks, two artificial flies, or two artificial lures, except for a setline or while fishing at Flaming Gorge Reservoir.

(5) When angling through the ice, the hole may not exceed 12 inches across at the widest point, except at Bear Lake, Flaming Gorge Reservoir, and Fish Lake where specific limitations apply.

R657-13-7. Fishing With a Second Pole.

(1) Residents and nonresidents may use a second pole to take fish only in the:

(a) Bear River from the Idaho state line downstream, including Cutler Reservoir and the outlet canals;

(b) Little Bear River below Valley View highway (SR-130);

(c) Malad River;

(d) Willard Bay Reservoir;

(e) Pine View Reservoir;

(f) Flaming Gorge Reservoir;

(g) Pelican Lake;

(h) Starvation Reservoir;

(i) Utah Lake;

(j) Yuba Reservoir;

(k) D.M.A.D.;

(l) Gunnison Bend;

(m) Lake Powell;

(n) Gunlock Reservoir; and

(o) Huntington North Reservoir.

(2) A second pole permit is required in addition to a valid annual or short-term fishing license, or combination license and may be obtained for a $10 fee from any division office.

(3) Anglers under 14 years of age must purchase a fishing or combination license and second pole permit in order to use a second pole.

R657-13-8. Setline Fishing.

(1) Residents and nonresidents may use a setline to take fish only in the Bear River proper downstream from the Idaho state line, including Cutler Reservoir and outlet canals; Little Bear River below Valley View Highway (SR-30); Malad River; and Utah Lake.

(2) Angling with one pole is permitted while setline fishing.

(3) No more than one setline per angler may be used and it may not contain more than 15 hooks.

(4) A setline permit is required in addition to a valid fishing or combination license and may be obtained for a $10 fee from any division office.

(5) When fishing with a setline, the angler shall be within 100 yards of the surface or bank of the water being fished.

(6) A setline shall have one end attached to a nonmoving object, not attached to a fishing pole, and shall have attached a legible tag with the name, address, and setline permit number of the angler.

(7) Anglers under 14 years of age must purchase a fishing or combination license and setline permit in order to use a setline.

R657-13-9. Underwater Spearfishing.

(1) Underwater spearfishing is permitted from official sunrise to official sunset.

(2) Use of artificial light is unlawful while underwater spearfishing.

(3) Deer Creek Reservoir, Starvation Reservoir, Fish Lake, and Flaming Gorge Reservoir are open to taking game fish by means of underwater spearfishing from June 2 through September 4. These are the only waters open to underwater spearfishing for game fish.

(4) The bag and possession limit is two game fish. No more than one lake trout (mackinaw) greater than 20 inches may be taken at Fish Lake. At Flaming Gorge Reservoir only one lake trout (mackinaw) greater than 28 inches may be taken.

(5) Nongame fish may be taken by underwater spearfishing only in the waters listed in Subsection (3) above and as provided in Section R657-13-14.

R657-13-10. Dipnetting.

(1) Hand-held dipnets may be used to take Bonneville cisco only at Bear Lake.

(2) The opening of the dipnet may not exceed 18 inches.

(3) When dipnetting through the ice, the size of the hole is unrestricted.

R657-13-11. Restrictions on Taking Fish and Crayfish.

(1) Artificial light is permitted, except when underwater spearfishing.

(2) A person may not obstruct a waterway, use a chemical, explosive, electricity, poison, crossbow, firearm, pellet gun, or archery equipment, except as provided in Subsection R657-13-14(1)(c) to take fish or crayfish.

(3)(a) A person may not use a snag or gaff to take protected aquatic wildlife, however, a gaff may be used to land fish caught by lawful means, except at Flaming Gorge Reservoir and Fish Lake.

(b) "Snagging" or "gaffing" means to take a fish in a manner that the fish does not take the hook voluntarily into its mouth. A gaff is a spear or hook, with or without a handle, used for holding or lifting fish.

(4) Chumming is prohibited, on all waters except Lake Powell where dead anchovies only may be used for taking striped bass.

(5) The use of a float tube or a boat, with or without a motor, for fishing is unlawful on some waters. Boaters should be aware that other agencies may have additional restrictions on the use of float tubes, boats, or boats with motors on some waters.

(6) Nongame fish and crayfish may be taken only as provided in Sections R657-13-14 and R657-13-15.

R657-13-12. Bait.

(1)(a) Fishing is permitted with any bait, except corn, hominy, or live fish.

(b) Possession or use of corn or hominy while fishing is unlawful.

(2) Use or possession of any bait while fishing on waters designated artificial fly and lure only is unlawful.

(3) Game fish or their parts may not be used, except for the following:

(a) Dead Bonneville cisco may be used as bait only in Bear Lake.

(b) Dead yellow perch may be used as bait only in: Fish Lake, Gunnison, Hyrum, Newton, Pineview, Rockport, Sevier Bridge (Yuba), and Willard Bay reservoirs .

(c) Dead white bass may be used as bait only in Utah Lake.

(d) The eggs of any species of fish may be used.

(4) Use of live crayfish for bait is legal only on the water where the crayfish is captured. It is unlawful to transport live crayfish away from the water where captured.

(5) Manufactured, human-made items that may not be digestible, that are chemically treated with food stuffs, chemical fish attractants, or feeding stimulants may not be used on waters where bait is prohibited.

R657-13-13. Prohibited Fish.

(1) The following species of fish are classified as prohibited and may not be taken or held in possession:

(a) Bonytail chub (Gila elegans);

(b) Colorado squawfish (Ptychocheilus lucius);

(c) Flannelmouth sucker (Catostomus latipinnis);

(d) Gizzard shad (Dorosoma cepedianum);

(e) Grass carp (Ctenopharyngodon idella);

(f) Humpback chub (Gila cypha);

(g) June sucker (Chasmistes liorus);

(h) Least chub (Iotichthys phlegethontis);

(i) Leatherside chub (Gila copei);

(j) Razorback sucker (Xyrauchen texanus);

(k) Roundtail chub (Gila robusta);

(l) Virgin River chub (Gila robusta seminuda);

(m) Virgin spinedace (Lepidomeda mollispinis); and

(n) Woundfin (Plagopterus argentissimus).

(2) Any of these species taken while attempting to take other legal species shall be immediately released.

R657-13-14. Taking Nongame Fish.

(1)(a) Except as provided in Subsections (b) and (c), a person possessing a valid Utah fishing or combination license may take nongame fish for personal, noncommercial purposes during the open fishing season set for the given body of water.

(b) A person may not take any species of fish designated as prohibited in Section R657-13-12.

(c) Nongame fish may not be taken in the following waters, except carp may be taken by angling, archery, spear, or underwater spearfishing:

(i) San Juan River;

(ii) Colorado River;

(iii) Green River (from confluence with Colorado River upstream to Colorado state line in Dinosaur National Monument);

(iv) Green River (from Colorado state line in Brown's Park upstream to Flaming Gorge Dam, including Gorge Creek, a tributary entering the Green River at Little Hole);

(v) White River (Uintah County);

(vi) Duchesne River (from Myton to confluence with Green River);

(vii) Virgin River (Main stem, North, and East Forks).

(viii) Ash Creek;

(ix) Beaver Dam Wash;

(x) Fort Pierce Wash;

(xi) La Verkin Creek;

(xii) Santa Clara River (Baker Reservoir downstream to the confluence with the Virgin River);

(xiii) Diamond Fork;

(xiv) Thistle Creek;

(xv) Main Canyon Creek (tributary to Wallsburg Creek);

(xvi) South Fork of Provo River (below Deer Creek Dam); and

(xvii) Snake Valley waters (west and north of US Highway 6 and that part of US Highway 6 and 50 in Millard and Juab counties).

(2) Nongame fish, except those species listed in Section R657-13-13, may be taken by spear or underwater spearfishing in the waters specified in Subsection R657-13-9(3), angling, traps, bow and arrow, liftnets, or seine.

(3) Seines shall not exceed 10 feet in length or width.

(4) Lawfully taken nongame fish shall be either released or killed immediately upon removing them from the water, however, they may not be left or abandoned on the shoreline.

R657-13-15. Taking Crayfish.

(1) A person possessing a valid Utah fishing or combination license may take crayfish for personal, noncommercial purposes during the open fishing season set for the given body of water.

(2) Crayfish may be taken by hand or with a trap, pole, liftnet, handline, or seine, provided that:

(a) game fish or their parts, or any substance unlawful for angling, is not used for bait;

(b) seines shall not exceed 10 feet in length or width;

(c) no more than five lines are used, and no more than one line may have hooks attached (bait is tied to the line so that the crayfish grasps the bait with its claw); and

(d) live crayfish are not transported from the body of water where taken.

R657-13-16. Possession and Transportation of Dead Fish and Crayfish.

(1) Fish held in possession in the field or in transit shall be kept in such a manner that:

(a) the species of fish can be readily identified;

(b) the number of fish can be readily counted;

(c) the size of the fish can be readily measured where size limits apply; and

(d) fillets shall have attached sufficient skin to include the conspicuous markings so species may be identified.

(2) A legal limit of game fish or crayfish may accompany the holder of a valid fishing or combination license within Utah or when leaving Utah.

(3) A person may possess or transport a legal limit of game fish or crayfish for another person when accompanied by a donation letter.

(4) A person may not take more than one bag limit in any one day or possess more than one bag limit of each species or species aggregate regardless of the number of days spent fishing.

(5) A person may possess or transport dead fish on a receipt from a registered commercial fee fishing installation, a private pond owner, or a short-term fishing event. This receipt shall specify:

(a) the number and species of fish;

(b) date caught;

(c) the certificate of registration number of the installation, pond, or short-term fishing event; and

(d) the name, address, telephone number of the seller.

R657-13-17. Possession of Live Fish and Crayfish.

(1) A person may not possess or transport live protected aquatic wildlife except as provided by the Wildlife Code or the rules and proclamation of the Wildlife Board.

(2) For purposes of this rule, a person may not transport live fish or crayfish away from the water where taken.

(3) This does not preclude the use of live fish stringers, live wells, or hold type cages as part of normal angling procedures while on the same water in which the fish or crayfish are taken.

R657-13-18. Release of Tagged or Marked Fish.

Without prior authorization from the division, a person may not:

(1) tag, mark, or fin-clip fish for the purpose of offering a prize or reward as part of a contest;

(2) introduce a tagged, marked, or fin-clipped fish into the water; or

(3) tag, mark, or fin-clip a fish and return it to the water.

R657-13-19. General Season Dates and Bag and Possession Limits.

(1) All waters of state fish raising and spawning facilities are closed to fishing.

(2) State waterfowl management areas are closed to fishing except as specified in the proclamation of the Wildlife Board for taking fish and crayfish.

(3) The general season for taking fish and crayfish is January 1 through December 31, 24 hours each day. Exceptions are specified in the proclamation of the Wildlife Board for taking fish and crayfish.

(4)(a) Bag and possession limits are specified in the proclamation of the Wildlife Board for taking fish and crayfish and apply statewide unless otherwise specified.

(b)(i) A person may not fish in waters that have a specific bag or size limit while possessing fish in violation of that limit.

(ii) Fish not meeting the size, bag, or species provisions on specified waters shall be returned to the water immediately.

(5) A person under 14 years of age may:

(a) fish without a license and take 1/2 a bag and possession limit; or

(b) purchase a license and take a full bag and possession limit.

(6) A person may not take more than one bag limit in any one day or have in possession more than one bag limit of each species or species aggregate regardless of the number of days spent on fishing.

R657-13-20. Variations to General Provisions.

Variations to general season dates, times, bag and possession limits, methods of take, use of a float tube or a boat for fishing, and exceptions to closed areas are specified in the proclamation of the Wildlife Board for taking fish and crayfish.

KEY: fish, fishing, wildlife, wildlife law

January 1, 1998	**23-14-18**
Notice of Continuation September 26, 1997	**23-14-19**
	23-19-1
	23-22-3

R671. Pardons (Board of), Administration.
R671-101. Rules.
R671-101-1. Rules.

Board of Pardons rules shall be processed according to state rulemaking procedures. The Board shall determine if the rule is to be submitted through the regular rulemaking or emergency rulemaking procedure. Rules shall then be distributed as necessary.

Any error, defect, irregularity or variance in the application of these rules which does not affect the substantial rights of a party may be disregarded. Rules are to be interpreted with the interests of public safety in mind so long as the rights of a party are not substantially affected.

KEY: pardons

1993	**77-27-2**
Notice of Continuation December 12, 1997	**77-27-9**
	63-46a

R671. Pardons (Board of), Administration.
R671-102. Americans with Disabilities Act Complaint Procedure Rule.
R671-102-1. Purpose and Authority.

A. This rule is promulgated pursuant to Section 63-46a-3 (2) of the State Administrative Rulemaking Act. The Board of Pardons Office adopts, defines, and publishes within this rule complaint procedures to provide for prompt and equitable resolution of complaints filed in accordance with Title II of the Americans with Disabilities Act, pursuant to 29 CFR 35.107,1992 ed.

B. No qualified individual with a disability, by reason of such disability, shall be excluded from participation in or be denied the benefits of the services, programs, or activities of this office, or be subjected to discrimination by this office.

R671-102-2. Definitions.

A. "The ADA Coordinator" means the Office of the Board of Pardons' coordinator or designee, who has responsibility for investigating and providing prompt and equitable resolution of complaints filed by qualified individuals with disabilities in accordance with the Americans With Disabilities Act, or provisions of this rule.

B. "The ADA State Coordinating Committee" means that committee with representatives designated by the directors of the following agencies:

(1) Office of Planning and Budget;

(2) Department of Human Resource Management;

(3) Division of Risk Management;

(4) Division of Facilities Construction Management; and

(5) Office of Attorney General.

C. "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 such an individual; a record of such an impairment; or being regarded as having such an impairment.

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

E. "Individual with a disability" (hereafter individual) means a person who has a disability which limits one of his/her 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 Office of the Board of Pardons, or who would otherwise be an eligible applicant for vacant state positions, as well as those who are employees of the state.

F. "Board" means the Board of Pardons and Parole.

G. "Chairman" or "Chairman of the Board" means Chairman of the Board of Pardons and Parole.

R671-102-3. Filing of Complaints.

A. A 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 Board's ADA Coordinator in writing or in another accessible format suitable to the individual.

C. Each complaint shall:

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

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

(3) describe the office's alleged discriminatory action in sufficient detail to inform the office of the nature and date of the alleged violation;

(4) describe the action and accommodation desired; and

(5) be signed by the individual or by his/her legal representative.

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

R671-102-4. 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 Section 3 (C) of this rule if it is not made available by the individual.

B. When conducting the investigation, the coordinator may seek assistance from the Board'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:

(1) an expenditure of funds which is not absorbable within the agency's budget and would require appropriation authority;

(2) facility modifications which require an expenditure of funds which is not absorbable within the agency's budget and would require appropriation authority; or

(3) reclassification or reallocation in grade; the coordinator shall consult with the ADA State Coordinating Committee.

R671-102-5. 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 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 day period, he shall notify the individual in writing or by another suitable format why the decision is being delayed and what additional time is needed to reach a decision.

R671-102-6. 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. The appeal shall be filed in writing with the Chairman of the Board or a designee other than the Board's ADA Coordinator.

C. The filing of an appeal shall be considered as authorization to the Board's Chairman or designee, by the individual, to allow review of all information, including information classified as private or controlled.

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

E. The Chairman of the Board or designee shall review the factual findings of the investigation and the individual's statement regarding the inappropriateness of the 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 the Chairman or designee to:

(1) an expenditure of funds which is not absorbable and would require appropriation authority;

(2) facility modifications which require an expenditure of funds which is not absorbable and would require appropriation authority; or

(3) reclassification or reallocation in grade; he/she 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 suitable format to the individual.

G. If the Chairman or designee is unable to reach a decision within the ten working day period, he/she shall notify the individual in writing or by another suitable format why the decision is being delayed and the additional time needed to reach a decision.

R671-102-7. Classification of Records.

A. The record of each complaint and appeal, and all written records produced or received as part of such actions, shall be classified as protected as defined under Section 63-2-304 until the ADA Coordinator, the Chairman of the Board 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 coordinator, Chairman of the Board or designees shall be classified as public information.

R671-102-8. Relationship to Other Laws.

A. 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 Subpart F, beginning with Part 35.170, 1992 Edition); or any other Utah State of Federal law that provides equal or greater protection for the rights of individuals with disabilities.

KEY: disabilities
1993 **67-19-32**
Notice of Continuation December 12, 1997

R671. Pardons (Board of), Administration.
R671-201. Original Parole Grant Hearing Schedule and Notice.
R671-201-1. Schedule and Notice.

Within six months of an offender's commitment to prison the Board will give notice of the month and year in which the inmate's original hearing will be conducted. A minimum of one week (7 calendar days) prior notice should be given regarding the specific day and approximate time of such hearing.

All sex offenses, all first degree felonies, and all second and third degree felonies where a life has been taken, will be routed to the Board as soon as practicable for the determination of the month and year for their original hearing date. The Board will only consider information available to the court at the time of sentencing.

An inmate who is serving a sentence of up to fifteen years will be eligible for a hearing after service of nine months.

An inmate who is serving a sentence of up to five years including Class A Misdemeanor commitments will be eligible for a hearing after the service of ninety days.

Excluded from the above provisions are inmates who are sentenced to death or life without parole.

An inmate may petition the Board to calendar him/her at a time other than the usual times designated above or the Board may do so on its own motion. A petition by the inmate shall set out the special reasons which give rise to the request. The Board shall notify the petitioner of its decision in writing as soon as possible.

KEY: parole, inmate
February 19, 1997 **77-27-2**
Notice of Continuation December 12, 1997 **77-27-5**
77-27-7
77-27-11

R671. Pardons (Board of), Administration.
R671-202. Notification of Hearings.

R671-202-1. Notification.

An offender shall be notified at least seven calendar days in advance of any hearing where personal appearance is involved, except in extraordinary circumstances, and shall be specifically advised as to the purpose of the hearing.

In extraordinary circumstances, the hearing may be conducted without the seven day notification, or the offender may waive this notice requirement.

Board calendars and materials are prepared in advance and, when possible, notice of original hearings, rehearings and parole revocation hearings are published in a newspaper of general circulation four days in advance of the hearings. A public notice of personal appearance hearing will also be posted one week in advance at the Board of Pardons office.

Open public hearings are regularly scheduled by the Board at the various correctional facilities throughout the state. The Board will convene a weekly open public meeting at its offices after providing proper notice.

KEY: parole, inmate

1993	**77-27-7**
Notice of Continuation December 12, 1997	**77-27-9**
	77-27-11

R671. Pardons (Board of), Administration.
R671-203. Victim Input and Notification.
R671-203-1. Victim Input and Notification.

Pursuant to statute, the Department of Corrections shall provide the Board of Pardons with all available information concerning the impact a crime may have had upon the victim or victim's family. Also, the prosecutor of the case shall forward to the Board a victim impact statement referring to physical, mental or economic loss suffered by the victim or victim's family.

In accordance with statute victims shall be allowed to testify before the Board of Pardons at original parole grant hearings, rehearings and applicable parole violation and rescission hearings. Victims shall be given timely notice, delivered to their last known address, of the place and time of the hearing.

A victim is defined as an individual, of any age, against whom an offender committed a felony or class A misdemeanor offense for which the hearing is being held. If a victim does not wish to give testimony or is unable to do so, a designee may be appointed to speak on their behalf. Family may testify if the victim is deceased as a result of the offense or if the victim is a child.

Oral testimony at hearings shall be limited to five minutes in length per victim or designee. If family testifies, testimony should be limited to one family representative from the marital family (i.e. spouse or children) and/or one family representative from the nuclear/extended family (i.e. parent, sibling or grandparent). Under exceptional or extraordinary circumstances a victim may formally petition the Board to request additional testimony.

If requested by the victim, the victim may present testimony during the hearing outside the presence of the offender. The offender will be excused from the hearing room so that the victim can give testimony. The victim's testimony will be recorded. At the conclusion of the testimony, the offender will be returned to the hearing room and the Board will play the recorded testimony to allow the offender to respond to the victim's testimony.

Victims who want to testify are asked to notify the Board three weeks in advance of the hearing so that appropriate arrangements can be made and time allocated for the presentations. victims or designees should bring a written copy of their remarks to the hearing or send a copy to the Victim Coordinator for the Board file.

If more than four victims want to speak at the same hearing, the hearing may need to be rescheduled to accommodate the extra time required to hear all the testimony. If Board business is not concluded by 5:00 p.m. on a hearing day, all remaining hearings may be rescheduled and visitors may have to return.

A victim or designee, who is appearing at a hearing where photographic equipment is being used by the media, will not be photographed without the approval of the victim and the presiding Board Member or Hearing Officer.

Victims may contact the Board of Pardons, after any parole hearing, for information concerning the outcome of that hearing. Victims are advised that they may also contact the Utah State Prison Records Unit Supervisor for information on offender releases.

KEY: victims of crimes

1993	**77-27-5**
Notice of Continuation December 12, 1997	**77-27-9**
	77-27-9.5
	77-27-13 (5)
	64-13-20 (4)

R671. Pardons (Board of), Administration.
R671-204. Pending Charges.
R671-204-1. Pending Charges.

It is the policy to the Board of Pardons to consider continuing an original parole grant hearing, parole violation hearing, rehearing or rescission hearing pending the resolution of felony or misdemeanor charges. When determining a continuance, the Board will consider the gravity of the new charges, whether the date has been set for trial, whether the presentence or post sentence reports have been completed, or any other information that could address the pending charges.

If the Board determines that pending charges warrants a continuance of a hearing, the offender will be notified in writing that his/her hearing has been continued and the reasons for doing so. When the Board is notified that the charges have been resolved, the hearing will be rescheduled as soon as practicable.

KEY: inmate, parole

1993	**77-27-7**
Notice of Continuation December 12, 1997	**77-27-11**

R671. Pardons (Board of), Administration.
R671-206. Competency of Offenders.
R671-206-1. General.

If a Board member or staff presiding at a hearing has reason to believe that an offender may be mentally incompetent, all proceedings shall be stayed pursuant to 77-15-5 (6). The Board's Mental Health Advisor shall notify the Department of Corrections of the Board's concern.

The Prison Bureau of Medical Services will conduct a screening evaluation regarding the issue of competency. If there is reason to believe that the inmate or parolee may be incompetent, the Department of Corrections will request the Attorney General to file a petition with the district court for a competency hearing pursuant to UCA 77-15-3

If the Department determined incompetency requirements cannot be met, or if the district court determines the offender is mentally competent, the Board shall proceed with scheduled hearings/actions.

KEY: criminal competency
1993 **77-15-3**
Notice of Continuation December 12, 1997 **7-15-5**
77-27-2
77-27-7
77-27-13

R671. Pardons (Board of), Administration.
R671-207. Mentally-Ill Offender Custody Transfer.
R671-207-1. General.

Custody transfer of a mentally-ill offender from the Utah State Hospital to the utah State Prison will occur when the Hospital and the Prison agree that the prison can provide the mentally-ill offender with the level of care necessary to maintain the offender's current mental condition. If the Hospital and the Prison cannot agree upon the transfer, the Board of Pardons shall make the decision as to where the offender is to be housed.

The Division of Human Services shall notify the Department of Corrections and the Board's mental health advisor when a mentally ill offender is eligible for transfer to the Prison. If the Department of Corrections agrees that the prison can provide the mentally ill offender with the level of care necessary to maintain the offender's mental condition, pursuant to 77-16a-204 (1) (2), the custody transfer will occur. The Board may hold an administrative review hearing within 30 days of the actual transfer date.

In the event the Division of Human Services and the Department of Corrections do not agree on the transfer of a mentally ill offender, the Division of Human Services shall notify the Board's mental health advisor, in writing, of the dispute. The Division of Human Services and the Department of Corrections will provide the mental health advisor with copies of all reports and recommendation by both agencies. The Board's mental health advisor shall make a recommendation to the Board of the transfer and the Board shall issue its decision upon the transfer within 30 days pursuant to 77-16a-204 (4).

The Department of Corrections shall notify the Board whenever a mentally ill offender is transferred from the Hospital to the Prison pursuant to 77-16a-204 (5).

KEY: criminal competency
1993 **77-16a-204**
Notice of Continuation December 12, 1997 **77-27**

R671. Pardons (Board of), Administration.
R671-208. Confidentiality of Psychological Evaluations and Alienist Reports.
R671-208-1. General.

All psychological evaluations prepared by the Department of Corrections for the Board are confidential documents and are subject to the control of the Department of Corrections.

Alienist reports prepared pursuant to Utah Code Annotated Subsection 77-27-7(3) by designated Board of Pardons contract staff are confidential documents and are subject to the control of the Board. The Board may release such reports to the Department of Corrections and to private therapists and agencies, who provide mental health services to offenders under the jurisdiction of the Board of Pardons. for the use in treatment and management of offenders. The board may not release that portion of the recommendations made to the Board for the inmate's treatment and management to any individual or agency including individuals and programs within the Department of Corrections.

Requests for reports must be in writing and directed to the Board's mental health advisor. Private therapists and agencies who request reports must include a release of information form signed by the offender. Department of Corrections personnel and private therapists and agencies who receive alienist reports from the Board of Pardons shall not disclose said reports or information contained therein to other individuals or agencies.

KEY: psychological, parole, inmate
1993 **77-27**
Notice of Continuation December 12, 1997

R671. Pardons (Board of), Administration.
R671-301. Personal Appearance.
R671-301-1. Personal Appearance.

By statute, the Board or its designee is required to see each and every offender in at least one hearing. In rehearings, the offender is afforded all the rights and considerations afforded in the initial hearing except as provided by other Board rules because the setting of a parole date is still at issue. In rescission hearings and parole revocation hearings, a personal appearance is mandatory unless waived.

An offender has the right to be present at a parole grant, rehearing, rescission, or parole violation hearing if s/he is

within the state (UCA 77-27-7). The offender may speak on his/her own behalf, present documents, ask, and answer questions. In the event an offender waives this right, or refuses to personally attend the hearing the Board may proceed with the hearing and a decision may be made in his/her absence.

If an offender is being housed out of state the right to a personal appearance may be waived. The waiver should be in writing and witnessed by a staff member at the institution where the offender is housed. A written waiver shall be voluntary. The original copy of the waiver is to be forwarded to the Board and retained in the offender's file.

If the offender chooses not to waive the appearance, any of the following five alternatives be utilized at the discretion of the Board in conducting the hearing:

1. Request the Warden to return the offender to the state for the hearing.
2. A courtesy hearing may be conducted with the consent of the offender by the paroling authority of jurisdiction where the offender is housed. A request along with a complete copy of Utah's record shall be forwarded for the hearing. All reports, a summary of the hearing, and a recommendation shall be returned to the Utah Board for final action.
3. An individual Board member may travel to the jurisdiction and conduct the hearing, record the proceeding, and make a written record and recommendation for the Board's final decision.
4. A Board hearing officer may be sent to conduct the hearing, record the proceeding and make a written record and recommendation for the Board's final decision.
5. A hearing may be conducted by way of conference telephone call with the consent of the offender.

KEY: inmate, parole

1993	**77-27-2**
Notice of Continuation December 12, 1997	**77-27-7**
	77-27-9
	77-27-11
	77-27-29

R671. Pardons (Board of), Administration.

R671-302. News Media and Public Access to Hearings.

R671-302-1. Open Hearings.

According to state law and subject to fairness and security requirements, Board of Pardons hearings shall be open to the public, including representatives of the news media.

R671-302-2. Limited Seating.

When the number of people wishing to attend a hearing exceeds the seating capacity of the room where the hearing will be conducted, priority shall be given to:

1. Individuals involved in the hearing
2. Victim(s) of record.
3. Up to five people selected by the victim(s) of record.
4. Up to five people selected by the offender
5. Up to five members of the news media as allocated by the Board or its designee (see RESERVED MEDIA SEATING)
6. Members of the public and media on a first-come, first served basis.

R671-302-3. Security and Conduct.

All attendees are subject to Prison security requirements and must conduct themselves in a manner which does not interfere with the orderly conduct of the hearing. Any individual causing a disturbance or engaging in behavior deemed by the Board to be disruptive of the proceeding may be ordered to leave and security personnel of the prison may be requested to escort the individual from the premises.

R671-302-4. Executive Session.

Executive sessions are closed sessions with no access. No filming, recording or transmitting of executive session portions of any hearing shall be allowed.

R671-302-5. News Media Equipment.

Subject to prior approval by the Board or its designee (see APPROVING EQUIPMENT), the news agency representatives shall be permitted to operate photographic, recording or transmitting equipment during the public portions of any hearing. When more than one news agency requests permission to use photographic, recording or transmitting equipment, a pooling arrangement may be required.

When it is determined by the Board or its deignee, that any such equipment or operators of that equipment have the potential to cause a disturbance or interfere with the holding of a fair and impartial hearing, or are causing a disturbance or interfering with the holding of a fair and impartial hearing, restrictions may be imposed to eliminate those problems.

Photographing, recording and/or transmitting the image of a victim testifying before the Board will be prohibited unless approved by the victim and the presiding Board member or Hearing Officer.

R671-302-6. Prior Approval.

News media representatives wishing to use photographic, recording or transmitting equipment or to be considered for one of the five reserved media seats shall submit a request in writing to the Board or its designee. Such requests must be submitted in compliance with the policy and procedures of the Department of Corrections. If requesting the use of equipment, the request must specify by type, all the pieces of equipment to be used.

R671-302-7. Approving Equipment.

If the request is to use photographic, recording or transmitting equipment, at least 48 hours prior to a regularly scheduled hearing and 96 hours prior to a Commutation Hearing, it shall be the responsibility of a representative of the news agency making the request to confer with the designated staff member of the Board to work out the details. If the designated staff member is unfamiliar with the equipment proposed to be used, he may require that a

demonstration be performed to determine if it is likely to be intrusive, cause a disturbance or will inhibit the holding of a fair and impartial hearing in any way. If the Board, or its designee determines that such may occur, it may be required that the equipment be modified or substituted for equipment that will not cause a problem or the equipment may be banned.

Video tape or "on air" type cameras mounted on a tripod and still cameras encased in a soundproof box and mounted on a tripod shall be deemed to be approved equipment.

If the equipment is approved for use at a hearing, its location and mode of operation shall be approved in advance by the Board's designated staff member and it shall remain in a stationary position during the entire hearing and shall be operated as unobtrusively as possible.

There shall be no artificial light used.

If there is more than one request for the same type of equipment, the news agencies shall be required to make pool arrangements, as no more than one piece of the same type of equipment shall be allowed. If no agreement can be reached on who the pool representative will be, the Board, or its designee, shall draw a name at random. All those wishing to be a pool representative must agree in advance to fully cooperate with all pool arrangements.

R671-302-8. Reserved Media Seating.

If there are fewer than four other requests received prior to the deadline, the request shall be approved. If more than five requests are made, the Board's designee shall allocate the seating based on a pool arrangement. Each category shall select its own representative(s). If no agreement can be reached on who the representative(s) will be, the Board's designee shall draw names at random. All those wishing to be a pool representative must agree in advance to fully cooperate with all pool arrangements.

One seat shall be allocated to each of the following categories:

1. Local daily newspapers with statewide circulation
2. Major wire services with local bureaus
3. Local television stations with regularly scheduled daily newscasts
4. Local radio stations with regularly scheduled daily newscasts
5. Daily, weekly or monthly publications (in that order) located in the area where the criminal activity took place.
6. If the requests submitted do not fill all of the above categories, a seat shall be allocated to a representative of a major wire service with no local bureau or a national publication (in that order).

If seats remain unfilled, one additional seat shall be allocated to the categories in the above order until all seats are filled. No news agency shall have more than one individual assigned to reserved media seating unless all other requests have been satisfied.

R671-302-9. Violations.

Any news agency found to be in violation of this policy may have its representatives restricted in or banned from covering future Board hearings.

KEY: news agencies
1993 **77-27-5**
Notice of Continuation December 12, 1997

R671. Pardons (Board of), Administration.
R671-303. Offender Access to Information.
R671-303-1. Offender Access to Information.

For any hearing at which an offender is entitled to a personal appearance, the offender shall be provided a general summary either orally or in writing of any information on which the Board intends to rely in making its decision.

The offender shall have the opportunity to respond to the summary.

At the time the offender appears before the Board, the Board shall summarize the information considered in reaching its decision. The offender will be given a reasonable opportunity to respond to any information the Board is considering. If the offender asserts that information considered by the Board is not correct, he may present documentation, affidavits or other information to disprove the fact in dispute.

The Board may continue the hearing to allow for submission of such information. The Board shall consider any information obtained at the hearing or supplied by the offender.

If the offender alleges a factual inaccuracy in any of the summarized information, the Board shall, as to each matter controverted that would materially affect the Board's decision,

(1) make a finding as to the allegation or

(2) make a determination that no such finding is necessary because the matter controverted will not be taken into account in the Board's decision.

Upon request and in accordance with Chapter 1, Title 63, Government Records Access and Management Act, the Board shall provide an offender with a copy of public or private records in its files that it uses in making a decision in the offender's case.

KEY: inmates' rights, inmate, parole, records
1993 **63-2-85.3**
Notice of Continuation December 12, 1997 **63-2-85.4**

R671. Pardons (Board of), Administration.
R671-304. Hearing Record.
R671-304-1. Hearing Record.

The Board shall cause a record to be made of all proceedings.

R671-304-2. Procedure.

A record (verbatim transcript, tape recording or written summary) shall be made of all hearings. The record shall be retained by the Board for future reference or transcription upon request at cost. However, copies may be provided at no cost to the petitioner in accordance with UCA 77-27-8 (3).

KEY: government hearings
1993 **77-27-8**
Notice of Continuation December 12, 1997 **77-27-9**

R671. Pardons (Board of), Administration.
R671-307. Foreign Nationals and Offenders With Detainers.
R671-307-1. Foreign Nationals and Offenders With Detainers.

Offenders who are foreign nationals and offenders who have detainers lodged against them shall be considered for parole and termination consistent with other Board policies. The Board will consider requests for transfer pursuant to international treaties.

KEY: parole
1993 **77-27-9**
Notice of Continuation December 12, 1997 **77-27-13**

R671. Pardons (Board of), Administration.
R671-308. Offender Hearing Assistance.
R671-308-1. Offender Hearing Assistance.

The Board of Pardons will allow an offender to have such assistance from other persons as may be required in preparation for a Board hearing.

Family, friends, professionals, interpreters, case workers, and minority representatives are allowed to be present at hearings and may assist the offender in preparing his case.

An attorney shall be retained by the State to represent all parolees who desire representation at Parole Revocation hearings before the Board of Pardons. However, an alleged parole violator may choose to have a private attorney represent the offender at his/her own expense.

Except as otherwise provided by law, no person other than the offender may address the Board at any hearing except for the offender's attorney at a Parole Revocation hearing, or such persons as the Board may find necessary to the orderly conducting of any hearing.

KEY: parole, inmate
1993 **77-17-7**
Notice of Continuation December 12, 1997 **77-27-9**
77-27-11
77-27-29

R671. Pardons (Board of), Administration.
R671-309. Impartial Hearings.
R671-309-1. Impartial Hearings.

Offenders are entitled to an impartial hearing before the Board of Pardons. To that end, the Board of Pardons discourages any direct outside contact with individual Board Members regarding specific cases. This also applies to Hearing Officers designated to conduct hearings. Any such contact should be made with the Board's designated staff member.

All contacts by offenders, victims of crime, their family members or any other person outside the staff of the Board of Pardons regarding a specific case shall be referred, whenever possible, to the staff member designated by the Board who may not be directly involved in hearing the case. If circumstances dictate, the designated Board staff member shall prepare a memorandum for the file containing the substance of the contact. If the contact is by a victim wishing to make a statement for the Board's consideration, the Board's rule on Victim Input and Notification shall apply.

If a contact, or prior knowledge of a case or individuals involved, is such that it may affect the ability of a Board Member or designated Hearing Officer to make a fair and impartial decision in a case, the Board Member or designated Hearing Officer shall decide whether to participate in the hearing. If the decision is to participate, the offender shall be informed of the contact or prior knowledge and be given the opportunity to request that the Board Member or Hearing Officer not participate. Such a request is not binding in any way, but shall be weighed along with all other factors in making a final decision regarding participation in the hearing.

This rule shall not preclude contact by members of the Department of Corrections so long as such contact is not for the purpose of influencing the decision of an individual Board Member on any particular case or hearing.

KEY: parole, inmate
1993 **77-27-7**
Notice of Continuation December 12, 1997 **77-27-9**

R671. Pardons (Board of), Administration.
R671-310. Rescission Hearings.
R671-310-1. Rescission Hearings.

Any prior Board decision may be reviewed and rescinded by the Board at any time until an offender's actual release from custody.

If the rescission of a release or rehearing date is being requested by an outside party, information shall be provided to the Board establishing the basis for the request. Upon receipt of such information, the offender may be scheduled for a rescission hearing. The Board may also review and rescind an offender's release or rehearing date on its own initiative. Except under extraordinary circumstances, the offender should be notified of all allegations and the date of the scheduled hearing at least seven calendar days in advance of the hearing. The offender may waive this period.

In the event of an escape, the Board will rescind the inmate's date upon official notification of escape from custody and continue the hearing until the inmate is available for appearance, charges have been resolved and appropriate information regarding the escape has been provided.

The hearing officer shall conduct the hearing and make an interim decision to be reviewed, along with a summary report of the hearing, by the Board members.

KEY: parole, inmate
1993 **77-26-7**
Notice of Continuation December 12, 1997

R671. Pardons (Board of), Administration.
R671-311. Special Attention Hearings and Reviews.
R671-311-1. General.

This type of consideration is used to grant relief in special circumstances requiring action by the Board. This action is initiated by the receipt of a written request indicating that special circumstances exist for which a change in status may be warranted. These circumstances could include, but are not limited to, illness of the offender requiring extensive medical attention, exceptional performance or progress in the institution, exceptional opportunity for employment, exceptional family circumstances, or marginal performance on parole, and involves information that was not previously considered by the Board. For Special Attentions that have not originated from or been processed through the Department of Corrections, the Board shall request the Department review and make recommendations before taking action.

Special Attention requests that are considered to be repetitive, frivolous or lacking in substantial merit may be placed in the offenders file without formal action or response.

R671-311-2. Special Attention Hearing.

A Special Attention Hearing will be convened or conducted when, in the opinion of the Board, a personal appearance is in the best interest to resolve the issue. Special Attention Hearings are open to the public, are hearings of record and the offender should receive 7 days notice of the purpose, place, date and time of the hearing.

R671-311-3. Special Attention Review.

A Special Attention Review will be processed administratively based on written reports supplied to the Board without the personal appearance of the offender.

KEY: parole, inmate
April 30, 1996 **77-27-7**
Notice of Continuation December 12, 1997

R671. Pardons (Board of), Administration.
R671-315. Pardons.
R671-315-1. Pardons.

The Board of Pardons shall consider a petition for a pardon from an individual whose sentence(s) have been terminated or expired for at least five years and who has exhausted all judicial remedies including expungement. Upon verification of these criteria, the Board may cause an investigation of the petitioner to be conducted which may include, but not be limited to, criminal, personal and employment history. The Board may publish the petition in the legal notices section of a newspaper of general circulation and invite comment from the public.

The Board shall consider the petition and all available information relevant to it. The Board may deny a pardon by majority vote without a hearing. If the Board decides to consider the granting of a pardon, a hearing shall be scheduled with appropriate notice given. The Board may grant a conditional pardon or an unconditional pardon. The petitioner shall be notified in writing of the results as soon as practicable.

The Board may dispense with any requirement created by this policy if good cause exists.

KEY: pardons
1993 **77-27-2**
Notice of Continuation December 12, 1997 **77-27-5**
77-27-9
Art VII Sec 12

R671. Pardons (Board of), Administration.
R671-316. Redetermination.
R671-316-1. Redetermination Review.

Offenders will be eligible to apply for redetermination at five-year intervals from the last time-related decision. A time-related decision is defined as a personal appearance hearing or redetermination review dealing with release or rehearing dates. Offenders who have been given a decision of natural life in prison will be eligible for redetermination at ten year intervals.

When applying for redetermination, the offender waives personal appearance and accepts that the Board may reduce the time served, request psychological or other assessment, change conditions of release, make no change or increase the time to be served.

Applications for redetermination must originate with and be signed by the offender. Applications may be routed directly to the Board or preferably be submitted through the offender's caseworker. In either event, the Board will request a written progress report to include rationale and recommendation based on the Department of Corrections' assessment. The Department of Corrections should provide these materials to the Board in a timely manner.

KEY: parole, inmate
1994 **77-27-7**
Notice of Continuation December 12, 1997

R671. Pardons (Board of), Administration.
R671-317. Interim Decisions.
R671-317-1. Interim Decisions.

Any hearing, except for commutation, may be conducted by one Board Member or hearing officer or by any number or combination of examiners up to the full board. Any decision which is made by less than three concurring Board members is an interim decision and is subject to modification upon review and voting by other Board Members. Interim decisions will be in full force and effect until reviewed and

either affirmed or modified by a majority of the Board Members. Interim decisions may be made as a result of either a personal appearance hearing of administrative review.

KEY: government hearings, parole, inmate
1993 **77-27**
Notice of Continuation December 12, 1997

R671. Pardons (Board of), Administration.
R671-401. Parole Incident Reports.
R671-401-1. General.

An incident report shall be submitted to the Board when an incident, positive or negative, occurs which would serve to modify the conditions of parole or a parolee's status.

Examples of incidents which shall be reported to the Board via an Incident Report at the time of occurrence are:

a. Conviction of any infraction, misdemeanor or felony.

b. Significant incidents of infractions of the general or specific conditions of parole.

c. An incident which results in the parole supervisor placing the parolee in jail on a parole hold, arrest, detainment, or other conditions or incidents which result in the parolee being denied liberty.

All suspected parole violations shall be investigated and an incident report along with a recommended course of action shall be submitted to the Board within a reasonable period of time. The report shall advise the Board of a parolee's adjustment and provide for modification of parole agreement conditions if necessary. Police reports, court orders, and waivers of personal appearance from parolees shall be attached when applicable.

KEY: parole
1993 **77-27-7**
Notice of Continuation December 12, 1997 **77-27-10**
77-27-11
77-27-13
77-27-21.5

R671. Pardons (Board of), Administration.
R671-402. Special Conditions of Parole.
R671-402-1. General.

The Board of Pardons shall order special conditions as part of a parole agreement on an individual basis and only if such conditions can be reasonably related to rehabilitation of the offender or the protection of society. The offender shall be given an opportunity to respond to proposed special conditions.

At any time, the Board may review an offender at its own initiative or upon recommendation by the Department of Corrections or others and add any special conditions it deems appropriate. The offender shall be afforded a personal appearance before the Board or a Board Hearing Officer to discuss the proposed condition(s) unless that appearance is waived.

KEY: parole
1993 **77-27-5**
Notice of Continuation December 12, 1997 **77-27-6**
77-27-10
77-27-11

R671. Pardons (Board of), Administration.
R671-405. Parole Termination.
R671-405-1. Termination of Parole.

The Board of Pardons shall consider terminating an offender's parole when petitioned to do so by the Department of Corrections, other interested parties or on its own initiative. When considering termination, the Board of Pardons may toll any parole time when a parolee is an absconder. The toll time shall be from the date a Board warrant was issued to the date the warrant was executed.

Absent exigent circumstances, if a termination request is denied, the parolee may not be reconsidered for termination until six months has passed. When a termination is approved by the Board, written notification of the Board's action will be provided to the parolee and the Department of Corrections.

Depending on the crime, statutory periods of parole without violation are three and ten years.

Upon receipt of written notification of the service of the statutory maximum period on parole and verification of that information, the Board of Pardons shall then order the closing of the file.

KEY: sentencing, parole
1993 **76-3-202**
Notice of Continuation December 12, 1997 **77-35-21.5**
77-27-9
77-27-12

R671. Pardons (Board of), Administration.
R671-501. Warrants of Arrest.
R671-501-1. Issuance of Warrants.

A member of the Board of Pardons may issue a warrant in compliance with the Board's policy on Evidence for Issuance of Warrants. Such warrants shall have the same force and effect as if signed by all members.

R671-501-2. Voiding of Warrants.

A request to void a warrant shall be submitted in writing and will include the rationale on which the recommendation is based to the Board member who issued that warrant; if that individual is not available any Board member may act on the request.

KEY: warrants
1993 **77-27-11**
Notice of Continuation December 12, 1997

R671. Pardons (Board of), Administration.
R671-503. Prerevocation Hearings.
R671-503-1. General.

A Prerevocation Hearing should be conducted by an independent hearing officer within fourteen days after detention on a Board warrant, on all alleged parole violations unless such hearing is expressly waived by the parolee, unless good cause is shown for exceeding the 14 day period as determined by the Board. The parole officer shall serve Prerevocation Hearing Information on a parolee at least three working days prior to the actual Prerevocation Hearing. At the same time, the parole officer shall advise the parolee of his rights concerning the Prerevocation Hearing.

The hearing should be held reasonably near where the violation is alleged to have occurred. The purpose of the hearing is to determine whether there is probable cause to believe that the parolee is in violation of his parole agreement. Upon completion of the hearing, the hearing officer will inform the parolee both verbally and in writing whether probable cause exists. At the time of service, the parolee shall also be informed of his right to waive the Prerevocation Hearing, and where the parolee elects to do so a written waiver to that effect shall be obtained. The parolee may request witnesses, an attorney, or a postponement. A certified copy of a bindover or conviction will be accepted by the Board as a finding of probable cause in lieu of a Prerevocation Hearing and the matter will proceed directly to a Parole Revocation hearing.

Upon completion of the Prerevocation Hearing, the hearing officer shall notify the parolee verbally, whether probable cause exists that a parole violation has occurred. Within twenty-one calendar days, excluding holidays, written findings of fact and conclusions of law shall be issued by the hearing officer and served on the parolee.

KEY: parole, government hearings
1993 **77-27-11**
Notice of Continuation December 12, 1997 **77-27-27**
77-27-28
77-27-29
77-27-30

R671. Pardons (Board of), Administration.
R671-504. Timeliness of Parole Revocation Hearings.
R671-504-1. General.

The Parole Revocation Hearing should be conducted within ninety (90) days from the date of the Prerevocation Hearing or its waiver EXCEPT in the following circumstances:

1. If a parolee is detained in another state on a Utah Board warrant or on a new offense, a parole revocation hearing should be conducted within ninety (90) days from the parolee's return to the State of Utah. When the only hold on a parolee is a Utah Board warrant, then the parolee must be returned as soon as is practicable after affording the parolee all rights.

2. When the parolee is convicted of a new offense of which the parole office had knowledge, and the parolee has not been detained on a Board warrant during the pendency of court proceedings, the parole revocation process should be commenced within ninety (90) days from the time of sentencing on the new offense.

3. The Board may for good cause upon a motion by the parolee or the Department of Corrections, or upon its own motion exceed the 90 day period.

If a "guilty" plea is entered, the dispositional phase of the hearing begins at once.

If a "not guilty" plea is entered, and the case has not been continued, the evidentiary stage of the Revocation Hearing should be conducted within sixty (60) days, unless good cause is shown for exceeding the 60 days.

KEY: parole, government hearings
1993 **77-27-11**
Notice of Continuation December 12, 1997 **77-27-27**
77-27-28
77-27-29
77-27-30

R671. Pardons (Board of), Administration.
R671-505. Parole Revocation Hearings.
R671-505-1. General.

Prior to the Parole Revocation Hearing, the parolee shall be given adequate written notice of the date, time and location of the hearing and the alleged parole violations. At the hearing, the offender shall be provided with an opportunity to hear the evidence in support of the allegations, legal counsel unless waived, an opportunity to confront and cross-examine adverse witnesses unless they would be subject to risk or harm, and an opportunity to present evidence and witnesses in his/her own behalf.

Parolees are served with written allegations and notice of the hearing at least five working days prior to the Revocation Hearing. Such service and notice may be waived by the parolee. These allegations are again read at the hearing, after which the parolee enters a plea.

The parolee may plead guilty at the initial hearing and the dispositional phase will begin immediately, or the Board may continue the hearing upon request of the parolee, or on its own motion, pending the outcome of a court criminal action or an Evidentiary Hearing.

If a guilty plea is entered or the offender is found guilty in an Evidentiary Hearing, the Board will then hear discussion as to disposition from the offender or the attorney for the offender and the Department of Corrections. The Board may then retire to Executive Session, make a decision, reopen the hearing and render the decision on the record.

KEY: parole, government hearings
1993 **77-27-11**
Notice of Continuation December 12, 1997 **77-27-27**
77-27-28
77-27-29
77-27-30

R671. Pardons (Board of), Administration.
R671-507. Restarting the Parole Period.
R671-507-1. General.

Upon a parolee's new conviction for a crime or a violation of the parole agreement, the Board of Pardons may restart the parole period after conducting a personal appearance hearing or upon receipt of a waiver of personal appearance signed by the parolee.

If additional incarceration is indicated, parole revocation proceedings shall be initiated at the Board's direction.

KEY: parole
1993 **76-3-202**
Notice of Continuation December 12, 1997

R671. Pardons (Board of), Administration.
R671-508. Evidentiary Hearings.
R671-508-1. General.

The Utah Board of Pardons shall conduct an evidentiary hearing when a not guilty plea is entered by a parolee at a parole revocation hearing and the Department of Corrections desires to pursue the allegation.

R671-508-2. Conduct of Evidentiary Hearings.

When a parolee enters a plea of not guilty to one or more of the allegations at a parole violation hearing, the Board may conduct, or in its discretion, continue the matter for an evidentiary hearing.

A) The evidentiary hearing shall be conducted within sixty (60) days of the entry of a not-guilty plea, unless the Board finds good cause for continuance beyond that date. The parolee may be represented by an attorney of choice or as provided by the Board. The state may be represented by a representative of the Department of Corrections and/or by the Attorney General's Office. All hearings shall be open to the public, except for matters the Board determines to be confidential. Such confidential hearings shall be conducted as set forth in Rule 508-3, herein.

B) All parties shall be notified of the time, date, and place of the hearing and of the disputed allegations(s). The parolee shall be notified of his or her right to counsel, the right to confront and cross examine witnesses (absent a showing of good cause for not allowing the confrontation), and the right to present rebuttal evidence.

C) At least ten (10) days prior to the hearing, unless otherwise directed by the Board, each party shall provide to the other and to the Board a list of anticipated witnesses, documents, and other evidence to be submitted at the hearing, together with a summary of the relevance of each anticipated piece of evidence.

D) The hearing may be presided over by a single board member, a panel of board members, or by a hearing officer or panel of hearing officers as the Board chairperson may designate. The presiding hearing officer, or panel may, upon its or her own motion, or upon motion of either party, exclude evidence that is irrelevant, unduly repetitious, or privileged in the courts of Utah. He or she may further take judicial notice of undisputed facts and may rule on motions offered or pending during the hearing.

E) The state shall bear the burden to establish a parole violation by a preponderance of the evidence. All testimony shall be given under oath. Strict rules of evidence shall not apply. Hearsay evidence shall be admissible and shall be given such weight as the Board deems appropriate; however, no finding of guilt shall be based solely on hearsay evidence, except where such evidence would be otherwise permitted in a court of law.

F) At the hearing, each party shall be afforded an opportunity to make a brief opening statement, beginning with the State. The State shall thereafter present its evidence. Upon conclusion of the State's case, the parolee shall be permitted to present evidence in response. If the parolee, in his or her defense, raises issues not adequately addressed by the State's case in chief, the presiding officer shall allow the State to present rebuttal evidence in response to that issue. Upon conclusion of all evidence, the presiding officer may allow each party a brief closing argument. The panel shall then render a finding of guilty or not guilty, and may thereafter proceed directly to the dispositional phase of the hearing.

R671-508-3. Treatment of Confidential Testimony.

Confidential testimony shall be admitted at an evidentiary hearing on an alleged parole violation under the following three-part procedure:

A) The State shall make a specific, written preliminary showing of good cause for the testimony to be received in camera.

B) Upon a finding of just cause for confidentiality, the Board shall conduct an in camera inspection of the witness, the proffered testimony, and any supporting testimony to determine (1) the credibility and veracity of the witness, (2) the overall reliability of the information itself, and (3) that keeping the information confidential will not substantially impair the parolee's due process rights to notice of the evidence or to confront and cross-examine adverse witnesses. If the Board is satisfied with these three aspects, it shall receive the testimony and give it whatever weight it deems appropriate. An electronic record shall be made of this in camera proceeding.

C) A summary of the testimony taken in camera shall be prepared for disclosure to the parolee, informing the parolee of the general nature of the testimony received in camera but without defeating the good cause found by the Board for treating the information confidentially. This summary shall be presented on the record at the public evidentiary hearing and the parolee shall be afforded an opportunity to respond thereto.

KEY: parole, government hearings
1993 **77-27-2**
Notice of Continuation December 12, 1997 **77-27-5**
77-27-9
77-27-11

R708. Public Safety, Driver License.
R708-1. Rehabilitation of Alcohol and Drug Problem Drivers.
R708-1-1. Authority.

Sections 53-3-225 and 53-3-206 Utah Code Annotated, 1953, as amended, prohibit the licensing of a habitual user of drugs and/or alcohol, which may render the user incapable of driving safely.

R708-1-2. Policy and Procedure.

(a) When a driver history reflects two or more convictions for driving under the influence committed within six years prior to relicensure, the driver must complete or be actively involved in an alcohol rehabilitation program administered by one of the agencies on the approved lists of the department. The completion date of the program must be subsequent to the last DUI violation.

(b) In the event any combination of two or more of the following are listed as violations committed within six years on the driver history (A08, A12, A26, M84(alc), M84(non-alc), A98), the driver should be referred to a hearing officer to discuss eligibility requirements before relicensure. For example: 8-10-94 M84(alc) and 7-1-95 A12 should be referred to a hearing officer since it is at the department's discretion whether or not to require alcohol rehabilitation. License status in the header record will only indicate a need to complete alcohol rehabilitation when two or more DUI convictions appear on the record or upon the hearing officer's recommendation.

(c) When a person who is required by this office to complete or be actively involved in alcohol or drug rehabilitation before being relicensed asks an employee for a referral, such referrals must come from the approved lists of the department.

(d) If a court has ordered a person to complete an assessment, education, or treatment from a licensed drug or alcohol rehabilitation facility, evidence of compliance must be received from the court prior to reinstatement of driving privilege. Any official document adopted by the court as proof that the court order was complied with, shall be accepted as evidence of compliance by the Driver License Division.

(e) The procedures described in this rule will comply with provisions of the Utah Administrative Procedures Act to the fullest practical extent, except where such provisions do not apply.

KEY: rehabilitation

1994	**53-3-206**
Notice of Continuation December 4, 1997	**53-3-225**

R708. Public Safety, Driver License.
R708-2. Commercial and Private Driver Training Schools.
R708-2-1. Foreword.

The Commercial Driver Training Schools Act, Sections 53-3-501 through 509, provides for the licensing and regulation of commercial and private automobile driving schools and the instructors of such schools. This law applies to all persons engaged in the business of giving instructions for hire in driver training and in the operation of a motor vehicle. Among other things, the law provides that the Commissioner of Public Safety shall adopt and prescribe such regulations concerning the administration of this article as are necessary to carry out the intent of the law, and to protect the public. The following rules and regulations are promulgated in accordance with the provisions of "The Utah Administrative Rulemaking Act".

R708-2-2. Definitions.

"Behind-the-Wheel Instruction and Practice Driving Instruction" means the learning experiences in driver training provided for the students as observers and as student drivers in a dual controlled motor vehicle.

"Branch office" means an approved location where the business of the driver training school is conducted other than the principal place of business.

"Classroom Instruction" means that part of the driver training course consisting of learning experiences located in a classroom which utilize effective teaching methods such as lecture, discussion, and audio-visual aids.

"Commissioner" means the Commissioner of the Department of Public Safety.

"Corporation" means a business incorporated under the laws of a state or other jurisdiction.

"Department" means the Department of Public Safety.

"Division" means the Driver License Division.

"Driver Training" means behind the wheel, observation, and classroom learning experiences provided by the school for the purpose of helping students learn to operate motor vehicles safely and efficiently.

"Dual Control Automobile" means a motor vehicle equipped with a second functioning foot brake positioned for use by the instructor and inside and outside mirrors for the instructor for the purpose of observing rearward.

"Fraudulent Practices" means any conduct or representation on the part of the licensee or any partner, officer, agent, or employee of a licensee tending to induce another or to give the impression that a license to operate a motor vehicle or any other license or service granted by the commissioner may be obtained by any means other than the ones prescribed by law; or requesting, accepting, acting, or collecting money for such purpose.

"Observation Time" means that time during which a student is riding in the rear seat of a dual controlled training vehicle observing the driver instructor, procedures and techniques of the student who is driving and other road users.

"Partnership" means an association of two or more persons who co-own and operate a business for profit.

"Qualified Instructor" as per Section 53-3-502.

"School" as per Section 53-3-502.

R708-2-3. Licensing of Commercial and Private Driver Training Schools and Reporting Requirements.

A. License Required - Every person proposing to engage in the business of conducting a commercial or private driver training school not exempted by statute, shall, prior to

engaging in such business, secure a license for this purpose. Applications for the license may be secured at the Driver License Division, 3495 So. 300 W., Salt Lake City, Ut. 84115. Applicants are responsible for obtaining any business licenses required by the municipality in which they are located.

B. Application for License - An application made by an individual must be signed by the applicant and notarized. In the case of a partnership, the application must be signed by the persons applying for partnership and notarized. In the case of a corporation, the application must be signed by an officer thereof and notarized. The department may require a financial statement from each applicant or officer or partner thereof. Applications must be submitted at least 30 days prior to licensing and an appointment shall be made at that time to have the school inspected by a department representative.

Every application must be accompanied by the following supplementary documents:

1. In the case of a corporation, a certified copy of a certificate of incorporation.

2. Samples of all forms and receipts to be used by the school.

3. A schedule of fees for all services to be performed by the licensee.

4. A fingerprint record of each applicant or officer or partner thereof. A Bureau of Criminal Identification check will be done on all applicants, officers and partners. Fingerprints may be taken by any law enforcement agency. The department may require applicants for renewal of a license to submit a new fingerprint record.

5. A certificate of automobile insurance for each automobile used for driver training purposes.

6. A copy of all tests and criteria which the school requires of a student to satisfactorily complete the course.

C. License Fees - The commercial or private driver training school license is valid for the calendar year and expires on December 31 of the year issued. The annual fee for original license is $80.00. The annual fee for renewal is $50.00. The annual fee for each branch license is $20.00. If a license is suspended or revoked no part of the fees will be refunded. Fees should be paid to the Department of Public Safety, State of Utah.

D. Display of License Required - Upon approval of an original application or renewal thereof, the department will issue a license to the applicant. Such license must be conspicuously displayed in the licensee's principal place of business or branch location at all times.

E. Licenses Not Transferable - Licenses are not transferable.

1. In the event of any change of ownership or interest in the business, the department must be notified immediately in writing by the new owner and a new application must be submitted. Such application shall be considered a renewal as long as one or more of the original licensees remain as part owner of the business. In the event the change of ownership or interest in the school is to any person or persons not named in the application for the last current license or renewal license of the business, such license shall be considered a new application of the business owners.

2. The department, in proper cases, may permit continuance of the business by the current licensee, pending processing of the application made by the person or persons to whom the business is to be transferred.

3. Upon the issuance of the new license, the prior license must be immediately surrendered to the department. There is no provision that permits a refund of any part of the license fee.

F. Lost, Mutilated or Destroyed Licenses - If a license is lost, mutilated or destroyed, a duplicate will be issued upon proof of the facts and payment of a fee of $5.00, and in the case of mutilation, upon surrender of such mutilated license. Such proof shall consist of a notarized affidavit indicating:

1. The date the license was lost, mutilated or destroyed.

2. The circumstances involving the loss, mutilation or destruction.

G. Surrender of License - Whenever any school or branch thereof shall be discontinued for any reason, the license of the school or branch of the school must be surrendered to the department within five days. In all such cases, the licensee is required to state in writing the reason for such surrender.

H. Branch Offices - Any office or classroom facility used at any time by the licensee that is in a location other than the primary location, shall be separately licensed as a branch office. A branch office shall meet all of the requirements for the primary office and shall be similarly equipped and perform substantially the same services. Branch office applications shall be made on an application form provided by the department. Branch offices must be inspected by a department representative and meet all requirements before they conduct business.

I. Instruction Permit - Upon enrollment, an instruction permit shall be issued for each student indicating that he is receiving driver training and is licensed to receive behind-the-wheel instruction with a qualified instructor and other students. Instruction permits shall be retained by the instructor and shall be available in the dual controlled automobile at all times while the student is driving and will be given to the student upon satisfactory completion of the course.

Applications for original driver training instruction permits must be completed by the instructor. It is the responsibility of the instructor to insure that the original application contains the correct name, date of birth, age, and address of the student(s), by means of a birth certificate or other official forms of identification. All applications must be submitted to the department in duplicate (two copies), typed or printed in ink and be complete with all of the required information. In addition, duplicate instruction permits shall not be issued unless the information regarding name, age, and date of birth of the individual are the same as those on the original application. Instruction permits shall not be issued to persons under the age of 15 years and nine months. All unused instruction permits issued between January 1 and September 30 shall be returned to the department prior to December 31 of each year. Unused permits issued during October, November, and December shall be submitted with the unused permits of the subsequent year.

J. Certificate of Completion - Upon completion of the driver training course, a certificate of completion will be issued to the student, to be presented to the division when the student makes application for a driver license. All duplicates of completed certificates shall be ordered by the school that issued the original certificate and for a $5.00 duplicate fee the student may obtain a copy of the certificate from the department.

1. Students transferring from the Utah public school system into the commercial and private driver education system will not be given credit for any previous driver education instruction unless authorized in writing by the State Office of Education.

2. Students who have completed the classroom portion of driver training in another state but who have not completed behind-the-wheel driving and observation training may receive credit for the classroom instruction if they provide an authorized letter or certificate from the school which provided the training. The letter or certificate must state the number of classroom hours completed.

K. Monthly Reports - Each commercial or private driver training school shall submit a monthly report of the number of students completing both classroom and behind-the-wheel driver instruction. These reports shall be submitted on forms supplied by the department and must be received by the department no later than the 15th day of each month. Failure to submit these reports within the prescribed time is grounds for the cancellation or revocation of the school's license.

R708-2-4. Licensing of Commercial or Private School Driver Training Instructors.

A. Instructor's License Required - No person, including the owner, operator, partner or any officer of the licensee shall give instructions for hire in driver training, including the operation of motor vehicles, unless such person is the holder of a valid instructor's license issued for such purpose by the department; such license to be valid for use only in connection with the operation of the specific driver training school or schools listed thereon. Upon approval of an initial application or a renewal thereof, the department will issue an instructor's license to the applicant. The instructor's license will be valid for the calendar year and the annual fee for an original license is $15.00 and renewal thereof is $10.00. Any additional or substitute instructors, for full or part-time teaching, are required to secure an instructor's license. If an instructor's license is lost, the loss must be reported immediately in writing to the department and a duplicate instructor's license must be issued. The fee for a duplicate instructor's license is $3.00.

B. Application for an Instructor's License - Application for an original or renewal instructor's license must be made by the person desiring such a license on a form provided by the department. The original and each yearly renewal application must be accompanied by a medical profile form provided by the department and completed by a physician or surgeon licensed to practice in this state. The form shall indicate any physical or mental impairments which may preclude his service as a driver training instructor. Physical examinations must have been made not more than three months prior to application. The school desiring to employ such a person as an instructor must endorse its consent on the application. When deemed necessary by the department, an applicant seeking to renew an instructor's permit may be required to take a driving skills test.

C. General Qualifications of Commercial or Private Driver Training Instructors - An instructor of driver training (there is no difference in the requirements for classroom or practice driving instruction) shall be qualified when that person has met the following conditions:

1. Possesses a valid Utah automobile driver license.

2. Has at least three years driving experience.

3. Is at least twenty one years of age.

4. Possesses acceptable physical condition as required by paragraph B of Section 4 of this rule.

5. Has a satisfactory driving record which consists of the following:

a. Instructors shall have a valid driver license, without a conviction for a moving violation or chargeable accident on record for which a driver license is suspended or revoked, for the two year period immediately prior to and during employment.

b. Conviction for a moving violation or chargeable accident for which a driver license is suspended or revoked shall result in automatic cancellation or revocation of authorization to teach which shall be concurrent with the driver license suspension or revocation.

6. Has completed specialized professional preparation in driver safety education consisting of not less than 21 quarter hours of credit as approved by the department. Of the 21 hours, one class in teaching methodology is required. In addition another class must include one of the following subjects:

Basic Driver and Safety Education;

Organization and Administration of Driver Education;

7. Has successfully passed both a written and a practical test administered by the department.

8. Has successfully passed a vision test and submitted a fingerprint record.

D. Special Tests and Examinations-Any of the following tests or examinations may be required by the department of an instructor applicant.

1. Written Test - This test shall be completed by the applicant on forms prepared by the department. The test may cover the following areas: Commercial and Private Driver Education Rules and Regulations, traffic laws, safe driving practices, operation of a motor vehicle, teaching methods and techniques, statutes pertaining to driver education, business ethics, office procedures and record keeping, financial responsibility, no fault insurance and the procedure involved in suspension or revocation of an individual's driving privilege, material contained in the "Utah Driver Handbook" and the applicant's general understanding of traffic safety education programs.

2. Practical Test - This test shall include driving a vehicle over a predetermined course during which the examiner accompanying the driver has an opportunity to judge accurately and grade the driver's ability to operate a vehicle safely and efficiently. The course selected may

include right and left turns, stop signs, traffic lights, a grade, curves, parking, freeway, and any other pertinent maneuvers. The practical test may include a demonstration of the ability of the applicant to act as an instructor.

3. Vision Test - This test shall consist of the standard eye tests given applicants for a Utah operator or commercial driver license.

4. Fingerprints - All instructors will be required to submit to fingerprinting and will be checked for a possible criminal record through the Bureau of Criminal Identification. The application of each instructor shall be checked to determine if the individual has an unsatisfactory driving record in any state.

E. Instructors Must Be Affiliated With A Specific Commercial or Private Driver Training School. Instructors shall be sponsored by a commercial or private driver training school and the school shall be responsible for controlling and supervising the actions of said instructors. No commercial or private driver training school shall knowingly employ any person as an instructor or in any other capacity whatsoever, who has been convicted of a felony or any crime involving indecency, degeneracy or moral turpitude.

F. Carrying Instructor's License - The instructor's license must be in the possession of the instructor at all times while providing instruction in driver training both in the classroom and in a motor vehicle.

G. Recertification - Holders of both school licenses and instructor's certificates shall be required to recertify every three years. Recertification may be obtained by submitting proof of completion of classes, seminars, workshops, etc., approved by the department. A list of approved classes, seminars, workshops, etc., can be obtained from the department.

R708-2-5. Grounds for Cancellation, Revocation and Refusal to Issue or Renew Instructor or School License.

A. The commissioner or designated employees of the department shall have the power following a proper hearing to cancel, revoke or refuse to renew a license for either an instructor or a school. The commissioner or designated employees of the department shall also have the power to refuse to issue a license for either an instructor or a school. A license may be canceled, revoked or refused for renewal for any of the following reasons:

1. Failure to comply with any of the provisions of Utah Code Ann. Title 41 Chapter 2.

2. Failure to comply with any of the provisions of these administrative rules.

3. Providing false information in an application or form required by the department.

4. Commission of a violation of Section 4, C-5-B of this rule pertaining to moving violations or chargeable accident that results in a suspension or revocation.

5. Failure to permit the department or its representatives to inspect the school, classrooms, records, or motor vehicles used in the instruction of the school's students.

6. Commission of any crime involving violence, dishonesty, deceit, indecency, degeneracy, drug or alcohol abuse, fraud, or moral turpitude.

7. Commission of any fraudulent acts or practices by any partner, officer, agent or employee in relation to the business conducted under the license.

8. Failure to appear for a hearing on any of the above charges.

B. Any licensee who has had a license canceled or revoked shall not be eligible to reapply for a license until six months have elapsed since the date of the cancellation or revocation. The licensee shall be required to pay a $25.00 reinstatement fee to the department at the time of reapplication for reinstatement.

C. Any proceeding to cancel or revoke or to refuse to issue or renew a school or instructor license is hereby designated an informal adjudicative proceeding under the Utah Administrative Procedures Act, Utah Code Ann. Section 63-46b-4.

D. The following procedures will govern informal adjudicative proceedings:

1. Action by the department to cancel, revoke or refuse to issue or renew a license will be commenced by the department by the issuance of a notice of agency action. The notice of agency action will comply with the provisions of Section 63-46b-3.

2. No response need be filed to the notice of agency action.

3. An opportunity for a hearing will be granted on a cancellation, revocation or refusal to issue or renew a license.

4. The licensee or applicant will receive written notice of the hearing at least ten days prior to the date of the hearing.

5. No discovery, either compulsory or voluntary will be permitted prior to the hearing except that all parties shall have access to information contained in the department's files, and to investigatory information and materials not restricted by law.

6. The hearing shall be conducted by an individual designated by the commissioner.

7. Within twenty days after the close of the hearing or after the failure of a party to appear for the hearing, the individual conducting the hearing shall issue a written decision which shall constitute final agency action. The written decision shall state the decision, the reason for the decision, notice of right to request reconsideration under Section 63-46b-13, notice of right of judicial review under Section 63-46b-15, and the time limits for filing an appeal to the appropriate district court.

R708-2-6. Students Potentially Eligible for Instruction in Commercial or Private Driver Training Schools.

A. Who is Eligible? Commercial and private driver training schools may not offer driver training instruction to any individual who is not at least 15 years and nine months of age. No school or instructor shall decrease the required classroom, driving, or observation hours for any previous driver training instruction without department approval. No credit shall be given for driving experience which the student may have obtained prior to enrollment.

B. Fitness of Students Before Receiving Behind-the-Wheel Instruction - It is recommended that driver training instructors determine physical or emotional problems which

may potentially result in a hazardous situation during a period of behind-the-wheel driving. It is recommended that school personnel follow the procedures for making such determination established by the division before permitting any students to participate in the behind-the-wheel phase of the program. Information concerning visual, mental or physical standards may be obtained from any division office.

R708-2-7. Driver Training Standards.

A. Classroom Instruction - For purposes of sequencing instructional events, when practicable, classroom instruction shall be followed by behind-the-wheel practice driving instruction. Concurrent programs are also permitted; however, caution should be exercised that sufficient classroom instruction is given at the beginning of the course to properly prepare the student to handle practice driving instruction.

A course of classroom instruction in driver training shall consist of instruction of not less than 18 clock hours including all of the following areas:

1. Mental attitudes and physical characteristics of individuals as related to driving.

2. Laws and regulations affecting use of motor vehicles with special emphasis on Utah laws.

3. Characteristics of streets and highways; i.e., driving in urban, suburban and rural areas and freeway driving.

4. The automobile and its maintenance.

5. The driver as a consumer of highway transportation services.

6. The cyclist in traffic.

7. Driving skills.

8. Effects of the motor vehicle on modern life.

9. Utah's motor vehicle laws regarding a driver's responsibility when involved in an accident, financial responsibility and no fault insurance.

10. Causes and processes involved in the suspension or revocation of an individual's driver license.

Classroom instruction shall be conducted for not less than nine separate class sessions on nine separate days of two hours for each classroom setting. Classroom instruction will preferably be extended over a two to four week period and shall be conducted in a manner that assures each student will receive instruction in each segment of the curriculum. Not more than five of the classroom hours may be devoted to the showing of slides or films or for presentations by professional people who have been approved in writing in advance by the department.

B. Behind-the-Wheel-or-Practice Driving Instruction - Behind-the-wheel driving instruction shall include a minimum of six clock hours of instruction in a dual-control automobile with a qualified instructor and be limited to a maximum of two hours per day. The front seat of the vehicle shall be occupied by two individuals - the instructor and student. Under no circumstances shall there be more than five individuals in the vehicle.

A course of behind-the-wheel driving shall include teacher demonstrations, observations and student practice in using vehicle controls to start, shift gears, make right and left turns, stop, back, park, etc. This instruction should begin under relatively simple conditions and progress until the student has acquired reasonable skill in operating the vehicle under varying traffic conditions. Each student should have experience in driving on urban streets, open highways, and when appropriate, on freeways. Practice driving should be given under conditions where the student will have an opportunity to develop sound driving practices, including instruction in hazardous conditions which may be present at different times of the day and year. Special emphasis should be given to the matter of developing desirable attitudes so that each student indicates a sincere desire to show courteous and safe consideration for other users of the road and other occupants of their vehicle.

C. In-Vehicle Observation Time - All students shall receive a minimum of six hours of observation of other student drivers. This observation shall be from the rear seat and is limited to a maximum of two hours per day. The students observing from the rear seat, as well as the practice driver, should receive benefit from time in the car. The teacher's role is not merely to provide driving experience for the student behind-the-wheel, but to make the car a practical classroom on wheels where all students are learning about the multitude of problems and situations which face a driver and the safe and sane solution to these problems.

D. Dual Control Automobiles and Equipment - All motor vehicles which are used for the purposes of behind-the wheel instruction of students in commercial or private training schools shall be properly registered in compliance with the motor vehicle registration laws of Utah and maintained in safe mechanical condition at all times. All motor vehicles shall meet the following requirements.

1. Dual Control Automobiles - Automobiles shall be provided with functioning dual control brakes.

2. Transmission - Students shall receive instruction in either standard shift automobiles or in automobiles with an automatic transmission. The option of choosing the type of transmission shall be left with the school.

3. Maintenance - Each automobile used for driver training shall receive preventive maintenance and repairs in accordance with recommendations of the manufacturer and maintenance records shall be kept.

4. Mirrors - A dual-control automobile shall be equipped with outside and inside mirrors for both the driver and the instructor for the purpose of observing rearward.

5. Seat Belts - All automobiles used in driver training will be equipped with a separate seat belt for each occupant of the vehicle.

6. Heaters and Defrosters - Heaters and defrosters shall be provided for the protection of the health and comfort of students and teachers and for the safe operation of the vehicle.

7. Tire Chains - Tire chains or snow tires shall be used in conformance with local police or highway patrol recommendations if instruction is given in snow or on icy road surfaces.

8. Special Safety Equipment - Fire extinguisher, first aid kit, safety flares and/or reflectors, all maintained in good and operable condition, shall be carried and accessible in every automobile used in driver training.

9. Safety Inspection and Use of Defective Equipment -

All dual control vehicles used in a driver training program must be capable of passing an official Utah State Vehicle Safety Inspection at all times during their instructional use. Failure to properly maintain the safe operating condition of a dual controlled instructional vehicle is grounds for the cancellation or revocation of the license of the school operating the vehicle. A dual control automobile shall be replaced when the automobile cannot be maintained to meet safety standards.

10. Marking of Cars - Each automobile used by a commercial or private school for driver training shall be properly identified to safeguard against accidents. An automobile is properly identified when:

The words "STUDENT DRIVER" are displayed on the front and rear and on both the left and right sides of the automobile. The letters shall be at least three inches in height. All advertising or other marking of the car for identification purpose with a specific commercial or private driving school must be limited to letters not to exceed two inches in height.

It is the responsibility of the driver training school to notify the department of any motor vehicle added to or deleted from their fleet. No vehicle many be used for driver training until it passes inspection by the department.

E. Utah Driver Handbook-Utah Traffic Laws- All students shall have a copy of the current Utah Driver Handbook for study which shall be used in the course as the teacher deems most effective. The handbook should not become the sole test of the course, but is an essential aid when Utah Traffic Laws are studied. Handbooks are available from the division.

R708-2-8. Notification of Accident.

Should any driver training vehicle become involved in an accident during the course of instruction, the instructor shall, within five working days of the date of the accident, submit to the department a copy of the investigating officer's accident report.

R708-2-9. Insurance Required.

The licensee must file with the department evidence of the minimum required insurance with a company authorized to do business in the State of Utah. Each commercial or private school shall provide suitable insurance coverage on each automobile used in the driver training program sufficient to protect the instructor and the users of the automobile. The minimum insurance coverage is that required by the Utah Insurance Code, Chapter 22, Part III, Motor Vehicle Insurance, Utah Code Annotated.

The insurance company supplying the policy required by this act shall furnish the department with a certificate of insurance and shall be required to notify the department immediately upon cancellation of said insurance. Operation of a school without the required minimum insurance coverage shall be grounds for cancellation or revocation of the licensee's license.

R708-2-10. Records and Contracts.

A. Contracts and Agreements - A student shall not be given lessons, lectures, tutoring or any other service relating to instructions in driver training including motor vehicle or motorcycle operation unless and until a written contract department has been executed both by the school and by the student.

1. A copy of such contract must be given to the student and the original thereof must be retained by the school in its duplicate contract file.

2. A school shall not agree to give an unlimited number of lessons nor shall any school represent or agree, orally or in writing, or as part of an inducement to sign any contract or to enroll for lessons, to give instruction until the driver license is obtained, or to give free lessons, or a premium or discount if a driver license is not obtained.

3. The term "no refund" is not permitted in contracts. Schools may substitute the following: "This school will not refund any tuition or part of tuition if the school is ready, willing and able to fulfill its part of the agreement". This does not prohibit the refunding of all or a portion of the student fee, however, when circumstances exist which preclude the student from completing the course.

B. Records - Every licensee shall maintain the following records:

1. A permanently bound book, with pages consecutively numbered, setting forth the name, address, record of every person given lessons, lectures, tutoring, instruction of any kind or any other services relating to instruction in the operation of motor vehicles.

2. A book or other record, showing the date, type and duration of all lessons, lectures, tutoring, instructions or other services relating to instruction in the operation of motor vehicles including the names of the instructors giving such lessons or instructions and identification of the vehicle in which any road lesson is given.

3. Authorized personnel from the department shall at least annually review the records of all schools and may observe and note the instruction given both in the classroom and behind the wheel. The department shall have the right to conduct reviews of the operations of the schools whenever it is deemed necessary to insure compliance with established rules and regulations governing commercial and private driver training schools.

C. Loss, Mutilation or Destruction of Records - The loss, mutilation or destruction of any records which a driver school is required to maintain under these regulations must be reported to the department immediately by affidavit stating:

1. The date such records were lost, destroyed or mutilated.

2. The circumstances involving such loss, destruction or mutilation.

D. Retention of Records - All records must be retained for three years during which period they shall be subject to the inspection of the commissioner or his authorized representative at all times during reasonable business hours.

R708-2-11. Advertising, Location of Schools and Classrooms.

A. Advertising - Advertising by a commercial or private driver training school must conform to the following:

1. Schools must not publish, advertise or intimate that a

driver license is guaranteed or assured. The display of a sign such as "Driver License Secured Here" is forbidden.

2. A licensed driver training school may exhibit on its premises a sign reading, "This School is Licensed by the State of Utah".

3. No commercial or private driver training school shall solicit business or cause business to be solicited in its behalf or display or distribute any advertising material within 1500 feet of a building in which motor vehicles registrations or driver licenses are issued to the public.

B. Location and Site of Commercial and Private Driver Training Schools - In municipalities having a population of 50,000 or more, no license will be issued for a commercial or private driver training school if the place of business is within 1500 feet of a building in which motor vehicle registrations or driver licenses are issued to the public. This rule shall not apply, however, to compel the discontinuance of a driver training school office which was already established and in operation at the time of the adoption of these regulations. No driver training school may change its place of business or location without prior notification to the department.

C. Classrooms - Each school shall provide classroom space, either in their own building or in a common classroom. Said classroom shall provide seating facilities for all students, sanitary facilities and appropriate training aids, such as blackboards, charts, projectors, etc. Classroom facilities and building shall be in compliance with local and state fire, safety and health codes.

R708-2-12. Changes in Officers and Addresses.

The department must be notified in writing by the school immediately if there is a change in the residence or business address of any individual owner, partner, officer or employee of any driver school. The department must be notified by the school in writing of any change in the officers, directors or controlling stockholder and must supply the same information as would be required on an original application by the corporation. Failure to notify the department of the change of address or in the officers, directors or controlling stockholders of any corporation or change in the members of a partnership may be considered reasonable grounds for the cancellation or revocation of the school license.

KEY: driver education, schools, rules and procedures
1992 53-3-501 through 509
Notice of Continuation December 3, 1997

R708. Public Safety, Driver License.
R708-7. Functional Ability in Driving: Guidelines for Physicians.
R708-7-1. Health and Driving.

(1) Every driver operating a vehicle on Utah roads is individually responsible for his health when driving. Each applicant for a Utah driver license shall be required to answer personal health questions related to driving safety. These questions have been adopted by the division in accordance with recommendations made by the Driver License Medical Advisory Board pursuant to the provisions of Section 53-3-303(8). If the applicant experiences a significant health problem, the applicant is required to take a medical report form furnished by the division to a health care professional who provides all requested information, including a functional ability profile that reflects the applicant's medical condition.

(2) The health care professional will be expected to discuss the applicant's health as it may affect driving abilities and to make special recommendations in unusual circumstances. Based upon a completed functional profile, the division may deny driving privileges or issue a license with or without limitations in accordance with the standards described in this rule and lists, tables, and charts incorporated herein. Health care professionals have a responsibility to help reduce unsafe highway driving conditions by carefully applying these guidelines and standards, and by counseling with their patients about driving under medical constraints.

R708-7-2. Driver's Responsibilities.

(1) The 1979 Utah State Legislature has defined driver operating responsibilities in Section 53-3-303, related to physical, mental or emotional impairments of drivers:

(a) Utah drivers are responsible to refrain from driving if there is uncertainty caused from having a physical, mental or emotional impairment which may affect driving safety;

(b) Utah drivers are expected to seek competent medical evaluation and advice about the significance of any impairment that relates to driving vehicles safely; and

(c) Utah drivers are responsible for reporting a "physical, mental or emotional impairment which may affect driving safety" to the Driver License Division in a timely manner.

R708-7-3. Health Care Professional's Responsibilities.

(1) Pursuant to Section 53-3-303, health care professionals shall:

(a) make reports to the state Driver License Division respecting impairments which may affect driving safety when requested by their patients. Nevertheless, the final responsibility for issuing a driver license remains with the Director of the Driver License Division;

(b) counsel their patients about how their condition affects safe driving. For example, if medication is prescribed for a patient which may cause changes in alertness or coordination, his health care professional shall advise him about how the medication can affect safe driving, and when it would be safe to operate a vehicle. Or, if a patient's visual acuity drops, he should similarly be advised, at least until corrective action has been taken to improve vision; and

(c) in accordance with Section 53-3-303(14)(b), be responsible for making available to their patients without reservation, their recommendations and appropriate information related to driving safety and responsibilities, whether defined by published guidelines or not.

R708-7-4. Driver License Medical Advisory Board.

(1) Pursuant to Section 53-3-303, the Driver License Medical Advisory Board shall advise the Director of the

Driver License Division and recommend written functional ability profile guidelines and standards for determining the physical, mental and emotional capabilities of applicants for licenses, appropriate to various driving abilities.

(2) In case of uncertainty of interpretation of these guidelines and standards, or in special circumstances, applicants may request a review of any division decision by a panel of Board members. All of the actions of the Director and Board are subject to judicial review.

(3) In accordance with Section 53-3-303(8), the Board shall administer the functional ability profile guidelines, which are intended to minimize such conflicts as the individual's desire to drive and the community's desire for highway safety.

R708-7-5. Persons Authorized to Complete "Functional Ability Evaluation Medical Certificate Report" Forms.

(1) Physicians and surgeons licensed to practice medicine may complete the entire reporting form.

(2) In accordance with 49 CFR 391.43 physician assistants, advanced practice nurses, doctors of chiropractic and other health care professionals may perform physical examinations and report their findings on the Functional Ability Evaluation medical Certificate Report provided that:

(a) they are licensed by the State as health care professionals.

(b) the physical examination does not require advanced or complex diagnosis or treatment.

(c) in the event that advanced or complex medical diagnostic analysis is required, or the patient profile level is more severe (numerically higher) than level 1 in category E; level 2 in categories A, B, C, D, F, or G; level 3 in categories J or K; or level 4 in categories H, I, or L, the licensed health care professional, consistent with sound medical practices, will be expected to promptly refer the patient to the appropriate physician, surgeon or doctor of osteopathy for further evaluation and for completion of the functional ability evaluations certifications report in those categories.

(3) Drivers whose profile levels do not meet the guidelines and standards listed in (2)(b) or (c) will be required to have a physician or surgeon complete the Functional Ability Evaluation Medical Certificate Report.

R708-7-6. Functional Ability Profile Categories.

(1) Functional ability of a driver to operate a vehicle safely may be affected by a wide range of physical, mental or emotional impairments. To simplify reporting and to make possible a comparison of relative risks and limitations, the Medical Advisory Board has adopted physical, emotional and behavioral functional ability profiles as defined in 12 separate categories, with multiple levels under each category.

R708-7-7. Use of the Functional Ability Profile.

(1) Health care professionals who evaluate their patients' health status for purposes of the patient obtaining a Utah driver license, shall report functional ability profiles on forms provided by the division.

(2) In assessing patient health and completing these report forms, health care professionals shall apply the standards and related information contained in the following lists, charts, and tables, which standards and guidelines are adopted and incorporated within this rule by reference, and are referred to in a booklet entitled, "Functional Ability in Driving: Guidelines And Standards for Health Care Professionals", (August 1, 1992 ed.).

Category A - Diabetes and Other Metabolic Conditions; narrative listing and table.

Category B - Cardiovascular; narrative listing and table.

Category C - Pulmonary; narrative listing and table.

Category D - Neurologic; narrative listing and table.

Category E - Epilepsy and Other Episodic Conditions; narrative listing and table.

Category F - Learning, Memory and Communications; narrative listing and table.

Category G - Psychiatric or Emotional Conditions; narrative listing and table.

Category H - Alcohol and Other Drugs; narrative listing and table.

Category I - Visual Acuity; narrative listing and table.

Category J - Musculoskeletal Abnormality or Chronic Medical Debility; narrative listing and table.

Category K - Functional Motor Ability; narrative listing and table.

Category L - Hearing; narrative listing and table.

(3) Copies of these documents are printed and distributed by the Utah Driver License Division. These may be obtained free of charge for health care professionals or at a cost of $5 each for all others from the division medical section, P.O. Box 30560, Salt Lake City, Utah 84130-0560.

KEY: physicians, administrative procedure
1994 **53-3-303**
Notice of Continuation December 3, 1997 **53-3-304**

R708. Public Safety, Driver License.

R708-8. Review Process: Driver License Medical Section.

R708-8-1. Step One.

When competent evidence is received by the Department that a driver license applicant or licensee has physical, mental or emotional conditions which may impair his ability to safely operate a motor vehicle, the department may act to restrict or deny the applicant or licensee's driving privilege by applying the Driver License Medical Advisory Board's Physician's Guidelines.

The decision to limit or deny privileges may also be based, in part, upon informal consultation between the department and one or more members of the Medical Advisory Board.

R708-8-2. Step Two.

53-3-303 requires the aggrieved applicant or licensee to notify this department of their desire for a medical review of the above action in writing within ten (10) days after the receipt of notice of such action.

R708-8-3. Step Three.

The Department (Driver License - Medical Section) upon receipt of a written request for review, will contact the Driver License Medical Advisory Board chairperson for his recommendation regarding which board members should be contacted to constitute a panel. These members will then be contacted by the department and will be given a time, date and location within sixty (60) days after receipt of the request at which to meet in order to review the medical evidence. The Driver License Division Director or his designate shall also attend the review meeting. Unless otherwise agreed upon, such meetings will be held after regular office hours. The applicant or licensee will be notified by the department of the date on which their case will be reviewed and may submit any type of written, photographic or otherwise documented medical evidence in their behalf to the department for the panel's consideration. The applicant may be requested by the Driver License Medical Advisory Board to appear in person during the review in order to answer questions regarding their medical condition.

The panel shall review the matters and make written findings and conclusions pursuant to which the department shall affirm or modify its previous action. It shall be the policy of the department to adhere as closely as possible to the panel's recommendations regarding licensure of the applicant. The applicant or licensee shall be notified in writing at their last known address of the Department's decision to uphold or modify its original action as soon as possible following the review.

R708-8-4. Step Four.

If new, relevant and heretofore undisclosed medical evidence which is germane to the applicant or licensee's case should develop following the panel's findings and conclusions, such evidence may be presented to the department and the applicant or licensee's case will be reviewed by the department in light of this evidence.

R708-8-5. Step Five.

If the applicant is further aggrieved by the department's decision following the above review process, they may appeal to the courts for judicial review as provided for by Section 53-3-224.

KEY: administrative procedure, legislative procedure
1992 53-3-303
Notice of Continuation December 3, 1997 53-3-224

R708. Public Safety, Driver License.
R708-21. Third-Party Testing.
R708-21-1. Definitions.

"Agreement" means a written agreement between the state and a third-party tester agreeing to conditions contained therein.

"Department" means the Department of Public Safety.

"Division" means the Driver License Division.

"Third-party tester" means a person, an agency of this or another state, an employer, a private driver training facility or other private institution, or a department, agency, or entity of local government with whom the state has an agreement to administer skills tests to commercial drivers.

R708-21-2. Authority and Purpose.

A. This rule is authorized by Sections 53-3-213 and 53-3-407, and 49 Part 383.75 of the Code of Federal Regulations.

B. The purpose of this rule is to establish standards and procedures for third-party testers who enter into an agreement with the state to administer skills tests to commercial drivers.

R708-21-3. Standards and Procedures.

A. Application for third-party tester certification.

1. Application for an original or renewal certification shall be made on a form furnished by the division, and shall include the following:

a. Name of third-party tester.

b. Address of third-party tester.

c. Names of all third-party examiners.

d. Addresses of all testing sites.

e. Third-party agreement.

2. Upon receipt of the application, the division shall schedule an inspection of the third-party tester to determine eligibility, establish test routes, schedule instruction and provide forms.

3. When certified, the third-party tester and all authorized examiners shall be placed on a list which is provided to all state commercial driver license examining stations. A formal letter of certification will be mailed to the third-party tester containing an assigned number to be used on official documents and the expiration date of the certification.

4. Certification shall be for a period of one year. No later than one month prior to expiration of certification, the third-party tester may submit a renewal application to the division which is the same process as applying for an original certification.

B. Agreement - The third-party tester is required to enter into a written agreement with the state to conduct skills tests as required by Federal regulation established in 49 C.F.R. part 383. The agreement must contain provisions that:

1. Allow the Federal Highway Administration or its representative, and/or the division to conduct random examinations, inspections, and audits without prior notice during normal business hours.

2. Allow the division to conduct on-site inspections annually or when deemed necessary by the division.

3. Require that all third-party examiners receive training approved by the division that will allow them to conduct skills tests that are in compliance with Federal minimum standards.

4. Require, at least on an annual basis, that check rides be made by division representatives.

5. The tests given by the third party are the same as those which would otherwise be given by the state.

C. Requirements for third-party testers.

1. To be certified, a third-party tester shall:

a. Make application to and enter into an agreement with

the division as provided in Section B of these rules.

b. Maintain a place of business with at least one permanent regularly occupied structure within the state.

c. Ensure place of business is safe and meets all requirements of state law and local ordinances.

d. Have at least one qualified and approved third-party examiner in their employ.

e. Not engage the service of an employee of the division as an examiner, agent, or employee.

D. Inspection and audit process.

1. During inspections a person designated by the third-party tester shall cooperate with the division or Federal representative in performing on-site inspections. On-site inspections shall at a minimum consist of:

a. Verifying third-party examiner requirements as prescribed in section G of this rule.

b. Examination of commercial driver records.

(1) The third-party tester must maintain accurate driver testing records and must be able to furnish them upon request.

(2) These records must be kept for at least four years. All record forms used by the third-party tester shall be approved or furnished by the division.

c. Verifying test routes and procedures for skills testing compliance.

d. Reviewing any other items the division deems necessary to assure that requirements of certification are met.

2. Check rides may be made by any designated division representative to verify compliance with state and Federal minimum testing standards. Check rides by the division may consist of:

a. A division employee taking the skills test as administered by the third-party tester as if such employee was a test applicant.

b. The division administering the skills test to a sample of drivers who were previously examined by the third-party tester to determine if the check ride results are consistent with the third-party tester results.

c. The division administering the skills tests to a third-party testing examiner to verify examiner skills and compliance with state and Federal minimum testing standards.

3. A division representative shall prepare a written report of all inspections, check rides and audits. A copy shall be submitted to the third-party tester and a copy retained by the division.

E. Skill test administration.

1. Skills tests shall be conducted strictly in accordance with the provisions of these requirements and with current test instructions provided by the division. Such instructions may include information on skill test content, route selection/revision, test forms, examiner procedures, and administrative procedures and/or changes.

2. Tests shall be conducted:

a. On test routes approved by the division.

b. In a vehicle that is representative of the class and type of vehicle for which the CDL applicant seeks to be licensed and for which the third-party examiner is qualified to test.

c. Using division approved content, forms and scoring procedures.

F. Certificate of Driver Competency.

1. The division shall supply an official Certificate of Driver Competency form to authorized third-party testers for their use when verifying driving competency and successful skills test completion as required by state and Federal minimum standards.

2. The division upon receipt of the Certificate of Driver Competency form from an approved third-party tester shall waive the skills portion of the application.

3. The certificate shall include the following information:

a. Applicant's name.

b. Applicant's social security number.

c. Description of vehicle in which test was taken.

d. Class of license, restriction and/or endorsement tested for.

e. Authorized third-party examiner signature.

f. Authorized third-party tester name and assigned number.

4. All authorized third-party examiners shall be required to sign a signature card which shall be kept on file by the division for signature verification.

5. Drivers shall submit the Certificate of Driver Competency form to the division within 90 days of the date of the skills test.

G. Third-party examiner requirements.

1. Third-party examiners who are authorized by the division to administer skills test shall:

a. Receive training approved by the division. Third-party examiners need to be aware that any training they receive from private or other organizations may require a training fee. Upon completion of training, third-party examiners shall be issued a certificate of completion.

b. Test and certify only those commercial driver license classes, endorsements, and restrictions that have been approved by the division.

c. Hold a valid driver license with no suspensions, revocations, cancellations or disqualifications within one year prior to application.

d. Conduct skills tests on behalf of only one third-party tester at any given time.

H. Denial, suspension, or cancellation of certification.

1. The division shall deny any application for a third-party tester or examiner certification, if the applicant does not qualify for the certification under provisions of these rules. Misstatements or misrepresentation may be grounds for denying a certification.

2. The division shall cancel the certification of any third-party tester or examiner upon the following grounds.

a. Failure to comply with or satisfy any of the provisions of these rules, the division's instructions or the third-party tester agreement.

b. Falsification of any records or information relating to the third-party testing program.

c. Commission of any act which compromises the integrity of the third-party testing program.

d. Failure to notify the division within ten days of any changes in examining personnel or testing locations.

e. A third-party examiner whose driver license is suspended, revoked, canceled, or disqualified.

3. A cancellation of a third-party tester or examiner certification shall be for the following lengths of time:

a. First infraction shall result in a warning from the division and an indefinite suspension of certification until the division is satisfied that the third-party tester will meet the requirements of this rule.

b. Second infraction of this rule arising from separate incidents shall result in a one year cancellation of certification.

c. Third infraction of this rule arising from separate incidents shall result in a five year cancellation of certification.

4. When a certification is canceled, the third-party may request a hearing before a designated department representative. The hearing shall consist of a finding of whether the alleged infraction(s) occurred and based upon these findings, whether the cancellation of certification should be rescinded or affirmed.

5. Reinstatement following cancellation shall consist of the third-party tester providing proof of compliance and making application for new certification.

I. Advertising.

1. No advertisement shall indicate in any way that a program can issue or guarantee the issuance of a commercial driver's license, or imply that the program can in any way influence the division in the issuance of commercial driver's license or imply that preferential or advantageous treatment from the department can be obtained.

2. No examiner, employee, or agent of a third-party tester shall be permitted to advertise or solicit business or cause business to be solicited in its behalf or display or distribute any advertising material within 1500 feet of a location rented, leased, or owned by the department.

KEY: training programs, driver education
1992 **53-3-213**
Notice of Continuation December 2, 1997 **53-3-407**

R708. Public Safety, Driver License.
R708-25. Commercial Driver License Applicant Fitness Certification.
R708-25-1. Authority.

This rule is authorized by Subsection 53-3-407(1)(c).

R708-25-2. Fitness Certification Requirements.

(1) Every Commercial Driver License (CDL) applicant must either certify compliance with federal fitness standards contained in 49 CFR 391.41, 43, and 45 or certify that he/she is not subject to such standards. Each applicant who is subject to fitness standards contained in Part 391 (49 CFR), shall be required to show proof that he/she complies with the standards.

(2) Certain commercial drivers are, in accordance with Parts 390.3 and 391.2 of 49 CFR, required to have Commercial Driver Licenses, but are exempted from the federal fitness standards. Exempted are drivers who are employees of Federal, State or Local governments, drivers performing the private transportation of passengers, drivers transporting corpses or sick or injured people, drivers occasionally transporting personal property not for compensation nor in the furtherance of a commercial enterprise, drivers of vehicles used in farm custom harvesting operations, and drivers for apiarian industries.

(3) The Federal Highway Administration (FHWA) makes allowances for specific classes of drivers who cannot meet the federal fitness standards for interstate commerce to drive commercially in intrastate commerce, which allowances are articulated in federal rules granting express consent to states involved in approved pilot projects for the FHWA. Under these conditions, the division may issue commercial Driver Licenses restricted to intrastate commerce with other appropriate restrictions when applicable, provided the applicant meets state medical standards which are consistent with the statutory provisions of Sections 53-3-302, 53-3-303, 53-3-304, and R708-7 and R708-8 of the Utah Administrative Code.

(4) Each Commercial Driver License applicant who is not exempted from the requirements of Part 391 (49 CFR) shall provide to the division, an official Department of Transportation fitness certificate or equivalent, in order to verify:

(a) That the applicant meets the U.S. Department of Transportation medical standards, and;

(b) That the fitness certificate or equivalent was issued pursuant to a current medical examination.

(5) If the division determines that the applicant's driving ability has been impaired physically or mentally, or if the applicant's condition does not otherwise comply with the certification requirements of the fitness certificate or equivalent, the division may refuse to process the application until the applicant meets the fitness standards.

KEY: physical examinations, licensing
1994 **53-3-407(1)(c)**
Notice of Continuation December 3, 1997

R708. Public Safety, Driver License.
R708-27. Certification of Driver Education Teachers in the Public Schools to Administer Knowledge and Driving Skills Tests.
R708-27-1. Authority and Purpose.

This rule establishes standards and procedures to certify teachers of driver education classes in the public schools to administer knowledge and driving skills tests as required by Section 53A-13-208 Utah Code Annotated.

R708-27-2. Definitions.

"Cancellation" means the certification is void.

"Certification" means the process by which public education teachers of driver education are certified by the Driver License Division to administer knowledge and driving skills tests.

"Division" means the Driver License Division of the Utah Department of Public Safety.

"Suspension" means that a teacher's certification is currently void but may be reinstated whenever the teacher follows a division-approved plan and complies with reinstatement procedures.

"Teacher" means a teacher of driver education classes in the public schools of the State of Utah.

"Test" means a division approved knowledge test or driving skills test as approved by the division.

"USOE" means the Utah State Office of Education.

R708-27-3. Standards and Procedures.

A. A teacher shall become certified by making application and by meeting the requirements of this rule. Application shall be made on a form furnished by the division and shall include the following information:

1. The name of the teacher who is applying for certification.

2. The addresses of locations where the teacher will be conducting driver education tests.

3. A verification that the teacher has completed division approved training for knowledge and driving skills testing.

B. The division will offer training to teachers concerning minimum standards which must be met in the administration and scoring of tests.

C. The division may authorize and train personnel within the public schools to provide the above training to teachers desiring to be certified to administer driver license knowledge and driving skills tests.

D. When testing students for driver licenses, certified teachers shall use only such driver training tests which are developed and used as a standard by the division for first time driver license applicants.

E. Knowledge test questions shall be kept in a secure place and shall be accessible only to school officials and to the division. Copies of the tests shall not be retained by students.

F. The driving skills test shall be conducted on streets, highways and off-road courses only. No simulator testing shall be substituted as part of the final test.

G. The test results will be valid for driver licensing purposes only if administered in conjunction with approved public driver education courses and by teachers meeting the requirements of these rules.

H. Records of all student test results shall be retained by the school for a four year period. The records shall be accessible to the division upon request during normal school hours.

I. Investigations and resolution of complaints relating to testing under this program shall be the responsibility of the USOE.

J. The USOE shall provide annually, on or before September 30, to the division, a list of all active certified driver education teachers.

R708-27-4. Submittal of Evidence of Student Test Completion.

The following procedures shall be followed by the teacher and the student in submitting evidence of satisfactory completion of knowledge and driving skills testing:

1. The school shall furnish a certificate of test completion to the student. The certificate shall be a form approved by the division and shall contain the results of tests taken, the signature of the certified teacher who administered the tests, and the date the tests were completed.

2. To apply for a Class D driver license, a student may submit the completed certificate of testing and the certificate of completion of driver training course, as issued to him/her by the school, to a division testing station.

3. When a student applies for a Class D driver license, the Division may waive it's normally administered knowledge and driving skills tests for students presenting valid certificates of testing.

R708-27-5. Refusal to Certify, Grounds for Cancellation and Suspension of Certification.

1. The division may refuse to certify teacher applicants who do not meet the standards for training or who submit an application that contains false or incomplete information.

2. The certification of a teacher shall be effective until cancelled or suspended by the division. The USOE may initiate suspension or cancellation of a certification by providing the division with a written request.

3. Certification once granted may be cancelled or suspended for non-compliance with these rules.

4. When the division determines that a need exists to cancel or suspend a teacher's certification, it shall determine an appropriate course of action from the following options:

a. suspension, pending a plan for remediation leading to reinstatement, or

b. cancellation of certification.

5. Reinstatement following cancellation of certification shall consist of completing an approved training plan following cancellation of certification and making application for a new certification.

6. Certification shall be cancelled when teachers no longer are employed as licensed public school teachers. Teachers who discontinue employment with the USOE and then return to teach driver education must make a new application with the division for a new certification and complete approved training following cancellation of certification.

KEY: driver education, teacher certification
November 24, 1995 53A-13-208
Notice of Continuation December 3, 1997

R714. Public Safety, Highway Patrol.
R714-158. Vehicle Safety Inspection Rule.
R714-158-1. Purpose.

Pursuant to state statute and federal regulation all motor vehicles and commercial trailers registered in Utah and operating in interstate commerce are required to be inspected annually. The Utah Highway Patrol is the state agency that administers and enforces the vehicle safety inspection program. It is the purpose of this rule to set forth standards governing the administration and enforcement of the program as authorized in Sections 41-6-117, 53-8-201, 41-1a-205, and Title 63, Chapter 46b, and in federal regulations 49 CFR 393 and 396.

R714-158-2. Definitions.

As used in this rule:

(1) "Air Pollution Control Systems" means all engine and exhaust system components that function to control the emission of pollutants from a gasoline, diesel, alcohol, natural gas or liquified petroleum gas fueled engine.

(2) "Auxiliary Lamp" means a lamp installed on or in a vehicle which supplements the original lamp system or is installed or placed on or in a vehicle for a special function.

(3) "Bond" means the surety bond stations are required to have.

(4) "Certificate" means the certificate of inspection given when a vehicle meets the requirements of the inspection program.

(5) "Certification" means the authority given to an inspector by the department to conduct safety inspections.

(6) "Commercial Motor Vehicle" means any vehicle, machine, tractor, trailer or semi trailer, propelled or drawn by mechanized power upon the highway in transportation of passengers or property or any combination thereof, except implements of husbandry.

(7) "Department" means the Utah Highway Patrol Safety Inspection Section.

(8) "Exhaust Systems" means any original equipment, or department approved aftermarket, vehicular component designed to remove exhaust gas, vapor and particulates from a gasoline, diesel, alcohol, natural gas or liquified petroleum gas fueled engine. All associated attachment hardware is included in the system.

(9) "Fleet Station" means a stationary or mobile unit licensed by the department and capable of conducting safety inspections of commercial motor vehicles, provided the fleet owns a minimum of 25 vehicles.

(10) "Inspector" means a person employed by a station licensed to conduct safety inspections.

(11) "Investigator" means a person employed by the department to supervise stations and inspectors.

(12) "License" means the authority given to a stationary station, fleet station or mobile station by the department to conduct safety inspections.

(13) "Lamp System" means every lamp, reflector, bulb and lens on or in a vehicle when the vehicle was manufactured by the original manufacturer.

(14) "Mobile Station" means a mobile unit licensed by the department and capable of conducting safety inspections.

(15) "Motor Vehicle" means every vehicle which is self propelled except vehicles moved solely by human power and motorized wheel chairs.

(16) "Occupant Protection System" means all components of air bags, air bag impact sensors, air bag propellants, air bag containers and any other vehicular component designed by an original equipment manufacturer, or aftermarket manufacturer, that is incorporated into a vehicle for the purpose of protecting a vehicle's human occupants from an impact.

(17) "Occupant Restraint System" means seat belts, seat belt assemblies, combination seat belts, automatic seat belts, seat belt locking devices, anchoring hardware, retractors, webbing, load limiters, straps, child restraint seats and associated hardware, and any other vehicular component manufactured by an original equipment manufacturer, or aftermarket manufacturer, that is incorporated in a vehicle for the purpose of restraining a vehicle's human occupants from an impact.

(18) "Ornamental Light" means any light on or in a vehicle or a part of a vehicle, not installed by the vehicle's original manufacturer that functions only to decorate or accessorize a vehicle.

(19) "Station" means a stationary unit including public garages, services stations and repair shops licensed by the department to conduct safety inspections.

(20) "Sticker" means the sticker used on the windshield of commercial motor vehicles which have met the requirements of the inspection program.

(21) "Sticker Certificate" means the certificate given along with the sticker.

(22) "Streetrods" ("Kitcars") means a vehicle that is an identifiable vintage or replica of a vintage or resembles a vehicle made prior to 1949 and has a significant drive train update.

(23) "Trailer" means any trailer or semi trailer, propelled or drawn upon the highway by mechanized power in transportation of passengers or property or any combination thereof; it does not include implements of husbandry, used in interstate commerce and required by federal regulation to be inspected.

(24) "Vehicle" means every motor vehicle, commercial motor vehicle and every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices used exclusively upon stationary rails or tracks.

R714-158-3. Application for Station License.

A. Application for a license as a station must be made on forms provided by the department, and may be obtained from the Safety Inspection Section, 4501 S. 2700 W. West Valley City, Utah 84119.

(1) The completed application and bond must be returned to the department.

B. A bond in the amount of $1,000.00 must be obtained by each applicant and returned with application prior to the issuance of a license.

(1) Fleet stations are exempt from the bond requirement.

C. A license approval and station application fee of

$100.00 will be required. This fee will also apply to any station upon re-approval, in the event of license revocation.

D. All stations will be required to submit a $25.00 license fee for each calendar year, except publicly owned stations.

(1) A $25.00 fee will be imposed to process return to the program in the event of a suspension.

E. The department reserves the right each year to establish periods of time during which applications may not be considered.

F. Upon receipt of application for a license the department will assign an investigator to make an inspection at the place of business. A determination will be made concerning the qualification of personnel and suitability of premises and equipment.

G. The $1000.00 bond will be forfeited in the event a station fails to observe the conditions of R714-158-5 "Going out of business."

R714-158-4. Inspection Station License.

A. Upon final approval, the license will be issued to the applicant and must be displayed in a prominent location at the address listed thereon.

B. Licenses are not transferable.

(1) A change in the ownership, name, or location of a station requires a new application, bond and license.

C. To eliminate any period of non-operation, such application should be made early enough for investigation of the new station site.

R714-158-5. Going Out of Business.

A station going out of business must immediately return the license, unused certificates and stickers and a final report of all inspections.

R714-158-6. Building and Equipment Requirements.

A. The following conditions must be met before a license will be granted:

(1) Station building must be of permanent construction 12 feet wide or wider and 25 feet long or longer if mechanical headlight aimers are used and 45 feet long or longer if a headlight aiming screen is used.

(2) The station must have the following:

(a) A level concrete or asphalt floor.

(b) A number stamp kit of 1 1/2 inch number size with ink that will not fade. (Required for fleet stations only.)

(c) The necessary hand tools to conduct an inspection.

(d) A hoist or heavy duty jacks.

(e) Measuring gauges and instruments for determining minimum specifications in the inspection process. A list of required and acceptable gauges and instruments can be obtained from a Safety Inspection Section office, or use of a computerized plate brake tester to test a vehicle's braking system.

(f) A light meter equal to or better than the GE-214 or pocket detective light meter, capable of measuring light transmittance of a vehicle's windows.

(g) A current safety inspection manual.

B. The building requirements of this section may be waived in the case of a mobile station, if in the opinion of the department the mobile station is capable of conducting safety inspections.

R714-158-7. Inspector Certification.

A. An applicant for certification as an inspector must:

(1) Obtain training in accordance with the requirements of R714-158-14.

(2) Pay a non-refundable $10.00 processing fee.

(3) Be at least 18 years of age.

(4) Have a valid Utah drivers license, or an out of state license approved by the department.

B. Applicants who fail the examination given during the training may attend another training seminar or re-test at the discretion of the department or contract agent.

(1) Certification cards are valid for three years and expire on the month, day and year shown.

(2) Certification cards can be renewed up to six months before the expiration date.

(3) If a certification card is revoked, before a re-certification can be obtained the person must make written application to the department. If approved, the person must attend a training seminar to become re-certified and submit an additional $25.00 re-instatement fee.

(4) A $10.00 fee will be imposed to process a return to the program in the event of a suspension of certification.

R714-158-8. General Program Requirements.

Inspections must be conducted honestly and thoroughly. Any attempt to coerce customers or to sell unneeded parts, repairs, or adjustments is prohibited.

(1) Repairs or adjustments may not be made to any vehicle without prior approval of the customer.

(a) Any part that is replaced as a result of an inspection must be returned to the customer.

(b) If the part cannot be returned, it must be shown to the customer.

(c) The customer is under no obligation to have a vehicle repaired at the station. Repairs may be made at a place determined by the owner.

(2) A current set of inspection records must be kept at each station or records keeping office.

(a) The records shall be kept for a minimum of twelve months.

(b) When requested, records must be made available for examination by an investigator of the department.

(3) Reports required by the department must be submitted prior to every third order of inspection supplies.

(a) Reports which are incomplete, dirty, illegible or not in sequence will not be accepted, and additional orders will not be processed.

(b) Certificates and stickers must be filled out on both sides.

(4) Each station in the program must maintain an adequate supply of certificates, stickers and other inspection supplies.

(a) Certificates, stickers and inspection supplies must be safeguarded against loss or theft.

(b) Missing or stolen certificates or stickers must be

reported to the department immediately after discovery.

(5) No certificate or sticker can be issued without making a proper inspection, nor issued to any vehicle that does not meet requirements of law.

(6) An inspector may conduct inspections, issue certificates and attach stickers to vehicles only at the location designated on the license.

(7) Certificates, stickers or inspection supplies may not be sold or transferred from one station to another.

(8) Each station must be open for at least eight continuous hours during the normal business day. Stations may close on holidays, Saturdays and Sundays.

(a) At least one inspector must be on duty at each station during business hours.

(9) Felony convictions or convictions of other crimes involving moral turpitude may constitute grounds for refusal or revocation of station owner licenses and inspector certifications.

R714-158-9. Vehicle Inspection Procedure.

When a vehicle is presented for inspection the following procedures are to be met:

(1) Obtain the vehicle registration and verify the vehicle identification number against the registration certificate.

(a) If the vehicle is not registered use the vehicle identification number from the vehicle on the inspection certificate.

(2) If the vehicle displays an inspection sticker remove it from the windshield and proceed with the inspection.

(3) Check for valid vehicle insurance, bonding or coverage in accordance with Section 41-12a-401, and record the company name, certificate number, policy number, bond number, or other number of certification.

(a) Without proof of insurance the vehicle is to be rejected.

(4) Check for a properly functioning speedometer and odometer.

(a) If not present or if broken the vehicle must be rejected.

(5) Test drive the vehicle to determine the following:

(a) Excessive looseness in the steering.

(b) Play in the brake pedal.

(c) Accelerate vehicle and apply brakes to check for uneven braking action.

(d) Stop, set parking or emergency brake, and accelerate vehicle in second gear, or drive, to test the parking or emergency brake function. (This procedure is not necessary when using a computerized plate brake tester.)

(6) Test the horn for proper operation.

(7) Properly installed rear view mirrors for 200 ft. rear visibility.

(8) Inspect the vehicle lighting equipment as follows:.

(a) Both high and low beam head lamps for proper operation and for unauthorized modifications, changes, colors, or covers.

(b) The head lamp adjustment.

(c) Parking lamps, tail lamps and signal lamps for proper operation and for unauthorized modifications, changes, colors, or covers.

(d) All other exterior lamps required by law for proper operation, specification and compliance with standards.

(9) Inspect vehicle components as follows:

(a) Windshield wipers for operation and blade condition.

(b) Body for excessive damage or jagged edges.

(c) Hood and door latches for proper operation.

(d) Vehicle floor for holes.

(10) Raise the vehicle off the ground and inspect as follows:

(a) Exhaust system for leaks and proper operation.

(b) Ball joints for wear or looseness.

(c) Tie rods and idler arm for wear or damage.

(d) Shock absorbers for leakage or broken.

(e) Tires for excessive wear, breaks, cuts or damage that may cause failure.

(f) Vehicle alterations (raising or lowering vehicle in excess of lawful limits).

(11) Inspect wheels and brakes as follows:

(a) All wheels for looseness in bearings.

(b) Remove one front and one rear wheel and measure brake shoes or disc pads. (This procedure is not necessary when using a computerized plate brake tester.)

(c) Wheel cylinders and brake lines for leakage or damage.

(d) Master cylinder for leakage and proper fluid level.

(12) Brake testing devices shall be capable of testing the braking standard as established in 49 CFR 571.105 (10-1-87). Verification of the function of testing devices shall be submitted to the department with a certification of accuracy and performance provided by a certified independent testing laboratory. Testing devices may be Low Speed Roller Dynamometers, Road Transducers, Low Speed Plate Brake Testers or similar testing devices capable of measuring the brake testing requirements of 49 CFR 571.125.

(13) The department has authority to allow devices to be used to test anti-lock, computer assisted and other advanced brake systems. These devices shall also be used to establish a criterion for further testing of brake systems for standardized safety inspection requirements.

(14) Brake testing devices must be approved by department prior to implementation into the Safety Inspection Testing Program.

(15) A Streetrod is not required to have fenders, or bumpers when operated on well maintained hard surfaced roads.

(16) T-Buckets or Kitcars are not required to have fenders or bumpers and may not be required to have a windshield or windshield wipers when operated only during fair weather on well maintained hard surfaced roads.

(a) Streetrods, T-Buckets and Kitcars must have brakes on all wheels.

(b) An engine cover may not be needed, provided that the engine is covered so as to prevent any hazard from moving engine parts.

(c) All vehicles are required to be equipped with seat belts with the exception of a vehicle that is restored to an original condition, and was manufactured prior to 1966.

R714-158-10. Glass Inspection Procedure.

A. Purpose.

(1) The purpose of this section is to set standards and specifications for windshields and other vehicle glass and set forth the procedures for accepting or rejecting vehicles that have window tinting or other non-transparent material added to glass, and to align specifications with the standards required by Federal Standard 205.

B. Windshield requirement.

(1) Automotive safety glazing is marked with the manufacturer's trademark and the letters "AS" followed by a number 1 to 11.

(a) Only "AS" 1 or "AS" 10 (bullet proof) may be used in a windshield.

(b) Models prior to 1966 also have model and D.O.T. number.

(2) A windshield is required in all motor vehicles presented for safety inspection, and must have the marking AS-1 or AS-10.

(a) All other glass in the vehicle must be marked AS-1 or AS-2.

(3) A windshield is not required in a motorcycle.

C. Glazed glass.

(1) No person shall operate any vehicle on any public highway, road, or street with the front windshield, the side windows to the immediate right and left of the driver that do not meet the requirements of FMVSS 205 in effect at the time of manufacture.

(2) Nothing in this rule shall prohibit the use of any products or material along the top edge of the windshield so long as such products or materials are transparent and do not encroach upon the AS-1 portion of the windshield as provided by FMVSS 205 and FMVSS 128.

(3) Right and left outside rear view mirrors shall be required with the use of any sun screening device or material except when used only on the top edge of the windshield.

D. Tinted glass.

(1) Inspect all glass for unauthorized materials or conditions that obscure driver's vision including unauthorized etching.

(2) A vehicle shall be rejected if:

(a) Tinting or other non-transparent material has been added to the windshield below a horizontal line four inches from the top of the windshield.

(b) Windows are covered by or treated with a material which presents a metallic or mirrored appearance when viewed from the outside of the vehicle.

(c) Tinting or other non-transparent material has been added to the windows to the immediate left or right of the driver's seat which do not allow at least 43% light transmittance.

(d) Tinting has been added to any windows to the rear of the driver's seat which do not allow at least 28% light transmittance and if the vehicle is not equipped with adequate rear view mirrors on both the left and right sides of the vehicle when equipped with window tinting.

E. Broken or nonfunctional glass.

(1) Reject the vehicle in the event any of the following is present with regard to windshields:

(a) Outright breakage either on the inside or outside surface and/or broken glass leaving sharp or jagged edge.

(b) Any star break larger than 2 inches located in the critical area.

(c) Any crack or cracks extending the full length of the windshield either vertically or horizontally.

(d) Any crack or cracks having a cumulative total of 24 inches or more.

(e) Sandpits or discoloration which interfere with the drivers vision.

(f) Damage other than minor pitting in the acute area (the area four inches down from the top of the windshield, four inches up from the bottom of the windshield (where the dash and the windshield touch), six inches to the left and right of the imaginary centerline of the steering column.

(2) Reject the vehicle in the event any of the following is present in regard to windows:

(a) Driver's window is not functional.

(b) Passenger compartment glass is broken, shattered, jagged, scratched, discolored or clouded to the point where driver's vision is impaired.

(c) Rear window is clouded or discolored to the extent that vision is impaired, unless the vehicle is equipped with both left and right outside rear view mirrors.

R714-158-11. Inspection Certificate and Windshield Sticker Certificate.

A. Inspection certificates (HP SI-29) and sticker certificates (HP SI-30) will be issued in books of twenty five and must be filled out in triplicate for every inspection. The original of these certificates must be given to the customer and must remain with the vehicle. The second copy must be given to the customer who will present it to the Department of Motor Vehicles for registration purposes.

(1) A maximum of twenty books of certificates and twenty books of stickers may be purchased on an order.

(2) All orders must be paid by check, except as authorized by the department.

(3) Unused certificates or stickers, if less than two years old and in a quantity of ten or more may be returned to the department for reimbursement or exchange.

(4) Returned certificates and stickers must be in the original book and sequence.

B. Certificates and stickers are to be filled out in the following manner:

(1) Vehicle identification number as it appears on the vehicle identification plate.

(2) Date the inspection is conducted.

(3) Year, type and the make of the vehicle.

(4) Number of the license plate that is on the vehicle.

(5) Current odometer reading.

(6) Registered owners name and complete address.

(7) Station name and number as it appears on the license.

(8) Number from a window sticker must be recorded on the sticker certificate.

(a) If the vehicle is rejected, the number must also be recorded on the reject copy.

(9) Total charges listed must include the cost to the

customer of all safety inspection related repairs including the inspection fee of $6.00, $10.00 or $13.00.

(a) Do not charge tax on the inspection fee.

(10) Any vehicle defect that would cause the vehicle to fail a safety inspection, even though repairs are made, should be noted in the repair column.

(11) Any item that may require repair or replacement before the next inspection should be noted in the advise column.

(a) If a notation is placed in either the reject or the advise column the customer must be told.

C. Instructions for attaching stickers.

(1) Complete the required information on the reverse side of the sticker.

(2) Remove the protective covering from the face of the sticker.

(3) Stamp the number in the space provided on the face of the sticker that corresponds to the month the inspection is completed.

(4) Clean the inside surface of the windshield and apply the sticker, smoothing out all air bubbles, allowing the sticker to adhere.

D. Expiration of the sticker.

(1) The sticker is valid for a maximum of twelve months and expires on the last day of the month, one year from the date it was issued.

E. Duplicate stickers.

(1) Each station must maintain an adequate supply of the previous years stickers to satisfy need for duplicate stickers.

(2) A maximum fee of $2.00 may be charged for a duplicate sticker.

(3) The inspector must require proof of prior inspection before issuing a duplicate sticker.

(a) If the original sticker certificate is not available the vehicle must be re-inspected or returned to the original station for a duplicate sticker.

(4) The expiration number (month) on the face of the inspection sticker, must be the same on the duplicate sticker as it was on the original sticker. Color (year of expiration) must be the same as original sticker.

(5) Duplicate stickers issued must be recorded in numerical order on the inspection report with the word "duplicate" and the original sticker number following the new sticker number.

F. Certificates and sticker certificates are to be issued as follows:

(1) The first copy must be carried in the vehicle at all times.

(2) The second copy must be presented to customer for registration purposes.

(3) The third copy is to be retained by the station.

(4) Vehicles must be inspected within 60 days prior to registration. The certificate must be dated at the time of inspection.

G. Each inspector must personally sign his own name to the certificate or sticker and record his certification number. Certificates should not be signed until the inspection is completed.

R714-158-12. Rejected Vehicle Certificate Procedure.

A. The reject portion of the certificate is to be filled out and given to the customer of a vehicle which does not pass the safety inspection.

(1) The reject portion is to be filled out completely and the number recorded on the certificate and the station report.

(2) The reject portion must show every item which caused the vehicle to fail the safety inspection.

B. The rejected vehicle notice shall not be used in lieu of an inspection certificate.

(1) This permits movement of the rejected vehicle only to be repaired or re-inspected.

(2) Stations shall not issue a second reject sticker to the same vehicle.

(3) An inspection certificate may only be issued after repairs have been completed.

C. In cases where vehicles are rejected the appropriate fee of $6.00, $10.00, or $13.00 may be charged provided that a complete inspection was conducted.

(1) Repairs must be made within 15 calendar days to avoid additional inspection fees.

R714-158-13. Inspection Report Procedure.

A. Report forms are to be completed as follows:

(1) Date the inspection was completed.

(2) Owner's name.

(3) Year and make of the vehicle.

(4) Vehicle identification number.

(5) Appropriate notation in any of the fifteen repair columns.

(6) Total cost including the inspection fee.

(7) Certificate or sticker number.

B. Certificate or sticker numbers must be listed in numerical order starting with the lowest number.

(1) A separate report form must be used for the certificates and another for the stickers.

(2) Duplicate certificates or stickers must be listed in this same order with the word "duplicate" and the number from the old certificate or sticker being printed on the same line.

(a) Duplicate stickers from the previous year must be recorded in numerical sequence on a separate inspection report form and need not be full pages.

(3) Lost or stolen certificates or stickers must be listed in this same order and the words "lost or stolen" printed on the same line.

(4) Certificates and stickers rendered unusable through some mishap must be listed in this same order and the word "void" printed on the same line.

(a) All certificates and stickers of rejected vehicles which have not been repaired within 15 calendar days must be returned to the department with the inspection report.

C. Failure to submit the required reports will be considered grounds for suspension or revocation of a license.

R714-158-14. Inspector Training and Certification.

A. In addition to the foregoing requirements prescribed by this rule, vehicle inspectors shall be required to obtain approved training, reference materials and instructions from

the department.

B. The department may contract with a private entity, community college, or college of higher learning to provide training, re-training or certification as an inspector for the vehicle inspection program. Reference manuals shall include the most current technical specifications for inspectors to conduct automobile, light truck, motorcycle, truck, trailer, semi trailer and bus inspections.

R714-158-15. Incorporation of Federal Standards for Commercial Vehicles.

The department adopts federal regulation 49 CFR 393, 396, and 396 appendix G, applicable to commercial motor vehicles and trailers operating in interstate commerce and incorporates those standards in this rule by reference.

R714-158-16. Adjudicative Proceedings.

A. Purpose of section.

(1) It is the purpose of this section to set forth procedures whereby:

(a) Appeal may be made by a person who has been denied a license as an inspection station, or whose license as an inspection station is being suspended or revoked.

(b) Appeal may be made by a person who has been denied certification as an inspector, or whose certification as an inspector is being suspended or revoked.

B. Specification.

(1) All adjudicative proceedings herein shall be conducted informally, and as authorized by sections 53-8-204, 63-46b-4 and 63-46b-5.

C. Forms for denial, suspension, revocation and appeal.

(1) Action to deny, suspend or revoke any license or certification or action to appeal any denial, suspension or revocation shall be made on forms provided by the department in accordance with section 63-46b-3.

D. Appeal to department.

(1) A person who has been issued a notice of intended agency action to suspend or revoke a license or certification may request a hearing before the department by filing an appeal with the Commander of the Safety Inspection Program within 10 days of receipt of the notice of intended agency action. If a timely appeal is filed, the intended agency action shall automatically be stayed.

(2) The hearing before the Commander of the Safety Inspection Program shall be informal and is intended to provide the person with an opportunity to show cause why the intended agency action should not be taken.

(3) The Commander of the Safety Inspection Program will issue a signed order to the parties within 5 days of the hearing, ordering or denying the intended agency action.

E. Appeal to Advisory Council.

(1) A person who has been denied a license or certification, or a person whose license or certification has been ordered suspended or revoked by the department may request a hearing before the Advisory Council pursuant to Section 53-8-203, by filing an appeal with the department within 10 days of receipt of the denial, suspension or revocation.

(2) Except in the case of an emergency order a timely appeal to the department requesting an Advisory Council hearing shall automatically stay a department suspension or revocation order.

(3) The hearing before the Advisory Council shall be informal and shall be held within 30 days after the appeal is filed.

(4) The Advisory Council shall make written findings and conclusions and issue a signed order to the parties involved within 10 days of the hearing affirming, denying, or modifying the order of the department.

F. Default order.

(1) A default order may be entered against a party who fails to participate in any of the hearings provided for herein in accordance with section 63-46b-11.

G. Reconsideration.

(1) Reconsideration of the Advisory Council order may be requested in writing within 20 days of the date of the order in accordance with section 63-46b-13.

H. Judicial review.

(1) The order of the Advisory Council shall be subject to judicial review in accordance with section 63-46b-15.

KEY: traffic regulations

1994	**53-8-201**
Notice of Continuation December 22, 1997	**53-8-203**
	63-46b

R714. Public Safety, Highway Patrol.

R714-200. Department Standards for Lights and Illumination Devices on Vehicles.

R714-200-1. Purpose.

The Department of Public Safety, hereinafter "department" is responsible for establishing rules regulating lamps and illuminating devices in accordance with 41-6-117.

R714-200-2. Procedure.

To ensure that lamps and illuminating devices meet certain specifications and that they are installed and function consistently with the requirements of other states and with the regulations of the United States Department of Transportation, hereinafter "U.S.D.O.T." the department adopts Title 49 CFR 571 Standard 108, 1993 edition, and incorporates it herein by reference and hereby declares that it shall apply to the following:

(1) Head lamp specifications required by Section 41-6-119.

(2) Tail lamp specifications required by Section 41-6-120.

(3) Stop lamps, supplemental stop lamps, and turn signal specifications required by Subsection 41-6-121.10. A vehicle equipped with only one tail lamp at the time of manufacture need not be equipped with an additional stop lamp.

(4) Additional lamps or reflectors specified in Section 41-6-122. Vehicles 80 inches or more in width are required to have marker lamps and reflectors.

(5) Lamps, reflectors and flags on the rear overhang of

oversize vehicles required by Section 41-6-128.

(6) Parking lamps required by Section 41-6-129.

(7) Warning lamps required by Section 41-6-133.

(8) Backup lamps and side marker lamps required by Subsection 41-6-133.5.

(9) Head lamp specifications for farm tractors and motor vehicles sold prior to July 1, 1980 required by Subsection 41-6-135.5.

(10) Lighting and warning devices on school buses required by Subsection 41-6-140.10.

R714-200-3. Prohibited Lamps, Lighting Accessories, Decorative Lamps.

(1) It is the purpose of this section to address the reference to "lamp" as set forth in Subsection 41-6-141.5.

(2) Head lamp covers, tints, emblems, decals or other foreign materials not in place at the time of original manufacture or not specifically intended for use by the vehicle's original manufacturer, and which do not meet the standards of Title 49 CFR 571 Standard 108, U.S.D.O.T., shall not be placed on, in or over a head lamp.

(3) Continuous operation daytime running lamps, (low beam head lamps) and associated system components, are permitted on vehicles.

(4) Tail lamps, turn signal lamps, back-up lamps and other factory installed lamps on a vehicle's exterior, as described in Title 49 CFR 571 Standard 108 (S5), shall not have any decals, tints, emblems, inserts or other foreign material on the lamp or lens that was not in place at the time of original manufacture or not specifically intended for use by the vehicle's original manufacturer.

(5) Flashing lights are prohibited on any vehicle except as authorized by Subsection 41-6-140(c). License plate lamps, clearance lamps, antenna lamps, deck lamps and interior lamps visible from a vehicle's exterior are included in this section.

(6) No accessory lamp, decorative lamp, auxiliary lamp, ornamental lamp or lamp system, may be offered for sale, kept for sale, sold installed or used on a vehicle, that does not meet the requirements of Title 49 CFR Standard 108, including color, positioning, aiming and location. No colored lamps or lenses not specifically covered by Title 49 CFR Standard 108, may be installed on or in a vehicle, where the colored lamp or lens would be visible to the exterior of the vehicle. This includes any blue, purple, green, violet, lavender, or pink lamps or lenses.

(7) This rule does not apply to implements of husbandry, road making machinery, farm tractors, except as specifically made applicable, and off highway use vehicles as described in Section 41-6-117.

(8) Aftermarket illuminating products not approved under this rule may be submitted to the American Association of Motor Vehicle Administrators, an agent for the department, for testing and approval prior to the marketing, installation or use of such products.

(9) If a person is denied approval of any aftermarket illuminating device by the department, appeal may be made in accordance with Title 63, Chapter 46b, and such appeal shall be considered an informal adjudicative proceeding.

R714-200-4. Emergency Vehicles/Exemptions.

The provisions of this rule do not apply to emergency vehicles used primarily for police, fire, rescue and ambulance work.

KEY: traffic regulations
1994 **41-6-117**
Notice of Continuation December 22, 1997

R714. Public Safety, Highway Patrol.
R714-210. Air Conditioning Equipment - Requirements.
R714-210-1. Purpose.

A. SAFETY PRACTICES FOR MECHANICAL VAPOR COMPRESSION REFRIGERATION EQUIPMENT OR SYSTEMS USED TO COOL PASSENGER COMPARTMENT OF MOTOR VEHICLES.

(1) SAE J639 RECOMMENDED PRACTICE, Federal Standard 108.

B. Recommended Practice is restricted to mechanical vapor compression refrigeration systems because all presently known or proposed passenger compartment cooling systems which involve any question of safety are of that type. It is not the intention to restrict the use of, or further development of, other types of refrigeration systems for passenger compartment cooling. Should other systems be found practical at some future time, this recommendation practice may be amended or an additional recommended safety practice drawn up for such other systems. The evaporative cooling units presently used are not here considered.

R714-210-2. A Mechanical Vapor Compression Refrigeration System for Cooling the Passenger Compartment of a Motor Vehicle Consists of:

A. A relatively small pump or compressor which raises the pressure of the refrigerant vapor and in doing so also raises it temperature.

B. A condenser where the compressed refrigerant vapor is cooled and liquefied by passing outside air over its surface to absorb heat from the refrigerant.

C. A receiver or container where the cooled and liquefied refrigerant is stored under pressure.

D. An expansion valve or other liquid refrigerant metering device which regulates the flow of refrigerant to the evaporator.

E. An evaporator, wherein the liquid refrigerant vaporizes because of the heat which it absorbs from the air passing over the evaporator surface. This absorption of heat from the air result in a considerable reduction in the air temperature.

F. A blower unit which circulates air over the evaporator, where the air is cooled and then delivered to the passenger compartment. The air which is supplied to the evaporator unit may come from the passenger compartment (recirculated air); or from the outside of the vehicle (outside air); or as a mixture of recirculated and outside air.

G. A system of controls which may be manual, automatic, or part manual and part automatic. The control

elements may control air delivery by the evaporator unit, temperature in the passenger compartment, the amount of outside air introduced, maximum pressure within the system, and similar items.

H. In addition the system may require wiring, tubing, connections, air ducts, a means of driving the compressor and the evaporative blower, and a means of cooling the condenser.

R714-210-3. Refrigerants.

A. While the above description may appear lengthy and complicated, the actual cooling system is relatively simple, being somewhat comparable to a residential room cooler. It requires only a small quantity of refrigerant. (1) The refrigerant must be non-toxic, non-flammable, and non-explosive, such as R-12 (Dichlorodifluoromethane) or R-22 (Monochlorodifluoromethane), as defined by the American Society of Refrigerating Engineers in ASRE 34-57.

R714-210-4. Safety Practices - The Following Safety Practices are Recommended.

A. A pressure or temperature sensitive relief valve or device shall be located in the high pressure side of the system and shall be vented to the outside of the passenger and baggage compartments and air circulating system for the passenger compartment. In no case shall the blow-off pressure be greater than 800 psi of its saturated vapor temperature equivalent.

B. The high pressure side of the system (that part contained between the compressor outlet and the liquid throttling device) shall have an ultimate bursting pressure of not less than two and one-half times the blow-off pressure setting of the safety relief valve or device.

C. A plainly legible and durable name plate or tag shall be mounted near the point where the refrigerant is charged into the system. The name plate or tag shall indicate the type of refrigerant to be used and the recommended operating charge. The same name plate or an additional plate mounted to one or more of the principle components of the system where it or they can be easily seen, shall contain the name and location of the manufacturer.

KEY: traffic regulations
1987 41-6-154.10
Notice of Continuation December 22, 1997

R714. Public Safety, Highway Patrol.
R714-220. Standards for Protective Headgear.
R714-220-1. Purpose.

A. It is the responsibility of the Commissioner of Public Safety to promulgate and enforce specifications and standards for the use of protective headgear.

B. The purpose of the rule is to reduce deaths and injuries to any person or persons under the age of 18 years who may be operating or riding on any motorcycle or motor driven cycle within the State of Utah. This requirement does not apply to any person or persons that are within an enclosed cab.

C. In order to properly set specifications and standards for headgear, and to conform with Federal requirements, the Commissioner chooses to adopt by reference Federal Standard Part 571; S 218 as the standard to fulfill the requirements of this section.

KEY: traffic regulations
1987 41-6-107.8
Notice of Continuation December 22, 1997

R714. Public Safety, Highway Patrol.
R714-230. Standards and Specifications for Seat Belts.
R714-230-1. Purpose.

A. It is the responsibility of the Commissioner of Public Safety to promulgate and enforce specifications and standards for the use of seat belts.

B. In order to properly set specifications and standards for seat belts, and to maintain compliance with federal requirements, the Commissioner of Public Safety chooses to adopt by reference Federal Standard part 571; S 209 as the standards for the purpose of this act.

KEY: traffic regulations
1987 41-6-148.10
Notice of Continuation December 22, 1997

R714. Public Safety, Highway Patrol.
R714-240. Standards and Specifications for Child Restraint Devices.
R714-240-1. Purpose.

A. A resident parent or legal guardian driver, who is transporting his or her child in a motor vehicle on a highway, shall:

(1) provide for the protection of a child younger than two years of age by using a child restraint device approved by the Commissioner of Public Safety.

(2) The device shall restrain the child in the manner prescribed by the manufacturer.

B. In order to properly set standards and specifications for child restraint devices the Commissioner of Public Safety is adopting by reference Federal Standard part 571; S 213 to fulfill the requirements of this act.

KEY: traffic regulations
1987 41-6-148.20
Notice of Continuation December 22, 1997

R714. Public Safety, Highway Patrol.
R714-300. Brake Equipment Requirements.
R714-300-1. Purpose.

Pursuant to the authority under Section 41-6-145, the following brake equipment is required by the Department of Public Safety, hereinafter "department".

R714-300-2. Service Brake Requirements.

Every Motor Vehicle, Other than a Motorcycle or Motor-Driven Cycle, when Operated Upon a Highway, shall:

A. Be equipped with brakes adequate to control the movement of and to stop and to hold such vehicle, including two separate means of applying the brakes, each of which means shall be effective to apply the brakes to at least two wheels.

B. If these two separate means of applying the brakes are connected in any way, they shall be so constructed that the failure of any one part of the operating mechanism shall not leave the motor vehicle without brakes on at least two wheels.

R714-300-3. Brake Requirements for Motorcycles, or Motor-Driven Cycles.

Every Motorcycle, or Motor-Driven Cycle, when Operated Upon a Highway, shall be equipped with at least one brake, which may be operated by hand or foot.

R714-300-4. Brake Requirements for Trailers and Semitrailers.

Every Trailer or Semitrailer Operated Upon a Highway shall:

A. Gross weight of less than 2000 pounds need not be equipped with brakes.

B. Gross weight of 2000 pounds or more, shall be equipped with brakes adequate to control the movement of and to stop and hold such vehicle, and so designed to be activated by the driver of the towing vehicle.

C. Gross weight of 3000 pounds or more, shall be equipped with brakes adequate to control the movement of and to stop and to hold, and so designed and connected that in case of an accidental break-away of the towed vehicle, the brakes shall automatically be applied.

R714-300-5. Brake Requirements for All Wheels on a Vehicle, Exceptions.

Every Motor Vehicle Shall have Brakes on All Wheels, Exceptions.

A. Any motorcycle or motor-driven cycle need not be equipped with parking brakes.

B. Any truck or truck tractor manufactured after July 24, 1980 must have brakes on the front wheels, in compliance with federal regulation 49 CFR 393.42.

R714-300-6. Requirements for Parking Brakes.

A. Parking brakes shall be capable of being applied by the driver's muscular effort or by spring action or by equivalent means.

B. Operation may be assisted by the service brakes or other source of power, provided that failure of the service brake actuation system or other power assisting mechanism will not prevent the parking brakes from being applied in conformance with the foregoing requirements.

(1) The parking brakes shall be so designed that when once applied they shall remain applied with the required effectiveness despite exhaustion of any source of energy or leakage of any kind.

(2) The same brake drums, brake shoes and lining assemblies, brake-shoe anchors and mechanical brake-shoe actuation mechanism normally associated with the wheel brake assemblies may be used for both the service brakes and the parking brakes.

(3) If the means of applying the parking brakes and the service brakes are connected in any way, they shall be so constructed that failure of any one part shall not leave the vehicle without operative brakes.

(4)The brake shoes operating within or upon the drums on the vehicle wheels of any motor vehicle may be used for both service and hand operation.

R714-300-7. Performance Ability of Brakes.

A. Every motor vehicle or combination of vehicles, at all times and under all conditions of loading, upon application of the service brake, shall be capable of the following:

(1) Developing a braking force that is not less than the percentage of its gross weight cited in paragraph (4) of this section for its classification.

(2) Decelerating to a stop from not more than twenty miles per hour at not less than the feet per second cited in paragraph (4) of this section for its classification.

(3) Stopping from a speed of twenty miles per hour in not more than the distance cited in paragraph (4) of this section for the classification, such distance to be measured from the point at which movement of the service brake pedal or control begins.

(4) Tests for deceleration and stopping distance shall be made on a substantially level (not to exceed plus or minus one percent grade), dry, smooth, hard surface that is free from loose materials.

(a) Passenger vehicles not including buses, stopping distance is 25 feet, deceleration is 17 feet per second, equivalent braking force percentage of vehicle or combination weight is 53.0%.

(b) Single or combination units of an actual gross weight of less than 10,000 pounds, stopping distance is 30 feet, deceleration is 14 feet per second, equivalent braking force percentage of vehicle or combination weight is 43.5%.

(c) Single units of an actual gross weight of 10,000 pounds or more, stopping distance is 40 feet, deceleration is 14 feet per second, equivalent braking force in percentage of vehicle or combination weight is 43.5%.

(d) All other vehicles or combinations of vehicles of an actual gross weight of 10,000 pounds or more stopping distance is 50 feet, deceleration is 14 feet per second, equivalent braking force in percentage of vehicle or combination weight is 43.5%.

(5) Pole trailers and house moving dollies are exempt from the provisions of being equipped with brakes as required in this section.

(6) Motor vehicles defined as Vintage vehicles in Section 41-21-1 are exempt from the provisions of this rule provided they comply with the requirements of Section 41-21-4.

B. The department is authorized to require an inspection of the brake on any motorcycle and any motor-driven cycle and to disapprove any such brake which it finds will not comply with the performance ability standard set forth in the

required brake equipment regulations, or which in its opinion is not properly designed or constructed as to ensure reasonable and reliable performance in actual use.

C. The department may refuse to register or may suspend or revoke the registration of any vehicle referred to in this section when it determines the brakes thereon does not comply with the provisions of this section.

D. No person shall operate on any highway, any vehicle referred to in this section, in the event the department has disapproved the brake equipment upon such vehicle or type of vehicle.

KEY: traffic regulations
1994 **41-6-145**
Notice of Continuation December 22, 1997

R714. Public Safety, Highway Patrol.
R714-550. Rule for Spending Fees Generated by the Reinstatement of Driver Licenses.
R714-550-1. Purpose and Authority.

Subsection 53-3-105(29) provides for the establishment of an administrative fee to be paid for the reinstatement of a driver license suspended or revoked for the commission of alcohol or drug-related offenses. Subsection 53-3-106(5) provides that a portion of the fee will be appropriated by the legislature to the Utah Department of Public Safety (department) so that the department can in turn purchase equipment for law enforcement agencies of the state and its political subdivisions to assist them in enforcing alcohol or drug-related driving laws. This rule is authorized by Section 53-3-117 which requires the department to make rules governing the manner in which those funds are distributed.

R714-550-2. Law Enforcement Alcohol and Drug Fee Committee.

There is hereby established a Law Enforcement Alcohol and Drug Fee Committee (committee) which shall be responsible for assisting the department in purchasing equipment for law enforcement agencies to assist them in their enforcement of alcohol or drug-related driving laws.

R714-550-3. Committee Make-up.

(1) The committee will consist of six members made up of one representative from each of the following groups or organizations:

(a) Utah Highway Patrol Superintendent or designee;

(b) Utah Department of Public Safety, Breath Alcohol Program;

(c) Utah Division of Highway Safety;

(d) Utah Sheriffs Association;

(e) Utah Chiefs of Police Association;

(f) Statewide Association of Prosecutors;

(2) Members of the committee shall:

(a) be approved by the Commissioner of the Utah Department of Public Safety;

(b) be appointed for four year terms; and

(c) cease to be members of the committee immediately upon the termination of their membership in the group or organization they represent.

(3) If a vacancy occurs during the four year term of a committee member, a new member shall be appointed from the same group or organization to complete the term of that member.

(4) The committee shall select a chairman and vice-chairman from among its members.

(5) Four members shall constitute a quorum for committee action.

R714-550-4. Committee Meetings.

The committee shall meet at least quarterly for the purpose of reviewing applications from law enforcement agencies for equipment.

R714-550-5. Application for Equipment.

Application for equipment shall be made on department forms and shall be mailed to the committee in care of the department.

R714-550-6. Criteria for Awarding Equipment.

The committee shall base its decisions for awarding equipment on the following criteria:

(a) the effectiveness to which the equipment will be used by the agency in enforcing alcohol or drug-related driving laws;

(b) the effectiveness of the equipment in enhancing the agency's ability to prosecute impaired drivers;

(c) the effectiveness of the equipment in enhancing the agency's efficient use of manpower; and

(d) the completeness of the agency's application.

R714-550-7. Agency Accountability.

Law enforcement agencies that receive equipment from the committee shall:

(a) use the equipment only in the manner set forth in the agency's application;

(b) use the equipment only to enforce alcohol and drug-related driving laws;

(c) maintain records sufficient to show how the equipment is used; and

(d) cooperate with the committee if and when the committee determines it is necessary to audit agency records showing how the equipment is used.

KEY: drugs, alcohol, fees
December 17, 1997 **53-3-117**

R724. Public Safety, Law Enforcement and Technical Services, Regulatory Licensing.
R724-4. Concealed Firearm Permit Rule.
R724-4-1. Purpose.

The purpose of this rule is to set forth the process whereby the Division of Law Enforcement and Technical Services administers permits to carry concealed firearms in accordance with Title 53, Chapter 5, Part 7, "Concealed Weapon Act."

R724-4-2. Authority.

This rule is authorized under Section 53-5-704 which requires the Division to issue concealed firearm permits and to otherwise administer the concealed firearm permit program under Sections 53-5-704 through 53-5-709.

R724-4-3. Definitions.

Terms used in this rule shall be defined as follows:

A. "Affidavit" means a written statement made under oath before a notary public.

B. "Approved Firearms Instructor" means a person approved by the Division who can certify that an applicant meets the general firearm familiarity requirement of Subsection 53-5-704(7).

C. "Board" means the Concealed Weapons Review Board created in Section 53-5-703.

D. "Concealed" means that which is covered, hidden, or secreted in a manner that the public would not be aware of its presence and is readily accessible for immediate use.

E. "Crime Of Violence" means any crime defined as such in Subsection 76-10-501(2)(b).

F. "Division" means the Division of Law Enforcement and Technical Services of the Utah Department of Public Safety.

G. "Domestic Violence" means any of the crimes listed in Subsection 77-36-1(2) when committed by one cohabitant against another.

H. "Equivalent experience with a firearm through participation in law enforcement" means experience showing that the applicant has within the last five years met the firearms requirement of his/her department as evidenced by verifiable documentation from his/her department.

I. "Equivalent experience with a firearm through participation in the military" means experience showing that the applicant has within the last five years successfully met the firearms requirements of his/her military organization as evidenced by verifiable documentation from his/her military organization, provided that such training meets the requirements of Subsection 53-5-704(7)(a).

J. "Equivalent experience with a firearm through participation in an organized shooting competition" means experience showing that the applicant has within the last five years competed in an organized shooting competition as evidenced by verifiable documentation from the organization sanctioning or conducting the organized shooting competition, provided the organized shooting competition meets the requirements of Subsection 53-5-704(7)(a).

K. "Felony" means any criminal conduct other than those crimes defined as misdemeanors or infractions in the statutes of this state.

L. "Mitigating Circumstances" means circumstances which reduce culpability for purposes of assessing good character.

M. "Moral Turpitude" means a conviction for criminal conduct under the statutes of this state or any other jurisdiction of any of the following offenses:

1. theft;
2. fraud;
3. tax evasion;
4. issuing bad checks;
5. robbery;
6. aggravated robbery;
7. bribery;
8. perjury;
9. extortion;
10. arson or aggravated arson;
11. criminal mischief;
12. falsifying government records;
13. forgery;
14. receiving stolen property;
15. firearms violations involving a crime of violence;
16. burglary or aggravated burglary;
17. vandalism;
18. kidnapping, aggravated kidnapping, or child kidnapping;
19. crimes involving unlawful sexual conduct as described in Title 76, Chapter 5, Part 4, Chapter 5a, Chapter 7, Part 1, and Chapter 10, Part 13; and
20. violations of the pornographic and harmful materials and performances act, as defined in Title 76, Chapter 10, Part 12.

N. "Offenses involving the use of alcohol" means any of the following offenses:

1. Any violation of Sections 41-6-44 through 41-6-44.20; and
2. Violations of Title 32A, Chapter 12, Part 2 involving the illegal use or consumption of an alcoholic beverage.

O. "Offenses involving the use of narcotics" means any offense involving the use of any narcotic or drug as defined in Title 58, Chapter 37.

P. "Past pattern of behavior" means verifiable incidents, with or without an arrest or conviction, that would lead a reasonable person to believe that an individual has a violent nature and would be a danger to themselves or others.

R724-4-4. Application Process.

A. It is the purpose of this section to set forth the procedure for obtaining and renewing a permit to carry a concealed firearm in accordance with Title 53, Chapter 5, Part 7.

B. Application for a permit to carry a concealed firearm shall be made in writing to the Division on forms provided by the Division. An application package shall include:

1. A completed application form;
2. Proof that the applicant is 21 years of age or older at the time application is made;
3. Evidence of general familiarity with the types of firearms to be concealed, verified by a signed certificate from

an approved firearms instructor;

4. A five-year employment history;

5. A five-year residential history;

6. Two letters of character reference;

7. Two recent color photographs of passport quality, measuring 2"x 2"; and

8. Two completed fingerprint cards.

C. An applicant shall pay a nonrefundable processing fee of $59.00 at the time the application is filed. This fee consists of $35.00 mandated by Section 53-5-707 and a $24.00 Federal Bureau of Investigation finger print processing fee. Payment shall be in the form of cash, cashier's check or money order. The Division is not responsible for cash lost in the mail.

D. An applicant may request an interview prior to submitting the application form. The Division may require an interview subsequent to the submission of the application form.

E. A background investigation shall be conducted on all applicants to determine if they are of good character as required by Section 53-5-704. The background investigation shall consist of:

1. Verifying the accuracy of the application information;

2. Checking the applicant's criminal history through local and state computer files which include:

a. Utah Computerized Criminal History;

b. National Crime Information Center;

c. Utah Law Enforcement Information Network;

d. Drivers license Information;

e. Statewide Warrants File;

f. Criminal Justice Juvenile Files; and the

g. Criminal History Expungement System.

3. Forwarding the fingerprint cards to the FBI for a review of the applicant's criminal history record pursuant to Sections 53-5-704 and 706.

F. The Division will review all the above information and approve or deny the application.

1. Notice of approval may be given by telephone or in writing.

2. Notice of denial shall be given in writing and shall state the reasons for denial.

G. Renewal of a permit to carry a concealed firearm is required every two years.

1. The renewal form is available from the Division.

2. A renewal applicant shall pay a nonrefundable fee of $5.00. Payment shall be made in the form of cash, cashier's check or money order. The Division is not responsible for cash lost in the mail.

H. A peace officer who has honorably retired from full-time employment within five years of making application shall be exempt from the following requirements:

1. Two letters of character reference;

2. Two sets of fingerprints;

R724-4-5. Temporary Permit.

A. The purpose of this section is to set forth the procedure for approval of a temporary permit to carry a concealed firearm in accordance with Section 53-5-705.

B. To be eligible to obtain a temporary permit to carry a concealed firearm, an applicant must:

1. Have applied for a permit under Section 53-5-704;

2. Have applied for a temporary permit under Section 53-5-705;

3. Demonstrate good character; and

4. Demonstrate extenuating circumstances that would justify the need for a temporary permit.

C. Provisions regarding denial or revocation of a temporary permit are set forth in Subsection R724-4-10(D) of this rule.

R724-4-6. Out-of-State Applicants.

A. Out-of-state applicants will be subject to the same application process as in-state applicants. The State of Utah does not recognize reciprocity between other states in granting concealed firearm permits.

B. A permit to carry a concealed firearm issued by any other state will not be recognized as valid in the State of Utah.

R724-4-7. Permit Holders to Notify Peace Officer When Stopped.

When a permit holder is stopped for questioning by a peace officer based on reasonable suspicion in accordance with Section 77-7-15 and the permit holder has a concealed firearm in his/her possession, the permit holder shall immediately advise the peace officer that he/she is a permit holder and has a concealed firearm in his/her possession.

R724-4-8. Approved Firearms Instructors.

A. It is the purpose of this section to set forth the procedure whereby the Division approves firearms instructors as provided in Subsection 53-5-704 (7) (b)(ii).

B. Application to become an approved firearms instructor shall be made in writing to the Division on forms provided by the Division. The application shall include:

1. A completed application form;

2. Evidence that the applicant has completed a firearms instructor training program sponsored by the National Rifle Association or Peace Officer Standards and Training or a program equivalent thereto; and

3. A notarized release of information form.

C. A firearms instructor applicant shall pay a nonrefundable fee of $5.00. Payment shall be made in the form of cash, cashier's check or money order. The Division is not responsible for cash lost in the mail.

D. The applicant must submit with the application a copy of a course of instruction that meets the course content requirements established by the Division and as required by Subsection 53-5-704(7)(a).

E. The applicant must have a criminal history free of any convictions specified in Subsections 53-5-704(2)(a) through (f).

R724-4-9. Records Access.

A. The purpose of this section is to define access to concealed firearm permit records in accordance with Title 63, Chapter 2, and Subsection 53-5-708(1).

B. Except as provided in Subsection 53-5-708(1)

information supplied to the Division by an applicant shall be considered "private" in accordance with Subsection 63-2-302(2)(d).

C. Information gathered by the Division and placed in the applicant's file shall be considered "protected" in accordance with Subsections 63-2-304(8)and(9). However, if such information was used as the basis for denial, such information shall be considered "private" in accordance with Subsection 63-2-302(2)(d) and the applicant shall have access to it in accordance with Subsection 53-5-704(10)(c).

R724-4-10. Adjudicative Procedures.

A. It is the purpose of this section to set forth:

1. The reasons why a permit may be denied or revoked;

2. The reasons why a temporary permit may be denied or revoked;

3. The reasons why approval as a firearms instructor may be denied or revoked; and

4. The procedures whereby appeal may be made to the board by a person whose permit has been denied or revoked.

5. The procedures whereby appeal may be made to the board by a firearms instructor whose approval has been denied or revoked.

B. Denial or revocation of a temporary permit is not appealable to the board.

C. A permit may be denied or revoked for any of the following reasons:

1. Knowingly and wilfully providing false information on the application for a concealed firearm permit;

2. Failing to meet the criteria for good character as required by Section 53-5-704.

D. A temporary permit may be denied or revoked for any of the following reasons;

1. The circumstances justifying the temporary permit no longer exist;

2. The holder of the permit has knowingly and willfully provided false information regarding his character; or

3. The holder of the temporary permit does not meet the requirements for a permit under Section 53-5-704.

E. Approval as a firearms instructor may be denied or revoked for any of the following reasons:

1. Knowingly and wilfully providing false information on the application for approval as a firearms instructor;

2. Failing to meet the criteria for good character as required by Section 53-5-704.

3. Failing to teach from a course of instruction that meets the training requirements set forth in Subsections 53-5-704(7)(a)(i) and (ii);

4. Failing to maintain records that verify whether or not a concealed firearm permit applicant has passed the required course of instruction.

F. A permit or temporary permit revoked by the Division must be surrendered to the Division immediately upon demand by the Division.

G. A permit applicant, permit holder, or firearms instructor may request a hearing before the board on a denial or revocation by filing an appeal to the Division within 60 days from the date the notice of denial or revocation is received.

1. The hearing before the board will be conducted informally in accordance with Section 63-46b-5.

2. The board shall issue a signed order to the parties giving the decision, reasons for the decision, and notice of appeal rights within a reasonable time after the hearing.

3. A default order may be entered against a party who fails to participate in the hearing in accordance with Section 63-46b-11.

H. Reconsideration of the board's decision may be requested in writing within 20 days of the date of the decision pursuant to Section 63-46b-13.

I. Judicial review of all final actions resulting from informal adjudicative proceedings is available pursuant to Section 63-46b-15.

R724-4-11. Mandatory Revocation and Suspension.

A. A permit or temporary permit shall be revoked if the holder fails to maintain good character as evidenced by conviction of any crime referred to in Section 53-5-704.

B. A permit or temporary permit shall be suspended if the holder is charged with a crime of violence.

C. A permit or temporary permit that was suspended because the holder was charged with a crime of violence, shall be immediately reinstated upon notice that the holder has been acquitted or the charges have been dropped.

KEY: concealed firearm permit
October 2, 1995 53-5-704
Notice of Continuation December 2, 1997 63-46b

R724. Public Safety, Law Enforcement and Technical Services, Regulatory Licensing.
R724-6. Emergency Vehicles.
R724-6-1. Purpose.

This rule explains how vehicles can be designated as "authorized emergency vehicles." Authorized emergency vehicles shall be referred to in this rule as "emergency vehicles."

R724-6-2. Authority.

This rule is authorized by Section 41-6-1.5 and Subsection 53-1-108(1)(c).

R724-6-3. Definitions.

As used in this rule:

(1) "Emergency" or "emergencies" means a situation in which property or human life is in jeopardy and the prompt summoning of aid is essential to the preservation of human life or property and justifies the operator of a vehicle to exercise the driving privileges in Subsection 41-6-14(2).

(2) "Industrial ambulance" means an ambulance that is owned and operated by a private company for the sole benefit of its employees.

R724-6-4. Publicly Owned Emergency Vehicles.

(1) A publicly owned fire department vehicle, or publicly owned police vehicle can be designated as an

emergency vehicle if the vehicle:

(a) responds to emergencies;

(b) is in compliance with the emergency lights and siren requirements of Title 41, Chapter 6;

(c) is properly insured; and

(d) is approved as an emergency vehicle by the political subdivision that owns it.

R724-6-5. Privately Owned Emergency Vehicles.

Privately owned vehicles can be designated as emergency vehicles by meeting the requirements set forth in this rule.

R724-6-6. Categories of Privately Owned Emergency Vehicles.

(1) Privately owned emergency vehicles shall be divided into the following categories:

(a) private fire response vehicles;

(b) private police vehicles;

(c) private search and rescue vehicles; and

(d) private ambulance vehicles.

R724-6-7. Private Fire Response Vehicles, Private Police Vehicles, and Private Search and Rescue Vehicles.

(1) A private fire response vehicle, private police vehicle, or private search and rescue vehicle can be designated as an emergency vehicle if:

(a) the vehicle is used on a part time basis to assist a governmental agency in responding to emergencies;

(b) the owner of the vehicle receives written authorization to operate the vehicle as an emergency vehicle from the sheriff, chief of police, or fire chief of the governmental agency that the vehicle is authorized to assist;

(c) the vehicle is in compliance with the emergency lights and siren requirements of Title 41, Chapter 6;

(d) the vehicle is licensed and has a current safety inspection certificate; and

(e) the governmental agency that authorizes the vehicle to operate as an emergency vehicle has adopted written policies regarding the operation of emergency vehicles in their jurisdiction. The policies shall require compliance with the statutory restrictions and requirements of Title 41, Chapter 6.

R724-6-8. Ambulance Vehicles.

(1) A publicly owned or privately owned ambulance vehicle can be designated as an emergency vehicle if the vehicle is licensed by the Utah Department of Health, Bureau of Emergency Medical Services to provide emergency and non-emergency ambulance services under Title 26, Chapter 8.

(2) An industrial ambulance vehicle can be designated as an emergency vehicle if:

(a) the vehicle is in compliance with the emergency lights and siren requirements of Title 41, Chapter 6;

(b) the vehicle is properly insured;

(c) the vehicle is licensed and has a current safety inspection certificate; and

(d) the company that owns the vehicle receives written authorization to operate the vehicle as an emergency vehicle from:

(i) the sheriff of the county in which the company is located; and

(ii) the chief of police of the city, if any, in which the company is located.

KEY: emergency vehicle

September 11, 1997 41-6-1.5

Notice of Continuation December 2, 1997 53-1-108(1)(c)

R746. Public Service Commission, Administration.
R746-100. Practice and Procedure Governing Formal Hearings.
R746-100-1. General Provisions and Authorization.

A. Procedure Governed -- Sections 1 through 14 of this rule shall govern the formal hearing procedures before the Public Service Commission of Utah, except those involving motor carriers. Sections 15 and 16 shall govern rulemaking proceedings before the Commission.

B. Consumer Complaints -- Consumer complaints are designated as informal proceedings.

C. No Provision in Rules -- In situations for which there is no provision in these rules, the Utah Rules of Civil Procedure shall govern, unless the Commission considers them to be unworkable or inappropriate.

D. Words Denoting Number and Gender -- In interpreting these rules, unless the context indicates otherwise, the singular includes the plural, the plural includes the singular, the present or perfect tenses include future tenses, and the words of one gender include the other gender. Headings are for convenience only, and they shall not be used in construing any meaning.

E. Authorization -- This rule is authorized pursuant to Section 54-1-1 which requires the Commission to exercise its rulemaking powers and Subsection 54-1-2.5 which establishes the requirements for Commission procedure, including Hearings, Practice and Procedure, Chapter 7 of Title 54.

R746-100-2. Definitions.

A. "Applicant" is a party applying for a license, right, or authority from the Commission.

B. "Commission" is the Public Service Commission of Utah. In appropriate context, it may include administrative law judges in the Commission's employ.

C. "Committee" is the Committee of Consumer Services, Department of Commerce.

D. "Complainant" is a person who complains to the Commission of an act or omission of a person in violation of law, the rules, or an order of the Commission.

E. "Consumer complaint" is a complaint of a retail customer against a public utility.

F. "Contested On-the-Record Proceeding" is a proceeding required by constitution, statute, published Commission rule, or order in a particular case, to be decided on the basis of its record, and in which a protest or notice to intervene has been filed.

G. "Division" is the Division of Public Utilities, Utah State Department of Commerce.

H. "Ex Parte Communication" means an oral or written communication with a member of the Commission, administrative law judge, or Commission employee who is, or may be reasonably expected to be, involved in the decision-making process, relative to the merits of a matter under adjudication unless notice and an opportunity to be heard are given to each party. It shall not, however, include requests for status reports on a proceeding covered by these rules.

I. "Formal proceeding" is a proceeding before the Commission not designated informal by rule, pursuant to Section 63-46b-4.

J. "Informal proceeding" is a proceeding so designated in these rules.

K. "Party" is a participant in a proceeding defined by Subsection 63-46b-2(1)(f).

L. "Interested person" is a person who may be affected by a proceeding before the Commission, but who does not seek formal intervention. An interested person may not participate in the proceedings except as a public witness, but shall receive copies of notices and orders in the proceeding.

M. "Intervenor" is a person permitted to intervene in a proceeding before the Commission.

N. "Person" means an individual, corporation, partnership, association, governmental subdivision, or governmental agency.

O. "Petitioner" is a person seeking relief other than the issuance of a license, right, or authority from the Commission.

P. "Presiding officer" is a person conducting an adjudicative hearing, pursuant to Subsection 63-46b-2(1)(h), and may be the entire Commission, one or more commissioners acting on the Commission's behalf, or an administrative law judge appointed by the Commission.

Q. "Proceeding" or "adjudicative proceeding" is an action before the Commission initiated by a notice of agency action, or request for agency action, pursuant to Section 63-46b-3. It is not an informal or preliminary inquiry or investigation undertaken by the Commission to determine whether a proceeding is warranted; nor is it a rulemaking action pursuant to Title 63, Chapter 46a, the Administrative Rulemaking Act.

R. "Public witness" is a person expressing interest in an issue before the Commission but not entitled or not wishing to participate as a party.

S. "Respondent" is a person against whom a notice of agency action or request for agency action is directed.

T. "Staff" is the Commission staff. Staff participation in proceedings shall be limited pursuant to Section 54-1-6.

R746-100-3. Pleadings.

A. Pleadings Enumerated -- Applications, petitions, complaints, orders to show cause, and other traditional initiatory pleadings may be filed with the Commission. Traditional pleadings will be considered requests for agency action, pursuant to Section 63-46b-3, concerning adjudicative proceedings. Answers, petitions to intervene, protests, and other traditional responsive pleadings may be filed with the Commission and will be considered responses, subject to the requirements of Section 63-46b-6.

1. The following filings are not requests for agency action or responses, pursuant to Sections 63-46b-3 and 63-46b-6:

a. motions, oppositions, and similar filings in existing Commission proceedings;

b. informational filings which do not request or require affirmative action, such as Commission approval.

B. Docket Number and Title --

1. Docket number -- Upon the filing of an initiatory pleading, or upon initiation of a generic proceeding, the Commission shall assign a docket number to the proceeding

which shall consist of the year in which the pleading was filed, a code identifying the public utility appearing as applicant, petitioner, or respondent, or generic code designation and another number showing its numerical position among the filings involving the utility or generic proceeding filed during the year.

2. Headings and titles -- Pleadings shall bear a heading substantially as follows:

TABLE

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Name of Attorney preparing or Signer of Pleading
Address
Telephone Number
Date Submitted

     BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH
 ----------------------------------------------------

In the Matter of the          )
Application, petition,        )    Docket Number
etc.-- for complaints,        )
names of both complainant     )    Type of pleading
and respondent should         )
appear                        )

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C. Form of Pleadings -- With the exception of consumer complaints, pleadings shall be double-spaced and typewritten, which may include a computer or word processor, if the type is easily legible and in the equivalent of at least 12 pitch elite type. Pleadings shall be presented on paper 8-1/2 x 11 inches, shall include the docket number, if known, and shall be dated and time stamped upon receipt by the Commission. Pleadings shall also be presented as an electronic word processing document, an exact copy of the paper version filed, and may be on a 5-1/4" or 3-1/2" floppy disk, using WordPerfect, MS Word, or ASCII, unless prior approval for another format is obtained from the Commission. Pleadings over five pages shall be double sided and three-hole punched, with the holes being 5/16" or larger.

D. Amendments to Pleadings -- The Commission may allow pleadings to be amended or corrected at any time. Initiatory pleadings may be amended without leave of the Commission at any time before a responsive pleading has been filed or the time for filing the pleading has expired. Defects in pleadings which do not affect substantial rights of the parties shall be disregarded.

E. Signing of Pleadings -- Pleadings shall be signed by the party, or by the party's attorney or other authorized representative if the party is represented by an attorney or other authorized representative, and shall show the signer's address. The signature shall be considered a certification by the signer that he has read the pleading and that, to the best of his knowledge and relief, there is good ground to support it.

F. Consumer Complaints --

1. Alternative dispute resolution, informal procedures -- Before a proceeding on a consumer complaint is initiated before the Commission, the Commission shall try to resolve the matter through referral first to the customer relations department, if any, of the public utility complained of and then to the Division for investigation and mediation. Only after these resolution efforts have failed will the Commission entertain a proceeding on the matter.

2. Request for agency action -- Persons requesting Commission action shall be required to file a complaint in writing, requesting agency action. The Commission shall not act on illegible or incomplete complaints and shall return those complaints to the complainant with instructions for correction or completion.

G. Content of Pleadings --

1. Pleadings filed with the Commission shall include the following information as applicable:

a. if known, the reference numbers, docket numbers, or other identifying symbols of relevant tariffs, rates, schedules, contracts, applications, rules, or similar matter or material;

b. the name of each participant for whom the filing is made or, if the filing is made for a group of participants, the name of the group, if the name of each member of the group is set forth in a previously filed document which is identified in the filing being made;

c. the specific authorization or relief sought;

d. copies of, or references to, tariff or rate sheets relevant to the pleading;

e. the name and address of each person against whom the complaint is directed;

f. the relevant facts, if not set forth in a previously filed document which is identified in the filing being made;

g. the position taken by the participant filing a pleading, to the extent known when the pleading is filed, and the basis in fact and law for the position;

h. the name, address, and telephone number of an individual who, with respect to a matter contained in the filing, represents the person for whom the filing is made;

i. additional information required to be included by Section 63-46b-3, concerning commencement of adjudicative proceedings, or other statute, rule, or order.

H. Motions -- Motions may be submitted for the Commission's decision on either written or oral argument, and the filing of affidavits in support or contravention of the motion is permitted. If oral argument is sought, the party seeking oral argument shall place the matter on the Commission's Law and Motion calendar and provide at least five days written notice to affected parties.

I. Responsive Pleadings -- Responsive pleadings shall be filed in formal proceedings in accordance with Section 63-46b-6.

R746-100-4. Filing and Service.

A. Filing of Pleadings -- Originals of pleadings shall be filed with the Commission in the format described in R746-100-3(C), together with the number of copies designated by the secretary of the Commission.

B. Notice -- Notice shall be given in conformance with Section 63-46b-3.

C. Required Public Notice -- When applying for original authority or rate increase, the party seeking authority or requesting Commission action shall publish notice of the filing or action requested, in the form and within the times as the Commission may order, in a newspaper of general circulation in the area of the state in which the parties most

likely to be interested are located.

D. Times for Filing -- Responsive pleadings to complaints or orders to show cause shall be filed with the Commission and served upon opposing parties within 30 days after service of the complaint or order to show cause. Motions directed toward initiatory pleadings shall be filed before a responsive pleading is due; otherwise objections shall be raised in responsive pleadings. Motions directed toward responsive pleadings shall be filed within ten days of the service of the responsive pleading.

E. Computation of Time -- The time within which an act shall be done shall be computed by excluding the first day and including the last, unless the last day is Saturday, Sunday, or a state holiday, and then it is excluded and the period runs until the end of the next day which is neither a Saturday, Sunday, nor a holiday.

R746-100-5. Participation.

A. Generally -- Parties to a proceeding before the Commission, as defined in Section 63-46b-2, shall have full rights to participate in a proceeding including the right to present evidence, cross-examine witnesses, make argument, written and oral, submit motions, and otherwise participate. The Division and Committee shall be given full participation rights in any case. Interested persons and parties denominated amicus curiae shall be given limited participations rights as the Commission shall determine.

B. Classification -- Participants in a proceeding shall be designated "petitioners," "respondents," "intervenors," or "amici curiae" according to the nature of the proceeding and the relation of the parties thereto.

R746-100-6. Appearances and Representation.

A. Taking Appearances -- Parties shall enter their appearances at the beginning of a hearing or when designated by the presiding officer by giving their names and addresses and stating their positions or interests in the proceeding. Parties shall, in addition, fill out and submit to the Commission an appearance slip, furnished by the Commission.

B. Representation of Parties -- Parties may be represented by an attorney licensed to practice in Utah; an attorney licensed in a foreign state, when joined of record by an attorney licensed in Utah, may also represent parties before the Commission. Upon motion, reasonable notice to each party, and opportunity to be heard, the Commission may allow an attorney licensed in a foreign state to represent a party in an individual matter based upon a showing that local representation would impose an unreasonable financial or other hardship upon the party. The Commission may, if it finds an irresolvable conflict of interest, preclude an attorney or firm of attorneys, from representing more than one party in a proceeding. Individuals who are parties to a proceeding, or officers or employees of parties, may represent their principals' interests in the proceeding.

R746-100-7. Intervention and Protest.

Intervention -- Persons wishing to intervene in a proceeding for any purpose, including opposition to proposed agency action or a request for agency action filed by a party to a proceeding, shall do so in conformance with Section 63-46b-9.

R746-100-8. Discovery.

A. Informal discovery -- The Commission encourages parties to exchange information informally. Informational queries termed "data requests" which have been typically used by parties practicing before the Commission may include written interrogatories and requests for production as those terms are used in the Utah Rules of Civil Procedure. Informal discovery is appropriate particularly with respect to the clarification of pre-filed testimony and exhibits before hearing so as to avoid unnecessary on-the-record cross-examination. The Commission may require an informal exchange of information as it judges appropriate. The Commission, on its own motion or the motion of a party, may require the parties to participate in an informal meeting to exchange information informally and otherwise simplify issues and expedite the proceeding.

B. Formal Discovery -- Discovery shall be made in accordance with Rules 26 through 37, Utah Rules of Civil Procedure, with the following exceptions and modifications.

C. Exceptions and Modifications --

1. If no responsive pleading is required in a proceeding, parties may begin discovery immediately upon the filing and service of an initiatory pleading if protestants and intervenors have filed and served the requisite notices of intervention or protest before they begin discovery. If a responsive pleading is required, discovery shall not begin until ten days after the time limit for filing the responsive pleading.

2. Rule 26(b)(4) restricting discovery shall not apply, and the opinions, conclusions, and data developed by experts engaged by parties shall be freely discoverable.

3. At any stage of a proceeding, the Commission may, on its own motion or that of a party, convene a conference of the parties to establish times for completion of discovery, the scope of, necessity for, and terms of, protective orders, and other matters related to discovery.

4. Formal discovery shall be initiated by an appropriate notice filed with the Commission and served on the party or person from whom discovery is sought. These notices shall provide a reasonable time for the affected party or person to comply or appear, as the case may be. Discovery requests, regardless of how denominated, responses to, and transcripts of depositions shall not be filed with the Commission unless the Commission orders otherwise.

5. In the applicable Rules of Civil Procedure, reference to "the court" shall be considered reference to the Commission.

R746-100-9. Prehearing Conference and Prehearing Briefs.

A. Prehearing Conferences -- Upon the Commission's motion or that of a party, the presiding officer may, upon written notice to parties of record, hold prehearing conferences for the following purposes:

1. formulating or simplifying the issues, including each party's position on each issue;

2. obtaining stipulations, admissions of fact, and documents which will avoid unnecessary proof;

3. arranging for the exchange of proposed exhibits or prepared expert or other testimony, including a brief description of the evidence to be presented and issues addressed by each witness;

4. determining procedure to be followed at the hearing;

5. encouraging joint pleadings, exhibits, testimony and cross-examination where parties have common interests, including designation of lead counsel where appropriate;

6. agreeing to other matters that may expedite the orderly conduct of the proceedings or of a settlement. Agreements reached during the prehearing conference shall be recorded in an appropriate order unless the participants stipulate or agree to a statement of settlement made on the record.

B. Prehearing Briefs -- The Commission may require the filing of prehearing briefs which shall conform to the format described in R746-100-3(C) and may include:

1. the issues, and positions on those issues, being raised and asserted by the parties;

2. brief summaries of evidence to be offered, including the names of witnesses, exhibit references and issues addressed by the testimony;

3. brief descriptions of lines of cross-examination to be pursued.

C. Final prehearing conferences -- After all testimony has been filed, the Commission may at any time before the hearing hold a final prehearing conference for the following purposes:

1. determine the order of witnesses and set a schedule for witnesses' appearances, including times certain for appearances of out-of-town witnesses;

2. delineate scope of cross-examination and set limits thereon if necessary;

3. identify and prenumber exhibits.

R746-100-10. Hearing Procedure.

A. Time and Place -- When a matter is at issue, the Commission shall set a time and place for hearing. Notice of the hearing shall be served in conformance with Sections 63-46b-3(2)(b) and 63-46b-3(3)(e) at least five days before the date of the hearing.

B. Continuance -- Continuances may be granted upon good cause shown. The Commission may impose the costs in connection with the continuance as it judges appropriate.

C. Failure to Appear -- A party's default shall be entered and disposed of in accordance with Section 63-46b-11.

D. Subpoenas and Attendance of Witnesses -- Commissioners, the secretary to the Commission, and administrative law judges employed by the Commission are delegated the authority to sign and issue subpoenas. Parties desiring the issuance of subpoenas shall submit them to the Commission. The parties at whose behest the subpoena is issued shall be responsible for service and paying the person summoned the statutory mileage and witness fees. Failure to obey the Commission's subpoena shall be considered contempt.

E. Conduct of the Hearing --

1. Generally -- Hearings may be held before the full Commission, one or more commissioners, or administrative law judges employed by the Commission as provided by law and as the Commission shall direct. Hearings shall be open to the public, except where the Commission closes a hearing for the presentation of proprietary or trade secret material. Failure to obey the rulings and orders of the presiding officer may be considered contempt.

2. Before commissioner or administrative law judge -- When a hearing is conducted before less than the full Commission or before an administrative law judge, the presiding officer shall ensure that the taking of evidence and subsequent matters proceed as expeditiously as practicable. The presiding officer shall prepare and certify a recommended decision to the Commission. Except as otherwise ordered by the Commission or provided by law, the presiding officer may schedule and otherwise regulate the course of the hearing; recess, reconvene, postpone, or adjourn the hearing; administer oaths; rule on and receive evidence; cause discovery to be conducted; issue subpoenas; hold conferences of the participants; rule on, and dispose of, procedural matters, including oral or written motions; summarily dispose of a proceeding or part of a proceeding; certify a question to the Commission; permit or deny appeal to the Commission of an interlocutory ruling; and separate an issue or group of issues from other issues in a proceeding and treat the issue or group of issues as a separate phase of the proceeding. The presiding officer may maintain order as follows:

a. ensure that disregard by a person of rulings on matters of order and procedure is noted on the record or, if appropriate, is made the subject of a special written report to the Commission;

b. if a person engages in disrespectful, disorderly, or contumacious language or conduct in connection with the hearing, recess the hearing for the time necessary to regain order;

c. request that the Commission take appropriate action, including removal from the proceeding, against a participant or counsel, if necessary to maintain order.

3. Before full Commission -- In hearings before the full Commission, the Commission shall exercise the above powers and any others available to it and convenient or necessary to an orderly, just, and expeditious hearing.

F. Evidence --

1. Generally -- The Commission is not bound by the technical rules of evidence and may receive any oral or documentary evidence; except that no finding may be predicated solely on hearsay or otherwise incompetent evidence. Further, the Commission may exclude non-probative, irrelevant, or unduly repetitious evidence. Testimony shall be under oath and subject to cross-examination except that of public witnesses.

2. Exhibits --

a. Except as to oral testimony and items administratively noticed, material offered into evidence shall be in the form of an exhibit. Exhibits shall be premarked and parties offering exhibits shall, before the hearing begins, provide copies of their exhibits to the presiding officer, other participants or their representatives, and the original to the reporter, if there

is one, otherwise to the presiding officer. If documents contain information the offering participant does not wish to include, the offering party shall mark out, excise, or otherwise exclude the extraneous portion on the original. Additions to exhibits shall be dealt with in the same manner.

b. Exhibits shall be premarked, by the offering party, in the upper right corner of each page by identifying the party, the witness, docket number, and a number reflecting the order in which the offering party will introduce the exhibit.

c. Exhibits, if over five pages, shall conform to the format described in R746-100-3(C) and be double sided and three-hole punched, with the holes being 5/16 of an inch or larger. They shall also be adequately footnoted and if appropriate, accompanied by either narrative or testimony which adequately explains the following: Explicit and detailed sources of the information contained in the exhibit; methods used in statistical compilations, including explanations and justifications; assumptions, estimates and judgments, together with the bases, justifications and results; formulas or algorithms used for calculations, together with explanations of inputs or variables used in the calculations.

3. Administrative notice -- The presiding officer may take administrative or official notice of a matter in conformance with Section 63-46b-8(1)(b)(iv).

4. Stipulations -- Participants in a proceeding may stipulate to relevant matters of fact or the authenticity of relevant documents. Stipulations may be received in evidence, and if received, are binding on the participants with respect to any matter stipulated. Stipulations may be written or made orally at the hearing.

5. Settlements --

a. Cases may be resolved by a settlement of the parties if approved by the Commission. Issues so resolved are not binding precedent in future cases involving similar issues.

b. Before accepting an offer of settlement, the Commission may require the parties offering the settlement to show that each party has been notified of, and allowed to participate in, settlement negotiations. Parties not adhering to settlement agreements shall be entitled to oppose the agreements in a manner directed by the Commission.

G. Prefiled Testimony -- If a witness's testimony has been reduced to writing and filed with the Commission before the hearing, in conformance with R746-100-3(C), at the discretion of the Commission, the testimony may be placed on the record without being read into the record; if adverse parties shall have been served with, or otherwise have had access to, the prefiled, written testimony for a reasonable time before it is presented. Except upon a finding of good cause, a reasonable amount of time shall be at least ten days. The testimony shall have line numbers inserted at the left margin and shall be authenticated by affidavit of the witness. If admitted, the testimony shall be marked and incorporated into the record as an exhibit. Parties shall have full opportunity to cross-examine the witness on the testimony. Unless the Commission orders otherwise, parties shall have witnesses present summaries of prefiled testimony orally at the hearing. Witnesses shall reduce their summaries to writing and either file them with their prefiled testimony or serve them on parties of record not less than 48 hours before the hearing. At the hearing, witnesses shall read their summaries into the record. Opposing parties may cross-examine both on the original prefiled testimony and the summaries.

H. Rate Case Joint Exhibits -- Both narrative and numerical joint exhibits, detailing each party's position on each issue, shall be filed with the Commission before the hearing. These joint exhibits shall:

a. be updated throughout the hearing;

b. depict the final positions of each party on each issue at the end of the hearing; and

c. be in conformance with R746-100-3(C).

I. Recording of Hearing and Transcript -- Hearings shall be recorded by a shorthand reporter licensed in Utah; except that in non-contested matters, or by agreement of the parties, hearings may be recorded electronically.

J. Order of Presentation of Evidence -- Unless the presiding officer orders otherwise, applicants or petitioners, including petitioners for an order to show cause, shall first present their case in chief, followed by opponents, intervenors, and the Division, in the order designated by the presiding officer, followed by the proposing party's rebuttal.

K. Cross-Examination -- The Commission may require written cross-examination and may limit the time given parties to present evidence and cross-examine witnesses. The presiding officer may exclude friendly cross-examination. The Commission discourages and may prohibit parties from making their cases through cross-examination.

L. Procedure at Conclusion of Hearing -- At the conclusion of proceedings, the presiding officer may direct a party to submit written proposed findings of fact and conclusions of law. The presiding officer may order proposed findings and conclusions in other matters as judged appropriate. The presiding officer may also order parties to present further matter in the form of oral argument or written memoranda.

R746-100-11. Decisions and Orders.

A. Generally -- Decisions and orders may be drafted by the Commission or by parties as the Commission may direct. Orders shall contain a heading similar to that of pleadings and bear at the top the name, address, and telephone number of the persons preparing them. Final orders shall have a concise summary of the case containing the salient facts, the issues considered by the Commission, and the Commission's disposition of them. Parties preparing final orders shall be responsible for preparing and filing the abstract, and final orders shall not be complete without the abstract.

B. Recommended Orders -- If a case has been heard by less than the full Commission, or by an administrative law judge, the official hearing the case shall submit to the Commission a recommended report containing proposed findings of fact, conclusions of law, and an order based thereon.

C. Final Orders of Commission -- If a case has been heard by the full Commission, it shall confer following the hearing. Upon reaching its decision, the Commission shall draft or direct the drafting of a report and order, which upon signature of at least two Commissioners shall become the order of the Commission. Dissenting and concurring

opinions of individual commissioners may be filed with the order of the Commission.

D. Deliberations -- Deliberations of the Commission shall be in closed chambers.

E. Effective Date -- Copies of the Commission's final report and order shall be served upon the parties of record. Orders shall be effective the date of issuance unless otherwise stated in the order. Upon petition of a party, and for good cause shown, the Commission may extend the time for compliance fixed in an order.

F. Review or Rehearing -- Petitions for review or rehearing shall be filed within 20 days of the issuance date of the order in accordance with Section 63-46b-13 and served on other parties of record. Following the filing of a petition for review, opposing parties may file responsive memoranda or pleadings within 10 days. Other proceedings on review shall be in accordance with Section 54-7-17.

R746-100-12. Appeals.

Appeals from final orders of the Commission shall be to the Supreme Court of Utah.

R746-100-13. Ex Parte Communications.

A. Ex Parte Communications Prohibited -- To avoid prejudice, real or perceived, to the public interest and persons involved in proceedings pending before the Commission:

B. Persons Affected -- Except as permitted in R746-100-13(C), no person who is a party to on-the-record proceedings, or the party's counsel, agent, or other person acting on the party's behalf, shall engage in ex parte, off-the-record communications with a commissioner, administrative law judge, or any other employee of the Commission who is or may reasonably be expected to be involved in the decision-making process, regarding a matter pending before the Commission in the contested on-the-record proceeding. No commissioner, administrative law judge, or other employee of the Commission who is or may reasonably be expected to be involved in the decision-making process, shall request or entertain ex parte, off-the-record communications.

C. Exceptions -- The prohibitions contained in R746-100-13(B) do not apply to a communication:

1. from an interceder who is a local, state, or federal agency which has no official interest in the outcome and whose official duties are not affected by the outcome of the on-the-record proceedings before the Commission to which the communication relates;

2. from a party, or the party's counsel, agent, or other person acting on the party's behalf, in an on-the-record proceeding, if the communication relates to matters of procedure only;

3. from a person when otherwise authorized by law;

4. related to routine safety, construction, and operational inspections of project works by Commission employees undertaken to investigate or study a matter pending before the Commission in an on-the-record proceeding;

5. related to routine field audits of the accounts or the books or records of a company subject to the Commission's accounting requirements not undertaken to investigate or study a matter pending in issue before the Commission in an on-the-record proceeding;

6. related solely to a request for supplemental information or data necessary for an understanding of factual materials contained in documents filed with the Commission in a proceeding covered by these rules and which is made in the presence of or after coordination with counsel.

D. Records of Ex Parte Communications -- Written communications prohibited by R746-100-13(B), sworn statements reciting the substance of oral communications, and written responses and sworn statements reciting the substance of oral responses to prohibited communications shall be delivered to the secretary of the Commission who shall place the communication in the case file, but separate from the material upon which the Commission can rely in reaching its decision. The secretary shall serve copies of the communications upon parties to the proceeding and serve copies of the sworn statement to the communicator and allow him a reasonable time to file a response.

F. Treatment of Ex Parte Communications -- A commissioner, administrative law judge, or an employee of the Commission who receives an oral offer of a communication prohibited by R746-100-13(B) shall decline to hear the communication and explain that the matter is pending for determination. If unsuccessful in preventing the communication, the recipient shall advise the communicator that the communication will not be considered. The recipient shall, within two days, prepare a statement setting forth the substance of the communication and the circumstances of its receipt and deliver it to the secretary of the Commission for filing. The secretary shall forward copies of the statement to the parties.

G. Rebuttal -- Requests for an opportunity to rebut on the record matters contained in an ex parte communication which the secretary has associated with the record may be filed in writing with the Commission. The Commission may grant the requests only if it determines that fairness so requires. If the communication contains assertions of fact not a part of the record and of which the Commission cannot take administrative notice, the Commission, in lieu of receiving rebuttal material, normally will direct that the alleged factual assertion on proposed rebuttal be disregarded in arriving at a decision. The Commission will not normally permit a rebuttal of ex parte endorsements or oppositions by civic or other organizations by the submission of counter endorsements or oppositions.

H. Sanctions -- Upon receipt of a communication knowingly made in violation of R746-100-13(B), the presiding officer may require the communicator, to the extent consistent with the public interest, to show cause why the communicator's interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected because of the violation.

I. Time When Prohibitions Apply -- The prohibitions contained in this rule shall apply from the time at which a proceeding is noticed for hearing or the person responsible for the communication has knowledge that it will be noticed for hearing or when a protest or a motion or notice to intervene in opposition to requested Commission action has been filed, whichever occurs first.

R746-100-14. Law and Motion Calendar.

There shall be a Law and Motion Calendar, excluding transportation matters, on Tuesdays commencing at 9:00 a.m., or as otherwise established and announced by the Commission, for the disposition of motions and like matters. It shall be the responsibility of parties filing law and motion matters to have them placed on the Commission's Law and Motion Calendar and to notify parties of record by written notice, or as otherwise directed by the Commission, of the time and place of hearings not fewer than five days before the hearings.

R746-100-15. Rulemaking.

A. How initiated --

1. By the Commission -- When the Commission perceives the desirability or necessity of adopting a rule, it shall draft or direct the drafting of the rule. During the drafting process, the Commission may request the opinion and assistance of any appropriate person. It may also, in its discretion, conduct public hearings in connection with the drafting. When the Commission is satisfied with the draft of the proposed rule, it may formally propose it in accordance with the Utah Rulemaking Act, 63-46a-4.

2. By others -- Persons may petition the Commission for the adoption of a rule. The petitions shall be accompanied by a draft of the rule proposed. Upon receipt the Commission shall review the petition and draft and if it finds the proposed rule desirable or necessary, it shall proceed as with proposed rules initiated by the Commission, including amending or redrafting. If the Commission finds the proposal unnecessary or undesirable, it shall so notify the petitioner in writing, giving reasons for its findings. No public hearing shall be required in connection with the Commission's review of a petition for rulemaking.

B. Hearing Procedure -- Hearings conducted in connection with rulemaking shall be informal, subject to requirements of decorum and order. Absent a finding of good cause to proceed otherwise, testimony and statements shall be unsworn, and there shall be no opportunity for participants to cross-examine. The Commission shall have the right, however, to freely question witnesses. Public hearings shall be recorded by shorthand reporter or electronically, at the discretion of the Commission, and the Commission may allow or request the submission of written materials.

R746-100-16. Deviation from Rules.

The Commission may order deviation from a specified rule upon notice, opportunity to be heard and a showing that the rule imposes an undue hardship on a party which outweighs the benefits of the rule.

KEY: rules and procedures, public utilities, government hearings

February 1, 1996	**54-1-6**
Notice of Continuation December 8, 1997	**54-4-1**
	54-7-17
	63-46b

R746. Public Service Commission, Administration.

R746-101. Statement of Rule for the Filing and Disposition of Petitions for Declaratory Rulings.

R746-101-1. Definitions.

A. Terms used in this rule are defined in Section 63-46a-2, except that "agency" shall mean the Utah Public Service Commission.

B. In addition:

1. "Order" shall mean a Commission action of particular applicability which determines the legal rights, duties, privileges, immunities, or other legal interests of one or more specific persons and not a class of persons;

2. "Declaratory Ruling" shall mean an administrative interpretation or explanation of rights, status, interests or other legal relationships under a statute, rule or order; and

3. "Applicability" shall mean a determination of the relationship of a statute, rule or order to a given set of facts.

R746-101-2. Petition Procedure.

A. A person or agency may petition the Commission for a declaratory ruling.

B. The petition shall be addressed to the Commission and directed to the chairman of the Commission.

C. The Commission will stamp upon the petition the date of its receipt.

D. The petitioner shall serve a copy of the petition upon the public utility which could or would be adversely affected by a Commission ruling favorable to the petitioner and shall file with the Commission the certificate of service within five days of the filing of the petition; or petitioner shall include in the petition a statement to the effect that no public utility under the Commission's jurisdiction will be adversely affected by a ruling favorable to the petitioner.

R746-101-3. Petition Form.

A. The petition shall:

1. be clearly designated a request for a declaratory ruling;

2. identify the statute, rule or order to be reviewed;

3. describe adequately the facts and circumstances in which applicability is to be reviewed;

4. describe the reason or need for the review;

5. include an address and telephone number where petitioner can be reached; and

6. be signed by the petitioner or petitioner's duly authorized representative and be notarized.

R746-101-4. Petition Review and Disposition.

A. The Commission shall:

1. review and consider the petition;

2. prepare a declaratory ruling in compliance with the requirements of 63-46b-21(6) and stating:

a. the applicability or non-applicability of the statute, rule or order in question;

b. the reasons for the applicability or non-applicability of the statute, rule or order in question;

c. requirements imposed upon the Commission, petitioner, or a person as a result of the ruling.

B. The Commission may:

1. interview the petitioner;
2. hold a public hearing on the petition;
3. consult with counsel or the Attorney General; or
4. take action which the Commission, in its discretion and judgment, deems necessary to provide the petitioner with adequate review and due consideration of the petition.

C. The Commission shall prepare the declaratory ruling without unnecessary delay and shall send the petitioner and each party a copy of the ruling.

D. The Commission shall retain the petition and a copy of the declaratory ruling in its records.

KEY: public utilities, rules and procedures, government hearings
1992 63-46a-2
Notice of Continuation December 8, 1997 63-46b-21(6)

R746. Public Service Commission, Administration.
R746-200. Residential Utility Service Rules for Electric, Gas, Water, and Sewer Utilities.
R746-200-1. General Provisions.

A. Title -- These rules shall be known and may be cited as the Residential Utility Service Rules.

B. Purpose -- The purpose of these Rules is to establish and enforce uniform residential utility service practices and procedures governing eligibility, deposits, account billing, termination, and deferred payment agreements.

C. Policy --

1. The policy of these rules is to assure the adequate provision of residential utility service, to restrict unreasonable termination of or refusal to provide residential utility service, to provide functional alternatives to termination or refusal to provide residential utility service, and to establish and enforce fair and equitable procedures governing eligibility, deposits, account billing, termination, and deferred payment agreements.

2. Nondiscrimination -- Residential utility service shall be provided to qualified persons without regard to employment, occupation, race, handicap, creed, sex, national origin, marital status, or number of dependents.

D. Requirement of Good Faith -- Each agreement or obligation within these rules imposes an obligation of good faith, honesty, and fair dealings in its performance and enforcement.

E. Customer Information -- At the time that residential service is extended to an account holder, a public utility shall provide the consumer with a consumer information pamphlet approved by the Commission which clearly describes and summarizes the substance of these rules. The utility shall mail or deliver a copy of this pamphlet, or a summarized version approved by the Commission, to its residential customers annually in September or October. Copies of this pamphlet shall be prominently displayed in the business offices maintained by the utility and furnished to consumers upon request. The utility has a continuing obligation to inform its consumers of significant amendments to these rules. Each utility with over 10,000 customers receiving service shall print and make available upon request a Spanish edition of a consumer information pamphlet. The English edition of the pamphlet shall contain a prominent notice, written in Spanish and English, that the utility has a Spanish edition of its pamphlet and whether or not it has qualified personnel available to help Spanish-speaking customers. For the purposes of this section, utilities with fewer than 10,000 users may use the pamphlets printed by the Division of Public Utilities for the distribution and availability requirements.

F. Scope --

1. These rules shall apply to gas, water, sewer, and electric utilities that are subject to the regulatory authority of the Commission. Except as provided in R746-200-6(G)(4), Notice of Proposed Termination, these rules do not apply to master metered apartment dwellings. Motor carriers, railroad corporations and telecommunications corporations, are excluded from the requirements of these rules. Commercial, industrial, government accounts and special contracts are also excluded from the requirements of these rules.

2. Upon a showing that specified portions of these rules impose an undue hardship and provide limited benefit to its customers, a utility may petition the Commission for an exemption from specified portions of these rules.

G. Customer's Statement of Rights and Responsibilities -- When utility service is extended to an account holder, annually, and upon first notice of an impending service disconnection, a public utility shall provide a copy of the "Customer's Statement of Rights and Responsibilities" as approved by the Commission. The Statement of Rights and Responsibilities shall be a single page document. It shall be prominently displayed in each customer service center.

R746-200-2. General Definitions.

A. "Account Holder" -- A person, corporation, partnership, or other entity which has agreed with a public utility to pay for receipt of residential utility service and to which the utility provides service.

B. "Applicant" -- As used in these rules means a person, corporation, partnership, or other entity which applies to a public utility for residential utility service.

C. "Budget Billing" -- Monthly residential payment plan under which the customer's estimated annual billing is divided into 12 monthly payments.

D. "Deferred Payment Agreement" -- As used in these rules means an agreement to receive, or to continue to receive, residential utility service pursuant to Section R746-200-5 and to pay an outstanding debt or delinquent account owed to a public utility.

E. "Residential Utility Service" -- Means gas, water, sewer, and electric service provided by a public utility to a residence.

F. "Termination of Service" -- The terms "termination," "disconnection," and "shutoff" as used in these rules are synonymous and mean the stopping of service for whatever cause.

G. "Load Limiter" -- Device which automatically interrupts electric service at a residence when the preset kW demand is exceeded. Service is restored when the customer decreases usage and then presses the reset button on the

device.

R746-200-3. Deposits and Eligibility for Service.

A. Deposits and Guarantees --

1. Each utility shall submit security deposit policies and procedures to the Commission for its approval before the implementation and use of those policies and procedures. Each utility shall submit third-party guarantor policies and procedures to the Commission.

2. Each utility collecting security deposits shall pay interest thereon at a rate as established by the Commission. The deposit paid, plus accrued interest, is eligible for return to the customer after the customer has paid the bill on time for 12 consecutive months.

3. A residential customer shall have the right to pay a security deposit in at least three equal monthly installments if the first installment is paid at the time the deposit is required.

B. Eligibility for Service --

1. Residential utility service is to be conditioned upon payment of deposits, where required, and of any outstanding debts for past utility service which are owed by the applicant to that public utility, subject to Subsections R746-200-3(B)(2), and R746-200-6(B)(2), Reasons for Termination. Service may be denied when unsafe conditions exist, when the applicant has furnished false information to get utility service, or when the customer has tampered with utility-owned equipment, such as meters and lines. An applicant is ineligible for service if at the time of application, the applicant is cohabiting with a delinquent account holder, previously terminated for non-payment, and the applicant and delinquent account holder also cohabited while the delinquent account holder received the utility's service, whether the service was received at the applicants present address or another address.

2. When an applicant cannot pay an outstanding debt in full, residential utility service shall be provided upon execution of a written, deferred payment agreement as set forth in Section R746-200-5.

R746-200-4. Account Billing.

A. Billing Cycle -- Each gas, electric, sewer and water utility shall use a billing cycle that has an interval between regular periodic billing statements of about one or two months. This section applies to permanent continuous service customers, not to seasonal customers.

B. Estimated Billing --

1. A gas, electric, sewer or water public utility using an estimated billing procedure shall try to make an actual meter reading at least once in a two-month period and render a bill for the appropriate charge determined from that reading. When weather conditions prevent regular meter readings, or when customers are served on a seasonal tariff, the utility will make arrangements with the customer to get meter reads at acceptable intervals.

2. If a meter reader cannot gain access to a meter to make an actual reading, the public utility shall take appropriate additional measures in an effort to get an actual meter reading. These measures shall include, but are not limited to, scheduling of a meter reading at other than normal business hours, making an appointment for meter reading, or providing a prepaid postal card with a notice of instruction upon which an account holder may record a meter reading. If after two regular route visits, access has not been achieved, the utility will notify the customer that he must make arrangements to have the meter read as a condition of continuing service.

3. If, after compliance with Subsection R746-200-4(B)(2), a public utility cannot make an actual meter reading it may render an estimated bill for the current billing cycle in accordance with Subsection R746-200-6(B)(1)(f), Reasons for Termination.

C. Periodic Billing Statement -- Except when a residential utility service account is considered uncollectible or when collection or termination procedures have been started, a public utility shall mail or deliver an accurate bill to the account holder for each billing cycle at the end of which there is an outstanding debit balance for current service, a statement which the account holder may retain, setting forth each of the following disclosures to the extent applicable:

1. the outstanding balance in the account at the beginning of the current billing cycle using a term such as "previous balance";

2. the amount of charges debited to the account during the current billing cycle using a term such as "current service";

3. the amount of payments made to the account during the current billing cycle using a term such as "payments";

4. the amount of credits other than payments to the account during the current billing cycle using a term such as "credits";

5. the amount of late payment charges debited to the account during the current billing cycle using a term such as "late charge";

6. the closing date of the current billing cycle and the outstanding balance in the account on that date using a term such as "amount due";

7. a listing of the statement due date by which payment of the new balance must be made to avoid assessment of a late charge;

8. a statement that a late charge, expressed as an annual percentage rate and a periodic rate, may be assessed against the account for late payment;

9. the following notice: "If you have any questions about this bill, please call the Company."

D. Late Charge --

1. Commencing not sooner than the end of the first billing cycle after the statement due date, a late charge of a periodic rate as established by the Commission may be assessed against an unpaid balance in excess of new charges debited to the account during the current billing cycle. The Commission may change the rate of interest.

2. No other charge, whether described as a finance charge, service charge, discount, net or gross charge may be applied to an account for failure to pay an outstanding bill by the statement due date. This section does not apply to reconnection charges or return check service charges.

E. Statement Due Date -- An account holder shall have not less than 20 days from the date the current bill was

prepared to pay the new balance, which date shall be the statement due date.

F. Disputed Bill --

1. In disputing a periodic billing statement, an account holder shall first try to resolve the issue by discussion with the public utility's collections personnel.

2. When an account holder has proceeded pursuant to Subsection R746-200-4(F)(1), the public utility's collections personnel shall investigate the disputed issue and shall try to resolve that issue by negotiation.

3. If the negotiation does not resolve the dispute, the account holder may obtain informal and formal review of the dispute as set forth in Section R746-200-7, Informal Review, and R746-200-8, Formal Review.

4. While an account holder is proceeding with either informal or formal review of a dispute, no termination of service shall be permitted if amounts not disputed are paid when due.

R746-200-5. Deferred Payment Agreement.

A. Deferred Payment Agreement --

1. An applicant or account holder who cannot pay a delinquent account balance on demand shall have the right to receive residential utility service under a deferred payment agreement subject to R746-200-5(B), Breach.

2. Gas and electric utilities shall have personnel available 24 hours each day to reconnect utility service, if, before reconnection, the account holder agrees to negotiate and execute a deferred payment agreement and to pay the first installment by visiting the utility's business office within 48 hours after service has been reconnected. A water utility shall have personnel available so that service can be restored before 6:00 p.m. on the next generally recognized business day.

3. The applicant or account holder shall have the right to set the amount of the equal monthly installment of a deferred payment agreement, if the full amount of the delinquent balance plus interest shall be paid within 12 months and if the account holder agrees to make an initial payment not less than the amount of the monthly installment. The account holder shall have the right to pre-pay the outstanding balance due under a deferred payment agreement at any time during the term of the agreement. The account holder also has the option, when negotiating a deferred payment agreement, to include the amount of the current month's bill plus the reconnection charges in the total amount to be paid over the term of the deferred payment agreement.

4. If a utility has a budget billing or equal payment plan available, it shall offer the account holder the option of agreeing to pay the current bills for residential utility service plus the monthly installment necessary to liquidate the delinquent bill or of agreeing to pay a budget billing amount set by the utility plus the monthly deferred payment installment. When negotiating a deferred payment agreement with a utility that does not offer a budget billing plan, the account holder shall agree to pay the current bills for residential utility service plus the monthly installment necessary to liquidate the delinquent bill.

5. The terms of the deferred payment agreement shall be set forth in a written agreement, a copy of which shall be provided to the customer.

6. A deferred payment agreement may include a finance charge as established by the Commission. If a finance charge is assessed, the deferred payment agreement shall contain notice of the charge.

B. Breach -- If an applicant or account holder breaches a condition or term of a deferred payment agreement, the public utility may treat that breach as a delinquent account and shall have the right to terminate service pursuant to these rules, subject to the right of the customer to seek review of the alleged breach by the Commission, and the account holder shall not have the right to a renewal of the deferred payment agreement. Renewal of deferred payment agreements after the breach shall be at the utility's option.

R746-200-6. Termination.

A. Delinquent Account --

1. A residential utility service bill which has remained unpaid beyond the statement due date is a delinquent account.

2. When an account is a delinquent account, a public utility, before termination, shall issue a written late notice to inform the account holder of the delinquent status. A late notice or reminder notice must include the following information:

a. A statement that the account is a delinquent account and should be paid promptly;

b. A statement that the account holder should communicate with the public utility's collection department, by calling the company, if he has a question concerning the account;

c. A statement of the delinquent account balance, using a term such as "delinquent account balance."

3. When the account holder responds to a late notice or reminder notice the public utility's collections personnel shall investigate disputed issues and shall try to resolve the issues by negotiation. During this investigation and negotiation no other action shall be taken to terminate the residential utility service if the account holder pays the undisputed portion of the account subject to the utility's right to terminate pursuant to R746-200-6(F), Termination Without Notice.

4. A copy of the "Statement of Customer Rights and Responsibilities" referred to in Subsection R746-200-1(G) of these rules shall be issued to the account holder with the first notice of impending service disconnection.

B. Reasons for Termination --

1. Residential utility service may be terminated for the following reasons:

a. Nonpayment of a delinquent account;

b. Nonpayment of a deposit when required;

c. Failure to comply with the terms of a deferred payment agreement or Commission order;

d. Unauthorized use of, or diversion of, residential utility service or tampering with wires, pipes, meters, or other equipment;

e. Subterfuge or deliberately furnishing false information; or

f. Failure to provide access to meter during the regular route visit to the premises following proper notification and opportunity to make arrangements in accordance with R746-

200-4(B), Estimated Billing, Subsection (2).

2. The following shall be insufficient grounds for termination of service:

a. A delinquent account, accrued before a divorce or separate maintenance action in the courts, in the name of a former spouse, cannot be the basis for termination of the current account holder's service;

b. Cohabitation of a current account holder with a delinquent account holder who was previously terminated for non-payment, unless the current and delinquent account holders also cohabited while the delinquent account holder received the utility's service, whether the service was received at the current account holder's present address or another address;

c. When the delinquent account balance is less than $25.00, unless no payment has been made for two months;

d. Failure to pay an amount in bona fide dispute before the Commission;

e. Payment delinquency for third party services billed by the regulated utility company, unless prior approval is obtained from the Commission.

C. Restrictions upon Termination During Serious Illness --

1. Residential gas, water, sewer and electric utility service may not be terminated and will be restored if terminated when the termination will cause or aggravate a serious illness or infirmity of a person living in the residence. Utility service will be restored or continue for one month or less as stated in Subsection R746-200-6(C)(2).

2. Upon receipt of a physician's statement, either on a form obtained from the utility or on the physician's letterhead stationery, identifying the health infirmity or potential health hazard, a public utility will continue or restore residential utility service for the period set forth in the physician's statement or one month, whichever is less; however, the person whose health is threatened or illness aggravated may petition the Commission for an extension of time.

3. During the period of continued service, the account holder is liable for the cost of residential utility service. No action to terminate the service may be undertaken, however, until the end of the period of continued service.

D. Restrictions upon Termination to Residences with Life-Supporting Equipment -- No public utility shall terminate service to a residence in which the account holder or a resident is known by the utility to be using an iron lung, respirator, dialysis machine, or other life-supporting equipment, without specific prior approval by the Commission. Account holders eligible for this protection can get it by filing a written notice with the utility. Thereupon, a public utility shall mark and identify applicable meter boxes when this equipment is used.

E. Payments for HEAT, Home Energy Assistance Target, Program -- The Commission approves the provision of the Department of Human Service's standard contract with public utility suppliers in Utah that suppliers will not discontinue utility service to a low-income household for at least 30 days after receipt of utility payment from the state program on behalf of the low-income household.

F. Termination Without Notice -- Any provision contained in these rules notwithstanding, a public utility may terminate residential utility service without notice when, in its judgment, a clear emergency or serious health or safety hazard exists for so long as the conditions exist, or when there is unauthorized use or diversion of residential utility service or tampering with wires, pipes, meters, or other equipment owned by the utility. The utility shall immediately try to notify the customer of the termination and the reasons therefor.

G. Notice of Proposed Termination --

1. At least 10 calendar days before a proposed termination of residential utility service, a public utility shall give written notice of disconnection for nonpayment to the account holder. The 10-day time period is computed from the date the bill is postmarked. The notice shall be given by first class mail or delivery to the premises and shall contain a summary of the following information:

a. a Statement of Customer Rights and Responsibilities under existing state law and Commission rules;

b. the Commission-approved policy on termination for that utility;

c. the availability of deferred payment agreements and sources of possible financial assistance including but not limited to state and federal energy assistance programs;

d. informal and formal procedures to dispute bills and to appeal adverse decisions, including the Commission's address and telephone number;

e. specific steps, printed in a conspicuous fashion, that may be taken by the consumer to avoid termination;

f. the date on which payment arrangements must be made to avoid termination; and

g. subject to the provision of Subsection R746-200-1(E), Customer Information, a conspicuous statement, in Spanish, that the notice is a termination notice and that the utility has a Spanish edition of its customer information pamphlet and whether it has personnel available during regular business hours to communicate with Spanish-speaking customers.

2. At least 48 hours before termination of service is scheduled, the utility shall make good faith efforts to notify the account holder or an adult member of the household, by mail, by telephone or by a personal visit to the residence. If personal notification has not been made either directly by the utility or by the customer in response to a mailed notice, the utility shall leave a written termination notice at the residence. Personal notification, such as a visit to the residence or telephone conversation with the termination party, is required only during the winter months, October 1 through March 31. Other months of the year, the mailed 48-hour notice can be the final notice before the termination.

If termination of service is not accomplished within 15 days following the 48-hour notice, the utility company will follow the same procedures for another 48-hour notice.

3. A public utility shall send duplicate copies of 10-day termination notices to a third party designated by the account holder and shall make reasonable efforts to personally contact the third party designated by the account holder before termination occurs, if the third party resides within its service area. A utility shall inform its account holders of the third-

party notification procedure at the time of application for service and at least once each year.

4. For residential premises when a person other than the occupant is the account holder and that fact is known to the utility, the utility shall post a notice of proposed termination on the premises in a conspicuous place and shall make reasonable efforts to give actual notice to the occupants by personal visits or other appropriate means at least five calendar days before the proposed termination. The posted notice shall contain the information specified in Subsection R746-200-6(G)(1). This notice provision applies to residential premises when the account holder has requested termination or the account holder has a delinquent bill. If nonpayment is the basis for the termination, the utility shall also advise the tenants that they may continue to receive utility service for an additional 30 days by paying the charges due for the 30-day period just past.

H. Termination -- Upon expiration of the notice of proposed termination, the public utility may terminate residential utility service. Except for service diversion or for safety considerations, utility service shall not be disconnected between Thursday at 4:00 p.m. and Monday at 9:00 a.m. or on legal holidays recognized by Utah, or other times the utility's business offices are not open for business. Service may be disconnected only between the hours of 9:00 a.m. and 4:00 p.m.

I. Customer-Requested Termination --

1. A customer shall advise a public utility at least three days in advance of the day on which he wants service disconnected to his residence. The public utility shall disconnect the service within four working days of the requested disconnect date. The customer shall not be liable for the services rendered to or at the address or location after the four days.

2. A customer who is not an occupant at the residence for which termination is requested shall advise the public utility at least 10 days in advance of the day on which he wants service disconnected and sign an affidavit that he is not requesting termination as a means of evicting his tenants. Alternatively, the customer may sign an affidavit that there are no occupants at the residence for which termination is requested and thereupon the disconnection may occur within four days of the requested disconnection date.

J. Restrictions Upon Termination Practices -- A public utility shall not use termination practices other than those set forth in these rules. A utility shall have the right to use or pursue legal methods to ensure collections of obligations due it.

K. Policy Statement Regarding Elderly and Handicapped -- The state recognizes that the elderly and handicapped may be seriously affected by termination of utility service. In addition, the risk of inappropriate termination may be greater for the elderly and handicapped due to communication barriers which may exist by reason of age or infirmity. Therefore, this section is specifically intended to prevent inappropriate terminations which may be hazardous to these individuals. In particular, Subsection R746-200-6(G), requiring adequate notice of impending terminations, including notification to third parties upon the request of the account holder, Subsection R746-200-6(C), restricting termination when the termination will cause or aggravate a serious illness or infirmity of a person living in the residence, and Subsection R746-200-6(D), restricting terminations to residences when life-supporting equipment is in use, are intended to meet the special needs of elderly and handicapped persons, as well as those of the public in general.

L. Load Limiter as a Substitute for Termination, Electric Utilities --

1. An electric utility may, but only with the customer's consent, install a load limiter as an alternative to terminating electric service for non-payment of a delinquent account or for failure to comply with the terms of a deferred payment agreement or Commission order. Conditions precedent to the termination of electric service must be met before the installation of a load limiter.

2. Disputes about the level of load limitation are subject to the informal review procedure of Subsection R746-200-7.

3. Electric utilities shall submit load limiter policies and procedures to the Commission for their review before the implementation and use thereof.

R746-200-7. Informal Review.

Subject to the provisions of R746-100-3(F)(1), Consumer Complaints, a person who cannot resolve a dispute with the utility concerning a matter addressed in these rules may obtain informal review of the dispute by a designated employee within the Division of Public Utilities. This employee shall investigate the dispute, try to resolve it, and inform both the utility and the consumer of his findings within five business days from receipt of the informal review request. The Division of Public Utilities shall inform the consumer of his right to petition the Commission for a formal review of the dispute, and shall make available to the consumer a standardized complaint form with instructions approved by the Commission. While an account holder is proceeding with an informal or a formal review of a dispute, no termination of service shall be permitted, provided any amounts not disputed are paid when due, subject to the utility's right to terminate service pursuant to R746-200-6(F), Termination Without Notice.

R746-200-8. Formal Review.

A. The Commission, upon its own motion or upon the petition of any person, may initiate formal or investigative proceedings upon matters arising out of informal complaints.

R746-200-9. Penalties.

A. A residential account holder who claims that a regulated utility has violated a provision of these customer service rules, other Commission rules, company tariff, or other approved company practices may utilize the informal and formal grievance procedures. If deemed appropriate, the Commission may assess a penalty pursuant to Section 54-7-25.

B. Fines collected shall be used to assist low income Utahns to meet their basic energy needs.

KEY: public utilities, rules, utility service shutoff*

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Notice of Continuation December 8, 1997 **54-4-7**
54-7-9
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R746. Public Service Commission, Administration.
R746-310. Uniform Rules Governing Electricity Service by Electric Utilities.
R746-310-1. General Provisions.

A. 1. Scope and Applicability -- The following rules apply to the methods and conditions for service employed by utilities furnishing electricity in Utah.

2. A utility may petition the Commission for an exemption from specified portions of these rules in accordance with R746-100-16, Deviation from Rules.

B. Definitions --

1. "Capacity" means load which equipment or electrical system can carry.

2. "CFR" means the Code of Federal Regulations, 1991 edition.

3. "Commission" means the Public Service Commission of Utah.

4. "Contract Demand" means the maximum amount of kilowatt demand that the customer expects to use and for which the customer has contracted with the utility.

5. "Customer" means a person, firm, partnership, company, corporation, organization, or governmental agency supplied with electrical power by an electric utility subject to Commission jurisdiction, at one location and at one point of delivery.

6. "Customer's Installation" means the electrical wiring and apparatus owned by the customer and installed by or for the customer to facilitate electric service and which is located on the customer's side of the point of delivery of electric service.

7. "Customer meter" or "meter" means the device used to measure the electricity transmitted from an electric utility to a customer.

8. "Demand" means the rate in kilowatts at which electric energy is delivered by the utility to the customer at a given instant or averaged over a designated period of time.

9. "Electric service" means the availability of electric power and energy at the customer's point of delivery at the approximate voltage and for the purposes specified in the application for electric service, electric service agreement or contract, irrespective of whether electric power and energy is actually used.

10. "Energy" means electric energy measured in kilowatt-hours--kWh. For billing purposes energy is the customer's total use of electricity measured in kilowatt-hours during any month.

11. "FERC" means the Federal Energy Regulatory Commission.

12. "Month" means the period of approximately 30 days intervening between regular successive meter reading dates.

13. "National Electrical Safety Code" means the 1993 edition of the American National Standard National Electrical Safety Code as approved by the American National Standards Institute, incorporated by reference.

14. "Point of delivery" means the point, unless otherwise specified in the application for electric service, electric service agreement or contract, at which the utility's service wires are connected with the customer's wires or apparatus. If the utility's service wires are connected with the customer's wire or apparatus at more than one point, each connecting point shall be considered a separate point of delivery unless the additional connecting points are made by the utility for its sole convenience in supplying service. Additional service supplied by the utility at a different voltage or phase classification shall also be considered a separate point of delivery. Each point of delivery shall be separately metered and billed.

15. "Power" means electric power measured in kilowatts--kw. For billing purposes, power is the customer's maximum use of electricity shown or computed from the readings of the utility's kilowatt meter for a 15-minute period, unless otherwise specified in the applicable rate schedule; at the option of the utility it may be determined either by periodic tests or by permanent meters.

16. "Power factor" means the percentage determined by dividing customer's average power use in kilowatts, real power, by the average kilovolt-ampere power load, apparent power, imposed upon the utility by the customer.

17. "Premises" means a tract of land with the buildings thereon or a building or part of a building with its appurtenances.

18. "Rated capacity" means load for which equipment or electrical system is rated.

19. "Service line" means electrical conductor which ties customer point of delivery to distribution network.

20. "Transmission line" means high voltage line delivering electrical energy to substations.

21. "Utility" means an electrical corporation as defined in Section 54-2-1.

22. "Year" means the period between the date of commencement of service under the application for electric service, electric service agreement or contract and the same day of the following calendar year.

R746-310-2. Customer Relations.

A. Information to Customers -- Each electric utility shall transmit to each of its consumers a clear and concise explanation of the existing rate schedule, and each new rate schedule applied for, applicable to the consumer. This statement shall be transmitted to each consumer:

1. Not later than 60 days after the date of the commencement of service to the consumer and not less frequently than once a year thereafter, and

2. Not later than 30 days, 60 days if a utility uses a bi-monthly billing system, after the utility's application for a change in a rate schedule applicable to the consumer.

3. An electric utility shall annually mail to its customers a clear and concise explanation of rate schedules that may be applicable to that customer.

4. The required explanation of existing and proposed rate schedules may be transmitted together with the

consumer's regular billing for utility service or in a manner deemed appropriate by the Commission.

5. An electric utility shall print on its monthly bill, in addition to the information regarding consumption and charges for the current bill, similar information showing average daily energy use and cost for the same billing period for the previous year. That information shall include the utility telephone number for use by customers with questions or concerns on their electric service.

B. Meter Reading Method -- Upon request, utilities shall furnish reasonable assistance and information as to the method of reading customer meters and conditions under which electric service may be obtained from their systems.

C. Utility's Responsibility -- Nothing in these rules shall be construed as placing upon the utility a responsibility for the condition or maintenance of the customer's wiring, appliances, current consuming devices or other equipment, and the utility shall not be held liable for loss or damage resulting from defects in the customer's installation and shall not be held liable for damage to persons or property arising from the use of the service on the premises of the customer.

D. Conditions of Service -- The utility shall have the right of refusing to, or of ceasing to, deliver electric energy to a customer if any part of the customer's service, appliances, or apparatus shall be unsafe, or if the utilization of electric energy by means thereof shall be prohibited or forbidden under the authority of a law or municipal ordinance or regulation, until the law, ordinance or regulation shall be declared invalid by a court of competent jurisdiction, and may refuse to serve until the customer shall put the part in good and safe condition and comply with applicable laws, ordinances and regulations.

The utility does not assume the duty of inspecting the customer's services, appliances or apparatus, and assumes no liability therefor. If the customer finds the electric service to be defective, the customer is requested to immediately notify the utility to this effect.

E. Access to premises and meters -- As a condition of service the customer shall, either explicitly or implicitly, grant the utility necessary permission to enable the utility to install and maintain service on the premises. The customer shall grant the utility permission to enter upon the customer's premises at reasonable times without prior arrangements, for the purpose of reading, inspecting, repairing, or removing utility property.

If the customer is not the owner of the occupied premises, the customer shall obtain permission from the owners.

F. Customer Complaints --

1. Utilities shall fully and promptly investigate customer complaints pertaining to service. Utilities shall maintain record of each complaint that concerns outages or interruptions of service including the date, nature, and disposition of the complaint.

2. Customer complaints shall be filed with the Commission in accordance with Subsection R746-100-3(F), Consumer Complaints, Practice and Procedure Governing Formal Hearings.

G. Service Interruptions --

1. Utilities shall maintain records of interruptions of service of their entire system, a community, or a major distribution circuit. These records shall indicate the date, time of day, duration, approximate number of customers affected, cause and the extent of the interruption.

2. Utilities will provide reasonable notice of contemplated work which is expected to result in service interruptions. Failure of a customer to receive this notice shall not create a liability upon the utility. When it is anticipated that service must be interrupted, the utility will endeavor to do the work at a time which causes the least inconvenience to customers.

3. For the purposes of this section, a service interruption is defined as a consecutive period of three minutes or longer, during which the voltage is reduced to less than 50 percent of the standard voltage.

H. Restrictions of Change of Utility Service -- If a customer has once obtained service from an electric utility, that customer may not be served by another electric utility at the same premises without prior approval of the Commission.

I. Rate Schedules, Rules and Regulations -- Utilities may adopt reasonable rules and regulations, not inconsistent with Commission rules governing service and customer relations. Upon Commission approval, rules and regulations of the utilities shall constitute part of utility tariffs.

R746-310-3. Meters and Meter Testing.

A. Reference and Working Standards

1. Reference standards -- Utilities having 500 or more meters in service shall have a high grade reference standard meter which shall be calibrated at least annually by the U.S. Bureau of Standards or a testing agency that regularly calibrates with them. Other utilities with meters in service shall at least have access to another utility's or testing agency's high grade reference standards that are periodically calibrated.

2. Working standards -- Utilities furnishing metered service shall provide for, or have access to, high grade testing instruments, working standards, to test the accuracy of meters or other instruments used to measure electricity consumed by its customers. The error of accuracy of the working standards at both light load and full load shall be less than one percent of 100 percent of rated capacity. This accuracy shall be maintained by periodic calibration against reference standards.

B. Meter Tests -- Unless otherwise directed by the Commission, the requirements contained in the 1988 edition of the American National Standards Code for Electricity Metering, incorporated by reference, shall be the minimum requirements relative to meter testing.

1. Accuracy limits -- After being tested, meters shall be adjusted to as near zero error as practicable. Meters shall not remain in service with an error over two percent of tested capacity, or if found to register at no load.

2. Before installation -- New meters shall be tested before installation. Removed meters shall be tested before or within 60 days of installation.

3. Periodic -- In-service meters shall be periodically or sample tested.

4. Request -- Upon written request, utilities shall promptly test the accuracy of a customer's meter. If the meter has been tested within 12 months preceding the date of the request, the utility may require the customer to make a deposit. The deposit shall not exceed the estimated cost of performing the test. If the meter is found to have an error of more than two percent of tested capacity, the deposit shall be refunded; otherwise, the deposit may be retained by the utility as a service charge. Customers shall be entitled to observe tests, and utilities shall provide test reports to customers.

5. Referee -- In the event of a dispute, the customer may request a referee test in writing. The Commission may require the deposit of a testing fee. Upon filing of the request and receipt of the deposit, if required, the Commission shall notify the utility to arrange for the test. The utility shall not remove the meter prior to the test without Commission approval. The meter shall be tested in the presence of a Commission representative, and if the meter is found to be inaccurate by more than two percent of rated capacity, the customer's deposit shall be refunded; otherwise, it may be retained.

C. Bill Adjustments for Meter Error --

1. Fast meter -- If a meter tested pursuant to this section is more than two percent fast, the utility shall refund to the customer the overcharge based on the corrected meter readings for the period the meter was in use, not exceeding six months, unless it can be shown that the error was due to some cause, the date of which can be fixed. In this instance, the overcharge shall be computed back to, but not beyond that time.

2. Slow meter -- If a meter tested pursuant to this section is more than two percent slow, the utility may bill the customer for the estimated energy consumed but not covered by the bill for a period not exceeding six months unless it can be shown that the error was due to some cause, the date of which can be fixed. In this instance, the bill shall be computed back to, but not beyond that time.

3. Non-registering meter -- If a meter does not register, the utility may bill the customer for the estimated energy used but not registered for a period not exceeding three months.

D. Meter Records -- Utilities shall maintain records for each meter until retirement. This record shall contain the identification number; manufacturer's name, type and rating; each test, adjustment and repair; date of purchase; and location, date of installation, and removal from service. Utilities shall keep records of the last meter test for every meter. At a minimum, the records shall identify the meter, the date, the location of and reason for the test, the name of the person or organization making the test, and the test results.

R746-310-4. Station Instruments, Voltage and Frequency Restrictions and Station Equipment.

A. Station Instruments -- Utilities shall install the instruments necessary to obtain a record of the load on their systems, showing at least the monthly peak and a monthly record of the output of their plants. Utilities purchasing electrical energy shall install the instruments necessary to furnish information regarding monthly purchases of electrical energy, unless those supplying the energy have already installed instruments from which that information can be obtained.

Utilities shall maintain records indicating the data obtained by station instruments.

B. Voltage and Frequency Restrictions --

1. Unless otherwise directed by the Commission, the requirements contained in the American National Standards Institute Standard for Electric Power Systems and Equipment--Voltage Ratings, 1989 edition, incorporated by this reference, shall be the minimum requirements relative to utility voltages.

2. Utilities shall own or have access to portable indicating voltmeters or other devices necessary to accurately measure, upon complaint or request, the quality of electric service delivered to its customer to verify compliance with the standard established in Subsection R746-310-4(B)(1). Utilities shall make periodic voltage surveys sufficient to indicate the character of the service furnished from each distribution center and to ensure compliance with the voltage requirements of these rules. Utilities having indicating voltmeters shall keep at least one instrument in continuous service.

3. Utilities supplying alternating current shall maintain their frequencies to within one percent above and below 60 cycles per second during normal operations. Variations in frequency in excess of these limits due to emergencies are not violations of these rules.

C. Station Equipment --

1. Utilities shall inspect their poles, towers and other similar structures with reasonable frequency in order to determine the need for replacement, reinforcement or repair.

D. General Requirements -- Unless otherwise ordered by the Commission, the requirements contained in the National Electrical Safety Code, as defined at R746-310-1(B)(13), constitute the minimum requirements relative to the following:

1. the installation and maintenance of electrical supply stations;

2. the installation and maintenance of overhead and underground electrical supply and communication lines;

3. the installation and maintenance of electric utilization equipment;

4. rules to be observed in the operation of electrical equipment and lines;

5. the grounding of electrical circuits.

R746-310-5. Design, Construction and Operation of Plant.

Facilities owned or operated by utilities and used in furnishing electricity shall be designed, constructed, maintained and operated so as to render adequate and continuous service. Utilities shall, at all times, use every reasonable effort to protect the public from danger and shall exercise due care to reduce the hazards to which employees, customers and others may be subjected from the utility's equipment and facilities.

R746-310-6. Line Extensions.

A. Utilities shall provide line extensions in accordance with the terms of their tariff on file with, and approved by the Commission.

R746-310-7. Accounting.

A. Uniform System of Accounts -- The Commission adopts the FERC rules found at 18 CFR Part 101, which is incorporated by reference, as the uniform system of accounts for electric utilities subject to Commission jurisdiction. Utilities shall employ and adhere to that system.

B. Uniform List of Retirement Units of Property --

1. The Commission adopts the FERC rules found at 18 CFR Part 116, incorporated by reference, as the schedule to be used in conjunction with the uniform system of accounts in accounting for additions to and retirements of electric plant. Utilities subject to Commission jurisdiction shall employ and adhere to this schedule.

2. Utilities shall obtain Commission approval prior to making a change in depreciation rates, methods or lives for either new or existing property.

R746-310-8. Billing Adjustments.

A. Definitions --

1. A "backbill" is that portion of a bill, other than a levelized bill, which represents charges not previously billed for service that was actually delivered to the customer during a period before the current billing cycle.

2. A "catch-up bill" is a bill based upon an actual reading rendered after one or more bills based on estimated or customer readings. A catch-up bill which exceeds by 50 percent or more the bill that would have been rendered under a utility's standard estimation program is presumed to be a backbill.

B. Notice -- Every backbill shall contain a written explanation of the reason for the backbill that shall be sufficiently detailed to apprise the customer of the circumstances, error or condition that caused the underbilling, and, if the backbill covers more than a 24-month period, a statement setting forth the reasons the utility did not limit the backbill under Subsection R746-310-8(D), Limitations of the Period for Backbilling.

C. Limitations on Rendering a Backbill -- A utility shall not render a backbill more than three months after the utility actually became aware of the circumstance, error, or condition that caused the underbilling. This limitation does not apply to fraud and theft of service situations.

D. Limitations of the Period for Backbilling --

1. A utility shall not bill a customer for service rendered more than 24 months before the utility actually became aware of the circumstance, error, or condition that caused the underbilling or that the original billing was incorrect.

2. In case of customer fraud, the utility shall estimate a bill for the period over which the fraud was perpetrated. The time limitation of Subsection R746-310-8(D)(1) does not apply to customer fraud situations.

3. In the case of a backbill for Utah sales taxes not previously billed, the period covered by the backbill shall not exceed the period for which the utility is assessed a sales tax deficiency.

E. Payment Period -- A utility shall permit the customer to make arrangements to pay a backbill without interest over a time period at least equal in length to the time period over which the backbill was assessed. If the utility has demonstrated that the customer knew or reasonably should have known that the original billing was incorrect or in the case of fraud or theft, in which case, interest will be assessed at the rate applied to past due accounts on amounts not timely paid in accordance with the established arrangements.

R746-310-9. Overbilling.

A. Standards and Criteria for Overbilling-- Billing under the following conditions constitutes overbilling:

1. a meter registering more than two percent fast, or a defective meter;

2. use of an incorrect watt-hour constant;

3. incorrect service classification, if the information supplied by the customer was not erroneous or deficient;

4. billing based on a switched meter condition where the customer is billed on the incorrect meter;

5. meter turnover, or billing for a complete revolution of a meter which did not occur;

6. a delay in refunding payment to a customer pursuant to rules providing for refunds for line extensions;

7. incorrect meter reading or recording by the utility; and

8. incorrect estimated demand billings by the utility.

B. Interest Rate--

1. A utility shall provide interest on customer payments for overbilling. The interest rate shall be the greater of the interest rate paid by a utility on customer deposits, or the interest rate charged by a utility for late payments.

2. Interest shall be paid from the date when the customer overpayment is made, until the date when the overpayment is refunded. Interest shall be compounded during the overpayment period.

C. Limitations--

1. A utility shall not be required to pay interest on overpayments if offsetting billing adjustments are made during the next full billing cycle subsequent to the receipt of the overpayment.

2. The utility shall be required to offer refunds, in lieu of credit, only when the amount of the overpayment exceeds $50 or the sum of two average month's bills. However, the utility shall not be required to offer a refund to a customer having a balance owing to the utility, unless the refund would result in a credit balance in favor of the customer.

3. If a customer is given a credit for an overpayment, interest will accrue only up to the time at which the first credit is made, in cases where credits are applied over two or more bills.

4. A utility shall not be required to make a refund of, or give a credit for, overpayments which occurred more than 24 months before the customer submitted a complaint to the utility or the Commission, or the utility actually became aware of an incorrect billing which resulted in an overpayment.

5. When a utility can demonstrate before the Commission that a customer knew or reasonably should have known an overpayment to be incorrect, a utility shall not be required to pay interest on the overpayment.

6. Utilities shall not be required to pay interest on overpayment credits or refunds which were made before the

effective date of the rule.

7. Disputes regarding the level or terms of the refund or credit are subject to the informal and formal review procedures of the Utah Public Service Commission.

R746-310-10. Preservation of Records.

The Commission adopts the standards to govern the preservation of records of electric utilities subject to the jurisdiction of the Commission at 18 CFR 125, which is incorporated by reference.

KEY: public utilities, utility regulation*, electric utility industries

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R746. Public Service Commission, Administration.
R746-320. Uniform Rules Governing Natural Gas Service by Gas Utilities.
R746-320-1. General Provisions.

A. Scope and Applicability -- The following rules apply to the methods and conditions of service employed by utilities furnishing natural gas service in Utah. These rules supersede any conflicting provisions contained in tariffs of natural gas utilities subject to Commission jurisdiction. A utility may petition the Commission for an exemption from specified portions of these rules in accordance with R746-100-16, Deviation from Rules.

B. Definitions --

1. "British Thermal Unit" or "BTU" means the quantity of heat required to raise the temperature of one pound of water one degree Fahrenheit.

2. "CFR" means the Code of Federal Regulations, 1991 edition.

3. "Commission" means the Public Service Commission of Utah.

4. "Cubic Foot" means:

a. when gas is supplied and metered to customers at the standard delivery pressure, as defined in Subsection R746-320-2(G) hereafter, the volume of gas which, at the temperature and pressure existing in the meter, occupies one cubic foot;

b. when gas is supplied to customers through positive displacement meters at other than standard delivery pressure, the volume of gas which occupies one cubic foot after applying a suitable correction factor to simulate delivery and metering at standard delivery pressure; the correction factor shall include allowance for gas temperature when it is reasonably practical to determine the same;

c. when gas is supplied through other meters, the volume of gas which occupies one cubic foot at a temperature of 60 degrees Fahrenheit and at absolute pressure as provided in utility tariff rates or regulations approved by this Commission.

5. "Cubic Foot, Standard" or "Standard Cubic Foot" means the volume of gas occupying one cubic foot, on a dry basis, at a temperature of 60 degrees Fahrenheit, and under a pressure equivalent to 30 inches of mercury, the mercury being at a temperature of 32 degrees Fahrenheit and under standard gravity.

6. "Customer" means a person, firm, partnership, company, corporation, organization, or governmental agency supplied with gas by a gas utility subject to Commission jurisdiction.

7. "Customer Meter" means the device used to measure the volume of gas transferred from a gas utility to a customer.

8. "FERC" means the Federal Energy Regulatory Commission.

9. "Gas Main" means a distribution line that is designed to serve as a common source of supply for more than one service line. The term does not include service lines.

10. "Service Line" means a distribution line that transports gas from a common source of supply to:

a. a customer meter or the connection to a customer's piping, whichever is farther downstream, or

b. the connection to a customer's piping if there is no customer meter.

11. "Therm" means a unit of heating value equalling 100,000 BTU.

12. "Utility" means a gas corporation as defined in Section 54-2-1.

R746-320-2. Quality Control Equipment, Standards, Records and Reports.

A. Testing Equipment and Facilities --

1. Utilities shall own and maintain or have access to the testing equipment necessary to make Commission-required tests of the gas sold by the utilities. The Commission may approve arrangements for individual utilities to have their testing done by another utility or competent party.

2. Utilities shall properly maintain testing equipment which shall be subject to Commission inspection. The Commission may inspect the testing equipment at reasonable times.

3. Utilities shall locate and use testing equipment so as to ensure that gas samples taken are fairly representative of the gas being distributed in the portion of the system being tested.

B. Heating Value --

1. Utilities shall file with the Commission, as part of their tariffs, the range within which the average heating value per unit of gas to be sold will fall.

2. Utilities shall maintain the heating value established in their tariffs and in so doing shall regulate the chemical composition and specific gravity of the gas so as to maintain satisfactory combustion in customers' appliances without repeated adjustment of the burners.

3. When utilities distribute supplemental or substitute gas, they shall ensure that it performs satisfactorily regardless of heating value.

C. Heating Value Tests, Records, and Reports --

1. Utilities shall make sufficient tests, or have access to

tests made by their suppliers, to accurately determine the heating value of the gas sold.

2. Tests shall be made at a location, or locations, which will ensure the samples taken fairly represent the gas being furnished to the utilities and their customers. All test reports shall be available for review when requested by the Commission.

D. BTU Measurement Equipment --

1. Utilities shall maintain or have access to an approved type calorimeter in an adequate testing station as specified in Subsection R746-320-2(C)(1) above. Utilities may use an approved recording calorimeter which shall be checked at least once each month with an approved standard calorimeter or against a standard gas.

2. Both calorimeter and method of testing shall be subject to Commission inspection.

3. Utilities may use BTU measuring equipment other than calorimeters upon petition to and approval by the Commission.

E. Gas Odor -- Gas supplied to customers shall be odorized in accordance with 49 CFR 192.625, which is incorporated by this reference.

F. Purity of Gas -- Gas supplied to customers shall contain no more than 75 to 80 parts per million of total sulfur. Gas shall be free of water and hydrocarbons in liquid form at the temperature and pressure at which the gas is delivered.

G. Standard Delivery Pressure -- Standard Delivery Pressure shall be four ounces above local atmospheric pressure. Maximum and minimum low pressure delivery pressures shall conform to 49 CFR 192.623, which is incorporated by reference.

H. Pressure Testing and Maintenance of Standards --

1. Utilities shall make every reasonable effort to maintain adequate gas pressure. Utilities shall make determinations and keep records of pressures adequate to enable the utilities at all times to have accurate current knowledge of the pressure existing in their distribution systems. Pressure records shall be properly identified, dated, and filed in the utilities' records.

2. Utilities shall periodically test and maintain the accuracy of all recording pressure gauges.

3. Pressure limiting and regulator stations shall comply with 49 CFR 192.741, which is incorporated by this reference.

R746-320-3. Use, Location, and Accuracy Tests of Meters.

A. Use of Meters -- Gas sold by utilities shall be metered through approved meters except in case of emergency, or when otherwise authorized by the Commission as provided in R746-100-16, Deviation from Rules. Meters shall bear an identifying number and shall be plainly marked to indicate the units of the meter index. When gas is delivered at higher than standard pressure, the contract, rate schedule, or gas bill shall specify the method to be used to correct the gas volume to standard pressure.

B. Meter Location -- Meters may be located either inside or outside of buildings. The locations selected by utilities and provided by customers shall be convenient for inspection and reading of the meters and shall comply with 49 CFR 192.353, 192.355, 192.357, incorporated by reference.

C. Meter Accuracy at Installation -- New meters and reinstalled meters shall be no more than one percent fast or two percent slow.

D. Initial Tests of Meters -- Meters shall be tested and meet the foregoing accuracy limits before installation. At the time meters are placed into service, the meter index reading shall be recorded.

E. Periodic Tests of Meters --

1. Utilities shall adopt schedules for periodic tests and repairs of positive displacement meters. Utilities shall keep records of accuracy of meters periodically tested and shall analyze the records to determine meter service life for purposes of adjusting the periods for testing and servicing meters.

2. Unless a time extension or a statistical sampling method is approved by the Commission, meter test intervals for displacement meters of the following rated capacities shall not exceed the following:

TABLE

a.	To 300 cu. ft./hr	10 yrs
b.	300 to 600 cu. ft./hr	5 yrs
c.	600 to 1,500 cu. ft./hr	3 yrs
d.	Over 1,500 cu. ft./hr	2 yrs
e.	Orifice Meters, inspected and checked for accuracy	1 yr

F. Meter Tests by Request --

1. Upon written request, utilities shall test a customer's meter promptly. If a meter has been tested within 12 months preceding the date of the request, the utility concerned may require the customer to make a deposit to defray the costs of the test. If the meter is found to be more than three percent inaccurate, either over or under, the deposit shall be refunded; otherwise the deposit may be retained by the utility as a service charge. The deposit shall not exceed the estimated cost of performing the test.

2. The customer shall be entitled to observe the test and the utility shall forward a copy of the written report of the test to the customer.

G. Referee Meter Tests -- If there is a dispute over a test, the customer concerned may request a referee test in writing. The Commission may require the deposit of a testing fee in connection with a referee test to defray costs of the test. Upon filing of the request and receipt of the deposit, if required, the Commission shall notify the utility and the utility shall not remove the meter until the Commission so instructs. The meter shall be tested in the presence of the Commission's representative, and if the meter is found to be more than three percent inaccurate, the customer's deposit may be refunded; otherwise it may be retained.

H. Adjustment of Bills for Meter Error --

1. If a meter tested pursuant to Subsections R746-320-3(E) and (F) is more than three percent fast, there shall be refunded to the customer the amount billed in error for one-half the period since the last test. The one-half period shall not exceed six months.

2. If a meter tested pursuant to Subsections R746-320-(E) and (F) is more than three percent slow, the utility may

bill the customer in an amount equal to the unbilled error for one-half the period since the last test, said one-half period shall not exceed six months.

3. In the event of a nonregister meter, customer may be billed on an estimate based on previous bills for similar usage.

4. In the event of unauthorized use, the customer may be billed on a reasonable estimate of the gas consumed.

I. Standard Meter Test Methods -- Meter tests shall be made by trained personnel using approved methods and testing equipment. The methods and apparatus recommended in the Gas Displacement Standard, Second Edition 1985, published by the American Gas Association and incorporated by this reference, may be used to satisfy this rule.

J. Meter Testing Equipment -- Utilities shall own and maintain, or have access to, at least one five-cubic-foot prover of an approved type, as well as other equipment necessary to test meters. Meter testing equipment shall be installed in a meter testing station designed for that purpose.

K. Records of Meter Tests -- Utilities shall record the original data of meter tests on standard forms and preserve the same until the next time meters are tested.

L. Meter Records -- Utilities shall keep permanent records of their meters. Utilities shall start a record for each meter at the time of purchase and include the date of purchase, identification number, manufacturer's name, type, and rating. Utilities shall keep records of all tests, adjustments, and repairs. Utilities shall keep records of meter readings when the meters are installed or removed from service together with the addresses of customers served. The meter records shall be systematically kept and filed until the meters are retired.

R746-320-5. Design, Construction, and Operation of Plant.

A. Generally --

1. Facilities owned or operated by utilities and used in furnishing gas shall be designed, constructed, maintained and operated so as to render adequate and continuous service. Utilities shall, at all times, use every reasonable effort to protect the public from danger and shall exercise due care to reduce the hazards to which employees, customers, and others may be subjected from their equipment and facilities.

2. Utilities shall use accepted good practice of the gas industry, but in no event shall those practices be construed to require less than required by this rule, R746-409, Pipeline Safety in Utah, Chapter 13 of Title 54, and the federal Natural Gas Pipeline Safety Act, 49 U.S.C. Section 1671 et seq.

B. Regulators -- If the gas pressure maintained in a customer's service line exceeds the standard delivery pressure, the utility concerned shall install an approved service regulator on the service line on the customer's premises. The regulator shall be set to deliver gas within the established delivery pressure range and shall have a vent piped to the outdoors if the regulator is located within a building. If pressure in the service line exceeds 100 p.s.i.g., a primary regulator, in addition, shall be installed on the service line outside the building. Regulators shall not be required for service of industrial or commercial customers served through high pressure meters.

C. Main Extensions -- Utilities shall adopt, with Commission approval, uniform rules and regulations governing main extensions.

D. Installation and Maintenance of Service Lines and Meters --

1. Utilities shall furnish, install and maintain, free of charge, a gas service line from the gas main adjacent to customers' premises to the customers' property lines or curbs, except that utilities shall not be required to install the piping on the outlet side of meters.

2. Customers may be required by utilities to install or pay in full or in part for gas service lines from property lines to customers' buildings in accordance with approved tariffs.

3. Service lines and meters shall be owned and maintained by utilities.

E. Service Lines for Temporary Service --

1. Utilities may render temporary service to customers and may require the customers to bear all costs, in excess of any salvage value realized, of installing and removing service lines.

2. Temporary service shall be deemed to be service provided for emergency or short-term use, as specified in approved tariffs, or service for speculative operations or those of questionable permanency.

F. Gas Service Line Valves --

1. New gas service lines, entering customers' buildings, which are operating at a pressure greater than 10 p.s.i.g., and other service lines two inches or larger, I.P.S., shall be equipped with a gas service line valve located on the service line outside buildings served. If a service line valve is underground, it shall be located in a durable curb box at an easily-accessible location. The top of the curb box shall be at ground level and shall be kept visible by the customer.

2. Service lines shall be equipped with a gas service line valve near the meter. If a service line is not equipped with an outside shut-off, the inside shut-off shall be a type which can be sealed in the off position.

R746-320-6. Records.

A. Maps and Records --

1. Utilities shall keep suitable maps or records to show size, location, character, and date of installation of major plant items.

2. Upon Commission request, and in form specified by or satisfactory to the Commission, utilities shall file adequate descriptions or maps showing the location of facilities.

B. Operating Records --

1. Utilities shall keep appropriate operating records for use in statistical and analytical studies for regulatory purposes.

2. Operating records shall be subject to Commission inspection at reasonable times.

C. Availability of Records -- Utilities shall keep all records made mandatory by these rules at the utilities' offices in Utah. Commission representatives may inspect mandatory records at reasonable times and in a reasonable manner during normal operating hours.

D. Reports to the Commission -- Utilities shall furnish to the Commission, at times and in form designated by the

Commission, the results of required tests and summaries of mandatory records. At Commission request, utilities shall also furnish the Commission with information concerning facilities or operations.

E. Preservation of Records -- The Commission adopts the standards of 18 CFR 225, incorporated by reference, to govern the preservation of records of natural gas utilities subject to the jurisdiction of the Commission.

R746-320-7. Accounting.

A. Uniform System of Accounts -- The Commission adopts 18 CFR 201, incorporated by this reference, as the uniform system of accounts for gas utilities subject to Commission jurisdiction. Utilities shall employ and adhere to this system.

B. Uniform List of Retirement Units of Property -- The Commission adopts 18 CFR 216, incorporated by this reference, as the schedule to be used in conjunction with the uniform system of accounts in accounting for additions to and retirements of gas plant. Utilities subject to Commission jurisdiction shall employ and adhere to this schedule.

KEY: rules and procedures, public utilities, utility service shutoff

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R746. Public Service Commission, Administration.

R746-343. Rule for Deaf, Severely Hearing or Speech Impaired Person.

R746-343-1. Purpose and Authority.

This rule is to establish a program as required in Section 54-8b-10 which will provide telecommunication devices to certified deaf, or severely hearing or speech impaired persons, who qualify under certain conditions, and to provide a dual relay system using third party intervention to connect deaf or severely hearing or speech impaired persons with normal hearing persons by way of telecommunication devices.

R746-343-2. Definitions.

A. Definitions

1. "Applicant" is a person applying for a Telecommunication Device for the Deaf, signal device, or other communication device.

2. "Audiologist" is a person who has a Master's or Doctoral degree in Audiology, is licensed in Audiology in Utah, and holds the Certificate of Clinic Competence in Audiology from the American Speech/Language/Hearing Association, or its equivalent.

3. "Deaf" is a hearing loss that requires the use of a TDD to communicate effectively on the telephone.

4. "Provider" is a service provider who agrees to be, if determined by the Public Service Commission, the administrator of the program or a portion of the program.

5. "Distribution center" is a facility authorized by the provider to distribute TDDs and signal devices, personal communicators, or other devices required by a recipient to communicate effectively on the telephone.

6. "Dual relay system" is the provision of voice and teletype communication between users of TDDs and other parties.

7. "Otolaryngologist" is a licensed physician specializing in ear, nose and throat medicine.

8. "Recipient" is a person who receives a TDD, signal device, personal communicator, or other device to communicate effectively on the telephone.

9. "Speech language pathologist" is a person who has a Master's or Doctoral degree in Speech Language Pathology in Utah, and holds the Certificate of Clinical Competence in Speech/Language Pathology from the American Speech Language Hearing Association, or its equivalent.

10. "Severely hearing impaired" is a hearing loss that requires use of TDD to communicate effectively on the telephone.

11. "Severely Speech Impaired" is a speech handicap, or disorder, that renders speech on an ordinary telephone unintelligible.

12. "Signal device" is a mechanical device that alerts a deaf, deaf-blind, or severely hearing impaired person of an incoming telephone call.

13. "Telecommunications Device for the Deaf, or TDD, is an electrical device for use with a telephone that utilizes a key board. It may also have an acoustic coupler, display screen or braille display to transmit and receive messages.

14. "Telephone relay center" is a facility administered by the provider to provide dual relay service.

15. "Commission" is the Utah Public Service Commission.

R746-343-3. Eligibility Requirements.

A. An applicant is eligible if he is deaf, severely hearing impaired, or severely speech impaired and is eligible for assistance under a low income public assistance program administered by the Department of Human Services. The impairment must be established by the certification on an application form by a person who is permitted to practice medicine in Utah, an audiologist, otolaryngologist, speech/language pathologist, or qualified personnel within a state agency. The applicant must provide evidence that they are currently eligible, though it is not necessary that they be participating, for public assistance under one of the following programs:

1. Aid to Families with Dependent Children;
2. Emergency Work Program;
3. Food Stamps;
4. General Assistance;
5. Home Energy Assistance Target Program;
6. Medical Assistance;
7. Refugee Assistance; or
8. Supplemental Security Income.

C. The provider may require additional documentation to determine applicant's eligibility.

D. During the training session required in Section

R746-343-8, Training, the applicant must demonstrate an ability to send and receive messages with a TDD or other appropriate devices.

R746-343-4. Approval of an Application.

A. Approved Application--

1. When an original application has been approved, the provider shall inform the applicant in writing of:

a. when the original application has been approved;

b. the location of the distribution center or designated place where the applicant may receive a TDD;

c. the date and time of the training session as required in Section R746-343-8.

2. When the request for a replacement TDD, signal device, or other device has been approved, the provider or the distribution center shall inform the recipient of the procedure for obtaining a replacement device.

B. Denied Applications--If an original application or replacement request is denied, the provider shall inform the applicant in writing of the reasons for the denial and of applicable procedures for appeal. Denial notices shall be sent by certified mail with return receipt. The notice shall be accompanied by instructions on the review process.

R746-343-5. Review by the Provider.

A. An applicant or recipient whose request for an original or replacement device has been denied may request that the provider review the decision.

B. The request for review shall be in writing and shall specify the basis for review and must be received by the provider within 30 days of the receipt of the notice of denial.

C. Within ten days of receiving the request for review, the provider shall inform the applicant or recipient in writing of the disposition of the request.

R746-343-6. Review by the Commission.

A. Within 20 days of the notice of denial from the provider for review, the applicant or recipient may request in writing a hearing by the Commission. The request shall specify the reasons for challenging the decision.

R746-343-7. Distribution Process.

A. Distribution Centers shall:

1. Upon notice from the provider, distribute TDDs, signal devices, or other specified devices, to persons determined eligible under Section R746-343-3, Eligibility Requirements, and who reside in Utah;

2. Require each recipient or legal guardian to sign an agreement, Condition of Acceptance, form supplied by the provider;

3. Forward completed application forms and agreement forms to the provider;

4. Inform the provider of those applicants who fail to report for training and receipt of devices.

B. The provider shall implement a program to facilitate distribution of devices and provide training as required.

C. Neither the distribution center nor the provider shall be responsible for providing replacement paper for devices, the payment of the recipient's monthly telephone bill, purchase or lease cost of recipient's telephone, or the cost of replacement light bulbs for signal devices.

R746-343-8. Training.

A. The provider shall be responsible for seeing that training is provided to each recipient and legal guardian, or significant other, in accordance with guidelines established by the provider.

R746-343-9. Replacement Devices.

A. The distribution center shall provide devices to persons determined by the provider to be eligible under Sections R746-343-3, Eligibility Requirements, and R746-343-8, Training, accept devices that need repair, and deliver devices returned by recipients to a repair center designated by the provider.

R746-343-10. Ownership and Liability.

A. TDDs, signal devices, and other devices provided by this program are the property of the state.

B. A recipient or guardian shall return a TDD, signal device, or other device, to the provider or distribution center when the recipient no longer intends to reside in Utah, is no longer qualified for the program, does not need the device, or has been notified by the provider to return the device.

C. Other than normal usage, recipients are liable for damage to or loss of a device issued under conditions of acceptance.

R746-343-11. Out of State Use.

No person shall remove a TDD, signal device, or other device from the state for a period longer than 90 days without written permission of the provider.

R746-343-12. Dual Relay Service--Telephone Relay Center.

A. A telephone relay center shall provide dual relay service seven days a week, 24 hours a day, including holidays.

B. A telephone relay center shall hire operators with specialized communication skills who shall be salaried employees.

C. A telephone relay center shall require the operators to relay each message accurately, except as otherwise specifically provided in Section R746-343-14, Criminal Activity.

R746-343-13. Confidentiality and Privacy Requirements.

A. Except as otherwise specifically provided in Section R746-343-14, Criminal Activity, a telephone relay center shall protect the privacy of persons to whom relay services are provided and shall require each operator to maintain the confidentiality of each telephone message.

B. The confidentiality and privacy of persons to whom relay services are provided will be protected by means of the following:

1. The relay center shall not maintain any form of permanent copies of messages relayed by their operators or allow the content of telephone messages relayed by their

operators to be communicated to non-staff members.

2. Persons using the relay system shall not be required to provide identifying information until the party they are calling is on line, and shall only be required to identify themselves to the extent necessary to fulfill the purpose of their call.

3. Relay operators shall not leave messages with third parties unless instructed to do so by the person making the call.

4. Persons using the relay system may file complaints about the relay service to the telephone relay center or the provider, who shall review each complaint.

R746-343-14. Criminal Activity.

A. Relay operators shall not knowingly transmit telephone messages that are made in furtherance of a criminal activity as defined by Utah or federal law.

B. The confidentiality and privacy requirements of Section R746-343-13, Confidentiality and Privacy Requirements, do not apply to telephone conversations made in furtherance of a criminal activity as defined by Utah or federal law.

R746-343-15. Surcharge.

A. The surcharge will be placed on access lines as determined by the count of main stations or its equivalent.

B. The surcharge established by the Commission in accordance with Subsection 54-8b-10(4) is $.18.

C. Subject to Subsection R746-343-15(D), the telephone surcharge will be collected by each local exchange company providing basic service in Utah and submitted, less administrative cost, to the Public Service Commission on a quarterly basis.

D. The provider will submit its budget for annual review by the Public Service Commission.

E. The telephone surcharge need not be collected by a local exchange company if the amount collected would be less than the actual administrative costs of that collection. In that case, the local exchange company shall submit to the Commission, in lieu of the revenue from the surcharge collection, a breakdown of the anticipated costs and the expected revenue from the collection showing that the costs exceed the revenue.

KEY: AFDC, physically handicapped, rates, telecommunications
1994 54-8b-10
Notice of Continuation December 17, 1997

R746. Public Service Commission, Administration.
R746-346. Operator-Assisted Services.
R746-346-1. General Provisions.

A. Authorization -- Section 54-8b-13 requires that the Commission establish rules for operator-assisted services.

B. Title -- These rules shall be known and may be cited as Operator-Assisted Service Rules.

C. Scope and Applicability -- These rules are intended to assure that the specific requirements of 54-8b-13(1)(a)-(d) are placed into effect.

R746-346-2. General Definitions.

The following words and terms shall have the following meaning in this section, unless the context clearly indicates otherwise:

A. "Aggregator" -- A person that:

1. is not a telecommunications corporation;

2. in the ordinary course of its business makes operator assisted services available to the public or to customers and transient users of its business or property through an operator service provider;

3. receives from an operator service provider by contract, tariff, or otherwise, commissions or compensation for calls delivered from the aggregator's location to the operator service provider.

B. "Automatic Number Identification" -- The ability to automatically identify the originating telephone number from the local switching system.

C. "Call Splashing" -- Call transferring, whether caller requested or operator service provider initiated, that results in a call being rated or billed from a site different from the one from which the call originated.

D. Call Transferring" -- Processing of a call from one operator service provider to another operator service provider.

E. "End User Choice" -- The ability to route operator-assisted calls to the billed party's chosen operator service provider and telecommunication carrier.

F. "Operator-Assisted Service" -- Services which assist callers in placing or charging a telephone call, either through live intervention or automated intervention.

G. "Operator Service Provider" -- A person who provides, for a fee to a caller, operator-assisted services.

K. "Originating Line Screening" -- A two-digit code passed by the local switching system, with the automatic number identification, at the beginning of a call that provides information about the originating line.

L. "Redirect the Call" -- A procedure used by operator service providers that transmits a signal back to the originating telephone instrument and causes the instrument to disconnect the operator service provider's connection and to redial the digits, originally dialed by the caller, directly to the local exchange carrier's network.

R746-346-3. Information to be Provided at the Telephone Set.

A. Notice -- A contract between an operator service provider and a call aggregator for the provision of operator service to public telephones shall require the call aggregator to attach to or prominently display near each public telephone a notice that provides:

1. the name, address and toll-free number of the operator service provider;

2. instructions for accessing the operator service provider;

3. when technically feasible, instructions for accessing any other operator service provider operating in the relevant geographical area;

4. instructions for accessing the public safety emergency telephone numbers for the jurisdiction where aggregator's telephone service is geographically located;

B. Correctional Facility Telephones -- The requirements of section R746-346-3(A)(3) and (4) shall not apply to telephones located in the secured inmate areas of correctional facilities.

R746-346-4. Requirements before Call is Completed.

The provider of operator services shall:

A. identify itself to the customer upon answering calls;

B. identify itself to the billed party if the billed party is different from the caller;

C. quote rate information at the caller's request, without charge, 24 hours a day, seven days a week;

D. permit the caller to terminate the call at no charge prior to completion of the call by the operator service provider.

R746-346-5. Uncompleted Call.

A. Billing -- No operator service provider shall charge for uncompleted calls.

B. Determination -- If the operator service provider cannot determine with certainty that a call was completed, it shall provide a full credit for a call of one minute or less upon being informed by a customer that the call was not completed.

C. Includes -- An uncompleted call includes calls terminating to an intercept recording live intercept operator, a busy tone, or unanswered calls.

D. Does Not Include -- An uncompleted call does not include calls using busy line interrupt, line status verification, or directory assistance services.

R746-346-6. 911 Calls, "0-" Calls, and End-User Choice.

A. "911" Calls -- A contract between an operator service provider and a call aggregator for the provision of operator services using public telephones shall require that "911" calls to be connected directly to the public emergency agency serving the geographic location from which the call was made without charge.

B. "0-" Calls -- When end-user choice is not available the contract between an operator service provider and a call aggregator for the provision of operator services through public telephones shall require the operator service provider to directly route "0-" calls to the local exchange carrier operator without charge to the calling party, unless the operator service provider provides direct access to emergency service providers. In providing access to emergency service providers, the operator service provider shall:

1. identify the originating telephone number and the location of the originating telephone, except that local exchange carriers shall be allowed to identify the location using internal sources such as repair service or business office records if the internal sources are accessible to operators for emergency purposes 24 hours a day;

2. have a complete and current list of emergency service provider telephone numbers for each telephone prefix served, including police or sheriff, fire, and ambulance;

3. be available 24 hours a day, seven days a week, without charge;

4. promptly connect the caller to the public emergency agency serving the geographic locality from which the call is made;

5. stay on the line until the operator determines that the caller is connected to the proper emergency agency;

C. Correctional Facilities -- The requirements of R746-346-6 shall not apply to telephones located in secured inmate areas of correctional facilities.

D. Initial Routing -- Nothing in this section shall require the initial routing of "0-" calls from public or semi-public, shared pay phone, telephones owned by the local exchange carrier to an operator service provider other than the local exchange carrier itself.

R746-346-7. Customer Complaints.

A. Toll-Free Number -- The operator service provider shall have a toll-free telephone number that callers may use from 8 a.m. to 5 p.m., Monday through Friday to make complaints and inquiries.

B. Process -- Upon complaint to the operator service provider by a customer either at its office, by letter, or by telephone, the operator service provider may attempt to resolve the complaint, but if it is unwilling or unable to do so shall advise the complainant of the Commission's complaint process and give the complainant the address and telephone number of the Compliance and Complaint Section of the Division. If appropriate, the operator service provider shall also give the customer the Commission's telephone device for the deaf number.

C. Investigation -- The operator service provider shall make an investigation of complaints forwarded from the Commission on behalf of a customer. The operator service provider shall formally advise the Commission of the results of the investigation within ten days after the complaint is forwarded by the Commission.

R746-346-8. Caller Access.

A. Contract -- A contract between an operator service provider and a call aggregator for the provision of operator services through public telephones shall require that the caller have access to the local exchange carrier operator servicing the exchange from which the call is made and to other telecommunication utilities, unless otherwise provided in R746-346-8(C).

B. Conditions -- The access required by this section shall be subject to the following conditions:

1. Caller access to the local exchange carrier operator shall be accomplished either:

a. by directly routing all "0-" calls to the local exchange carrier operator without charge to the caller; or

b. by transfer or redirection of the call by the operator service provider, without charge to the caller so that the local exchange carrier operator receives all signaling information, for example automatic number identification and originating line screening, that would have been received by the local exchange operator if the call had been directly routed to the local exchange carrier. The operator service provider shall be in compliance with the requirements of R746-346-6(B).

2. Caller access to interexchange carriers by "950-XXXX" and "1-800" numbers shall not be blocked.

3. Caller access to interexchange carriers by "10XXX+0," whether "10XXX+0+" or "10XXX+0," dialing shall not be blocked if the end office serving the originating line has originating line screening capability. A nonpresubscribed interexchange carrier shall not bill the call aggregator or the presubscribed interexchange carrier for local or toll messages originated at the call aggregator's facility by use of "10XXX+0," whether "10XXX+0+" or "10XXX+0-," dialing if the call aggregator:

a. has subscribed to the necessary local exchange company outgoing call screening feature to ensure that appropriate originating line screening is transmitted with each call; and

b. has provided 30 days notice to the interexchange carrier that originating screening is available.

C. Waiver -- Application for waiver of the above caller access requirements may be filed with the Commission by the call aggregator or the operator service provider to prevent fraudulent use of telephone services or for other good cause. If the application for waiver pertains to technical limitations of equipment, the equipment shall be clearly identified in the application, including the manufacturer and the model. The application shall indicate the date of purchase of the equipment by the call aggregator, the extent to which equipment is available to allow the access requirements to be met, the associated costs, and the time requirements associated with equipment modifications.

R746-346-9. Call Splashing.

No operator service provider shall transfer a call to another operator service provider unless that transfer is accomplished at, and billed from, the call's place of origin. If the transfer is not technically possible, the operator service provider shall inform the caller that the call cannot be transferred as requested and that the caller should hang up and attempt to reach another operator service provider through means provided by that other operator service provider.

R746-346-10. Enforcement.

The Commission or the Division shall investigate any complaint against an aggregator, operator service provider, interexchange carrier, or local exchange carrier alleged to have violated these rules. The alleged violator shall be given an opportunity to informally resolve complaints involving violation of these rules. If no resolution is achieved informally, the Commission or the Division may, upon its own motion or upon request of the original complainant, formally investigate the complaint and, upon proper notice, evidentiary hearing, and determination that a violation has occurred or is about to occur, may take action as it deems justified pursuant to 54-8b-13(3).

KEY: public utilities, telecommunications, telephone utility regulation

1991 54-4-1

Notice of Continuation December 29, 1997 54-8b-13

R746. Public Service Commission, Administration.

R746-349. Competitive Entry and Reporting Requirements.

R746-349-1. Applicability.

These rules shall be applicable to each telecommunications corporation applying to be a competitor in providing local exchange services or other public telecommunications services in all or part of the service territory of an incumbent telephone corporation.

R746-349-2. Definitions.

As used in these rules:

A. "CLEC" means competitive local exchange carrier.

B. "Division" means the Division of Public Utilities.

C. "GAAP" means generally accepted accounting principles.

R746-349-3. Filing Requirements.

A. In addition to any other requirements of the Commission or of 63-46b and pursuant to 54-8b-2.1, each applicant for a certificate shall file, in addition to its application:

1. testimony and exhibits in support of the company's technical, financial, and managerial abilities to provide the telecommunications services applied for and a showing that the granting of a certificate is in the public interest. Informational requirements made elsewhere in these rules can be included in testimony and exhibits;

2. proof of a bond in the amount of $100,000. This bond is to provide security for customer deposits or other liabilities to telecommunications customers of the telecommunications corporation. An applicant may request a waiver of this requirement from the Commission if it can show that adequate provisions exist to protect customer deposits or other customer liabilities;

3. a statement as to whether the telecommunications corporation intends to construct its own facilities or acquire use of facilities from other than the incumbent local exchange carrier, or whether it intends to resell an incumbent local exchange carrier's and other telecommunications corporation's services;

4. a statement regarding the services to be offered including:

a. which classes of customer the applicant intends to serve,

b. the locations where the applicant intends to provide service,

c. the types of services to be offered;

5. a statement explaining how the applicant will provide access to ordinary intralata and interlata message toll calling, operator services, directory assistance, directory listings and emergency services such as 911 and E911;

6. an implementation schedule pursuant to 47 U.S.C. 252(c)(3) of the Telecommunications Act of 1996 which shall include the date local exchange service for residential and business customers will begin.

6. summaries of the professional experience and education of all managerial personnel who will have

responsibilities for the applicant's proposed Utah operations;

7. an organization chart listing all the applicant's employees currently working or that plan to be working in or for Utah operations and their job titles;

8. a chart of accounts that includes account numbers, names and brief descriptions;

9. financial statements that at a minimum include:

a. the most recent balance sheet, income statement and cash flow statement and any accompanying notes, prepared according to GAAP,

b. a letter from management attesting to their accuracy, integrity and objectivity, and that the statements were prepared in accordance with GAAP,

c. if the applicant is a start-up company, a balance sheet following the above principles must be filed,

d. if the applicant is a subsidiary of another corporation, financial statements following the above principles must also be filed for the parent corporation;

10. financial statements to demonstrate sufficient financial ability on the part of the applicant. At a minimum, the applicant's statements must show:

a. positive net worth for the applicant CLEC,

b. sufficient projected and verifiable cash flow to meet cash needs as shown in a five-year projection of expected operations,

c. proof of bond as specified in R746-349-3(A)(2);

11. a five-year projection of expected operations including the following:

a. proforma income statements and proforma cash flow statements,

b. when applicable, a technical description of the types of technology to be deployed in Utah including types of switches and transmission facilities,

c. when applicable, detailed maps of proposed locations of facilities including a description of the specific facilities and services to be deployed at each location;

12. an implementation schedule pursuant to 47 U.S.C. 252(c)(3) of the Telecommunications Act of 1996 which shall include the date local exchange service for residential and business customers will begin;

13. evidence of sufficient managerial and technical ability to provide the public telecommunications services contemplated by the application must be demonstrated by a showing of at least the following:

a. proof of certification in other jurisdictions; and that service is currently being offered in other jurisdictions by the applicant,

b. or the corporation has had at least two years of recent experience in providing telecommunications services related to the type of services the CLEC intends to provide;

14. a statement as to why entry by the applicant is in the public interest;

15. proof of authority to conduct business in Utah;

16. a statement regarding complaints or investigations of unauthorized switching, otherwise known as slamming, or other illegal activities of the applicant or any of its affiliates in any jurisdiction. This statement should include the following:

a. sanctions imposed against the applicant for any of these activities,

b. copies of any written documents related to these complaints, investigations, or sanctions, including: orders or other materials from the FCC or state commissions, any courts, or other government bodies, and any complaint letters or other documents from any non-government entities or persons,

c. the applicant's responses to any of these issues;

17. statement about the applicant's written policies regarding the solicitation of new customers and a description of efforts made by the applicant's to prevent unauthorized switching of Utah local service by the applicant, its employees or its agents.

B. Additional questions relating to the technical, financial, and managerial capabilities of the applicant and public interest issues may be submitted by the Division or other parties in accordance with R746-100-8, Discovery.

R746-349-4. Reporting Requirements.

A. When a telecommunications corporation files a request for negotiation with another telecommunications corporation for interconnection, unbundling or resale, the requesting telecommunications corporation shall file a copy of the request with the Commission.

B. Each certificated telecommunications corporation shall file an updated chart of accounts by March 31, of each year.

C. Each certificated telecommunications corporation with facilities located in Utah shall maintain network route maps that include all areas where the corporation is providing or offering to provide service in Utah. These maps will, at a minimum, include central office locations, types of switches, hub locations, ring configurations, and facility routes, accompanied by detailed written explanations. These route maps will be provided to the Division or the Commission upon request.

D. Each certificated telecommunications corporation shall file a map with the Division that identifies the areas within the state where the corporation is offering service. The map should separately identify areas being served primarily through resale and by facilities owned by the carrier. This map shall be updated within 10 days after changes to the service territory occur. The map shall be made available for public inspection.

E. At least five days before offering any telecommunications service through pricing flexibility, a telecommunications corporation shall file with the Commission a price list or the prices, terms, and conditions of a competitive contract. Each filing shall:

1. describe the public telecommunications services being offered;

2. set forth the terms and conditions upon which the public telecommunications service is being offered;

3. list the prices to be charged for the telecommunications service or the basis on which the service will be priced; and

4. be made available to the public through the Division.

F. The certificated CLEC shall file an annual report with the Division on or before March 31 for the preceding year, unless the CLEC requests and obtains an extension from the

Commission. The annual report shall contain the following information, unless specific forms are provided by the Division:

1. annual revenues from operations attributable to Utah by major service categories. That information would be provided on a "Total Utah" and "Utah Intrastate" basis. "Total Utah" will consist of the total of interstate and intrastate revenues. "Utah Intrastate" will reflect only revenues derived from intrastate tariffs, price lists, or contracts. Both Total Utah and Utah Intrastate revenues shall be reported according to at least the following classes of service:

a. private line and special access,

b. business local exchange,

c. residential local exchange,

d. measured interexchange,

e. vertical services,

f. business local exchange, residential local exchange and vertical service revenue will be reported by geographic area, to the extent feasible;

2. annual expenses and estimated taxes attributed to operations in Utah;

3. year-end balances by account for property, plant, equipment, annual depreciation, and accumulated depreciation for telecommunications investment in Utah. The actual depreciation rates which were applied in developing the annual and accumulated depreciation figures shall also be shown;

4. financial statements prepared in accordance with GAAP. These financial statements shall, at a minimum, include an income statement, balance sheet and statement of cash flows and include a letter from management attesting to their accuracy, integrity and objectivity and that the statements follow GAAP;

5. list of services offered to customers and the geographic areas in which those services are offered. This list shall be current and shall be updated whenever a new service is offered or a new area is served;

6. number of access lines in service by geographic area, segregated between business and residential customers;

7. number of messages and minutes of services for measured services billed to end users;

8. list of officers and responsible contact personnel updated annually;

9. a report of gross revenue on a form supplied by the Division. This report shall be used in calculating the Public Utility Regulation Fee owed by the CLEC.

G. The annual report and the report of gross revenue filed by a CLEC shall be considered protected documents under the Government Records Access Management Act. The CLEC shall prominently mark in red each report with the word "Confidential."

R746-349-5. Change of Service Provider.

A. All requests for termination of local exchange or intrastate toll service from an existing telecommunications corporation and subsequent transfer to a new carrier must be in compliance with 47 CFR 64.1100 and 1150, 1996, incorporated by this reference.

B. A telecommunications provider will be held liable for both the unauthorized termination of a customer's service with an existing carrier and the subsequent unauthorized transfer to the providers's own service. Telecommunications providers are responsible for unauthorized service terminations and transfers resulting from the actions of their agents. A carrier that engages in the unauthorized activity shall restore the customer's service to the original carrier without charge to the customer. Customer charges during the unauthorized period shall be the lesser of the charges charged by the original provider or the unauthorized provider. Violators may be punished pursuant to 54-7-25 through 54-7-28. The telecommunications provider responsible for the unauthorized transfer shall reimburse the customer or the original carrier for reestablishing service to the customer at the applicable tariff, price list or contract rate of the original carrier.

R746-349-6. Price Floor.

A. Incumbent local exchange carriers shall be prepared to demonstrate to the Commission compliance with 54-8b-3.3(3) for any telecommunications service or offering under the following conditions:

1. the incumbent local exchange carrier introduces a new service either by tariff or price list;

2. the incumbent local exchange carrier files tariffs or a price list that reduces rates;

3. upon petition by any person; or

4. if requested by the Commission or the Division.

B. Each incumbent local exchange carrier shall file a detailed description of the methods used to comply with 54-8b-3.3(3).

R746-349-7. CLEC Exemptions.

A. Unless otherwise ordered by the Commission either in the CLEC's certificate proceeding or in a proceeding instituted by the Commission or other party, a CLEC is exempt from the following statues and rules. All other rules of the Commission and all other duties of public utilities not specifically exempted by these rules apply to a new entrant. All powers of the Commission not specifically altered by these rules apply to a CLEC.

1. Exemptions from Title 54:

54-3-8, 54-3-19 -- Prohibitions of discrimination
54-7-12 -- Rate increases or decreases
54-4-21 -- Establishment of property values
54-4-24 -- Depreciation rates
54-4-26 -- Approval of expenditures

2. Exemptions from Commission rules:

R746-340-2 (D) -- Uniform System of Accounts (47 CFR 32)
R746-340-2 (E) (1) -- Tariff filings required
R746-340-2 (E) (2) -- Exchange Maps
R746-34l -- Lifeline
R746-344 -- Rate case filing requirements
R746-401 -- Reporting of construction, acquisition and disposition of assets
R746-405 -- Tariff formats
R746-600 -- Accounting for post-retirement

benefits

3. The CLEC will be exempted from the Lifeline rule, R746-341, only until the Commission establishes Lifeline rules that may include the CLEC or until the CLEC begins to provide residential local exchange service.

R746-349-8. CLEC's Obligations with Respect to Provision of Services.

A. The CLEC agrees to provide service within specified geographic areas upon reasonable request and subject to the following conditions:

1. the CLEC's obligation to furnish service to customers is dependent on the availability of suitable facilities on its network at company-designated locations as identified in its annual network route map filing;

2. the CLEC will only be responsible for the installation, operation, and maintenance of services that it provides;

3. the CLEC will furnish service if it is able to obtain, retain and maintain suitable access rights and facilities, without unreasonable expense, and to provide for the installation of those facilities required incident to the furnishing and maintenance of that service;

4. at its option, the CLEC may require payment of construction or line-extension charges by the customer ordering telephone service. Those charges will be in addition to the normal rates and charges applicable to the service being provided;

5. when potential customers are so located that it is necessary or desirable to use private or government right-of-way to furnish service, those potential customers may be required, at the CLEC's option, to provide or pay the cost of providing the right-of-way in addition to any other charges;

6. all construction of facilities will be undertaken at the discretion of the CLEC, consistent with budgetary responsibilities and consideration for the impact on the CLEC's other customers and contractual responsibilities.

KEY: essential facilities*, imputation*, public utilities, telecommunications

December 17, 1997 **54-7-25 through 28**
54-8b-2
54-8b3.3
54-8b-3.3
63-46b

R746. Public Service Commission, Administration.
R746-356. Intrastate (IntraLATA) Equal Access To Toll Calling Services By Telecommunications Carriers.
R746-356-1. Purpose and Authority.

A. Purpose --

1. These rules establish procedures and methods by which all Commission certified local exchange carrier telecommunications corporations (LECs) will provide and maintain equal access, and customer dialing parity, to intrastate (intraLATA) toll services when requested by one or more Commission or Federal Communications Commission (FCC) certified telecommunications corporations or common carriers.

2. The costs of the equal access implementation and continuing service shall be fairly and reasonably distributed based on the future toll service market share achieved by the LEC and all certified telecommunications carriers requesting equal access service.

3. The provisioning of interLATA interstate toll services by a subsidiary, or an affiliate, of a LEC will be considered to be the same as those services being provided by the LEC itself for implementation of intrastate equal access.

B. Authority --

1. Section 54-8b-2.2(3) requires that the Commission establish these rules.

2. Title 47 U.S.C. Section 271(e)(2)requires implementation of intraLATA equal access for Bell Operating Company interLATA service offerings.

3. Title 47 U.S.C. Section 251 (b)(3), requires all LECs to provide intraLATA equal access when requested by a commission or FCC certified telecommunications corporation or common carrier, or when the LEC commences providing in-region or interstate interLATA toll service to its customers, with some exceptions as defined in 47 U.S.C. Section 251(f)(2).

R746-356-2. Definitions.

For purposes of these rules, the following terms shall bear the associated meanings. All other terms are as defined in Section 54-8b

A. "Bona Fide Request" -- A written request submitted by a telecommunications corporation or common carrier certified by the Commission or the FCC for intraLATA or intraLATA equal access service in an exchange or exchanges of a LEC.

B. "Equal Access" -- Dialing arrangements and other service characteristics provided by a LEC to other carriers that are equivalent in type and quality to that provided by the LEC, or designated contract carrier, for its provision of intraLATA toll service.

C. "Presubscription" -- A process that allows customers to preselect the carrier that has equal access services for providing toll calls through the use of 1+ or 0+ without dialing a multi-digit access code, for example: 1O356 or 101356.

D. "Presubscribed Interexchange Carrier"(PIC) -- The certified telecommunications carrier a customer selects to provide 1+ or 0+ toll service, without the use of access codes, following equal access presubscription implementation.

E. "2-PIC" -- The equal access presubscription option that affords customers the opportunity to select one certified telecommunications carrier for all interLATA 1+ or O+ toll calls and, at the customer's option, to select another certified telecommunications carrier for all intraLATA 1+ or O+ toll calls.

R746-356-3. Equal Access Implementation.

A. Implementation -- LECs shall proceed to implement intraLATA equal access, using the 2-PIC method, in accordance with the following criteria:

1. US West Communications and all LECs that now

provide, through the LEC, subsidiary or affiliate company, interLATA toll services to Utah customers, and which provide interLATA equal access to any telecommunications carrier, including a LEC subsidiary or affiliate, shall file an equal access implementation plan with the Commission within 30 days after the effective date of these rules.

a. The plan shall include a cutover target date(s) that is no later than: seven months after the effective date of these rules, or in the case of US West Communications, the date on which US West implements in-region interLATA services by the authority of the FCC, whichever date is earlier.

b. Telecommunications carriers requiring intraLATA equal access from a LEC must file a bona fide request with the LEC within 30 days after receiving the implementation plan, with copies of the request being mailed to the Commission, the Division, and the CCS.

c. If no bona fide requests are received for equal access at one or more exchanges, the implementation plan and target date for these exchanges can, upon Commission approval, be deferred to a future date.

2. A LEC that does not meet the criteria of R746-356-3(A)(1), will respond to a bona fide request, or on its own initiative, by filing an implementation plan with the Commission within 30 days.

a. The target date for implementation shall be no later than seven months from the date of receipt of the bona fide request.

b. Copies of the plan shall be mailed to the requesting telecommunications carrier, all other carriers subscribing to the LEC's interLATA equal access service, the Commission, and the Division.

3. A LEC can request a temporary waiver of the requirement to implement intraLATA equal access for one or more of its exchange areas, when it can prove that it does not have the technical or economic abilities to provide intraLATA equal access service.

a. The Commission, after notice and opportunity for hearing, may grant a waiver upon a showing of a lack of technical or economic ability.

b. When a LEC receives a waiver it shall implement interLATA and IntraLATA equal access, no later than December 31, 2001, unless a later date has been established in the Commission waiver.

B. Approval of Equal Access Plans -- The Commission will assign each LEC equal access plan a docket number and issue a notice of the proceeding to all parties on its telecommunications list.

1. The Commission shall approve each plan within 45 days of the filed date, unless hearings are required to approve the implementation plan.

2. The plan target date(s) will be automatically extended by the number of days in excess of 45 required to finally approve a plan.

C. Exemption of Toll Services -- A LEC shall continue to provide retail toll services as a carrier of last resort for its own certified territory, or as a PIC for its own certified territory, until an order of exemption is issued by the Commission.

D. Continued Services -- LECs will continue to provide services for customer dialed number protocols 0-, Nll, 411,611, 911, and 976. These numbers are not equal access and call routing will continue to be processed unchanged by the LEC following the implementation of intraLATA equal access. Calls using customer dialed protocols, such as 500, 700, 800, 900, 10356, and 101356X, are not subject to presubscription and they will continue to be routed to the appropriate non-equal access carrier.

E. Routing Interface Signaling -- All carriers shall establish uniform end-to-end message routing interface signaling that includes at least the carrier identification code (CIC), originating line or trunk telephone number, and terminating line or trunk telephone number. This requirement is to permit direct billing to the responsible carrier(s) for use of the switched access network elements provided by other carriers.

R746-356-4. Equal Access Implementation Plans.

A. Criteria -- An intraLATA equal access implementation plan filed with the Commission, with a copy to the Division, shall include at least the following:

1. the planned individual central office or exchange cutover dates;

2. a schedule of any planned hardware and software upgrades required;

3. estimated investments and expenses for the planned upgrades;

4. estimated internal training expenses;

5. estimated cutover expenses;

6. estimated administrative expenses for preparing and filing tariffs;

7. estimated order processing expenses;

8. estimated customer notification and education expenses;

9. the computations of its estimated proposed equal access recovery charges; and

10. a copy of the work papers used to calculate the information required by R746-356-4(A)(3) through (9).

B. Service of Plans -- Copies of the plan shall be served on the Division of Public Utilities (Division), Committee of Consumer Services (CCS), and all telecommunications carriers that then subscribe to interLATA equal access from the LEC.

C. Status Reports -- In the Commission approval of a plan, the Commission shall establish the LEC's reporting requirements for reporting implementation progress, with a final report filed after implementation.

R746-356-5. Customer Education, Notification, and Presubscription Contact Procedure.

A. Customer Information -- Equal access customer instructional materials, forms, and notification letters developed by a LEC, shall be competitively neutral and unbiased as to the presubscription process. They shall clearly state the available PICs and a toll free contact number for each PIC. The proposed text of the first mailing letter shall be filed with the Commission and the Division at least 60 days prior to equal access implementation.

B. Customer Notification -- Customer notification of the

initial availability of intraLATA equal access will be provided as follows:

1. For exchanges in which interLATA equal access balloting is required, the ballot information shall be expanded to provide customer instructions that will allow the customer to presubscribe to both an interLATA and an intraLATA PIC, including the LEC.

2. For exchanges in which interLATA equal access has previously been provided, the balloting procedure will not be required. The LEC will provide notification of the intraLATA equal access implementation, and request that the customers preselect their PIC by letter required by R746-356-5(A). The letter will be sent to all LEC customers by 1st Class Mail no earlier than 45 days and no later than 15 days prior to the scheduled implementation date for each exchange.

3. Customers applying for local exchange service after the initial equal access notification mailing(s), but before implementation of equal access, shall receive a copy of the notification letter from the LEC.

4. Each PIC will be responsible for providing the LEC(s) with a current toll free number(s) to be included in the initial customer equal access notification letter.

5. The LEC will not be required to modify the customer notification letter seven days prior to the first mailing for the purpose of including another PIC that did not file a bona fide request in time for the letter preparation.

C. Subsequent Customer Notification -- Subsequent to the equal access implementation of each exchange. The following procedures shall apply to all customer contacts and requests:

1. Customers applying for new local exchange service from the LEC shall be informed of the presubscription process and their choice of available PICs from a list that is referred to by the service representative in a rotational or random manner. This list must be constructed so that a LEC, and any of its subsidiaries, or affiliates, are not listed more than once, nor mentioned or written adjacent to one another. When a LEC and its subsidiary, or affiliate, have very similar names, the customer must be specifically advised as to the relationship between the entities.

2. Each new customer shall be required to select both an interLATA PIC and an intraLATA PIC. A customer who does not select a PIC(s) shall be informed that they will not be presubscribed to any toll provider, and will be required to utilize access codes when placing toll calls, until that customer selects a PIC.

3. When a customer requests more information about a specific PIC, other than the LEC, the LEC representative shall refer the caller to the PIC.

4. When a customer requests or advises the LEC representative of an address change, with or without a number change, the LEC shall assume that the existing PICs will not change for the new address, unless the customer voluntarily directs the LEC to do otherwise.

5. When a customer reports trouble in placing intraLATA toll calls, the LEC representative shall first determine whether the customer is presubscribed to a PIC. If so, the report will be handled as a service complaint pursuant to the procedure in effect between the LEC and the PIC. If the customer is not presubscribed, the customer will be asked to select a PIC in the manner of a new customer, per R746-356-5(C)(1).

6. LEC representatives may market their company's intraLATA service when handling "general service" calls with customers. A general service call is a call to the LEC requesting general information about the LEC's services, the establishment or removal of the LEC's services, billing inquiries, or calls relating to any other aspect of the services then provided to the customer by the LEC. General service calls do not include calls requesting a specific PIC change, address change, or telephone number change from existing customers.

R746-356-6. Presubscription Selection Procedures.

A. Initial and Subsequent Orders -- The initial and subsequent orders for presubscribed PIC selections of customers shall be placed with a LEC by the customers or carriers, and confirmed pursuant to any FCC requirements and R746-349-3, Filing Requirements.

B. Multiple PIC Change Orders -- When a LEC receives multiple PIC change orders for the same customer, the LEC shall process and implement the PIC change order with the latest date.

C. Authorized Selections -- PIC presubscription selections shall only be authorized and valid when made by the "account holder" as defined in R746-240-2(A).

D. Payphone and Shared Tenent Services -- IntraLATA PIC presubscription shall be available to public and semi-public pay phone services and to Shared Tenant Services (STS). When the LEC receives differing PIC selection directions from a pay phone service or a STS provider and a premises owner, or a legally authorized representative of the premises owner, the LEC will assign the PIC selection of the owner.

E. Automatic PIC Assignment -- During the initial intraLATA equal access implementation of each exchange or central office, the existing customers that do not provide a PIC selection to the LEC, or to an equal access requesting carrier, will automatically receive the equal access PIC of the LEC serving the customer.

R746-356-7. Presubscription Charges.

A. Single PIC Selection Charge -- The LEC will establish an intraLATA equal access presubscription charge for new service PIC selections, or PIC selection changes. This charge will initially be the same as the LEC's interLATA charge. This charge will be subject to change and approval of the Commission. This intraLATA charge will apply when the customer is establishing or changing only the intraLATA PIC presubscription.

B. Multiple PIC Selection Charge -- The LEC will establish another intraLATA equal access presubscription charge that will apply when a customer orders the simultaneous installation or change of presubscription of both the intraLATA and interLATA PICs. Initially, the IntraLATA PIC charge applied when there is an order for both intraLATA and InterLATA PICs will be one-half of the intraLATA PIC charge pursuant to R746-356-7(A). This

charge will be subject to change and approval of the Commission.

C. Waiver --

1. During the initial equal access implementation for each exchange, the intraLATA presubscription charge shall not be imposed on the customers for their initial PIC selection.

2. Customers will be allowed to make one intraLATA PIC selection change within a four month period following implementation date of each exchange or central office without being billed the intraLATA presubscription PIC charge.

3. The PIC charge shall be imposed for any subsequent intraLATA PIC changes, or after the four-month period ,whichever occurs first.

4. If customers change their interLATA PIC at the same time they initially select an intraLATA PIC, the customer shall be billed only the interLATA PIC change charge.

D. New Customer Waiver -- New customers receiving service from a LEC, who do not initially select a presubscribed intraLATA PIC, may select a presubscribed interLATA during the first four-months of service without incurring the intraLATA PIC charge.

R746-356-8. Equal Access Implementation Cost Recovery Procedure.

A. Recovery of Waived PIC Charges -- The LEC shall bill each equal access telecommunications carrier for the presubscription PIC charges waived by R746-356-7(C) or (D).

B. Recovery of Expenses -- Any recovery of recurring and one-time expenses incurred for the provision of intraLATA equal access shall be through a separate, temporary equal access recovery charge (EARC) element in a LEC's switched access and toll tariffs. These expenses may include:

1. the incremental additional expenses related directly to the provision of hardware and software investments not required to upgrade the switching capabilities of each central office absent the provision of the intraLATA equal access;

2. expenses for the incremental additional training of customer contact personnel in the additional processing of intraLATA presubscription requests;

3. expenses related directly to the preparation, reproduction and mailing of the customer educational materials and equal access notifications;

4. expenses related directly to the preparation, reproduction and filings of the intraLATA equal access tariffs;

5. expenses for the Utah portion of the incremental additional software programming of the billing programs that would not be required absent the Utah intraLATA equal access; and

6. expenses for the Utah portion of the incremental additional software programming of the business office support systems that would not be required absent the Utah intraLATA equal access.

C. Recovery Timing -- Expenses for intraLATA equal access implementation developed from items shown in R746-356-8(B)shall be subject to approval by the Commission. The EARC shall be assessed to estimated monthly intraLATA originating switched access minutes and monthly originating LEC toll minutes of use, over a three-year period for US West, and over a two-year period for all other LECs.

D. True-Up --

1. For each applicable year, the EARC will be trued-up and changed based on the actual incurred expenses, the actual originating intraLATA switched access minutes billed to each PIC, and the intraLATA toll minutes billed by the LEC.

2. The true-ups shall result in an annual payment by the LEC to each participating equal access carrier for excess payments, or an annual bill from the LEC to each participating equal access carrier for any under-payments.

3. The true-ups should result in an annual inter-company payment process based on the proportional intraLATA switched access minutes previously billed to each carrier and the intraLATA toll minutes billed by the LEC.

4. The LEC and an equal access carrier may agree to alternative compensation arrangements in lieu of an annual payment.

KEY: communications, equal access*, telecommunications, toll calling*
December 30, 1997 **54-8b-2.2(3)**

R765. Regents (Board of), Administration.
R765-171. Postsecondary Proprietary School Act Rules.
R765-171-1. Purpose.

To set forth standards by which institutions and their agents subject to the Postsecondary Proprietary School Act are registered to operate consistent with public policy.

R765-171-2. References.

2.1. Title 53B, Chapter 5, Utah Code Annotated 1953.

R765-171-3. Definitions in addition to those in 53B-5-103.

3.1. A "course" is a unit subject within a program of education that must be successfully mastered before an educational credential can be awarded.

3.2. An "institution" operates for profit or nonprofit, is degree or nondegree granting, maintains a place of business within the state of Utah, solicits students from the general public, charges tuition and/or fees, offers instruction to students for entry-level employment or for upgrading in a specific field of endeavor, affords students legitimate and pedagogical methods that will logically culminate in a lawful educational credential, and is not exempt in accordance with this Title 53B, Chapter.

3.3. A "resident institution" is one where the courses and programs offered are predominantly conducted in a classroom or a class laboratory, with an instructor.

3.4. A "correspondence institution" is one in which the instruction is conducted predominantly through the means of home study. It is expected to maintain a stability of faculty and other resources sufficient for the completion of the program(s) offered, in order that the credential awarded will be of the caliber accepted by recognized authorities in the field.

3.5. A "branch or extension" is a freestanding location that is apart from the main campus, where resident instruction is provided on a regular, continuing basis.

3.6. A "permit" consists of a nontransferable pocket identification card issued to an agent or sales representative by the board, stating that he has been authorized to solicit students in behalf of his employing institution.

3.7. "Probation" is a negative action of the board which specifies a stated period for an institution or agent to correct stipulated deficiencies; but does not imply any impairment of operational authority.

3.8. A "program of education" consists of a series of courses which when completed, lead to an educational credential.

3.9. "Revocation" is a negative action of the board which orders an institution or agent to surrender its certificate or permit and cease operations, including advertising, enrolling students and teaching classes, for whatever reason.

3.10. "Suspension" is a negative action of the board which places stipulated limitations upon usage of a permit or certificate of registration for a stated period of time during which the deficiencies must be corrected or the certificate may be revoked.

R765-171-4. Rules Relating to 53B-5-104.

4.1. In order to award a degree or certificate an institution must meet the following general criteria:

4.1.1. The institution's program must meet the following generally accepted minimum number of semester/quarter credit hours required to complete a standard college degree: associate, 60/90; bachelor's, 120/180; master's, 150/225; and doctorate, approximately 200/300.

4.1.2. The areas of study at the institution, the methods of instruction, and the level of effort required of the student for a degree or certificate must be determined by the board to be commensurate with reasonable standards established by recognized accrediting agencies and associations.

4.1.3. In order for the institution to award a certificate or degree, the faculty must be academically prepared in the area of emphasis at the appropriate level, or as to vocational-technical programs, must have equivalent job expertise based on reasonable standards established by recognized accrediting agencies and associations. Notwithstanding, credit may be awarded toward degree completion based on (1) transfer of credit from other accredited and recognized institutions, (2) recognized proficiency exams (CLEP, AP, etc.), and (3) in-service competencies as evaluated and recommended by recognized national associations such as the American Council on Education. Such credit for personal experiences shall be limited to not more than one year's worth of work (45 quarter/30 semester credit hours).

4.1.4. In order to offer a program of study, either degree or nondegree, it must be of such a nature and quality as to make reasonable the student's expectation of some advantage in enhancing or pursuing employment, as opposed to a general education or nonvocational program which is excluded from registration under 53B-5-105(g).

4.2. The faculty member shall assign work, set standards of accomplishment, measure the student's ability to perform the assigned tasks, provide information back to the student as to his or her strengths and deficiencies, and as appropriate, provide counseling, advice, and further assignments to enhance the student's learning experience. This requirement does not preclude the use of computer assisted instruction or programmed learning techniques when appropriately supervised by a qualified faculty member.

4.3. As appropriate to the program or course of study to be pursued, the institution shall evaluate the prospective student's experience, background, and ability to succeed in that program through review of educational records and transcripts, tests or examinations, interviews, and counseling. This evaluation shall include a finding that the prospective student is beyond the age of compulsory high school attendance, as prescribed by Utah law; has received either a high school diploma or a General Education Development certificate, or has satisfactorily completed a national or industry developed competency-based test or an entrance examination that establishes the individual's ability to benefit. Based on this evaluation, the institution, before admitting the prospective student to the program, must have a reasonable expectation that the student can successfully complete the program, and that if he or she does so complete, that there is a reasonable expectation that he or she will be qualified and able to find appropriate employment based on the skills acquired through the program.

4.4. Each institution not exempted from this chapter shall prepare for the use of prospective students and other interested persons a catalog or general information bulletin that contains the following information:

4.4.1. legal name, address, and telephone number of the institution, also any branches and/or extension locations;

4.4.2. date of issue;

4.4.3. names, titles, and qualifications of administrators and faculty;

4.4.4. calendar, including scheduled state and federal holidays, recess periods, and dates for enrollment, registration, start of classes, withdrawal and completion;

4.4.5. admission and enrollment prerequisites, both institutional and programmatic, as provided in subsection 8.2;

4.4.6. policies regarding student conduct, discipline, and probation for deficiencies in academics and behavior;

4.4.7. policies regarding attendance and absence, and any provision for make-up of assignments;

4.4.8. policies regarding dismissal and/or interruption of training and of reentry;

4.4.9. policies explaining or describing academic matters such as:

4.4.9.1. student records maintained by the institution, including transcripts;

4.4.9.2. credit granted for previous education and experience;

4.4.9.3. grading system, including standards of progress required;

4.4.9.4. provision to students of interim grade or performance reports; and

4.4.9.5. graduation requirements and the credential awarded upon satisfactory completion of a program, as provided in subsection 8.4;

4.4.10. schedule of tuition, any other fees, books, supplies and tools;

4.4.11. policies regarding refunds of any unused charges collected as provided in subsection 8.3.2;

4.4.12. student assistance available, including scholarships and loans.

4.4.13. name, description, and length of each program offered, including a subject outline with course titles and approximate number of credit or clock hours devoted to each course;

4.4.14. placement services available and any variation by program;

4.4.15. facilities and equipment available; and

4.4.16. such other information as the institution may desire to include.

R765-171-5. Rules Relating to 53B-5-105.

5.1. Institutions that provide nonprofessional review courses, such as law enforcement and civil service, are not exempt, unless these are considered as workshops or seminars within the meaning of 53B-5-105(8).

5.2. In order for the church or religious denomination to be "bona fide" such that the institution is exempt from registration, the institution may not be the church or religious denomination's primary purpose, function or asset.

5.3. An institution accredited by an accrediting organization recognized by the Commission on Recognition of Postsecondary Accreditation is exempt from registration for the purposes of this chapter.

5.4. Any institution which claims an accreditation exemption must furnish acceptable documentation upon request by the board.

5.5. When available evidence suggests that an accredited institution is not in compliance with the standards for registration under this chapter and these rules, first the board shall contact the officials of the subject institution and request corrective action. If the board determines that the institution is unable or unwilling to resolve the matter, the board shall request corrective action from the appropriate accrediting authority.

5.6. To be exempt, the training or instruction shall not be the primary activity of the organization, association, society, labor union, or franchise system.

5.7. Flight schools approved under Part 141, Federal Aviation Regulations (FAR), 14 CFR Chapter 141, are exempt. Schools providing aviation training under Part 61, FAR, 14 CFR Chapter 61, are required to register.

5.8. When available evidence suggests that an institution regulated and approved by a state or federal governmental agency is not in compliance with the standards for registration under this chapter and these rules, first the board shall contact the officials of the subject institution and request corrective action. If the board determines that the institution is unable or unwilling to resolve the matter, the board shall request corrective action from the appropriate state or federal government agency.

5.9. The board shall determine(s) an institution's status in accordance with the categories contained in this section.

5.10. An exempt institution shall notify the board within thirty (30) days of a material change in circumstances which may affect its exempt status as provided in this section and shall follow the procedure outlined in Section 53B-5-106.

5.11. An exempted institution which voluntarily applies for a certificate by filing a registration statement shall comply with all rules as though such institution were nonexempt.

5.11.1. To apply for a certificate of registration, an accredited institution shall submit a completed registration statement application and a copy of such portions of its current accreditation self-evaluation report as are specified by the Board.

R765-171-6. Rules Relating to 53B-5-106.

6.1. The registration statement combined with an attached current catalog or information bulletin as outlined in subsection 4.4 of this chapter shall provide information and assertions as follows:

6.1.1. the institution's name, address, and telephone number;

6.1.2. the names of all persons involved in the operation of the institution and a stipulation that the resumes are on file at the institution and available to the students.

6.1.3. a current financial report, as described in subsection 7.9;

6.1.4. that its articles of incorporation have been registered and accepted by the Lieutenant Governor's office

and it has a local business license, if necessary;

6.1.5. that its facilities, equipment, and materials meet minimum standards for the training and assistance necessary to prepare students for employment;

6.1.6. that it maintains accurate attendance records, progress and grade reports, and information on tuition and fee payments appropriately accessible to students;

6.1.7. that its maintenance and operation is in compliance with all ordinances, laws, and codes relative to the safety and health of all persons upon the premises; and

6.1.8. that it maintains adequate insurance continuously in force to protect its assets.

6.2. The institution provides copies of the following documents:

6.2.1. a sample of the credential(s) awarded upon completion of a program;

6.2.2. a sample of current advertising including radio, television, newspaper and magazine advertisements, and listings in telephone directories; and

6.2.3. a copy of the student enrollment agreement.

6.3. A new institution which was not in operation in Utah prior April 27, 1987, and which intends to solicit and enroll students in this state, shall demonstrate as part of its registration statement that there is:

6.3.1. sufficient student interest in Utah in its courses; and

6.3.2. reasonable employment potential in those areas of study in which credentials will be awarded.

6.4. In addition, a branch institution whose parent campus is located outside of the state of Utah shall:

6.4.1. provide a copy of the authorization granted by the state of the parent institution;

6.4.2. designate a Utah resident with an agent's permit from the board as a permanent contact authorized to legally accept the responsibility to respond to student inquiries; and

6.4.3. make available a listing of which programs are offered in whole or in part in Utah and whether the student can complete his or her program without having to take residence at the parent campus;

6.5. Correspondence institutions, within or without the state of Utah shall demonstrate that:

6.5.1. their educational objectives can be achieved through home study;

6.5.2. their programs, instructional material, and methods are sufficiently comprehensive, accurate, and up-to-date to meet the announced institutional course and program objectives;

6.5.3. they provide adequate interaction between student and instructor, through the submission and correction of lessons, assignments, examinations, and such other methods as are recognized as characteristic of this particular learning technique and

6.5.4. any degrees and certificates earned through correspondence study meet the requirements and criteria of 4.1.

6.6. An authorized officer of each institution not exempted from this chapter shall sign a statement that:

6.6.1. discloses whether the institution, or any owner, administrator, faculty, staff, or agent of the institution has violated laws, federal regulations or state rules related to the operation of educational institutions as determined in a criminal, civil or administrative proceeding within five years preceding the filing of the registration statement; and

6.6.2. the information which the institution has provided in its registration statement is true and correct.

6.7. Upon receipt of a registration statement and its attachments, the board, within thirty (30) days, shall either issue a certificate, request further information or conduct a site visit to the institution as detailed in subsection 11.1.

6.8. A certificate of registration shall be issued by the board, if after review of an institution's registration statement, it is satisfied that the interests of the public will be served. This certificate is valid until it expires or is renewed, supplemented, canceled, or forfeited.

6.9. A registered institution shall notify the Board of circumstances that will result in a change in any information contained on the certificate, including name, type of institution, ownership or management, exemption status, academic programming, facilities, new or additional locations, etc. The Board shall determine whether the change necessitates a new registration application.

6.10. An institution ceasing its operations shall inform the board and provide the board with student records in accordance with 53B-5-109.

R765-171-7. Rules Relating to 53B-5-107.

7.1. An authorized officer of the institution to be registered under this chapter shall sign a certificate as to whether the institution or an owner, administrator, faculty, staff, or agent of the institution has violated laws, federal regulations or state rules related to the operation of educational institutions as determined in a criminal, civil or administrative proceeding within five years preceding the filing of the registration statement.

7.2. The Board shall refuse to register an institution when it determines that the institution or an owner, administrator, faculty, staff, or agent of the institution has violated laws, federal regulations or state rules related to the operation of educational institutions as determined in a criminal, civil or administrative proceeding and as a consequence of such violation(s) the Board has a reasonable doubt that the institution will function in accordance with these laws and rules or provide students with an appropriate learning experience.

7.3. A change in the ownership of an institution, as defined in subsection 53B-5-103(8), occurs when there is a merger or change of ownership or partnership or stock or assets of more than 50 percent within a three-year period. When this occurs the following information is submitted to the board for its review:

7.3.1. a copy of any new articles of incorporation;

7.3.2. a current financial statement, as outlined in subsection 7.9;

7.3.3. a listing of all institutional personnel that have changed as a result of the ownership transaction, together with complete resumes and qualifications;

7.3.4. a detailed description of any material modifications to be made in the operation of the institution;

and

7.3.5. payment of the appropriate fee.

7.4. Procedures for filing a renewal application consist of:

7.4.1. the board will notify the institution approximately sixty (60) days prior to the expiration date of its certificate of registration of the requirements for reregistration;

7.4.2. prior to thirty (30) days before expiration date, the institution shall submit the new registration statement with its attachments to the board, along with the appropriate fee.

7.4.3. within thirty (30) days after receipt of the new registration form and its attachments, the board shall either issue a certificate, request further information or conduct a site visit to the institution; and

7.4.4. when all requirements have been satisfied, a new certificate shall be issued.

7.5. If an institution fails to comply with the requirements to reregister stated above, its registration may be suspended or revoked.

7.6. To be reinstated an institution must submit evidence of compliance, together with payment of a penalty fee of $50, in addition to any other fees owed in accordance with 7.8.

7.7. Although a certificate of registration is valid for two (2) years, the board may request periodic updates of financial statements and the following statistical information:

7.7.1. number of students enrolled from September 1 through August 31;

7.7.2. number of students who completed and received a credential;

7.7.3. number of students who terminated or withdrew;

7.7.4. number of administrators, faculty, supporting staff, and agents; and

7.7.5. new catalog, information bulletin, or supplements.

7.8. The board collects the following fees in accordance with Section 53B-5-107(5):

7.8.1. initial registration statement and renewal application fees will be based on the number of students enrolled:

TABLE

Number of Students	Registration Fee
0-25 students per year,	$50
26 students and over per year	$100

7.9. The institution must have, in addition to other criteria contained in this chapter, sufficient financial resources to fulfill its commitments to students and staff members, and to meet its other obligations as evidenced by the following financial statements:

7.9.1. a current financial report prepared in accordance with generally accepted accounting principles including a balance sheet and an income statement for the most recent fiscal year with all applicable footnotes;

7.9.2. pro forma financial statements until actual information is available when an institution has not operated long enough to complete a fiscal year; and/or

7.9.3. a certified fiscal audit of its operations or such other documentation of financial status as may be required by the board.

7.10. The board will not register a program at a proprietary institution if it determines that the educational credential associated with the program may be interpreted by employers and the public to represent the undertaking or completion of educational achievement that has not been undertaken and earned.

7.11. Acceptance of registration statements and the issuing of certificates of registration to operate a school signifies that the legal requirements prescribed by statute and regulations have been satisfied. It does not mean that the board supervises, recommends, nor accredits institutions whose statements are on file and who have been issued certificates of registration to operate.

R765-171-8. Rules Relating to 53B-5-108.

8.1. The information required by 53B-5-108(1) contained in the institution's catalog or information bulletin as set forth in subsection 4.4.

8.2. An institution, as part of its assessment for enrollment, shall consider the applicant's basic skills, aptitude, and physical qualifications, as these relate to the choice of program and to anticipated employment and shall not admit a student to a program unless there is a reasonable expectation that the student will succeed, as prescribed by 4.3.

8.3. Financial dealings with students shall reflect standards of ethical practice and provide for the following:

8.3.1. a three-day cooling-off period, commencing with the day the contract with the applicant is signed until midnight of the third business day following such date, exclusive of Sundays and holidays, during which time the contract may be rescinded.

8.3.2. a fair and equitable refund policy that considers the interests of a student who withdraws as well as the institution itself. The refund must include a pro rata part of prepaid tuition and fees for the student who withdraws from the institution after only an initial exposure to its educational and/or housing program;

8.3.3. complete written information on repayment obligations to all applicants for financial assistance before an applicant student assumes such responsibilities; and

8.3.4. when there is a written enrollment agreement, promissory note or other obligation, such documents shall contain provisions which detail the rights of both the student and the institution.

8.4. Following the satisfactory completion of his or her training and education, a student is provided with appropriate educational credentials that show the program in which he or she was enrolled, together with a transcript of courses completed and grades or other performance evaluations received.

8.5. No institution shall use the designation of 'college' nor 'university' in its title nor in conjunction with its operation unless it actually confers a standard college degree as one of its credentials.

8.5.1. Such an institution which has, prior to the effective date of this chapter, used the designation of 'college' or 'university' in its title or in conjunction with its operation,

may continue that practice.

8.5.2. The name of the institution shall not contain any reference that could mislead potential students or the general public as to the type or nature of its educational services, affiliations or structure.

8.6. Advertising standards consist of the following:

8.6.1. the institution's chief administrative officer assumes all responsibility for the content of public statements made on behalf of the institution and instructs all personnel, including agents, as to this chapter and other appropriate laws regarding the ethics of advertisement and recruitment;

8.6.2. advertising shall be clear, factual, supportable, and shall not include any false or misleading statements with respect to the institution, its personnel, its courses and programs, its services, nor the occupational opportunities for its graduates;

8.6.3. the institution shall not advertise in conjunction with any other business or establishment, nor advertise in "help wanted" nor in "employment opportunity" columns of newspapers, magazines or similar publications in such a way as to lead readers to believe that they are applying for employment rather than education and training. It must disclose that it is primarily operated for educational purposes, if this is not apparent from its legal name;

8.6.4. an institution, its employees and agents, shall refrain from other forms of ambiguous or deceptive advertising, such as:

8.6.4.1. claims as to endorsement by manufacturers or businesses or organizations until and unless written evidence supporting this fact is on file; and

8.6.4.2. representations that students completing a course or program may transfer either credits or credentials for acceptance by another institution, state agency, or business, unless written evidence supporting this fact is on file;

8.6.5. an institution shall maintain a file of all promotional information and related materials for a period of three (3) years;

8.6.6. the board may require an institution to submit its advertising prior to its use; and

8.6.7. pursuant to subsections 53B-5-107(8) and 7.11, the only statement authorized for use in advertising is "Registered under the Utah Postsecondary Proprietary School Act." UCA 53B-5-107(8).

8.7. Recruitment standards include the following:

8.7.1. recruiting efforts shall be conducted in a professional and ethical manner and shall be free from 'high pressure' techniques; and

8.7.2. an institution shall not use loans, scholarships, discounts, or other such enrollment inducements, where such result in unfair or discriminatory practices.

8.8. An agent or sales representative may not be directly or indirectly portrayed as 'counselor,' 'advisor,' or any other similar title to disguise his or her sales function.

8.9. General requirements for all agents or sales representatives shall consist of the following:

8.9.1. no individual representing any institution offering programs or courses in this state may solicit students without first obtaining a permit, as set forth in sections 8.12 to 8.15.

8.9.2. a permit shall not be issued to an individual who has been convicted of a felony or misdemeanor or has been enjoined for violations of any state or federal laws relating to education within five (5) years preceding the filing of a permit application;

8.9.3. an agent or representative is responsible to have a clear understanding and knowledge of the programs and courses, tuition, enrollment requirements, enrollment agreement, support services, and the general operational procedures thereof;

8.9.4. a person may render information about an institution without securing a permit if:

8.9.4.1. he or she does not mention the specific price of a program or course and does not seek to solicit students; or

8.9.4.2. he or she participates in a high school career day or college day program and only explains the institution's offerings.

8.9.5. an agent shall surrender his or her permit to the board upon termination of his or her employment with the institution, or in the event that his or her permit is revoked or suspended before its expiration.

8.10. An institution is responsible to provide indemnification to any student suffering loss as a result of any fraud or other form of misrepresentation used by an agent in the recruitment process.

8.11. An institution operating in Utah but domiciled outside the state shall designate a Utah resident as its contact as set forth in subsection 6.4.2.

8.12. The agent's permit application shall include:

8.12.1. the name, Utah address, and telephone number of the applicant;

8.12.2. the name and address of the institution(s) the agent seeks to represent;

8.12.3. a letter of authority by the institution's chief administrative officer;

8.12.4. three (3) letters of reference from third persons or businesses who know the applicant and his work;

8.12.5. a complete record of the applicant's past five (5) years of employment;

8.12.6. a signed statement that the applicant has not been convicted, as set forth in subsection 8.9.2 above; and will fairly and honestly represent the institution(s) consistent with the instructions issued by it and the information which is contained on its registration statement.

8.13. Permits are restricted as follows:

8.13.1. a permit is issued to a specific individual, residing at a specific address, to represent a specific institution(s);

8.13.2. an agent, upon a material change in any of the information contained in his application, shall within thirty (30) days submit a supplementary application to the board for approval, and detail all particulars; and

8.13.3. although a permit is issued for two (2) years, the board may request interim information as to the agent's activities.

8.14. Procedure for filing a renewal permit includes:

8.14.1. the board will notify each agent prior to the expiration date of his permit and provide information as to the requirements for renewal;

8.14.2. the agent shall submit the renewal application with attachments to the board.

8.14.3. within thirty (30) days after receipt of the information and any attachments, the board will issue another permit, request further information, or conduct an investigation;

8.14.4. when all requirements have been satisfied, a new permit will be issued;

8.14.5. should an agent fail to comply, as stated above, he or she may be suspended, or his or her authorization revoked; and

8.14.6. in order for an agent to be reinstated, he or she must provide evidence of compliance with these law and rules.

R765-171-9. Rules Relating to 53B-5-109.

9.1. Institutional closure procedures consist of the following:

9.1.1. the chief administrative officer of each institution subject to this chapter, shall prepare a written plan for access to and the preservation of permanent records in the event the institution closes for whatever reason; and

9.1.2. in the event an institution closes with students enrolled who have not completed their programs, a list of such, including the amount of tuition paid and the proportion of their program completed, shall be submitted to the board, with all particulars.

9.2. School records consist of the following permanent scholastic records for all students who are admitted, even though withdrawn or terminated:

9.2.1. appropriate entrance and admission acceptance information;

9.2.2. attendance and performance information, including transcripts which consist of no less than the program for which he enrolled, each course attempted and the final grade earned;

9.2.3. graduation or termination dates of students;

9.2.4. enrollment agreements, tuition payments, refunds, and any other financial transactions;

R765-171-11. Rules Relating to 53B-5-111.

11.1. The Board may perform on-site evaluations to verify information submitted by an institution or an agent, or to investigate complaints filed with the Board.

11.2. Representative circumstances which provide just cause for negative actions are:

11.2.1. the award of credentials by a nonexempt institution without a filed and accepted registration statement and an issued certificate of registration;

11.2.2. a registration statement or permit application that contains material representations which are incomplete, improper, or incorrect;

11.2.3. failure to maintain facilities and equipment in a safe and healthful manner;

11.2.4. failure to perform the services, failure to meet the reasonable expectations of students for faculty instruction, teaching materials, equipment and facilities, failure to perform any commitment made in the registration statement or permit application, offering programs or services not contained in the registration statement currently on file, or violations of the conditions of the certificate of registration or permit;

11.2.5. utilization of agents without permits;

11.2.6. failure to maintain sufficient financial capability, as set forth in section 7.9;

11.2.7. to confer, or attempt to confer, a fraudulent credential, as set forth in 53B-5-201;

11.2.8. employment of students for commercial gain, if such fact is not contained in the current registration statement;

11.2.9. promulgation to the public of fraudulent or misleading statements relating to a program or service offered;

11.2.10. failure to correct a deficiency or act of noncompliance under this chapter and regulations;

11.2.11. withdrawal of the authority to operate in the home state of an institution whose parent campus or headquarters is not domiciled in this state;

11.2.12. failure of a Utah institution to comply with applicable laws in another state; and

11.2.13. failure to provide reasonable information to the board as requested from time to time.

11.3. The board, when aware of either one or a combination of the above causes shall:

11.3.1. promptly notify the attorney general or the county attorney of any county in which the activity is believed to have occurred so that he can instigate an action; and

11.3.2. regularly keep the attorney general or county attorney apprised of all significant developments as the matter evolves. The attorney general or the country attorney may proceed on his or her own initiative.

11.4. To be considered, a student complaint against an institution must be filed with the board within one year of the last date of the student's attendance. The following alternative procedures for handling student complaints are available to the board:

11.4.1. the board may conduct an investigation into the matter. If the evidence suggests probable violations because of unauthorized practices, it:

11.4.1.1. may make oral communication with the institution or agent and advise it or the agent of the discrepancies suspected, together with specific counsel and instructions for improvement;

11.4.1.2. may send a written communication which sets forth the details of the matter;

11.4.2. may set an informal conference of the complainant, the defendant, and authorized representative of the board to seek a resolution in which all parties involved agree; or

11.4.3. may convene a hearing. Hearings shall be conducted according to recognized due process procedures;

11.4.4. regardless of which of the above procedures is followed, the board's representative, upon careful deliberation, shall render a decision predicated upon the evidence. The board may dismiss the complaint or take action(s) including:

11.4.4.1. "probation," as defined in subsection 3.7;

11.4.4.2. "suspension" as defined in subsection 3.10;

and

11.4.4.3. "revocation" as defined in subsection 3.9;

11.4.5. all interested parties shall be advised of the decision.

11.5. Review of decisions consist of the following:

11.5.1. within ten days after the issuance of a decision, any party may file a written request for reconsideration, stating the specific grounds upon which relief is requested. The filing of the request is not a prerequisite for seeking judicial review of the decision;

11.5.2. the request for reconsideration shall be filed with the board and one copy sent by mail to each party;

11.5.3. the Commissioner or his designee shall issue a written order denying the request or granting the request. The request is deemed to have been denied if the decision is not made within 20 days after the request is filed; and

11.5.4. a party may obtain judicial review of final board action.

R765-171-12. Rules Relating to 53B-5-112.

12.1. Upon request of one or more institutions, the board may, at its discretion, counsel, advise, facilitate cooperation among or otherwise help and assist the requesting institutions in the development or improvement of appropriate postsecondary education programs.

R765-171-21. Rules Relating to 53B-5-201.

21.1. A person may not represent him or herself in a deceptive or misleading way, such as by the title "Dr." or "Ph.D." if he or she has not satisfied accepted academic or scholastic requirements.

KEY: education, postsecondary proprietary school*, registration
July 2, 1997 53B-5
Notice of Continuation December 3, 1997

R765. Regents (Board of), Administration.
R765-610. Utah Higher Education Assistance Authority Federal Family Education Loan Program, PLUS, SLS and Loan Consolidation Programs.
R765-610-1. Purpose.

To incorporate by reference all statutes, regulations and rules governing the Federal Family Education Loan Program, PLUS, SLS and Loan Consolidation programs.

R765-610-2. References.

2.1 Utah Code. Title 53B, Utah System of Higher Education, Chapter 12.

2.2 U.S. Congress, Title IV of the Higher Education Act of 1965, as amended.

2.3 U.S. Department of Education. Code of Federal Regulations, 34 CFR Parts 600, 668 and 682.

2.4 "Common Manual, Unified Student Loan Policy" published by Common Manual Guarantors, 1997.

R765-610-3. Definitions.

3.1 "UHEAA" means Utah Higher Education Assistance Authority.

3.2 "SLS" means Federal Supplemental Loans for Students Program.

3.3 "PLUS" means Federal PLUS Program.

3.4 "FFELP" means the Federal Family Education Loan Program. This consists of the Federal Subsidized Stafford Loan Program, the Federal Unsubsidized Stafford Loan Program, the Federal PLUS Program, the Federal Supplemental Loans for Students Program (SLS), and the Federal Loan Consolidation Program.

R765-610-4. Incorporation by Reference.

4.1 UHEAA, as the designated guarantor for the FFELP in the state of Utah, hereby incorporates by reference the following documents:

4.1.1 Title IV of the U.S. Higher Education Act of 1965, as amended.

4.1.2 U.S. Department of Education 34 CFR Parts 600, 668, and 682.

4.1.3 "Common Manual, Unified Student Loan Policy", published by Common Manual Guarantors, 1997.

R765-610-5. Policy.

5.1 Any action taken by UHEAA in accordance with UHEAA policies shall be performed by the Executive Director of UHEAA, or the Executive Director's designee.

5.2 UHEAA shall establish, from time to time, additional policies governing the operation of FFELP in accordance with requirements as referenced in 4.1.1, 4.1.2 and 4.1.3 of this rule. Such policies will be filed as rules in the Utah Administrative Code in accordance with the Administrative Rulemaking Act of this state as found in Title 63, Chapter 46a of the Utah Code.

5.3 Students and parents who are eligible for loans contemplated by this rule, and who wish to apply, shall be expected to comply with these rules. A copy of all federal statutes and regulations, and state rules, directly affecting FFELP, and a copy of the "Common Manual, Unified Student Loan Policy", are available for public inspection, or can be obtained from UHEAA's offices at 355 West North Temple, 3 Triad Center, Suite 550, Salt Lake City, Utah 84180.

KEY: higher education, student loans*
December 2, 1997 53B-12-101(6)
Notice of Continuation July 15, 1997

R765. Regents (Board of), Administration.
R765-660. Utah State Student Incentive Grant Program.
R765-660-1. Purpose.

To provide for the State Student Incentive Grant Program and incorporate by reference Federal statutes and regulations governing this program which awards grants to eligible students attending public or private non-profit institutions of higher education or public postsecondary vocational institutions.

R765-660-2. References.

2.1. 53B-7-103, Utah Code Annotated 1953.

2.2. Higher Education Act of 1965, as amended.

2.3. 34 CFR Parts 600, 668 and 692.

2.4. Education Department General Administration Regulations (EDGAR).

R765-660-3. Definitions.

3.1. "Academic Year" - Beginning July 1, 1993, "Academic Year" as determined by the educational institution in accordance with Section 481d of the Higher Education Act of 1965 as amended shall be:

3.1.1. a period requiring a minimum of 30 weeks of instructional time in which a full-time student is expected to complete at least:

3.1.1.1. 24 semester or 24 trimester or 36 quarter hours at an institution that measures program length in credit hours, or

3.1.1.2. 900 clock hours at an institution that measures program length in clock hours.

3.2. "Award Year" - As defined in 34 CFR Part 668.2, namely, the period of time from July 1 of one year through June 30 of the following year.

3.3. "Decentralized Program" - A program which delegates certain functions and sub-allocates SSIG funds to participating institutions for approved awards to SSIG recipients which have been selected by the participating institutions.

3.4. "Full-time Student" - As defined in 34 CFR Part 692.4b, namely, a student carrying a full-time academic workload - other than by correspondence - as measured by both of the following: 1) Course work or other required activities, as determined by the institution that the student attends or by the State. 2) Tuition and fees normally charged for full-time study by that institution.

3.5. "Full-time Equivalent Students" - A measure of annual instructional output calculated according to the following formulas:

3.5.1. For institutions that measure program length in quarter credit hours, the total number of undergraduate instructional credit hours attributed to the institution's fiscal year divided by 45, plus the total number of graduate instructional credit hours attributed to the institution's fiscal year divided by 30.

3.5.2. For institutions that measure program length in semester credit hours, the total number of undergraduate instructional credit hours attributed to the institutions fiscal year divided by 30, plus the total number of graduate instructional credit hours attributed to the institution's fiscal year divided by 20.

3.5.3. For institutions that measure program length in clock hours, the total number of instructional clock hours attributed to the institution's fiscal year divided by 792.

3.6. "Institution of Higher Education" - As defined in Section 481a of the Higher Education Act of 1965 as amended and 34 CFR Part 600.4.

3.7. "Non-Profit" - As defined in 34 CFR Part 77.1 of EDGAR.

3.8. "Participating Institution" - A public or private non-profit institution of higher education or postsecondary vocational institution which has entered into a participation agreement with the Office of the Utah Commissioner of Higher Education (Commissioner's Office).

3.9. "Postsecondary Vocational Institution" - As defined in 34 CFR Part 600.6.

3.10. "SSIG" - State Student Incentive Grant.

3.11. "Substantial Financial Need" - The difference between a student's cost of education (including tuition and fees; books and supplies; living expenses such as room and board, personal, miscellaneous, and transportation) and the sum of that student's expected family contribution and other student aid to be received. The difference thus computed must equal or exceed $200 for the student to be considered for SSIG funds. (The $200 threshold is calculated based on an entire academic year. Adjustments will be allowed for partial academic year attendance.) If eligible applicants exceed available funding levels, awards will start with the most needy students who meet all other application requirements.

R765-660-4. Policy.

4.1. State Board of Regents

The Utah State Board of Regents is the designated state agency for the SSIG program in the state of Utah. The responsibility for administration of the SSIG is assigned to the Utah Commissioner of Higher Education or the Commissioner's designee. The Utah SSIG program is administered as a decentralized program.

4.2. Institutional Administration

The President of each institution shall be responsible for the administration of the SSIG program at the institutional level in compliance with Federal and state regulations. The institutional administration of the program may be delegated to the financial aid director or other appropriate institutional officers.

4.3. Fiscal Control and Fund Accounting

The Commissioner's office shall provide fiscal control and fund accounting services for awards made under the program.

4.4. Governing Statutes and Regulations

The Utah State Board of Regents incorporates by reference the following Federal statutes and regulations:

4.4.1. The Higher Education Act of 1965, as amended;

4.4.2. Final Regulations of the U.S. Department of Education (i.e., 34 CFR Parts 600, 668, and 692); and

4.4.3. Education Department General Administration Regulations (EDGAR)

4.5. State Agency Rules

The State Board of Regents establishes, from time to time, agency rules governing the operation of the Utah SSIG Program in accordance with Federal requirements as referenced in 4.4.1, 4.4.2 and 4.4.3.

4.6. Statutes and Regulations Available

A copy of all Federal and state rules, regulations and statutes directly affecting the Utah SSIG Program can be obtained from the Office of the Commissioner of Higher Education at 3 Triad Center, Suite 550, Salt Lake City, Utah 84180.

4.7. Transfer of SSIG federal Funds

The Board, as the designated state agency for the SSIG program in the state of Utah, shall:

4.7.1. have a separate account number assigned from the Office of the State Director of Finance for Federal SSIG funds.

4.7.2. ensure that the custodian of Federal funds is the State Treasurer, Utah State Capitol, Salt Lake City.

4.7.3. make disbursements of Federal funds through the State Disbursing Office, Finance Department, Utah State Capitol, Salt Lake City, Utah.

4.7.4. have the receiving and approving officer for Federal funds be the Administrator of Utah SSIG Program, a staff member of the Board of Regents.

4.8. Matching of Federal SSIG funds

The state matching funds for the SSIG program are appropriated by the Utah State Legislature to the State Board of Regents for the Utah SSIG program. The Federal funds shall be matched:

4.8.1. at a program level; and

4.8.2. at a level of at least fifty percent state funds to fifty percent Federal funds; and

4.8.3. at a level not less than the average annual aggregate expenditures for the preceding three fiscal years or the average annual expenditure per full-time equivalent student for such years.

4.9. Allocation of Federal and State SSIG funds

The Commissioner's Office shall allocate Federal and state SSIG funds by using a formula based on the number of Utah resident, full-time equivalent students enrolled at each participating institution during the most recently completed fiscal year. The allocation of funds to a participating institution shall be in the same proportion to the total funds available to all Utah institutions as the number of resident, full-time equivalent students at the participating institution is to the total number of resident, full-time equivalent students at all participating institutions.

4.10. Inability of an institution to use the full allocation

When an institution indicates the inability to use its total allocation of SSIG Program funds in compliance with the guidelines during an award year, the Commissioner or the Commissioner's designee may reallocate such excess funds to other eligible institutions within the state or provide for the Federal funds to be reallocated to other states through the U.S. Secretary of Education, as provided in the Federal regulations.

4.11. Disbursements

SSIG funds shall be disbursed from the Commissioner's office on an as needed basis or just prior to the start of a new term. For institutions on a semester system this will be twice a year, for institutions on a quarter system this will be three times a year, for institutions operating on an open enrollment system this will be a minimum of three times a year.

4.12. Participation Agreement

The SSIG funds will be released to an institution upon receipt of a Participation Agreement signed by the President of the institution which certifies that the institution will follow all requirements of the program including the following;

4.12.1. The institution will maintain a separate account for Federal and state funds under this program.

4.12.2. SSIG funds allocated to institutions will be used only for direct financial assistance to students qualifying under the program.

4.12.3. SSIG funds allocated by the Utah Commissioner of Higher Education to support this program will not be transferred by the institution to other student aid programs.

4.12.4. SSIG funds not used by an institution will be returned to the Commissioner's Office within 30 days of the institution's determination that the funds will not be used and in no case later than 30 days before the end of the award year.

4.12.5. SSIG funds will not be disbursed to the student prior to the time the student completes registration.

4.12.6. The institution will maintain, on a current basis, adequate records sufficient to demonstrate that the program has been administered in accordance with the program requirements, to file a year-end report, to provide the Department of Education and the Commissioner's Office access to all records pertinent to the grant program, and provide student rosters to the Commissioner's Office upon request.

4.13. President or designee's responsibilities

The President of each institution or the President's designee, as the institutional administrator shall:

4.13.1. accept applications for Utah SSIG program funds consistent with institutional policy as it relates to applications, and the provisions of the Act and regulations.

4.13.2. determine the student's eligibility for participation in the program on the basis of an annually documented substantial financial need, using the congressional methodology of needs analysis.

4.13.3. ensure that no student shall be excluded from participation in this program on the basis of sex, race, color, age, religion, handicap, national origin, marital status or other constitutionally or legally impermissible grounds.

4.14. Student eligibility

To be eligible for a grant from the Utah SSIG Program, a student must:

4.14.1. be a Utah Resident as defined in the Utah code 53B-8-102.

4.14.2. be an eligible student as defined in Section 484 of the Higher Education Act of 1965 as amended and 34 CFR Part 668.7.

4.15. Maximum annual limit

A student may receive an SSIG award up to $2,500 for each award year for which the student is eligible for an SSIG award.

4.15.1. The maximum total grant under this program to any full-time student shall be $2,500 in any academic year.

4.15.2. Summer school awards are to be part of the student's $2,500 maximum.

4.15.3. SSIG awards shall be committed and disbursed before the end of the award year.

4.16. Estimated cost of attendance

In no case may the amount of the SSIG award exceed the student's estimated cost of attendance for the award period for which the grant is intended, less the sum of that student's expected family contribution and other student aid to be

received.

4.17. Less than full-time students

At the discretion of the Financial Aid Officer, grant funds may be awarded to less than full-time students. Aid awarded to less than full-time students shall not exceed that proportion of $2,500 which the less than full-time student's academic work load bears to a full academic work load.

4.18. Record Retention and Reporting

The President of each institution or the President's designee, as the institutional administrator shall:

4.18.1. maintain adequate records to show the utilization of the SSIG program.

4.18.2. submit such reports and information as may be required by the U.S. Department of Education or the Utah State Board of Regents in connection with the administration of the program.

4.19. Records to be maintained

In accordance with 34 CFR Part 692.21, the Utah State Board of Regents requires a participating institution to retain complete and accurate records of each SSIG awarded, including the following:

4.19.1. The Federal student aid application;

4.19.2. A copy of the award letter sent to the student;

4.19.3. A record of each disbursement of grant proceeds; and

4.19.4. Any additional records that are necessary to document the accuracy of reports submitted to the Utah State Board of Regents or the U.S. Department of Education.

4.20. Records retention

An institution shall retain the records required for each SSIG award for at least five years after the award is disbursed. The U.S. Secretary of Education, or the Administrator of the Utah SSIG program, may, in particular cases, require the retention of records beyond the five-year minimum period.

4.21. Records organization

The records must be organized in such a way as to permit ready identification of the current status of each grant. The records specified in subsections 4.19.1 through 4.19.4 of this policy may be stored on microfilm or computer format.

4.22. Records retention violations

In the event the institution violates the record retention policy as outlined above, the administrator of the Utah SSIG program, may take such corrective action as is deemed necessary.

KEY: higher education, financial aid*
1993 **53B-7-103**
Notice of Continuation December 3, 1997

R810. Regents (Board of), University of Utah, Parking and Transportation Services.
R810-1. University of Utah Parking Regulations.
R810-1-1. Authority.

The University's parking system is authorized by Utah Code, Title 53B, Chapter 3, Sections 103 and 107.

R810-1-2. Motor Vehicle Parking On Campus.

A vehicle is defined under Utah State Code, Unannotated 41-1a-102(65).

Anyone parking a vehicle on campus must comply with the following regulations:

A. Register the vehicle with Parking Services and pay the annual, quarterly or daily parking fee for the right to park in designated areas, or

B. Park the vehicle in a metered area or pay lot and pay the appropriate fee.

R810-1-3. Parking Areas.

Parking is permitted only in designated areas and only in accordance with all posted signs. Cars must be parked properly within marked stalls.

R810-1-4. Restrictions.

Parking is prohibited 24 hours daily at red curbs, "no parking" areas, bus zones, crosswalks, driveways, sidewalks, on the wrong side of the street, in front of fire hydrants and dumpsters, other prohibited or reserved parking areas as designated. Parking is also prohibited in and on unmarked roadways and other unmarked areas. Parking tickets will be issued for noncompliance.

R810-1-5. Vehicle Operator Responsibilities.

Parking area designations are subject to change, and it is the motorist's responsibility to be cognizant of such changes. The responsibility for finding an authorized parking space rests with the motor vehicle operator. Lack of a parking space in any desired area is not a valid excuse for failure to comply with these regulations.

R810-1-6. Parking for Drivers with Disabilities.

Stalls for drivers with disabilities are reserved for qualified students, faculty and staff. Vehicles parked in these stalls must display a valid permit issued by Parking and Transportation Services for the use of drivers with disabilities. Special stalls in visitor areas have been identified for the use of visitors to the University with disabilities. Vehicles parked in these stalls must display appropriate license plates or a state issued parking permit designating an individual with a disability.

R810-1-7. Residence Halls.

Residence halls parking is restricted to residence halls residents and meal ticket permit holders except in areas designated for other permits. A special "S" permit is required and must designate the hall in which the individual resides.

Residence halls visitors parking a vehicle without a valid University permit must obtain special day passes.

R810-1-8. University Vehicle Parking.

University owned vehicles are to be parked in maintenance stalls when available or other stalls when necessary and shall not violate "No Parking," "Tow Away," or "Disabled" zones. Drivers of improperly parked University vehicles will be responsible for tickets received. In emergency situations where maintenance vehicles must park in spaces other than those listed above, marker cones must be displayed in the front and rear of the vehicle; or emergency flashers must be activated.

R810-1-9. Motorcycle Parking.

Motorcycles, motorbikes, scooters and mopeds must be parked in areas designated for such vehicles and display an appropriate parking permit.

R810-1-11. University Student Apartments Parking.

University Student Apartment parking lots are restricted to apartment residents, housing employees, resident guests, applicants for apartment assignment, and visitors.

Parking is permitted only in designated areas and only in accordance with all posted signs. Each parking area is marked by signs at the entrance of the lot, or within the lot, or at individual stalls designating the type of parking allowed. Vehicles must be parked properly within marked stalls.

A. Vehicle Registration and Permit Issuance. Residents and employees are required to register all vehicles parked in University Student Apartment parking areas and to purchase a use permit in accordance with the schedule of approved fees. Motorcycle/moped permits are to be attached near the license plate in a clearly visible manner.

B. Additional Vehicle Registration. Due to limited parking availability, parking permits for additional vehicles, recreational vehicles, boats, trailers, and passenger cars exceeding 2 per apartment, will be authorized only after application, review and approval of the University Student Apartments Special Hearings Committee. Applications for additional vehicle registration and permits should be made during the week of late vehicle registration or upon apartment residency or change of status. Only a limited number of additional vehicle parking permit applications will be approved due to the limited space available in University Student Apartment parking lots. Boats, trailers, and recreational vehicles may be parked only in designated areas.

C. Parking for Drivers with Disabilities. Special stalls for qualified drivers with disabilities and additional stalls are assigned as needed upon request and written verification of an individual's disability by a physician.

D. Visitor Parking. Short term visitor parking of four hours or less is available without a special permit in designated visitor parking areas. Longer term visitor parking, up to 2 weeks, requires a special visitor parking permit.

E. Parking Permits. All parking permits are the property of University Student Apartments. Residents must return permits upon vacating the apartment. Failure to do so will result in an assessment of $25 for each permit not returned.

R810-1-12. Extended Parking Privileges.

Vehicles occupying the same lot or stall for 48 hours or

longer without a special permit issued by Parking Services will be ticketed and may also be removed at the expense of the owner if their presence interferes with regular University functions or maintenance. Vehicles parked in the residence halls lot and displaying a valid and appropriate parking permit are exempted from the 48 hour limitations.

When vehicles need to be stored on campus for 48 hours or more, arrangements must be made with Parking Services and an appropriate fee paid. Arrangements expire on the regular permit year basis.

R810-1-13. Abandoned Vehicles.

Vehicles which do not display current Utah or out-of-state vehicle registration and a valid University of Utah parking permit and have not been moved for a period of seven days will be considered as abandoned and may be removed from University property at owner's expense.

R810-1-14. Living In A Motor Vehicle On Campus.

In accordance with state health law, campers, trailers, and motor homes cannot be used for sleeping or living purposes while parked on campus except in stalls designated by Parking Services which provide for utilities and sanitary facilities. Violators will be ticketed.

R810-1-15. University Responsibility For Vehicle Damage.

The University is not responsible for the care and protection of or damage to any vehicle or its contents when operated or parked on University property. Acceptance of a permit shall constitute an acknowledgement and acceptance of this condition as the privilege to use the University's parking facilities.

R810-1-16. Special Parking.

Parking Services reserves the right to change the designated use of lots or roadways at any time to provide for special parking needs. During athletic or special events, Parking Services reserves the right to charge for the use of University parking lots. Vehicles with a current University permit will not be charged except for off-campus sponsored special events. After 6 p.m. and on Saturdays, Sundays and University recognized holidays, campus parking lots are available for parking without a permit except in reserved, handicapped and other specifically designated lots or spaces.

R810-1-17. Lost or Stolen Permits.

Parking Services is not responsible for lost or stolen parking permits. It is the responsibility of the permit holder to report lost or stolen permits to Parking and Transportation Services. Any tickets received on the lost or stolen permit will be the responsibility of the permit holder if a report is not made. Replacement permits may be obtained once a report is made and a replacement fee paid.

KEY: parking facilities
1992 53B-3-103
Notice of Continuation December 12, 1997 53B-3-107

R810. Regents (Board of), University of Utah, Parking and Transportation Services.
R810-3. Visitor Parking.
R810-3-1. Definitions.

1. Visitors are defined as any person other than a student, or a member of the faculty or staff of the University of Utah.

2. Visitors to the campus may park in pay lots and pay the appropriate fee, park at meters upon payment of the appropriate fee, or purchase and display a day pass.

3. It is a violation for any visitor to campus to park a vehicle contrary to the posted signs and published rules and regulations of the University.

KEY: parking facilities
1992 53B-3-103
Notice of Continuation December 12, 1997 53B-3-107

R810. Regents (Board of), University of Utah, Parking and Transportation Services.
R810-4. Registration Policies.
R810-4-1. Registration Policies.

A. General procedures for vehicle registration:

1. To obtain a University parking permit, applicants must present a completed registration form and the state vehicle registration card with the appropriate fee to Parking Services.

2. Valid permits will be displayed from the rear view mirror or affixed to the windshield according to printed instructions on the back of the permit.

B. An applicant who obtains a University permit shall not allow another person to purchase or use the permit. Qualified applicants may obtain only one employee permit.

C. Any person who falsifies vehicle registration information, facts, or fees shall have his University parking privileges revoked at the discretion of Parking Services and will be subject to the published fines and penalties.

D. Expired parking permits must be removed before displaying a new permit.

KEY: parking facilities
1992 53B-3-103
Notice of Continuation December 12, 1997 53B-3-107

R810. Regents (Board of), University of Utah, Parking and Transportation Services.
R810-7. Nonresidents and Out-of-State Plates.
R810-7-1. Students.

Students with nonresident status who drive vehicles bearing out-of-state license plates must complete the regular vehicle registration form and obtain a "U" permit. They must also show their state vehicle registration when buying their permit.

R810-7-2. Faculty and Staff.

Faculty and staff from out of state who are permanently employed at the University are required to register the vehicle with the Utah Motor Vehicle Division and obtain Utah license plates. Visiting faculty with temporary, short-term appointments, military personnel on active duty assignments, and travel nurses are exempted from this requirement.

R810-7-3. Emissions Inspection.

Vehicles that are registered outside of the state of Utah or outside of Salt Lake, Davis, Utah or Weber counties are required to comply with an emissions inspection in order to park in permit areas on campus. A permit cannot be issued until emission requirements are met.

KEY: parking facilities
1992 **53B-3-103**
Notice of Continuation December 12, 1997 **53B-3-107**

R810. Regents (Board of), University of Utah, Parking and Transportation Services.
R810-8. Vendor Regulations.
R810-8-1. Parking Options for Vendors and Sales Representatives.

Vendors and sales representatives may:

A. Obtain a vendor permit from Parking Services. The permit is for business use only and not for attending classes or for all-day parking.

B. Purchase a day pass.

C. Park in a pay lot and pay the appropriate fee.

D. Park at a meter and pay the appropriate fee.

E. Park in a twenty-minute delivery and loading zone.

1. Vendors are required to obey University parking regulations. Departments being serviced by vendors do not have the authority to exempt vendors from parking regulations.

KEY: parking facilities
1992 **53B-3-103**
Notice of Continuation December 12, 1997 **53B-3-107**

R850. School and Institutional Trust Lands, Administration.
R850-70. Sales of Forest Products From Trust Lands Administration Lands.
R850-70-100. Authorities.

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X, XVIII, and XX of the Utah Constitution, and Section 53C-1-302(1)(a)(ii) which authorize the Director of the School and Institutional Trust Lands Administration to provide for the sale of forest products, desert products, and other vegetative material from Trust Lands Administration lands.

R850-70-150. Planning.

1. Pursuant to Section 53C-2-201(1)(a), the Trust Lands Administration shall also undertake to complete the following planning obligations, in addition to the rule-based analysis and approval processes that are prescribed by this rule:

(a) Submission of the proposal for review by the Resource Development Coordinating Committee (RDCC);

(b) Evaluation of and response to comments received through the RDCC process; and

(c) Evaluation of and response to any comments received through the solicitation process described in R850-70-800(1)(b).

2. All other forest product sales within this category of activity carry no planning obligations by the agency beyond existing rule-based analysis and approval processes.

R850-70-200. Forest Products Defined.

1. Sawlogs: portions of a tree stem that exceed seven feet in length and six inches in diameter inside bark at the small end.

2. Poles: portions of a tree stem that are at least ten feet in length and do not exceed six inches in diameter at four and one-half feet above the ground.

3. Mine Props: portions of a tree stem that are between seven and ten feet in length, and six to nine inches diameter inside bark at the small end.

4. Posts: portions of a tree or tree stem, generally Utah juniper which are no more than ten feet in length and six inches top (small end) diameter.

5. Fuelwood: any portion of a tree, including those portions defined as sawlogs; poles; mine props; or posts; harvested for use as fuel. Normally including deadwood sales.

6. Christmas Tree: any coniferous tree, or part thereof, cut and removed from the place where grown without the foliage being removed.

7. Ornamental: any coniferous or deciduous tree, shrub, or bush less than 20' in height and no more than six inches diameter at four and one-half feet above the ground, which is removed from a natural setting, generally with roots attached, for transplant elsewhere.

8. Desert Plants: include any member of the Cactaceae Family or the Agavaceae Family.

9. Other Products: include boughs, branches, pinyon nuts, cones, Juniper berries, and native seed.

R850-70-300. Proof-of-Ownership.

Proof-of-ownership shall be issued with each sale of forest products in compliance with Section 78-38-4.5.

R850-70-400. Permit Sales.

The agency may make sales of forest products with a Small Forest Products Permit when the total sale value does not exceed $300. The permit shall be on a form prescribed by the agency.

R850-70-500. Noncompetitive Sales.

At the discretion of the director or designated representative(s), the agency may make forest product sales, not to exceed a value of $2,000, at not less than the established base rate without soliciting competitive bids.

R850-70-600. Competitive Sales.

The agency must make sales of forest products through competitive bidding procedures when the total sale value exceeds $2,000.

R850-70-700. Advertising Forest Product Sales.

Reasonable notice must be given to potential purchasers and other interested parties prior to completion of any sale with a potential total value exceeding $2,000. The cost of the notice will be borne by the successful applicant.

R850-70-800. Competitive Bidding Procedure.

1. Sales of timber and large forest products resources shall be initiated by the agency and shall follow the procedures below:

(a) Initial bidding shall be conducted through sealed bids which must contain 10% of the bid amount. Those submitting the three highest sealed bids shall be allowed to enter into oral auction.

(b) All sales shall be advertised through publication at least once a week for at least two weeks in one or more newspapers of general circulation in the county in which the sale is located. This notice shall contain, but is not limited to:

i) the legal description of the affected lands;
ii) the species and quantity of forest products;
iii) minimum sale price;
iv) advertising and processing costs;
v) dates of bidding period; and
vi) date, time, and location of oral auction.

2. The agency may cancel any timber or large forest products sale prior to sale closing.

R850-70-900. Awarding Forest Product Sales.

Sales shall be awarded to the highest qualified bidder unless a bidder is disqualified, in writing, by the agency on the grounds of previous poor contract performance or other good cause shown. The agency shall award sales within ten business days of the bid opening.

R850-70-1000. Bonding Requirements.

1. Prior to commencement of harvest operations, the purchaser shall post with the agency a bond in the form and amount as may be determined by the agency to assure

compliance with all terms and conditions of the sale contract.

2. A bond will be posted for at least twice the estimated cost of rehabilitation. Unless the sale was paid for in advance, the bond will also include the full purchase price of the sale.

3. All bonds posted may be used for payment of all monies due to the Trust Lands Administration on the total purchase price, and also for the costs of compliance with all other performance terms and conditions of the sale as specified in the contract.

4. Bonds shall be in effect even if the purchaser conveys all or part of the sale interest to an assignee, or subsequent purchaser until such time as the purchaser fully satisfies sale contract obligations, or until such time as the bond is replaced with a new bond posted by the assignee.

5. Bonds may be increased in reasonable amounts, at any time as the agency may order, provided the agency first gives the purchaser 30 days written notice stating the increase and the reason(s) for the increase.

6. Bonds may be accepted in any of the following forms at the discretion of the agency:

(a) Surety bond with an approved corporate surety registered in Utah.

(b) Cash deposit. The Trust Lands Administration will not be responsible for any investment returns on cash deposits.

(c) Certificate of deposit in the name of the "School and Institutional Trust Lands Administration" and purchaser with an approved state or federally insured banking institution registered in Utah. All certificates of deposit must be endorsed by the purchaser prior to acceptance by the agency.

Certificate of deposit must:

i) have a maturity date no greater than 12 months,

ii) be automatically renewable; and

iii) be deposited with the agency, the purchaser will be entitled to and receive the interest payments.

(d) an irrevocable letter of credit for a period longer than the term of the sale.

7. Bonds shall remain in force until such time as all contract payments and performance provisions have been satisfied by the purchaser and so documented by the agency in writing.

R850-70-1100. Assignments.

1. Competitively let sales may be assigned, in accordance with procedures established by the agency, to any person, firm, association, or corporation qualified to execute the terms and conditions of the sale contract, with prior written approval from the agency, provided that the assignee agrees to be bound by the terms and conditions of the sale and to accept the obligations of the assignor.

2. Permits and non-competitive sales may not be assigned.

R850-70-1200. Forest Product Valuation.

Forest products shall be offered for sale based on a methodology or price schedule to be determined by the agency pursuant to board policy.

R850-70-1300. Long-Term Agreements.

1. Long-term agreements (LTA) are those sales where the harvest of specified forest products will take place over a period of time exceeding two years. Upon approval of the director, the agency may enter into an LTA with a purchaser for a period not to exceed ten years provided that:

(a) Resource or other benefits can be demonstrated by the LTA.

(b) The LTA is advertised and competitively bid.

(c) The area included in the LTA is defined by legal or other tangible description.

(d) The LTA includes provisions for periodic reappraisal and adjustment of prices.

(e) The LTA may not preclude or prohibit forest product sales to other purchasers on trust lands adjacent to or within the area designated by the LTA.

(f) The LTA provides for amendment during the term of the LTA.

(g) The LTA does not preclude or prohibit other concurrent resource management activities and uses adjacent to or within the area designated by the LTA.

(h) Each LTA states that access granted by the LTA is not exclusive.

(i) A due-diligence provision is included in each LTA.

R850-70-1400. Fees and Procedures.

The agency may establish fees and develop such procedures as may be necessary to provide for the administration and sale of forest products pursuant to Section 53C-1-302(1)(b)(iii).

KEY: forest products, administrative procedure, timber
September 1, 1995 53C-1-302(1)(a)(ii)
Notice of Continuation December 11, 1997 53C-2-201(1)(a)

R861. Tax Commission, Administration.
R861-1A. Administrative Procedures.
R861-1A-1. Administrative Procedures Pursuant to Utah Code Ann. Section 59-1-210.

A. Definitions as used in this rule:

1. "Agency" means the Tax Commission of the state of Utah.

2. "Agency head" means the Tax Commission of the state of Utah, or one or more tax commissioners.

3. "Appeal" means appeal from an order of the Commission to an appropriate judicial authority.

4. "Commission" means the Tax Commission of the state of Utah.

5. "Conference" means an informal meeting of a party or parties with division heads, officers, or employees designated by division heads and informal meetings between parties to an adjudicative proceeding and a presiding officer.

6. "Division" means any division of the Tax Commission, including but not restricted to the Auditing Division, Property Tax Division, Motor Vehicle Division, Motor Vehicle Business Administration Division, Data Processing Division, and the Operations Division.

7. "Hearing" means a proceeding, formal or informal, at which the parties may present evidence and arguments to the presiding officer in relation to a particular order or rule.

8. "Officer" means an employee of the Commission in a supervisory or responsible capacity.

9. "Order" means the final disposition by the Commission of any particular controversy or factual matter presented to it for its determination.

10. "Presiding officer" means one or more tax commissioners, administrative law judge, hearing officer, and other persons designated by the agency head to preside at hearings and adjudicative proceedings.

11. "Quorum" means three or more members of the Commission.

12. "Record" means that body of documents, transcripts, recordings, and exhibits from a hearing submitted for review on appeal.

13. "Rule" means an officially adopted Commission rule.

14. "Rulemaking Power" means the Commission's power to adopt rules and to administer the laws relating to the numerous divisions.

15. All definitions contained in the Administrative Procedures Act, Utah Code Ann. Section 63-46b-2 as amended, are hereby adopted and incorporated herein.

R861-1A-2. Rulemaking Power Pursuant to Utah Code Ann. Section 59-1-210 and 63-46a-4.

A. Policy and Scope. In accordance with the responsibility placed upon it by law, the Commission shall enact appropriate rules. These rules shall prescribe practices and procedures for the Commission and other state and county officials and agencies over which the Commission has supervisory power and shall interpret laws the Commission is charged with administering when such interpretation is deemed necessary and in the public interest.

B. Preparation. In the preparation of rules the Commission may refer to appropriate materials and consult such parties as it deems advisable, whether or not such persons are employees of the Commission. Drafts of proposed rules may be submitted to the Office of the Attorney General for examination as to legality and form.

C. Notice and Hearing. The Commission may publish, by means of local communication, notice of its intent to exercise its rulemaking power in a particular area. Notice therein will be given of a scheduled hearing or hearings not sooner than 15 days after such notice, at which hearing or hearings any party who would be substantially affected by such exercise may present argument in support thereof or in objection thereto. Such notice and hearing or hearings will be instituted when the Commission deems them to be of substantial value and in the public interest or in accordance with Utah Code Ann. Section 63-46a-5. Such notice and hearing or hearings shall not be a prerequisite to the validity of any rule.

D. Adoption. Rules will be adopted by the Commission at formal meetings with a quorum present. Adopted rules will be written and entered into the official minutes of the Commission, which minutes are a public record available for examination by interested members of the public at the Commission offices. This proceeding and no other will be necessary for validity, unless otherwise required by the rulemaking procedures.

E. Effective Date. In accordance with Utah Code Ann. Section 63-46a-4.

F. Publication. Copies of adopted rules will be prepared and made available to interested parties requesting the same. Such rules may also be published periodically in booklets and bulletins. It shall be the policy of the Commission to provide for publication of all new rules at the time of each compilation of rules in the particular area. No rule, however, shall be deemed invalid by failure to prepare copies for distribution or to provide for publication in the manner herein described.

G. Petitions for Exercise of Rulemaking Power. The Commission may be petitioned to exercise its power to adopt a rule of general application. Such petition shall be submitted in writing by any party who would be substantially and directly affected by such rule. The Commission will have wide discretion in this area and will exercise this rulemaking power upon petition only when it deems that such exercise would be of substantial value to the citizens of Utah. If the Commission accepts such a petition, it may adopt such rule as it deems appropriate; however, the petitioning party may submit a proposed rule for the consideration of the Commission. If the Commission acts favorably upon such a petition, it will adopt and publish the rule in the manner hereinabove described, and in addition notify the petitioner of such adoption by mail at his last known address. If the Commission declines to act on such petition, it will so notify the petitioning party in the same manner.

H. Repeal and Amendment. The procedure above described for the enactment of rules shall also be followed for the amendment or repeal of existing rules.

R861-1A-3. Division and Prehearing Conferences

Pursuant to Utah Code Ann. Section 59-1-210 and 63-46b-1.

A. Division Conferences. Any party directly affected by a Commission action or contemplated action may request a conference with the supervisor or designated officer of the division involved in relation to such action. Such request may be either oral or written, and such conference will be conducted in an informal manner in an effort to clarify and narrow the issues and problems involved. The party requesting such conference will be notified of the result of the same, either orally or in writing, in person or through counsel, at the conclusion of such conference or within a reasonable time thereafter. Such conference may be held at any time prior to a hearing, whether or not a petition for such hearing, appeal, or other commencement of an adjudicative proceeding has been filed.

B. Prehearing Conferences. In any matter pending before the Tax Commission, the presiding officer may, after prior written notice, require the parties to appear for a prehearing conference. Such prehearing conferences may be by telephone if the presiding officer determines that it will be more expeditious and will not adversely affect the rights of any party. Prehearing conferences will be for the purposes of encouraging settlement, clarifying the issues, simplifying the evidence, facilitating discovery, and expediting the proceedings. In furthering those purposes, the presiding officer may request that the parties make proffers of proof or written prehearing conference statements as to what they believe the evidence will show at the hearing. After hearing such proffers of proof and reviewing written statements, the presiding officer may then advise the parties how he views each side of the evidence and state how he believes the Commission may rule if evidence at the hearing is as proffered at the prehearing conference, and then invite the parties to see if a stipulation can be reached which would settle the matter. If a settlement is reached by way of stipulation, the presiding officer may sign and enter an order in the proceeding. If a settlement is not reached, the presiding officer shall enter an order on the prehearing conference which clarifies the issues, simplifies the evidence, facilitates and limits discovery, and expedites the proceedings to a reasonable extent.

R861-1A-9. Tax Commission as Board of Equalization Pursuant to Utah Code Ann. Sections 59-2-212, 59-2-1003, and 59-2-1011.

A. Equalization Responsibilities. The Commission will sit as the State Board of Equalization in discharge of the equalization responsibilities given it by law. The Commission may sit on its own initiative to correct the valuation of property which has been overassessed, underassessed, or nonassessed as described in Section 59-2-212; and as a board of appeal from the various county boards of equalization as described in Section 59-2-1011.

B. Proceedings. A presiding officer may sit as the State Board of Equalization with the same force and effect as if the entire Commission were present. Any order will be signed by a quorum of the Commission after they have become familiar with the evidence and have reviewed the legal arguments of the parties with the presiding officer.

C. Appeals from County Boards. An appeal from a decision of a County Board of Equalization must be presented upon the same issues as were submitted to the county board in the first instance. The Commission shall consider but is not limited to, the facts and evidence submitted to the county board.

D. Remand of Insufficient Appeal. The Commission may remand an appeal to the County Board of Equalization if:

1. the minutes of the county board fail to conform with the requirements of Rule R861-1A-9.E, or

2. in the interest of effective tax administration the matter can best be resolved by the county board.

The Commission shall notify the county board of the order and the county board shall schedule a rehearing on the appeal within 20 days of the issuance of the notice.

E. Minutes of the County Board. The County Board of Equalization or county hearing officer shall prepare minutes of hearings held before them on property tax appeals. The minutes shall include:

1. the name and address of the property owner;

2. the identification number, location, and description of the property;

3. the value placed on the property by the assessor;

4. the basis stated in the taxpayer's appeal;

5. facts and issues raised in the hearing before the county board which are not clearly evident from the assessor's records; and

6. the decision of the County Board of Equalization and the reasons for the decision.

F. Exempt Property. The County Board of Equalization shall, in accordance with Sections 59-2-1003 and 59-2-1011, with respect to a decision affecting the exempt status of a property, prepare its decision in writing stating the reasons and statutory basis for the decision.

G. Manner of Conducting Proceedings. Except as otherwise provided by law or these rules, the provisions of Rules R861-1A-4, R861-1A-5, R861-1A-6, and R861-1A-7 shall be applicable to proceedings before the State Board of Equalization.

H. Definition of Statement "Within Ten Days" as Referred to in Section 59-2-1011. The term "within ten days after the final action of the county board," as used in Section 59-2-1011, means that a taxpayer shall have ten days, exclusive of weekends and holidays, from the date the county auditor mails the decision of the County Board of Equalization to the taxpayer, to appeal that decision to the State Board of Equalization. For purposes of Section 59-2-1011, the taxpayer's appeal shall be considered to have been filed on:

1. the date the notice of appeal which is mailed to the county auditor's office is postmarked, or

2. the date hand-delivered to the county auditor's office, or

3. a notice filed by the taxpayer shall be presumed to have been timely filed unless the county auditor provides convincing evidence to the contrary. In the absence of evidence of the date of mailing of the County Board of Equalization decision by the county auditor to the taxpayer, it

shall be presumed that the decision was mailed three days after the meeting of the County Board of Equalization at which the decision was made.

R861-1A-10. Miscellaneous Provisions Pursuant to Utah Code Ann. Section 59-1-210.

A. Rights of Parties. Nothing herein shall be construed to remove or diminish any right of any party under the Constitution of the United States, the Constitution of the state of Utah, or any existing law.

B. Effect of Partial Invalidation. If any part of these rules be declared unconstitutional or in conflict with existing statutory law by a court of competent jurisdiction, the remainder shall not be affected thereby and shall continue in full force and effect.

C. Enactment of Inconsistent Legislation. Any statute passed by the Utah Legislature inconsistent with these rules or any part thereof will effect a repeal of that part of these rules with which it is inconsistent, but of no other part.

D. Presumption of Familiarity. It will be presumed that parties dealing with the Commission are familiar with:

1. these rules and the provisions thereof,

2. the revenue laws of the state of Utah, and

3. all rules enacted by the Commission in its administration thereof.

R861-1A-11. Appeal of Factor Order Pursuant to Utah Code Ann. Section 59-2-704 (1953).

A. Appeal of Factor Order. Any county appealing a factor order issued pursuant to Utah Code Ann. Section 59-2-704(2), or any amendment initiated by the Commission to the order, shall, within 15 days of the mailing of an order to factor, request in writing a hearing before the Commission. The Commission shall immediately set the time and place of the hearing which shall be held no later than March 1 of the tax year to which the factor applies.

B. Hearings. Hearings on factor-order appeals shall be conducted as formal hearings and shall be governed by the procedures contained in these rules. If the parties are able to stipulate to a modification of the factor order, and it is evident that there is a reasonable basis for modifying the factor order, then an amended factor order may be executed by the Commission. One or more commissioners may preside at a hearing under this rule with the same force and effect as if a quorum of the Commission were present. However, a decision must be made and an order signed by a quorum of the Commission.

C. Decisions and Orders. The Commission shall render its decision and order no later than March 15. Upon reaching a decision, the Commission shall immediately notify the county assessor or if unavailable, his deputy, by telephone and shall confirm the order by mail. A county desiring to appeal the order must petition for reconsideration within ten days after the county assessor has been notified by telephone. No petition for reconsideration will be entertained unless evidence not reasonably available at the time of the hearing is to be presented. Oral argument on reconsideration will be heard only if the Commission determines it to be in the public interest. The Commission shall render a decision and order on a petition for reconsideration no later than March 31 and shall notify the county assessor by telephone and by mail.

D. Sales Information. Access to Commission property sales information shall be available by written agreement with the Commission to any county assessor appealing under this rule. All other reasonable and necessary information shall be available upon request, according to Commission guidelines.

E. Conflict with Other Rules. This rule supersedes all other rules which may otherwise govern such proceedings before the Commission.

R861-1A-12. Policies and Procedures Regarding Public Disclosure Pursuant to Utah Code Ann. Section 59-1-210.

This rule outlines the policies and procedures of the Commission regarding the public disclosure of and access to documents, workpapers, decisions, and other information prepared by the Commission under provisions of Utah Code Ann. Section 59-1-210.

A. Property Tax Orders. Property tax orders signed by the Commission will be mailed to the appropriately named parties in accordance with the Commission's rules of procedure. Property tax orders may also be made available to persons other than the named parties upon written request to the Commission. Nonparty requests will be subject to the following limitations.

1. If, upon consultation with the taxpayer, the Commission determines that a particular property tax order contains information which, if disclosed, would constitute a significant competitive disadvantage to the taxpayer, the Commission may either prohibit the disclosure of the order or require that applicable information be removed from the order prior to it being made publicly available.

2. The limitation in subsection 1. does not apply if the taxpayer affirmatively waives protection against disclosure of the information.

B. Other Tax Orders. Written orders signed by the Commission relating to all tax appeals other than property tax matters will also be mailed to the appropriately named parties in accordance with the Commission rules of procedure. Copies of these orders or information about them will not be provided to any person other than the named parties except for the following circumstances:

1. if the Commission determines that the parties have affirmatively waived any claims to confidentiality; or

2. if the Commission determines that the orders may be effectively sanitized through the deletion of references to the parties, specific tax amounts, or any other information attributable to a return filed with the Commission.

C. Imposition and Waiver of Penalty and Interest.

1. All facts surrounding the imposition of penalty and interest charges as well as requests for waiver of penalty and interest charges are considered confidential and will not be disclosed to any persons other than the parties specifically involved. These facts include the names of the involved parties, the amount of penalty and interest, type of tax involved, amount of the tax owed, reasons for the imposition of the penalty and interest, and any other information relating to imposition of the penalty and interest, except as follows:

(a) if the Commission affirmatively determines that a

finding of fraud is involved and seeks the imposition of the appropriate fraud penalties, the Commission may make all pertinent facts available to the public once legal action against the parties has been commenced; or

(b) if the Commission determines that the parties have affirmatively waived their rights to confidentiality, the Commission will make all pertinent facts available to the public.

D. Commission Notes and Workpapers.

1. All workpapers, notes, and other material prepared by the commissioners, as well as staff and employees of the Commission, are to be considered confidential, and access to the specific material is restricted to employees of the Commission and its legal counsel only. Examples of this restricted material include audit workpapers and notes, ad valorem appraisal worksheets, and notes taken during hearings and deliberations. In the case of information prepared as part of an audit, the auditing division will, upon request, provide summary information of the findings to the taxpayer. These items will not be available to any person or party by discovery carried out pursuant to these rules or the Utah Rules of Civil Procedure.

2. Relevant workpapers of the property tax division prepared in connection with the assessment of property by the Commission, pursuant to the provisions of Utah Code Ann. Section 59-2-217, shall be provided to the owner of the property to which the assessment relates, at the owner's request.

E. Reciprocal Agreements. Pursuant to Utah Code Ann. Sections 59-7-158, 59-10-545, and 59-12-109, the Commission may enter into individual reciprocal agreements to share specific tax information with authorized representatives of the United States Internal Revenue Service, tax officials of other states, and representatives of local governments within the state of Utah; provided, however, that no information will be provided to any governmental entity if providing such information would violate any statute or any agreement with the Internal Revenue Service.

F. Other Agreements. Pursuant to Utah Code Ann. Section 59-12-109, the Commission may provide departments and political subdivisions of the state of Utah with copies of returns and other information required by Chapter 12 of Title 59. This information is available only in official matters and must be requested in writing by the head of the department or political subdivision. The request must specifically indicate the information being sought and how the information will be used. The Commission will respond in writing to the request and shall impose conditions of confidentiality on the use of the information disclosed.

G. Multistate Tax Commission. The Commission is authorized to share specific tax information for audit purposes with the Multistate Tax Commission.

H. Statistical Information. The Commission authorizes the preparation and publication of statistical information regarding the payment and collection of state taxes. The information will be prepared by the various divisions of the Commission and made available after review and approval of the Commission.

I. Public Record Information. Pursuant to Utah Code Ann. 59-1-403(3)(c), the Commission may publicize the name and other appropriate information, as contained in the public record, concerning delinquent taxpayers, including their addresses, the amount of money owed by tax type, as well as any legal action taken by the Commission, including charges filed, property seized, etc. No information will be released which is not part of the existing public record.

R861-1A-13. Requests for Accommodation and Grievance Procedures Pursuant to Utah Code Ann. Section 63-46a-3(2), 28 CFR 35.107 1992 edition, and 42 USC 12201.

A. Disabled individuals may request reasonable accommodations to services, programs, or activities, or a job or work environment in the following manner.

1. Requests shall be directed to:

Accommodations Coordinator
Utah State Tax Commission
160 East Third South
Salt Lake City, Utah 84134
Telephone: 801-530-6920 TDD: 801-530-6269

2. Requests shall be made at least three working days prior to any deadline by which the accommodation is needed.

3. Requests shall include the following information:

a) the individual's name and address;

b) a notation that the request is made in accordance with the Americans with Disabilities Act;

c) a description of the nature and extent of the individual's disability;

d) a description of the service, program, activity, or job or work environment for which an accommodation is requested; and

e) a description of the requested accommodation if an accommodation has been identified.

B. The accommodations coordinator shall review all requests for accommodation with the applicable division director and shall issue a reply within two working days.

1. The reply shall advise the individual that:

a) the requested accommodation is being supplied; or

b) the requested accommodation is not being supplied because it would cause an undue hardship, and shall suggest alternative accommodations. Alternative accommodations must be described; or

c) the request for accommodation is denied. A reason for the denial must be included; or

d) additional time is necessary to review the request. A projected response date must be included.

2. All denials of requests under Subsections (1)(b) and (1)(c) shall be approved by the executive director or designee.

3. All replies shall be made in a suitable format. If the suitable format is a format other than writing, the reply shall also be made in writing.

C. Disabled individuals who are dissatisfied with the reply to their request for accommodation may file a request for review with the executive director in the following manner.

1. Requests for review shall be directed to:

Executive Director
Utah State Tax Commission
160 East Third South

Salt Lake City, Utah 84134
Telephone: 801-530-6466 TDD: 801-530-6269

2. A request for review must be filed within 180 days of the accommodations coordinator's reply.

3. The request for review shall include:

a) the individual's name and address;

b) the nature and extent of the individual's disability;

c) a copy of the accommodation coordinator's reply;

d) a statement explaining why the reply to the individual's request for accommodation was unsatisfactory;

e) a description of the accommodation desired; and

f) the signature of the individual or the individual's legal representative.

D. The executive director shall review all requests for review and shall issue a reply within 15 working days after receipt of the request for review.

1. If unable to reach a decision within the 15 working day period, the executive director shall notify the individual with a disability that the decision is being delayed and the amount of additional time necessary to reach a decision.

2. All replies shall be made in a suitable format. If the suitable format is a format other than writing, the reply shall also be made in writing.

E. The record of each request for review, and all written records produced or received as part of each request for review, shall be classified as protected under Section 63-2-304 until the executive director issues a decision.

F. Once the executive director issues a decision, any portions of the record that pertain to the individual's medical condition shall remain classified as private under Section 63-2-302 or controlled under Section 63-2-303, whichever is appropriate. All other information gathered as part of the appeal shall be classified as private information. Only the written decision of the executive director shall be classified as public information.

G. Disabled individuals who are dissatisfied with the executive director's decision may appeal that decision to the Tax Commission in the manner provided in Sections 63-46b-1 through 63-46b-22.

R861-1A-15. Requirement of Social Security and Federal Identification Numbers Pursuant to Utah Code Ann. Section 59-1-210.

A. Taxpayers shall provide the Tax Commission with their social security number or federal identification number, as required by the Tax Commission.

B. Sole proprietor and partnership applicants shall provide the Tax Commission with the following information for every owner or partner of the applying entity:

1. name;

2. home address;

3. social security number and federal identification number, as required by the Tax Commission.

C. Corporation and limited liability applicants shall provide the Tax Commission with the following information for every officer or managing member of the applying entity:

1. name;

2. home address; and

3. social security number and federal identification number, as required by the Tax Commission.

D. Business trust applicants shall provide the Tax Commission with the following information for the responsible trustees:

1. name;

2. home address; and

3. social security number and federal identification number, as required by the Tax Commission.

R861-1A-16. Utah State Tax Commission Management Plan Pursuant to Utah Code Ann. Section 59-1-207.

A. The executive director reports to the commission. The executive director shall meet with the commission periodically to report on the status and progress of this agreement, update the commission on the affairs of the agency and seek policy guidance. The chairman of the commission shall designate a liaison of the commission to coordinate with the executive director in the execution of this agreement.

B. The structure of the agency is as follows:

1. The Office of the Commission, including the commissioners and the following units that report to the commission:

a) Internal Audit;

b) Administrative Secretary;

c) Appeals;

d) Economic and Statistical;

e) Community Relations; and

f) Tax Policy Analyst.

2. The Office of the Executive Director, including the executive director's staff and the following divisions that report to the executive director:

a) Administration;

b) Customer Service;

c) Collections;

d) Auditing;

e) Property Tax;

f) Technology Management;

g) Tax and Motor Vehicle Processing; and

h) Motor Vehicle Enforcement.

C. The commission hereby delegates full authority for the following functions to the executive director:

1. general supervision and management of the day to day management of the operations and business of the agency conducted through the Office of the Executive Director and through the divisions set out in B.2;

2. management of the day to day relationships with the customers of the agency;

3. all original assessments, including adjustments to audit, assessment, and collection actions, except as provided in C.4. and D;

4. waivers of penalty and interest of offers in compromise agreements in amounts under $10,000, in conformance with standards established by the commission;

5. except as provided in D.7., voluntary disclosure agreements with companies, including multilevel marketers;

6. determination of whether a county or taxing entity has satisfied its statutory obligations with respect to taxes and fees administered by the Tax Commission;

7. human resource management functions, including employee relations, final agency action on employee grievances, and development of internal policies and procedures; and

8. administration of Title 63, Chapter 2, Government Records Access and Management Act.

D. The executive director shall prepare and, upon approval by the commission, implement the following actions, agreements, and documents:

1. the agency budget;

2. the strategic plan of the agency;

3. administrative rules and bulletins;

4. waivers of penalty and interest in amounts of $10,000 or more as per the waiver of penalty and interest policy;

5. offer in compromise agreements that abate tax, penalty and interest over $10,000 as per the offer in compromise policy;

6. stipulated or negotiated agreements that dispose of matters on appeal; and

7. voluntary disclosure agreements that meet the following criteria;

a) the company participating in the agreement is not licensed in Utah and does not collect or remit Utah sales or corporate income tax; and

b) the agreement forgives a known past tax liability of $10,000 or more.

E. The commission shall retain responsibility for the following functions:

1. rulemaking;

2. adjudicative proceedings;

3. advisory opinions issued in response to requests from individual taxpayers for guidance on specific facts and circumstances;

4. internal audit processes;

5. liaison with the governor's office;

a) Correspondence received from the governor's office relating to tax policy will be directed to the Office of the Commission for response. Correspondence received from the governor's office that relates to operating issues of the agency will be directed to the Office of the Executive Director for research and appropriate action. The executive director shall prepare a timely response for the governor with notice to the commission as appropriate.

b) The executive director and staff may have other contact with the governor's office upon appropriate notice to the commission; and

6. liaison with the Legislature.

a) The commission will set legislative priorities and communicate those priorities to the executive director.

b) Under the direction of the executive director, staff may be assigned to assist the commission and the executive director in monitoring legislative meetings and assisting legislators with policy issues relating to the agency.

F. Correspondence that has been directed to the commission or individual commissioners that relates to matters delegated to the executive director shall be forwarded to a staff member of the Office of the Executive Director for research and appropriate action. A log shall be maintained of all correspondence and periodically the executive director will review with the commission the volume, nature, and resolution of all correspondence from all sources.

G. The executive director's staff may occasionally act as support staff to the commission for purposes of conducting research or making recommendations on tax issues.

1. Official communications or assignments from the commission or individual commissioners to the staff reporting to the executive director shall be made through the executive director.

2. The commissioners and the Office of the Commission staff reserve the right to contact agency staff directly to facilitate a collegial working environment and maintain communications within the agency. These contacts will exclude direct commands, specific policy implementation guidance, or human resource administration.

H. The commission shall meet with the executive director periodically for the purpose of exchanging information and coordinating operations.

1. The commission shall discuss with the executive director all policy decisions, appeal decisions or other commission actions that affect the day to day operations of the agency.

2. The executive director shall keep the commission apprised of significant actions or issues arising in the course of the daily operation of the agency.

3. When confronted with circumstances that are not covered by established policy or by instances of real or potential conflicts of interest, the executive director shall refer the matter to the commission.

R861-1A-17. Definition of Return Pursuant to Utah Code Ann. Sections 59-1-210 and 59-1-403.

"Return," for purposes of Section 59-1-403, does not include the reports and statements filed with the commission pursuant to Title 59, Chapter 13, Part 2, Motor Fuel.

R861-1A-18. Allocations of Remittances Pursuant to Utah Code Ann. Sections 59-1-210 and 59-1-705.

A. Remittances received by the commission shall be applied first to penalty, then interest, and then to tax for the filing period and account designated by the taxpayer.

B. If no designation for period is made, the commission shall allocate the remittance so as to satisfy all penalty, interest, and tax for the oldest period before applying any excess to other periods.

C. Fees associated with Tax Commission collection activities shall be allocated from remittances in the manner designated by statute. If a statute does not provide for the manner of allocating those fees from remittances, the commission shall apply the remittance first to the collection activity fees, then to penalty, then interest, and then to tax for the filing period.

R861-1A-19. Definition of Bond Pursuant to Utah Code Ann. Section 59-1-505.

A. The bond that a taxpayer may deposit with the Tax Commission pursuant to Section 59-1-505 shall consist of one of the following:

1. a surety bond;

2. an assignment of savings account; or
3. an assignment of certificate of deposit.

R861-1A-20. Time of Appeal Pursuant to Utah Code Ann. Sections 59-1-301, 59-1-401, 59-1-501, 59-2-1007, 59-7-517, 59-10-533, 59-12-144, 59-13-210, and 63-46b-3.

A. A request for a hearing to correct a property tax assessment pursuant to Section 59-2-1007 must be in writing. The request is deemed to be timely if:

1. it is received in the Tax Commission offices on or before the close of business of the last day of the 30 day period; or

2. the date of the postmark on the envelope or cover indicates that the request was mailed on or before June 1.

B. A petition for redetermination must be received in the Commission offices no later than 30 days from the date of a notice that creates rights to appeal. The petition is deemed to be timely if:

1. the petition is received in the Tax Commission offices on or before the close of business of the last day of the 30 day period; or

2. the date of the postmark on the envelope or cover indicates that the request was mailed on or before the last day of the 30 day period.

C. Any party adversely affected by an order of the Commission may seek judicial review within 30 days of the date that appears on the Commission's order. Copies of the appeal shall be served upon the Commission and upon the Office of the Attorney General.

R861-1A-21. Rulings by the Commission Pursuant to Utah Code Ann. Section 59-1-205.

A. A quorum of the commission must participate in any order which constitutes final agency action on an adjudicative matter.

B. The party charged with the burden of proof or the burden of overcoming a statutory presumption shall prevail only if a majority of the participating commissioners rules in that party's favor.

R861-1A-22. Petitions for Commencement of Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-501, and 63-46b-3.

A. Time for Petition. Unless otherwise provided by Utah statute, petitions for adjudicative actions shall be filed within the time frames specified in R861-1A-20. If the last day of the 30-day period falls on a Saturday, Sunday, or legal holiday, the period shall run until the end of the next Tax Commission business day.

B. Contents. A petition for adjudicative action need not be in any particular form, but shall be in writing and, in addition to the requirements of Utah Code Ann. Section 63-46b-3, shall contain the following:

1. name and street address and, if available, a fax number or e-mail address of petitioner or the petitioner's representative;

2. a telephone number where the petitioning party or that party's representative can be reached during regular business hours;

3. petitioner's tax identification, social security number or other relevant identification number, such as real property parcel number or vehicle identification number;

4. particular tax or issue involved, period of alleged liability, amount of tax in dispute, and, in the case of a property tax issue, the lien date;

5. if the petition results from a letter or notice, the petition will include the date of the letter or notice and the originating division or officer; and

6. in the case of property tax cases, the assessed value sought.

C. Effect of Nonconformance. The commission will not reject a petition because of nonconformance in form or content, but may require an amended or substitute petition meeting the requirements of this section when such defects are present. An amended or substitute petition must be filed within 15 days after notice of the defect from the commission.

R861-1A-23. Designation of Adjudicative Proceedings Pursuant to Utah Code Ann. Section 63-46b-4.

A. The following matters are designated for informal proceedings:

1. appeals from county boards of equalization;
2. assessment of penalties and interest;
3. motor vehicle issues; and
4. revocation, suspension or denial of licenses or permits.

These actions may be converted to formal proceedings upon request of the petitioner and agreement by the respondent, or at the discretion of the presiding officer. If converted, the matter will be set for a prehearing and scheduling conference pursuant to R861-1A-26.

B. All matters other than those described in section A. shall be designated as formal or informal proceedings as agreed by the parties or, if no agreement is reached, at the discretion of the presiding officer. The presiding officer may override the agreement of the parties for good cause shown. The designation shall be made during the prehearing and scheduling conference pursuant to R861-1A-26.

C. A matter may be diverted to a mediation process pursuant to R861-1A-32 upon agreement of the parties and the presiding officer.

R861-1A-24. Formal Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-502.1, 63-46b-8, and 63-46b-10.

A. At a formal proceeding, an administrative law judge appointed by the commission or a commissioner may preside.

1. Assignment of a presiding officer to a case will be made pursuant to agency procedures and not at the request of any party to the appeal.

2. Once assigned, the presiding officer will preside at all steps of the formal proceeding except as otherwise indicated in these rules or as internal staffing requirements dictate.

B. Unless waived by the petitioner, a formal proceeding includes an initial hearing pursuant to 59-1-502.5, and may also involve a formal hearing on the record.

1. Initial Hearing.

a) An initial hearing pursuant to 59-1-502.5 shall be in

the form of a conference.

b) Any issue may be settled in the initial hearing, but any party has a right to a formal hearing on matters that remain in dispute at the conclusion of the initial hearing. As to those matters, a party must pursue a formal hearing and final agency action before pursuing judicial review of unsettled matters.

2. Formal Hearing on the Record.

a) Formal hearings on the record shall be conducted by a presiding officer under 2.b) or by the commission sitting as panel under 2.c).

b) Except as provided in 2.c., all formal hearings will be heard by the presiding officer.

(1) Within the time period specified by statute, the presiding officer shall sign a decision and order in accordance with 63-46b-10 and forward the decision to the Commission for automatic agency review.

(2) A quorum of the commission shall review the decision. If a majority of the participating commissioners concur with the decision, a statement affirming the decision shall be affixed to the decision and signed by the concurring commissioners to indicate that the decision represents final agency action. The order is subject to petition for reconsideration or to judicial review.

(3) If, on agency review, a majority of the commissioners disagree with the decision, the case may be remanded to the presiding officer for further action, amended or reversed. If the presiding officer's decision is amended or reversed, the commission shall issue its decision and order, and that decision and order shall represent final agency action on the matter.

c) The commission, on its own motion, upon petition by a party to the appeal, or upon recommendation of the presiding officer, may sit as a panel at the formal hearing on the record if the case involves an important issue of first impression, complex testimony and evidence, or testimony requiring a prolonged hearing.

(1) A panel of the commission shall consist of two or more commissioners

(2) An order issued from a hearing before a panel of commissioners shall constitute final agency action, and it is subject to petition for reconsideration or to judicial review.

R861-1A-25. Informal Adjudicative Proceedings Pursuant to Utah Code Ann. Section 63-46b-5.

A. Informal hearings shall be conducted on the record according to section 63-46b-5.

B. Within the time period specified by statute, the presiding officer shall sign a decision and order pursuant to 63-46b-5(1)(i)-(k) and forward the decision to the Commission for agency review by a quorum of the commission.

1. If a majority of commissioners concur with the decision, a statement affirming the decision shall be affixed to the decision and signed by the concurring commissioners to indicate that the decision represents final agency action. The order is subject to petition for reconsideration or to judicial review.

2. If, on agency review, a majority of the commissioners disagree with the decision, the case may be remanded to the presiding officer for further action as directed by the commission. or the order may be amended or reversed. The commission shall issue its decision and order representing final agency action.

R861-1A-26. Procedures for Formal and Informal Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-501, 63-46b-5 and 63-46b-6 through 63-46b-11.

A. Prehearing and Scheduling Conference. Except for petitions concerning appeals designated as informal by R861-1A- 23, all matters shall be subject to a prehearing and scheduling conference.

1. At the conference, the parties and the presiding officer shall:

a) designate the proceeding as formal or informal, or divert the action to a mediation process;

b) establish ground rules for discovery;

c) discuss scheduling;

d) clarify other issues; and

e) in the case of formal proceedings, determine whether the initial hearing will be waived and whether the commission will preside as a panel at the formal hearing on the record pursuant to R861-1A-24.

2. Upon designation of the proceeding as formal and upon agreement of the parties, the prehearing and scheduling conference may be converted to an initial hearing.

B. Notice of Hearing. At least ten days prior to a hearing date, the Commission shall notify the petitioning party or the petitioning party's representative by mail, e-mail, or facsimile of the date, time and place of any hearing or proceeding. In the case of notices for informal proceedings, the notice shall inform the parties of deadlines for exchanging witness lists or other information.

C. Proceedings Conducted by Telephone. Any proceeding may be held with one or more of the parties on the telephone if the presiding officer determines that it will be more convenient or expeditious for one or more of the parties and does not unfairly prejudice the rights of any party. Each party to the proceeding is responsible for notifying the presiding officer of the telephone number where contact can be made for purposes of conducting the hearing.

D. Representation.

1. A party may pursue a petition without assistance of counsel or other representation. However, a party may be represented by legal counsel or other representation at every stage of adjudication. Failure to obtain legal representation shall not be grounds for complaint at a later stage in the adjudicative proceeding or for relief on appeal from an order of the commission.

a) Legal counsel must enter an appearance.

b) Any representative other than legal counsel must submit a signed power of attorney authorizing the representative to act on the party's behalf and binding the party by the representative's action.

c) All documents will be directed to the party's representative. Documents may be transmitted by facsimile number, e-mail address or other electronic means if such

transmission does not breach confidentiality. Otherwise, documents will be mailed to or served upon the representative's street address as shown in the petition for agency action.

2. Any division of the commission named as party to the proceeding may be represented by the Attorney General's Office.

E. Subpoena Power.

1. The presiding officer may issue subpoenas to secure the attendance of witnesses or the production of evidence.

a) The party requesting the subpoena must prepare it and submit it to the presiding officer for signature.

b) Service of the subpoena shall be made by the party requesting it in a manner consistent with the Utah Rules of Civil Procedure.

F. Motions.

1. Conversion. Upon notice to the parties, the presiding officer may, on his own motion or on the motion of any party, convert the proceeding to a different type of proceeding under conditions specified in R861-1A-23.

2. Consolidation. The presiding officer has discretion to consolidate cases when the same tax assessment, series of assessments, or issues are involved in each, or where the fact situations and the legal questions presented are virtually identical.

3. Continuance. A continuance may be granted at the discretion of the presiding officer.

4. Default. The presiding officer may enter an order of default against a party in accordance with section 63-46b-11.

a) The default order shall include a statement of the grounds for default and shall be delivered to all parties by electronic means or, if electronic transmission is unavailable, by U.S. mail.

b) A defaulted party may seek to have the default set aside according to procedures set forth in the Utah Rules of Civil Procedure.

5. Ruling on Procedural Motions. Procedural motions may be made during the hearing or by written motion.

a) Each motion shall include the grounds upon which it is based and the relief or order sought. Copies of written motions shall be served upon all other parties to the proceeding.

b) Upon the filing of any motion, the presiding officer may:

(1) grant or deny the motion; or

(2) set the matter for briefing, hearing, or further proceedings.

R861-1A-27. Discovery Pursuant to Utah Code Ann. Section 63-46b-7.

A. Discovery in informal proceedings is limited by sections 63-46b-5, 59-1-403 and the Government Records Access and Management Act.

B. Discovery procedures in formal proceedings shall be established during the prehearing and scheduling conference in accordance with the Utah Rules of Civil Procedure and other applicable statutory authority.

C. The party requesting information or documents may be required to pay in advance the costs of obtaining or reproducing such information or documents.

R861-1A-28. Evidence in Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-210, 76-8-502, 76-8-503, 63-46b-8.

A. Except as otherwise stated in this rule, formal proceedings shall be conducted in accordance with the Utah Rules of Evidence, and the degree of proof in a hearing before the commission shall be the same as in a judicial proceeding in the state courts of Utah. Informal proceedings shall be conducted under relaxed rules of evidence.

B. Every party to an adjudicative proceeding has the right to introduce evidence. The evidence may be oral or written, real or demonstrative, direct or circumstantial.

1. The presiding officer may admit any reliable evidence possessing probative value which would be accepted by a reasonably prudent person in the conduct of his affairs.

2. The presiding officer may admit hearsay evidence. However, no decision of the commission will be based solely on hearsay evidence.

3. If a party attempts to introduce evidence into a hearing, and that evidence is excluded, the party may proffer the excluded testimony or evidence to allow the reviewing judicial authority to pass on the correctness of the ruling of exclusion on appeal.

C. At the discretion of the presiding officer or upon stipulation of the parties, the parties may be required to reduce their testimony to writing and to prefile the testimony.

1. Prefiled testimony may be placed on the record without being read into the record if the opposing parties have had reasonable access to the testimony before it is presented. Except upon finding of good cause, reasonable access shall be not less than ten working days.

2. Prefiled testimony shall have line numbers inserted at the left margin and shall be authenticated by affidavit of the witness.

3. The presiding officer may require the witness to present a summary of the prefiled testimony. In that case, the witness shall reduce the summary to writing and either file it with the prefiled testimony or serve it on all parties within 10 days after filing the testimony.

4. If an opposing party intends to cross-examine the witness on prefiled testimony or the summary of prefiled testimony, that party must file a notice of intent to cross-examine at least 10 days prior to the date of the hearing so that witness can be scheduled to appear.

D. The presiding officer shall rule and sign orders on matters concerning the evidentiary and procedural conduct of the proceeding.

E. Oral testimony at a formal or informal hearing will be sworn. The oath will be administered by the presiding officer or a person designated by him. Anyone testifying falsely under oath may be subject to prosecution for perjury in accordance with the provisions of Utah Code Ann. Sections 76-8-502 and 76-8-503.

F. Any party appearing in an adjudicative proceeding may submit a memorandum of authorities. The presiding officer may request a memorandum from any party if deemed necessary for a full and informed consideration of the issues.

R861-1A-29. Agency Review and Reconsideration Pursuant to Utah Code Ann. Section 63-46b-13.

A. Agency Review.

1. All written decisions and orders shall be submitted by the presiding officer to the commission for agency review before the decision or order is issued. Agency review is automatic, and no petition is required.

B. Reconsideration. Within 20 days after the date that an order is issued, any party may file a written request for reconsideration alleging mistake of law or fact, or discovery of new evidence.

1. The commission shall respond to the petition within 20 days after the date that it was received in the appeals unit to notify the petitioner whether the reconsideration is granted or denied.

(a) If no notice is issued within the 20-day period, the commission's lack of action on the request shall be deemed to be a denial and a final order.

(b) For purposes of calculating the 30 day limitation period for pursuing judicial review, the date of the commission's order on the reconsideration or the order of denial is the date of the final agency action.

2. If no petition for reconsideration is made, the 30 day limitation period for pursuing judicial review begins to run from the date of the final agency action.

R861-1A-30. Ex Parte Communications Pursuant to Utah Code Ann. Sections 63-46b-5 and 63-46b-8.

A. No commissioner or administrative law judge shall make or knowingly cause to be made to any party to an appeal any communication relevant to the merits of a matter under appeal unless notice and an opportunity to be heard are afforded to all parties.

B. No party shall make or knowingly cause to be made to any commissioner or administrative law judge an ex parte communication relevant to the merits of a matter under appeal for the purpose of influencing the outcome of the appeal. Discussion of procedural matters are not considered ex parte communication relevant to the merits of the appeal.

C. A presiding officer may receive aid from staff assistants if:

1. the assistants do not receive ex parte communications of a type that the presiding officer is prohibited from receiving, and,

2. in an instance where assistants present information which augments the evidence in the record, all parties shall have reasonable notice and opportunity to respond to that information.

D. Any commissioner or administrative law judge who receives an ex parte communication relevant to the merits of a matter under appeal shall place the communication into the case file and afford all parties an opportunity to comment on the information.

R861-1A-31. Declaratory Orders Pursuant to Utah Code Ann. Section 63-46b-21.

A. A party has standing to bring a declaratory action if that party is directly and adversely affected or aggrieved by an agency action within the meaning of the relevant statute. A party with standing may petition for a declaratory order to challenge:

1. the commission's interpretation of statutory language as stated in an administrative rule; or

2. the commission's grant of authority under a statute.

B. The commission shall not accept a petition for declaratory order on matters pending before the commission in an audit assessment, refund request, collections action or other agency action, or on matters pending before the court on judicial review of a commission decision.

C. The commission may refuse to render a declaratory order if the order will not completely resolve the controversy giving rise to the proceeding or if the petitioner has other remedies through the administrative appeals processes. The commission's decision to accept or reject a petition for declaratory order rests in part on the petitioner's standing to raise the issue and on a determination that the petitioner has not already incurred tax liability under the statutes or rules challenged.

D. A declaratory order that invalidates all or part of an administrative rule shall trigger the rulemaking process to amend the rule.

R861-1A-32. Mediation Process Pursuant to Utah Code Section 63-46b-1.

A. Except as otherwise precluded by law, a resolution to any matter of dispute may be pursued through mediation.

1. The parties may agree to pursue meditation any time before the formal or informal hearing on the record.

2. The choice of mediator and the apportionment of costs shall be determined by agreement of the parties.

B. If mediation produces a settlement agreement, the agreement shall be submitted to the presiding officer pursuant to R861-1A-33.

C. If mediation fails to resolve the dispute, the matter will be scheduled for a formal or informal hearing pursuant to R861-1A-23.

R861-1A-33. Settlement Agreements Pursuant to Utah Code Sections 59-1-210 and 59-1- 502.5.

A. "Settlement agreement" means a stipulation, consent decree, settlement agreement or any other legally binding document or representation that resolves a dispute or issue between the parties.

B. Procedure:

1. Parties with an interest in a matter pending before a division of the Tax Commission may submit a settlement agreement for review and approval, whether or not a petition for hearing has been filed.

2. Parties to an appeal pending before the commission may submit a settlement agreement to the presiding officer for review and approval.

3. Each settlement agreement shall be in writing and executed by each party or each party's legal representative, if any, and shall contain:

a) the nature of the claim being settled and any claims remaining in dispute;

b) a proposed order for commission approval; and

c) a statement that each party has been notified of, and

allowed to participate in settlement negotiations.

4. A settlement agreement terminates the administrative action on the issues settled before all administrative remedies are exhausted, and, therefore, precludes judicial review of the issues. Each settlement agreement shall contain a statement that the agreement is binding and constitutes full resolution of all issues agreed upon in the settlement agreement.

5. The signed agreement shall stay further proceedings on the issues agreed upon in the settlement until the agreement is accepted or rejected by the commission or the commission's designee.

a) If approved, the settlement agreement shall take effect by its own terms.

b) If rejected, action on the claim shall proceed as if no settlement agreement had been reached. Offers made during the negotiation process will not be used as an admission against that party in further adjudicative proceedings.

R861-1A-34. Advisory Opinions Pursuant to Utah Code Ann. Section 59-1-210.

A. Advisory opinions are written, informational statements of the commission's interpretation of statutes or administrative rules, or informational statements concerning the application of statutes and rules to specific facts and circumstances.

1. Advisory opinions address questions that have not otherwise been addressed in statutes, rules, or decisions issued by the commission.

2. The commission shall not knowingly issue an advisory opinion regarding facts raised pending before the commission in an audit assessment, refund request, or other agency action, or regarding matters that are pending before the court on judicial review of a commission decision. Any opinion inadvertently issued on a matter pending agency or judicial action shall be set aside until the conclusion of that action.

3. Requests for advisory opinions must be addressed to the commission in writing. If the requesting party is dissatisfied with the opinion, that party may resubmit the request along with new facts or information for commission review.

B. The weight afforded an advisory opinion in a subsequent audit or administrative appeal depends upon the degree to which the underlying facts addressed in the opinion were adequate to allow thorough consideration of the issues and interests involved.

C. An advisory opinion is not a final agency action. Petitioner must use the designated appeal process to address judiciable controversies arising from the issuance of an advisory opinion.

1. If the opinion leads to a denial of a claim, an audit assessment or some other agency action at a divisional level, the taxpayer must use the appeals procedures to challenge that action within 30 days of the final division decision.

2. If the only matter at issue in the opinion is a challenge to the commission's interpretation of statutory language or a challenge to the commission's authority under a statute, the matter may come before the commission as a petition for declaratory order submitted within 30 days of the date of the opinion challenged.

R861-1A-35. Manner of Retaining Records Pursuant to Utah Code Ann. Sections 59-1-210, 59-5-104, 59-5-204, 59-6-104, 59-7-506, 59-8-105, 59-8a-105, 59-10-501, 59-12-111, 59-13-211, 59-13-312, 59-13-403, 59-14-303, and 59-15-105.

A. Definitions.

1. "Database Management System" means a software system that controls, relates, retrieves, and provides accessibility to data stored in a database.

2. "Electronic data interchange" or "EDI technology" means the computer-to-computer exchange of business transactions in a standardized, structured electronic format.

3. "Hard copy" means any documents, records, reports, or other data printed on paper.

4. "Machine-sensible record" means a collection of related information in an electronic format. Machine-sensible records do not include hard-copy records that are created or recorded on paper or stored in or by an imaging system such as microfilm, microfiche, or storage-only imaging systems.

5. "Storage-only imaging system" means a system of computer hardware and software that provides for the storage, retention, and retrieval of documents originally created on paper. It does not include any system, or part of a system, that manipulates or processes any information or data contained on the document in any manner other than to reproduce the document in hard copy or as an optical image.

6. "Taxpayer" means the person required, under Title 59 or other statutes administered by the Tax Commission, to collect, remit, or pay the tax or fee to the Tax Commission.

B. If a taxpayer retains records in both machine-sensible and hard-copy formats, the taxpayer shall make the records available to the commission in machine-sensible format upon request by the commission.

C. Nothing in this rule shall be construed to prohibit a taxpayer from demonstrating tax compliance with traditional hard-copy documents or reproductions thereof, in whole or in part, whether or not the taxpayer also has retained or has the capability to retain records on electronic or other storage media in accordance with this rule. However, this does not relieve the taxpayer of the obligation to comply with B.

D. Recordkeeping requirements for machine-sensible records.

1. Machine-sensible records used to establish tax compliance shall contain sufficient transaction-level detail information so that the details underlying the machine-sensible records can be identified and made available to the commission upon request. A taxpayer has discretion to discard duplicated records and redundant information provided its responsibilities under this rule are met.

2. At the time of an examination, the retained records must be capable of being retrieved and converted to a standard record format.

3. Taxpayers are not required to construct machine-sensible records other than those created in the ordinary course of business. A taxpayer who does not create the electronic equivalent of a traditional paper document in the ordinary course of business is not required to construct such a

record for tax purposes.

4. Electronic Data Interchange Requirements.

a) Where a taxpayer uses electronic data interchange processes and technology, the level of record detail, in combination with other records related to the transactions, must be equivalent to that contained in an acceptable paper record.

b) For example, the retained records should contain such information as vendor name, invoice date, product description, quantity purchased, price, amount of tax, indication of tax status, and shipping detail. Codes may be used to identify some or all of the data elements, provided that the taxpayer provides a method that allows the commission to interpret the coded information.

c) The taxpayer may capture the information necessary to satisfy D.4.b) at any level within the accounting system and need not retain the original EDI transaction records provided the audit trail, authenticity, and integrity of the retained records can be established. For example, a taxpayer using electronic data interchange technology receives electronic invoices from its suppliers. The taxpayer decides to retain the invoice data from completed and verified EDI transactions in its accounts payable system rather than to retain the EDI transactions themselves. Since neither the EDI transaction nor the accounts payable system captures information from the invoice pertaining to product description and vendor name, i.e., they contain only codes for that information, the taxpayer also retains other records, such as its vendor master file and product code description lists and makes them available to the commission. In this example, the taxpayer need not retain its EDI transaction for tax purposes.

5. Electronic data processing systems requirements.

a) The requirements for an electronic data processing accounting system should be similar to that of a manual accounting system, in that an adequately designed accounting system should incorporate methods and records that will satisfy the requirements of this rule.

6. Business process information.

a) Upon the request of the commission, the taxpayer shall provide a description of the business process that created the retained records. The description shall include the relationship between the records and the tax documents prepared by the taxpayer, and the measures employed to ensure the integrity of the records.

b) The taxpayer shall be capable of demonstrating:

(1) the functions being performed as they relate to the flow of data through the system;

(2) the internal controls used to ensure accurate and reliable processing; and

(3) the internal controls used to prevent unauthorized addition, alteration, or deletion of retained records.

c) The following specific documentation is required for machine-sensible records retained pursuant to this rule:

(1) record formats or layouts;

(2) field definitions, including the meaning of all codes used to represent information;

(3) file descriptions, e.g., data set name; and

(4) detailed charts of accounts and account descriptions.

E. Records maintenance requirements.

1. The commission recommends but does not require that taxpayers refer to the National Archives and Record Administration's (NARA) standards for guidance on the maintenance and storage of electronic records, such as labeling of records, the location and security of the storage environment, the creation of back-up copies, and the use of periodic testing to confirm the continued integrity of the records. The NARA standards may be found at 36 C.F.R., Section 1234,(1995).

2. The taxpayer's computer hardware or software shall accommodate the extraction and conversion of retained machine-sensible records.

F. Access to machine-sensible records.

1. The manner in which the commission is provided access to machine-sensible records as required in B. may be satisfied through a variety of means that shall take into account a taxpayer's facts and circumstances through consultation with the taxpayer.

2. Access will be provided in one or more of the following manners:

a) The taxpayer may arrange to provide the commission with the hardware, software, and personnel resources necessary to access the machine-sensible records.

b) The taxpayer may arrange for a third party to provide the hardware, software, and personnel resources necessary to access the machine-sensible records.

c) The taxpayer may convert the machine-sensible records to a standard record format specified by the commission, including copies of files, on a magnetic medium that is agreed to by the commission.

d) The taxpayer and the commission may agree on other means of providing access to the machine-sensible records.

G. Taxpayer responsibility and discretionary authority.

1. In conjunction with meeting the requirements of D., a taxpayer may create files solely for the use of the commission. For example, if a data base management system is used, it is consistent with this rule for the taxpayer to create and retain a file that contains the transaction-level detail from the data base management system and meets the requirements of D. The taxpayer should document the process that created the separate file to show the relationship between that file and the original records.

2. A taxpayer may contract with a third party to provide custodial or management services of the records. The contract shall not relieve the taxpayer of its responsibilities under this rule.

H. Alternative storage media.

1. For purposes of storage and retention, taxpayers may convert hard-copy documents received or produced in the normal course of business and required to be retained under this rule to microfilm, microfiche or other storage-only imaging systems and may discard the original hard-copy documents, provided the conditions of this section are met. Documents that may be stored on these media include general books of account, journals, voucher registers, general and subsidiary ledgers, and supporting records of details, such as sales invoices, purchase invoices, exemption certificates, and credit memoranda.

2. Microfilm, microfiche and other storage-only imaging

systems shall meet the following requirements:

a) Documentation establishing the procedures for converting the hard-copy documents to microfilm, microfiche, or other storage-only imaging system must be maintained and made available on request. This documentation shall, at a minimum, contain a sufficient description to allow an original document to be followed through the conversion system as well as internal procedures established for inspection and quality assurance.

b) Procedures must be established for the effective identification, processing, storage, and preservation of the stored documents and for making them available for the period they are required to be retained.

c) Upon request by the commission, a taxpayer must provide facilities and equipment for reading, locating, and reproducing any documents maintained on microfilm, microfiche, or other storage-only imaging system.

d) When displayed on equipment or reproduced on paper, the documents must exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or complete numbers.

e) All data stored on microfilm, microfiche, or other storage-only imaging systems must be maintained and arranged in a manner that permits the location of any particular record.

f) There is no substantial evidence that the microfilm, microfiche or other storage-only imaging system lacks authenticity or integrity.

I. Effect on hard-copy recordkeeping requirements.

1. Except as otherwise provided in this section, the provisions of this rule do not relieve taxpayers of the responsibility to retain hard-copy records that are created or received in the ordinary course of business as required by existing law and regulations. Hard-copy records may be retained on a recordkeeping medium as provided in H.

2. Hard-copy records not produced or received in the ordinary course of transacting business, e.g., when the taxpayer uses electronic data interchange technology, need not be created.

3. Hard-copy records generated at the time of a transaction using a credit or debit card must be retained unless all the details necessary to determine correct tax liability relating to the transaction are subsequently received and retained by the taxpayer in accordance with this rule. These details include those listed in D.4.a) and D.4.b).

4. Computer printouts that are created for validation, control, or other temporary purposes need not be retained.

5. Nothing in this section shall prevent the commission from requesting hard-copy printouts in lieu of retained machine-sensible records at the time of examination.

R861-01A-36. Signatures on Tax Return Information Pursuant to Utah Code Ann. Sections 59-10-512 and 59-12-107.

A. "Telefile" means the filing of tax returns and tax payment information by telephone.

B. Taxpayers who file tax return information, other than electronic funds transfers, through the Tax Commission's telefile system shall use the Tax Commission assigned personal identification number as their signature for all tax return information filed through that system.

KEY: developmentally disabled, grievance procedures, taxation, disclosure requirements

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Notice of Continuation May 20, 1997

59-1-205
59-1-207
59-1-210
59-1-301
59-1-401
59-1-403
59-1-501
59-1-502.1
59-1-502.5
59-1-505
59-1-602
59-1-705
59-10-512
59-10-533
59-12-107
59-12-144
59-13-210
59-10-544
59-14-404
59-2-212
59-2-701
59-2-705
59-2-1003
59-2-1007
59-2-1011
59-2-1013
59-2-704
59-2-924
59-7-146(2)
59-7-517
63-46a-4
63-46b-1
76-8-502
76-8-503
59-2-701
63-46b-3
63-46b-4
63-46b-5
63-46b-6
63-46b-7
through
63-46b-11
63-46b-13
63-46b-21
63-46a-3(2)

R865. Tax Commission, Auditing.
R865-6F. Franchise Tax.
R865-6F-1. Corporation Franchise Privilege - Right to Do Business - Nature of Liability and How Terminated Pursuant to Utah Code Ann. Sections 16-10a-1501 through 16-10a-1522.

A. The Utah franchise tax is imposed upon corporations qualified or incorporated under the laws of Utah, whether or not they do business therein, and also upon corporations doing business in Utah, whether or not they are qualified or incorporated under the laws of Utah.

1. An unqualified foreign corporation doing business in this state is liable for Utah corporation franchise tax in the same amount as if it had duly applied for and received a certificate of authority to transact business in this state pursuant to Section 16-10a-1501.

2. An unqualified foreign corporation deriving income from this state, but not doing business in this state within the contemplation of the Utah corporation franchise tax law is subject to the Utah corporation income tax on income derived from this state under the provisions of Sections 59-7-201 to 59-7-207.

B. If a corporation received its corporate authority to do business in Utah prior to January 1, 1973, and is a member of an affiliated group filing a combined report under Section 59-7-402 or 59-7-403, and legally terminates its corporate authority, it must include its activity during the final year in the combined report of the group. The tax is imposed upon the income of the group rather than the income of the individual corporations.

C. A corporation that was incorporated, qualified, or that reinstated its corporate authority to do business in Utah after January 1, 1973 must file a corporation franchise tax return and pay the tax due with the return for the year in which it legally terminates its right to do business in this state. The Tax Commission shall not issue a tax clearance certificate until the final return has been filed and the amounts due for the final year are paid.

D. For Utah corporation franchise tax purposes, a foreign corporation terminates its corporate existence or the privileges for which the franchise tax is levied (unless it continues to do business) on the date on which:

1. a certificate of withdrawal is issued under the provisions of Section 16-10a-1520;

2. its corporate existence is legally terminated in its home state, provided authoritative evidence of that termination is filed;

3. a certificate of revocation of its authority to transact business in this state is issued under the provisions of Sections 16-10a-1530 and 16-10a-1531; or

4. the corporate powers, rights, and privileges are forfeited under the provisions of Section 59-7-534.

E. For Utah corporation franchise tax purposes, a corporation that is incorporated under the laws of this state terminates its corporate existence or the privilege of exercising its corporate franchise for which the franchise tax is levied on the date on which:

1. a certificate of dissolution is issued pursuant to a voluntary dissolution under the provisions of Section 16-10a-1401 or Sections 16-10a-1402 through 16-10a-1403;

2. a decree of dissolution is entered by the court pursuant to the provisions of Sections 16-10a-1430 through 16-10a-1433;

3. a certificate of merger or of consolidation (which effects the termination of the separate corporate existence of the Utah corporation) is issued pursuant to the provisions of Sections 16-10a-1101 through 16-10a-1107; or

4. the corporate rights and privileges are suspended under the provisions of Section 59-7-534.

F. If the corporation continues to do business in this state subsequent to any of the above dates, it is liable for franchise tax, even though doing business is not authorized, or may even be prohibited, by law. A corporation cannot avoid the franchise tax by doing business without authority which, if legally done, would subject the corporation to the tax.

R865-6F-2. Establishment of Taxable Year and Filing the First Return Pursuant to Utah Code Ann. Sections 59-7-501 and 59-7-505.

A. The period for which a corporation must file its returns for corporation franchise tax purposes is the same period under which its income is computed pursuant to Section 59-7-501.

B. The first return may cover a period of less than 12-calendar months, but may not exceed 12-calendar months. The period must end on the last day of a calendar month, except that the Tax Commission will accept returns being made using the 52-53 week method of reporting under Section 441(f), Internal Revenue Code.

C. If a corporation elects for federal purposes to end its filing period on a date that does not fall on the last day of a calendar month, the filing period for the purposes of effective dates of Utah laws ends on the last day of the month nearest to the federal year end. The Utah net income is computed based on the filing period for federal purposes, notwithstanding the Utah filing period ends on the last day of the month.

D. Except as provided in Section 59-7-505(8)(a), in the case of a domestic corporation, the first return period begins with the date of incorporation. Activity prior to date of incorporation must be reported on individual income or partnership returns or of such other entity as may be appropriate.

E. Except as provided in Section 59-7-505(8)(a), in the case of a foreign corporation, the first return period begins with the date the corporation is qualified to do business in Utah under Title 16, Chapter 10a, Part 15, or the date business within the state is commenced, whichever is the earlier.

R865-6F-6. Application of Corporation Franchise or Income Tax Acts to Qualified Corporations and to Nonqualified Foreign Corporations Pursuant to Utah Code Ann. Section 59-7-104.

A. Definitions.

1. "Ancillary activities" means those activities that serve no independent business function for the seller apart from

their connection to the solicitation of orders.

2. "De minimis activities" means those activities that, when taken together, establish only a trivial connection with the taxing state. An activity conducted within Utah on a regular or systematic basis or pursuant to a company policy, whether or not in writing, shall not normally be considered trivial.

3. "In-home office" means an office or place of business located within the residence of the employee or representative of a company that satisfies the following conditions:

a) The office may not be publicly attributed to the company, or to the employee or representative of the company in an employee or representative capacity.

b) The use of the office shall be limited to soliciting and receiving orders from customers; transmitting orders outside the state for acceptance or rejection by the company; or for other activities that are protected under Public Law 86-272, 15 U.S.C. 381-384 (hereafter P.L. 86-272) and this rule.

c) Neither the company nor the employee or representative shall maintain a telephone listing or other public listing for the company within the state, nor use advertising or business literature indicating that the company or its employee or representative can be contacted at a specific address within the state. However, the normal distribution and use of business cards and stationery identifying the employee's or representative's name, address, telephone, and fax numbers and affiliation with the company shall not, by itself, be considered as advertising or otherwise publicly attributing an office to the company or its employee or representative.

4. "Solicitation" means:

a) speech or conduct that explicitly or implicitly invites an order; and

b) activities that neither explicitly nor implicitly invite an order, but are entirely ancillary to requests for an order.

B. Every corporation doing business in Utah whether qualified or not, and every corporation incorporated or qualified in Utah whether or not doing business therein is subject to the Utah corporation franchise tax, unless exempted under the provisions of Section 59-7-102. If liability for the tax exists, the tax must be computed under the provisions of Section 59-7-104, at the rate provided by statute, but in no case shall the tax be less than the minimum tax prescribed.

C. Foreign corporations not qualified in Utah which ship goods to customers in this state from points outside this state, pursuant to orders solicited but not accepted by agents or employees in this state, and which are not doing business in Utah are not taxable under the Utah Corporation Franchise Tax Act if:

1. they maintain no office nor stocks of goods in Utah, and

2. they engage in no other activities in Utah.

D. Foreign corporations not qualified in Utah that make deliveries from stocks of goods located in this state are doing business in this state and are taxable under the Corporation Franchise Tax Act, even though they have no office or regular place of business in this state.

E. Foreign corporations not qualified in Utah are subject to the franchise tax if performing the necessary duties to fulfill contracts or subcontracts in Utah, whether through their own employees or by furnishing of supervisory personnel.

F. Corporations that own real property within this state and rent or lease such properties to others are subject to the franchise tax whether or not qualified under the laws of this state. This also applies to corporations deriving royalty, lease, or rental income from properties located within this state, whether or not such properties are owned by the corporation.

G. Foreign corporations not qualified in Utah are subject to the franchise or income tax if they derive income from revenue-producing properties located in Utah or moving through Utah or from services performed by personnel in this state. This includes, but is not limited to, freight and transportation operations, sales of real property having a Utah situs, leasing or sales of franchises, sporting or entertaining events, etc.

H. Corporations that participate in joint ventures or working and operating agreements which are performed in this state are subject to the franchise tax whether qualified or not.

I. Foreign corporations qualified in Utah are subject to the franchise tax even though engaged solely in interstate commerce.

J. P.L. 86-272 restricts a state from imposing a net income tax on income derived within its borders from interstate commerce if the only business activity of the company within the state consists of the solicitation of orders for sales of tangible personal property, which orders are sent outside the state for acceptance or rejection, and, if accepted, are filled by shipment or delivery from a point outside the state. The term "net income tax" includes a franchise tax measured by net income. If any sales of tangible personal property are made from Utah into a state which is precluded by P.L. 86-272 from taxing the income of the seller, such sales remain subject to throwback to Utah pursuant to Section 59-7-318(2). Similarly, a sale into Utah from another state would not subject a corporation to the Utah tax if the corporation's activities do not exceed those allowed under P.L. 86-272.

1. Only the solicitation to sell personal property is afforded immunity under P.L. 86-272; therefore, the leasing, renting licensing or other disposition of tangible personal property, or transactions involving intangibles such as franchises, patents, copyrights, trade marks, service marks and the like, or any other type of property are not protected activities under P. L. 86-272. The sale or delivery and the solicitation for the sale or delivery of any type of service that is not either (1) ancillary to solicitation, or (2) otherwise set forth as a protected activity below is also not protected under P.L. 86-272 or this rule.

2. For the in-state activity to be a protected activity under P.L. 86-272, it must be limited solely to solicitation, except for de minimis activities and activities conducted by independent contractors as described below.

K. The following in-state activities, assuming they are not of a de minimis level, will constitute doing business in Utah under P.L. 86-272 and will subject the corporation to the Utah corporation franchise tax:

1. making repairs or providing maintenance or service to the property sold or to be sold;

2. collecting current or delinquent accounts, whether directly or by third parties, through assignment or otherwise;

3. investigating credit worthiness;

4. installation or supervision of installation at or after shipment or delivery;

5. conducting training courses, seminars, or lectures for personnel other than personnel involved only in solicitation;

6. providing any kind of technical assistance or service including engineering assistance or design service, when one of the purposes thereof is other than the facilitation of the solicitation of orders;

7. investigating, handling, or otherwise assisting in resolving customer complaints, other than mediating direct customer complaints when the sole purpose of such mediation is to ingratiate the sales personnel with the customer;

8. approving or accepting orders;

9. repossessing property;

10. securing deposits on sales;

11. picking up or replacing damaged or returned property;

12. hiring, training, or supervising personnel, other than personnel involved only in solicitation;

13. using agency stock checks or any other instrument or process by which sales are made within this state by sales personnel;

14. maintaining a sample or display room in excess of two weeks (14 days) at any one location within the state during the tax year;

15. carrying samples for sale, exchange or distribution in any manner for consideration or other value;

16. owning, leasing, using, or maintaining any of the following facilities or property in-state:

(a) repair shop;

(b) parts department;

(c) any kind of office other than an in-home office;

(d) warehouse;

(e) meeting place for directors, officers, or employees;

(f) stock of goods other than samples for sales personnel or that are used entirely ancillary to solicitation;

(g) telephone answering service that is publicly attributed to the company or to employees or agents of the company in their representative status;

(h) mobile stores, i.e., vehicles with drivers who are sales personnel making sales from the vehicles;

(i) real property or fixtures to real property of any kind.

17. consigning stocks of goods or other tangible personal property to any person, including an independent contractor, for sale;

18. maintaining, by either an in-state or an out-of-state resident employee, an office or place of business (in-home or otherwise) of any kind other than an in-home office;

(b) The maintenance of any office or other place of business in this state that does not strictly qualify as an in-home office under this subsection shall, by itself cause the loss of protection under this rule.

(c) For purposes of this subsection it is not relevant whether the company pays directly, indirectly, or not at all for the cost of maintaining the in-home office.

19. entering into franchising of licensing agreements; selling or otherwise disposing of franchises and licenses; or selling or otherwise transferring tangible personal property pursuant to such franchise or license by the franchisor or licensor to its franchisee or licensee within the state;

20. shipping or delivering of goods into this state by means of private vehicle, rail, water, air or other carrier, irrespective of whether a shipment of delivery fee or other charge is imposed, directly or indirectly, upon the purchaser;

21. conducting any activity not listed as a protected activity below which is not entirely ancillary to requests for orders, even if such activity helps to increase purchases.

L. The following in-state activities will not cause the loss of protection for otherwise protected sales;

1. soliciting orders for sales by any type of advertising;

2. soliciting of orders by an in-state resident employee or representative of the company, so long as such person does not maintain or use any office or other place of business in the state other than an in-home office;

3. carrying samples and promotional materials only for display or distribution without charge or other consideration;

4. furnishing and setting up display racks and advising customers on the display of the company's products without charge or other consideration;

5. providing automobiles to sales personnel for their use in conducting protected activities;

6. passing orders, inquiries and complaints on to the home office;

7. missionary sales activities, i.e. the solicitation of indirect customers for the company's goods. For example, a manufacturer's solicitation of retailers to buy the manufacturer's goods from the manufacturer's wholesale customers would be protected if such solicitation activities are otherwise immune;

8. coordinating shipment or delivery without payment or other consideration and providing information relating thereto either prior or subsequent to the placement of an order;

9. checking of customer's inventories without a charge therefore if performed for reorder, but not for other purposes such as a quality control;

10. maintaining a sample or display room for two weeks (14 days) or less at any one location within the state during the tax year;

11. recruiting, training or evaluating sales personnel, including occasionally using homes, hotels or similar places for meetings with sales personnel;

12. mediating direct customer complaints when the purpose thereof is solely for ingratiating the sales personnel with the customer and facilitating requests for orders;

13. owning, leasing, using or maintaining personal property for use in the employee or representative's in-home office or automobile that is solely limited to the conducting of protected activities. Therefore, the use of personal property such as a cellular telephone, facsimile machine, duplicating equipment, personal computer and computer software that is limited to the carrying on of protected solicitation and activity entirely ancillary to such solicitation or permitted by the provisions of this rule shall not, by itself, remove the

protection of P.L. 86-272.

M. P.L. 86-272 provides protection to certain in-state activities if conducted by an independent contractor that would not be afforded if performed by the company or its employees or other representatives.

1. Independent contractors may engage in the following limited activities in the state without the company's loss of immunity;

a) soliciting sales;

b) making sales;

c) maintaining an office.

2. Sales representatives who represent a single principal are not considered to be independent contractors and are subject to the same limitations as those provided under P.L. 86-272 and this rule.

3. Maintenance of stock of goods in the state by the independent contractor under consignment or any other type of arrangement with the company, except for purposes of display and solicitation, shall remove the protection.

N. The Tax Commission will apply the provisions of P.L. 86-272 and of this rule to business activities conducted in foreign commerce. Therefore, whether business activities are conducted by (i) a foreign or domestic company selling tangible personal property into a county outside of the United States from a point within this state or by (ii) either company selling such property into this state from a point outside of the United States, the principles under this rule apply equally to determine whether the sales transactions are protected and the company immune from taxation in either this state or in the foreign county, as the case might be, and whether, if applicable, the throwback provisions of Section 59-7-318(2) will apply.

O. The protection afforded by P.L. 86-272 and the provisions of this rule do not apply to any corporation that is incorporated or domiciled in this state.

P. A company that registers or otherwise formally qualifies to do business within this state does not, by that fact alone, lose its protection under P.L. 86-272. Where, separate from or ancillary to such registration or qualification, the company receives and seeks to use or protect any additional benefit or protection from this state through activity not otherwise protected under P.L. 86-272 or this rule, such protection shall be removed.

Q. The protection afforded under P.L. 86-272 and the provisions of this rule shall be determined on a year by year tax basis. Therefore, if at any time during a tax year the company conducts activities that are not protected under P.L. 86-272 or this rule, no sales in this state or income earned by the company attributed to this state during any part of said tax year shall be protected from taxation for purposes of the corporate franchise tax.

R865-6F-8. Allocation and Apportionment of Net Income (Uniform Division of Income for Tax Purposes Act) Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.

A. Business and Nonbusiness Income Defined. Section 59-7-302 defines business income as income arising from transactions and activity in the regular course of the taxpayer's trade or business operations. In essence, all income that arises from the conduct of trade or business operations of a taxpayer is business income. For purposes of administration of the Uniform Division of Income for Tax Purposes Act (UDITPA), the income of the taxpayer is business income unless clearly classifiable as nonbusiness income.

1. Nonbusiness income means all income other than business income and shall be narrowly construed.

2. The classification of income by the labels occasionally used, such as manufacturing income, compensation for services, sales income, interest, dividends, rents, royalties, gains, operating income, and nonoperating income, is of no aid in determining whether income is business or nonbusiness income. Income of any type or class and from any source is business income if it arises from transactions and activity occurring in the regular course of a trade or business. Accordingly, the critical element in determining whether income is business income or nonbusiness income is the identification of the transactions and activity that are the elements of a particular trade or business. In general, all transactions and activities of the taxpayer that are dependent upon or contribute to the operation of the taxpayer's economic enterprise as a whole constitute the taxpayer's trade or business and will be transactions and activity arising in the regular course of business, and will constitute integral parts of a trade or business.

3. Business and Nonbusiness Income. Application of Definitions. The following are rules for determining whether particular income is business or nonbusiness income:

a) Rents from real and tangible personal property. Rental income from real and tangible property is business income if the property with respect to which the rental income was received is used in the taxpayer's trade or business or is incidental thereto and therefore is includable in the property factor under G.1.a).

b) Gains or Losses from Sales of Assets. Gain or loss from the sale, exchange or other disposition of real or tangible or intangible personal property constitutes business income if the property while owned by the taxpayer was used in the taxpayer's trade or business. However, if the property was utilized for the production of nonbusiness income the gain or loss will constitute nonbusiness income. See G.1.b).

c) Interest. Interest income is business income where the intangible with respect to which the interest was received arises out of or was created in the regular course of the taxpayer's trade or business operations or where the purpose for acquiring and holding the intangible is related to or incidental to trade or business operations.

d) Dividends. Dividends are business income where the stock with respect to which the dividends are received arises out of or was acquired in the regular course of the taxpayer's trade or business operations or where the purpose for acquiring and holding the stock is related to or incidental to the trade or business operations. Because of the regularity with which most corporate taxpayers engage in investment activities, because the source of capital for those investments arises in the ordinary course of a taxpayer's business, because the income from those investments is utilized in the ordinary

course of the taxpayer's business and because those investment assets are used for general credit purposes, income arising from the ownership or sale or other disposition of investments is presumptively business income. This presumption may be rebutted if the taxpayer can prove that the investment is unrelated to the regular trade or business activities.

e) Proration of Deductions. In most cases an allowable deduction of a taxpayer will be applicable only to the business income arising from the trade or business or to a particular item of nonbusiness income. In some cases an allowable deduction may be applicable to the business income and to nonbusiness income. In those cases the deduction shall be prorated among the business and nonbusiness income in a manner that fairly distributes the deduction among the classes of income to which it is applicable.

f) A schedule must be submitted with the return showing:

(1) the gross income from each class of income being allocated;

(2) the amount of each class of applicable expenses, together with explanation or computations showing how amounts were arrived at;

(3) the total amount of the applicable expenses for each income class; and

(4) the net income of each income class. The schedules should provide appropriate columns as set forth above for items allocated to this state and for items allocated outside this state.

g) In filing returns with this state, if the taxpayer departs from or modifies the manner of prorating any such deduction used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

h) If the returns or reports filed by a taxpayer with all states to which the taxpayer reports under UDITPA are not uniform in the application or proration of any deduction, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

B. Definitions.

1. "Taxpayer," for purposes of this rule, is as defined in Section 59-7-101.

2. "Apportionment" means the division of business income between states by the use of a formula containing apportionment factors.

3. "Allocation" means the assignment of nonbusiness income to a particular state.

4. "Business activity" refers to the transactions and activity occurring in the regular course of the trade or business of a taxpayer.

C. Apportionment.

1. If the business activity with respect to the trade or business of a taxpayer occurs both within and without this state, and if by reason of that business activity the taxpayer is taxable in another state, the portion of the net income (or net loss) arising from the trade or business derived from sources within this state shall be determined by apportionment in accordance with Sections 59-7-311 to 59-7-319.

2. Allocation. Any taxpayer subject to the taxing jurisdiction of this state shall allocate all of its nonbusiness income or loss within or without this state in accordance with Sections 59-7-306 to 59-7-310.

D. Consistency and Uniformity in Reporting. In filing returns with this state, if the taxpayer departs from or modifies the manner in which income has been classified as business income or nonbusiness income in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification. If the returns or reports filed by a taxpayer for all states to which the taxpayer reports under UDITPA are not uniform in the classification of income as business or nonbusiness income, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

E. Taxable in Another State.

1. In General. Under Section 59-7-303 the taxpayer is subject to the allocation and apportionment provisions of UDITPA if it has income from business activity that is taxable both within and without this state. A taxpayer's income from business activity is taxable without this state if the taxpayer, by reason of business activity (i.e., the transactions and activity occurring in the regular course of the trade or business), is taxable in another state within the meaning of Section 59-7-305. A taxpayer is taxable within another state if it meets either one of two tests:

a) if by reason of business activity in another state the taxpayer is subject to one of the types of taxes specified in Section 59-7-305(1), namely: a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or

b) if by reason of business activity another state has jurisdiction to subject the taxpayer to a net income tax, regardless of whether the state imposes that tax on the taxpayer. A taxpayer is not taxable in another state with respect to the trade or business merely because the taxpayer conducts activities in that state pertaining to the production of nonbusiness income.

2. When a Taxpayer Is Subject to a Tax Under Section 59-7-305. A taxpayer is subject to one of the taxes specified in Section 59-7-305(1) if it carries on business activity in a state and that state imposes such a tax thereon. Any taxpayer that asserts that it is subject to one of the taxes specified in Section 59-7-305(1) in another state shall furnish to the Tax Commission, upon its request, evidence to support that assertion. The Tax Commission may request that the evidence include proof that the taxpayer has filed the requisite tax return in the other state and has paid any taxes imposed under the law of the other state. The taxpayer's failure to produce that proof may be taken into account in determining whether the taxpayer is subject to one of the taxes specified in Section 59-7-305(1) in the other state. If the taxpayer voluntarily files and pays one or more taxes when not required to do so by the laws of that state or pays a minimal fee for qualification, organization, or for the privilege of doing business in that state, but

a) does not actually engage in business activity in that state, or

b) does actually engage in some business activity, not sufficient for nexus, and the minimum tax bears no relation to

the taxpayer's business activity within that state, the taxpayer is not subject to one of the taxes specified within the meaning of Section 59-7-305(1).

3. When a State Has Jurisdiction to Subject a Taxpayer to a Net Income Tax. The second test, that of Section 59-7-305(2), applies if the taxpayer's business activity is sufficient to give the state jurisdiction to impose a net income tax by reason of business activity under the Constitution and statutes of the United States. Jurisdiction to tax is not present where the state is prohibited from imposing the tax by reason of the provisions of Public Law 86-272, 15 U. S. C. A. Sec. 381-385 (P.L. 86-272). In the case of any state as defined in Section 59-7-302(6), other than a state of the United States or political subdivision of a state, the determination of whether a state has jurisdiction to subject the taxpayer to a net income tax shall be made as though the jurisdictional standards applicable to a state of the United States applied in that state. If jurisdiction is otherwise present, the state is not considered as without jurisdiction by reason of the provisions of a treaty between that state and the United States.

F. Apportionment Formula. All business income of the taxpayer shall be apportioned to this state by use of the apportionment formula set forth in Section 59-7-311. The elements of the apportionment formula are the property factor, see G. below, the payroll factor, see H. below, and the sales factor, see I.below, of the trade or business of the taxpayer. For exceptions see J. below.

G. Property Factor.

1. In General.

a) The property factor of the apportionment formula shall include all real and tangible personal property owned or rented by the taxpayer and used during the tax period in the regular course of its trade or business. Real and tangible personal property includes land, buildings, machinery, stocks of goods, equipment, and other real and tangible personal property but does not include coin or currency.

b) Property used in connection with the production of nonbusiness income shall be excluded from the property factor. Property used both in the regular course of the taxpayer's trade or business and in the production of nonbusiness income shall be included in the factor only to the extent the property is used in the regular course of the taxpayer's trade or business. The method of determining the portion of the value to be included in the factor will depend upon the facts of each case.

c) The property factor shall reflect the average value of property includable in the factor. Refer to G.6.

2. Property Used for the Production of Business Income. Property shall be included in the property factor if it is actually used or is available for or capable of being used during the tax period in the regular course of the trade or business of the taxpayer. Property held as reserves or standby facilities or property held as a reserve source of materials shall be included in the factor. For example, a plant temporarily idle or raw material reserves not currently being processed are includable in the factor. Property or equipment under construction during the tax period, except inventoriable goods in process, shall be excluded from the factor until the property is actually used in the regular course of the trade or business of the taxpayer. If the property is partially used in the regular course of the trade or business of the taxpayer while under construction, the value of the property to the extent used shall be included in the property factor.

3. Consistency in Reporting. In filing returns with this state, if the taxpayer departs from or modifies the manner of valuing property, or of excluding or including property in the property factor, used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification. If the returns or reports filed by the taxpayer with all states to which the taxpayer reports under UDITPA are not uniform in the valuation of property and in the exclusion or inclusion of property in the property factor, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

4. Numerator. The numerator of the property factor shall include the average value of the real and tangible personal property owned or rented by the taxpayer and used in this state during the tax period in the regular course of the trade or business of the taxpayer. Property in transit between locations of the taxpayer to which it belongs shall be considered to be at the destination for purposes of the property factor. Property in transit between a buyer and seller that is included by a taxpayer in the denominator of its property factor in accordance with its regular accounting practices shall be included in the numerator according to the state of destination. The value of mobile or movable property such as construction equipment, trucks, or leased electronic equipment that are located within and without this state during the tax period shall be determined for purposes of the numerator of the factor on the basis of total time within the state during the tax period. An automobile assigned to a traveling employee shall be included in the numerator of the factor of the state to which the employee's compensation is assigned under the payroll factor or in the numerator of the state in which the automobile is licensed.

5. Valuation of Owned Property.

a) Property owned by the taxpayer shall be valued at its original cost. As a general rule original cost is deemed to be the basis of the property for state franchise or income tax purposes (prior to any adjustments) at the time of acquisition by the taxpayer and adjusted by subsequent capital additions or improvements thereto and partial disposition thereof, by reasons including sale, exchange, and abandonment. However, capitalized intangible drilling and development costs shall be included in the property factor whether or not they have been expensed for either federal or state tax purposes.

b) Inventory of stock of goods shall be included in the factor in accordance with the valuation method used for state tax purposes.

c) Property acquired by gift or inheritance shall be included in the factor at its basis for determining depreciation.

6. Valuation of Rented Property.

a) Property rented by the taxpayer is valued at eight times its net annual rental rate. The net annual rental rate for any item of rented property is the annual rental rate paid by the taxpayer for the property, less the aggregate annual subrental rates paid by subtenants of the taxpayer. See J.2.

for special rules where the use of the net annual rental rate produces a negative or clearly inaccurate value or where property is used by the taxpayer at no charge or rented at a nominal rental rate.

b) Subrents are not deducted when the subrents constitute business income because the property that produces the subrents is used in the regular course of the trade or business of the taxpayer when it is producing the income. Accordingly there is no reduction in its value.

c) Annual rental rate is the amount paid as rental for property for a 12-month period; i.e., the amount of the annual rent. Where property is rented for less than a 12-month period, the rent paid for the actual period of rental shall constitute the annual rental rate for the tax period. However, where a taxpayer has rented property for a term of 12 or more months and the current tax period covers a period of less than 12 months (due, for example, to a reorganization or change of accounting period), the rent paid for the short tax period shall be annualized. If the rental term is for less than 12 months, the rent shall not be annualized beyond its term. Rent shall not be annualized because of the uncertain duration when the rental term is on a month to month basis.

d) Annual rent is the actual sum of money or other consideration payable, directly or indirectly, by the taxpayer or for its benefit for the use of the property and includes:

(1) Any amount payable for the use of real or tangible personal property, or any part thereof, whether designated as a fixed sum of money or as a percentage of sales, profits or otherwise.

(2) Any amount payable as additional rent or in lieu of rents, such as interest, taxes, insurance, repairs or any other items that are required to be paid by the terms of the lease or other arrangement, not including amounts paid as service charges, such as utilities, and janitor services. If a payment includes rent and other charges unsegregated, the amount of rent shall be determined by consideration of the relative values of the rent and other items.

e) Annual rent does not include:

(1) incidental day-to-day expenses such as hotel or motel accommodations, or daily rental of automobiles;

(2) royalties based on extraction of natural resources, whether represented by delivery or purchase. For this purpose, a royalty includes any consideration conveyed or credited to a holder of an interest in property that constitutes a sharing of current or future production of natural resources from that property, irrespective of the method of payment or how that consideration may be characterized, whether as a royalty, advance royalty, rental, or otherwise.

f) Leasehold improvements shall, for the purposes of the property factor, be treated as property owned by the taxpayer regardless of whether the taxpayer is entitled to remove the improvements or the improvements revert to the lessor upon expiration of the lease. Hence, the original cost of leasehold improvements shall be included in the factor.

7. Averaging Property Values. As a general rule, the average value of property owned by the taxpayer shall be determined by averaging the values at the beginning and end of the tax period. However, the Tax Commission may require or allow averaging by monthly values if that method of averaging is required to properly reflect the average value of the taxpayer's property for the tax period.

a) Averaging by monthly values will generally be applied if substantial fluctuations in the values of the property exist during the tax period or where property is acquired after the beginning of the tax period or disposed of before the end of the tax period.

b) Example: The monthly value of the taxpayer's property was as follows:

TABLE

January	$ 2,000
February	2,000
March	3,000
April	3,500
May	4,500
June	10,000
July	15,000
August	17,000
September	23,000
October	25,000
November	13,000
December	2,000
Total	$120,000

The average value of the taxpayer's property includable in the property factor for the income year is determined as follows:

$120,000 / 12 = $10,000

c) Averaging with respect to rented property is achieved automatically by the method of determining the net annual rental rate of the property as set forth in G.6.a).

H. Payroll Factor.

1. The payroll factor of the apportionment formula shall include the total amount paid by the taxpayer in the regular course of its trade or business for compensation during the tax period.

2. The total amount paid to employees is determined upon the basis of the taxpayer's accounting method. If the taxpayer has adopted the accrual method of accounting, all compensation properly accrued shall be deemed to have been paid. Notwithstanding the taxpayer's method of accounting, at the election of the taxpayer, compensation paid to employees may be included in the payroll factor by use of the cash method if the taxpayer is required to report compensation under that method for unemployment compensation purposes. The compensation of any employee on account of activities that are connected with the production of nonbusiness income shall be excluded from the factor.

3. The term "compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services. Payments made to an independent contractor or any other person not properly classifiable as an employee are excluded. Only amounts paid directly to employees are included in the payroll factor. Amounts considered paid directly include the value of board, rent, housing, lodging, and other benefits or services furnished to employees by the taxpayer in return for personal services.

a) The term "employee" means:

(1) any officer of a corporation; or

(2) any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee. Generally, a person will be considered to be an employee if he is included by the taxpayer as an employee for purposes of the payroll taxes imposed by the Federal Insurance Contributions Act. However, since certain individuals are included within the term employees in the Federal Insurance Contributions Act who would not be employees under the usual common law rules, it may be established that a person who is included as an employee for purposes of the Federal Insurance Contributions Act is not an employee for purposes of this rule.

b) In filing returns with this state, if the taxpayer departs from or modifies the treatment of compensation paid used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

(1) If the returns or reports filed by the taxpayer with all states to which the taxpayer reports under UDITPA are not uniform in the treatment of compensation paid, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

4. Denominator. The denominator of the payroll factor is the total compensation paid everywhere during the tax period. Accordingly, compensation paid to employees whose services are performed entirely in a state where the taxpayer is immune from taxation, for example, by P.L. 86-272, are included in the denominator of the payroll factor.

5. Numerator. The numerator of the payroll factor is the total amount paid in this state during the tax period by the taxpayer for compensation. The tests in Section 59-7-316 to be applied in determining whether compensation is paid in this state are derived from the Model Unemployment Compensation Act. Accordingly, if compensation paid to employees is included in the payroll factor by use of the cash method of accounting or if the taxpayer is required to report compensation under that method for unemployment compensation purposes, it shall be presumed that the total wages reported by the taxpayer to this state for unemployment compensation purposes constitute compensation paid in this state except for compensation excluded under H. The presumption may be overcome by satisfactory evidence that an employee's compensation is not properly reportable to this state for unemployment compensation purposes.

6. Compensation Paid in this State. Compensation is paid in this state if any one of the following tests applied consecutively are met:

a) The employee's service is performed entirely within the state.

b) The employee's service is performed entirely within and without the state, but the service performed without the state is incidental to the employee's service within the state. The word incidental means any service that is temporary or transitory in nature, or that is rendered in connection with an isolated transaction.

c) If the employee's services are performed both within and without this state, the employee's compensation will be attributed to this state:

(1) if the employee's base of operations is in this state; or

(2) if there is no base of operations in any state in which some part of the service is performed, but the place from which the service is directed or controlled is in this state; or

(3) if the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed but the employee's residence is in this state.

d) The term "base of operations" is the place of more or less permanent nature from which the employee starts his work and to which he customarily returns in order to receive instructions from the taxpayer or communications from his customers or other persons or to replenish stock or other materials, repair equipment, or perform any other functions necessary to the exercise of his trade or profession at some other point or points. The term "place from which the service is directed or controlled" means the place from which the power to direct or control is exercised by the taxpayer.

I. Sales Factor. In General.

1. Section 59-7-302(5) defines the term "sales" to mean all gross receipts of the taxpayer not allocated under Section 59-7-306 through 59-7-310. Thus, for purposes of the sales factor of the apportionment formula for the trade or business of the taxpayer, the term sales means all gross receipts derived by the taxpayer from transactions and activity in the regular course of the trade or business. The following are rules determining sales in various situations.

a) In the case of a taxpayer engaged in manufacturing and selling or purchasing and reselling goods or products, sales includes all gross receipts from the sales of goods or products (or other property of a kind that would properly be included in the inventory of the taxpayer if on hand at the close of the tax period) held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business. Gross receipts for this purpose means gross sales, less returns and allowances and includes all interest income, service charges, carrying charges, or time-price differential charges incidental to sales. Federal and state excise taxes (including sales taxes) shall be included as part of receipts if taxes are passed on to the buyer or included as part of the selling price of the product.

b) In the case of cost plus fixed fee contracts, such as the operation of a government-owned plant for a fee, sales includes the entire reimbursed cost, plus the fee.

c) In the case of a taxpayer engaged in providing services, such as the operation of an advertising agency, or the performance of equipment service contracts, or research and development contracts, sales includes the gross receipts from the performance of services including fees, commissions, and similar items.

d) In the case of a taxpayer engaged in renting real or tangible property, sales includes the gross receipts from the rental, lease or licensing of the use of the property.

e) In the case of a taxpayer engaged in the sale, assignment, or licensing of intangible personal property such as patents and copyrights, sales includes the gross receipts therefrom.

f) If a taxpayer derives receipts from the sale of

equipment used in its business, those receipts constitute sales. For example, a truck express company owns a fleet of trucks and sells its trucks under a regular replacement program. The gross receipts from the sales of the trucks are included in the sales factor.

g) In some cases certain gross receipts should be disregarded in determining the sales factor in order that the apportionment formula will operate fairly to apportion to this state the income of the taxpayer's trade or business. See J.3.

h) In filing returns with this state, if the taxpayer departs from or modifies the basis for excluding or including gross receipts in the sales factor used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

i) If the returns or reports filed by the taxpayer with all states to which the taxpayer reports under UDITPA are not uniform in the inclusion or exclusion of gross receipts, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

2. Denominator. The denominator of the sales factor shall include the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business, except receipts excluded under J.3.

3. Numerator. The numerator of the sales factor shall include gross receipts attributable to this state and derived by the taxpayer from transactions and activity in the regular course of its trade or business. All interest income, service charges, carrying charges, or time-price differential charges incidental to gross receipts shall be included regardless of the place where the accounting records are maintained or the location of the contract or other evidence of indebtedness.

4. Sales of Tangible Personal Property in this State.

a) Gross receipts from the sales of tangible personal property (except sales to the United States government; see I.5.) are in this state:

(1) if the property is delivered or shipped to a purchaser within this state regardless of the f.o.b. point or other conditions of sale; or

(2) if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state and the taxpayer is not taxable in the state of the purchaser.

b) Property shall be deemed to be delivered or shipped to a purchaser within this state if the recipient is located in this state, even though the property is ordered from outside this state.

c) Property is delivered or shipped to a purchaser within this state if the shipment terminates in this state, even though the property is subsequently transferred by the purchaser to another state.

d) The term "purchaser within this state" shall include the ultimate recipient of the property if the taxpayer in this state, at the designation of the purchaser, delivers to or has the property shipped to the ultimate recipient within this state.

e) When property being shipped by a seller from the state of origin to a consignee in another state is diverted while en route to a purchaser in this state, the sales are in this state.

f) If the taxpayer is not taxable in the state of the purchaser, the sale is attributed to this state if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state.

g) If a taxpayer whose salesman operates from an office located in this state makes a sale to a purchaser in another state in which the taxpayer is not taxable and the property is shipped directly by a third party to the purchaser, the following rules apply:

(1) If the taxpayer is taxable in the state from which the third party ships the property, then the sale is in that state.

(2) If the taxpayer is not taxable in the state from which the property is shipped, the sale is in this state.

5. Sales of Tangible Personal Property to United States Government in this state.

a) Gross receipts from the sales of tangible personal property to the United States government are in this state if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state. For purposes of this rule, only sales for which the United States government makes direct payment to the seller pursuant to the terms of a contract constitute sales to the United States government. Thus, as a general rule, sales by a subcontractor to the prime contractor, the party to the contract with the United States government, do not constitute sales to the United States government.

6. Sales Other than Sales of Tangible Personal Property in this State.

a) In general, Section 59-7-319(1) provides for the inclusion in the numerator of the sales factor of gross receipts from transactions other than sales of tangible personal property (including transactions with the United States government). Under Section 59-7-319(1), gross receipts are attributed to this state if the income producing activity that gave rise to the receipts is performed wholly within this state. Also, gross receipts are attributed to this state if, with respect to a particular item of income, the income producing activity is performed within and without this state but the greater proportion of the income producing activity is performed in this state, based on costs of performance.

b) The term "income producing activity" applies to each separate item of income and means the transactions and activity directly engaged in by the taxpayer in the regular course of its trade or business for the ultimate purpose of obtaining gains or profit. Income producing activity does not include transactions and activities performed on behalf of a taxpayer, such as those conducted on its behalf by an independent contractor. Accordingly, the income producing activity includes the following:

(1) the rendering of personal services by employees or the utilization of tangible and intangible property by the taxpayer in performing a service;

(2) the sale, rental, leasing, or licensing or other use of real property;

(3) the rental, leasing, licensing or other use of intangible personal property; or

(4) the sale, licensing or other use of intangible personal property. The mere holding of intangible personal property is not, of itself, an income producing activity.

c) The term "costs of performance" means direct costs determined in a manner consistent with generally accepted accounting principles and in accordance with accepted

conditions or practices in the trade or business of the taxpayer.

d) Receipts (other than from sales of tangible personal property) in respect to a particular income producing activity are in this state if:

(1) the income producing activity is performed wholly within this state; or

(2) the income producing activity is performed both in and outside this state and a greater proportion of the income producing activity is performed in this state than in any other state, based on costs of performance.

e) The following are special rules for determining when receipts from the income producing activities described below are in this state:

(1) Gross receipts from the sale, lease, rental or licensing of real property are in this state if the real property is located in this state.

(2) Gross receipts from the rental, lease, or licensing of tangible personal property are in this state if the property is located in this state. The rental, lease, licensing or other use of tangible personal property in this state is a separate income producing activity from the rental, lease, licensing or other use of the same property while located in another state. Consequently, if the property is within and without this state during the rental, lease or licensing period, gross receipts attributable to this state shall be measured by the ratio that the time the property was physically present or was used in this state bears to the total time or use of the property everywhere during the period.

(3) Gross receipts for the performance of personal services are attributable to this state to the extent services are performed in this state. If services relating to a single item of income are performed partly within and partly without this state, the gross receipts for the performance of services shall be attributable to this state only if a greater portion of the services were performed in this state, based on costs of performance. Usually where services are performed partly within and partly without this state, the services performed in each state will constitute a separate income producing activity. In that case, the gross receipts for the performance of services attributable to this state shall be measured by the ratio that the time spent in performing services in this state bears to the total time spent in performing services everywhere. Time spent in performing services includes the amount of time expended in the performance of a contract or other obligation that gives rise to gross receipts. Personal service not directly connected with the performance of the contract or other obligations, as for example, time expended in negotiating the contract, is excluded from the computations.

J. Special Rules:

1. Section 59-7-320 provides that if the allocation and apportionment provisions of UDITPA do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for, or the tax administrator may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

a) separate accounting;

b) the exclusion of any one or more of the factors;

c) the inclusion of one or more additional factors that will fairly represent the taxpayer's business activity in this state; or

d) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

2. Property Factor.

The following special rules are established in respect to the property factor of the apportionment formula:

a) If the subrents taken into account in determining the net annual rental rate under G.6.b) produce a negative or clearly inaccurate value for any item of property, another method that will properly reflect the value of rented property may be required by the Tax Commission or requested by the taxpayer. In no case however, shall the value be less than an amount that bears the same ratio to the annual rental rate paid by the taxpayer for property as the fair market value of that portion of property used by the taxpayer bears to the total fair market value of the rented property.

b) If property owned by others is used by the taxpayer at no charge or rented by the taxpayer for a nominal rate, the net annual rental rate for the property shall be determined on the basis of a reasonable market rental rate for that property.

3. Sales Factors.

The following special rules are established in respect to the sales factor of the apportionment formula:

a) Where substantial amounts of gross receipts arise from an incidental or occasional sale of a fixed asset used in the regular course of the taxpayer's trade or business, those gross receipts shall be excluded from the sales factor. For example, gross receipts from the sale of a factory or plant will be excluded.

b) Insubstantial amounts of gross receipts arising from incidental or occasional transactions or activities may be excluded from the sales factor unless exclusion would materially affect the amount of income apportioned to this state. For example, the taxpayer ordinarily may include or exclude from the sales factor gross receipts from such transactions as the sale of office furniture, and business automobiles.

c) Where the income producing activity in respect to business income from intangible personal property can be readily identified, that income is included in the denominator of the sales factor and, if the income producing activity occurs in this state, in the numerator of the sales factor as well. For example, usually the income producing activity can be readily identified in respect to interest income received on deferred payments on sales of tangible property, see I.1.a), and income from the sale, licensing or other use of intangible personal property, see I.6.b)(4).

(1) Where business income from intangible property cannot readily be attributed to any particular income producing activity of the taxpayer, the income cannot be assigned to the numerator of the sales factor for any state and shall be excluded from the denominator of the sales factor. For example, where business income in the form of dividends received on stock, royalties received on patents or copyrights, or interest received on bonds, debentures or government securities results from the mere holding of the intangible

personal property by the taxpayer, such dividends and interest shall be excluded from the denominator of the sales factor.

(2) Exclude from the denominator of the sales factor, receipts from the sales of securities unless the taxpayer is a dealer therein.

4. Domestic International Sales Corporation (DISC). In any case in which a corporation, subject to the income tax jurisdiction of Utah, owns 50 percent or more of the voting power of the stock of a corporation classified as a DISC under the provisions of Sec. 992 Internal Revenue Code, a combined filing with the DISC corporation is required.

5. Partnership or Joint Venture Income. Income or loss from partnership or joint venture interests shall be included in income and apportioned to Utah through application of the three-factor formula consisting of property, payroll and sales. For apportionment purposes, the portion of partnership or joint venture property, payroll and sales to be included in the corporation's property, payroll and sales factors shall be computed on the basis of the corporation's ownership interest in the partnership or joint venture, and otherwise in accordance with other applicable provisions of this rule.

R865-6F-14. Extent to Which Federal Income Tax Provisions Are Followed for Corporation Franchise Tax Purposes Pursuant to Utah Code Ann. Sections 59-7-106, 59-7-108, 59-7-118, and 59-7-121.

A. It is the policy of the Tax Commission, in matters involving the determination of net income for Utah corporation franchise tax purposes, to follow as closely as possible federal requirements with respect to the same matters. In some instances, of course, the federal and state statutes differ; and due to such conflict, the federal rulings, regulations, and decisions cannot be followed. Furthermore, in some instances, the Tax Commission may disagree with the federal determinations and does not consider them controlling for Utah corporation franchise tax purposes.

1. The items of major importance ordinarily allowed in conformity with federal requirements are:

a. depreciation (see rule R865-6F-9),

b. depletion,

c. exploration and development expenses,

d. intangible drilling costs,

e. accounting methods and periods (see rule R865-6F-2), and

f. Subpart F income.

2. The following are the major items which require different treatment under the state and federal statutes:

a. installment sales (see rule R865-6F-15),

b. consolidated returns (see rule R865-6F-4),

c. liquidating dividends,

d. municipal bond interest,

e. capital loss deduction,

f. loss carry-overs and carry-backs, and

g. gross-up on foreign dividends.

Note: The only reserves permitted in determining net-income for Utah corporation franchise tax purposes are depreciation, depletion, and bad debts.

R865-6F-15. Installment Basis of Reporting Income in Year of Termination Pursuant to Utah Code Ann. Section 59-7-119.

A. The Corporation Franchise Tax Act allows a corporation, under certain conditions and under rules prescribed by the Tax Commission, to report income arising from the sale or other disposition of property on a deferred or so-called installment basis. Thus, a gain technically realized at the time the sale is made may, at the election of the taxpayer, be reported on a deferred basis in accordance with the law and the following sections of this rule. The rule allowing deferment of reporting such income is only one of postponement of the tax, and not one of exemption from a tax otherwise lawfully due. Thus, the privilege of deferment is terminated if the taxpayer ceases to be subject to tax prior to the reporting of the entire amount of installment income. When a taxpayer elects to report income arising from the sale or other disposition of property as provided in Utah Code Ann. Section 59-7-119, and the entire income therefrom has not been reported prior to the year that the taxpayer ceases to be subject to the tax imposed under the Utah Corporation Income and Franchise Tax Acts, the unreported income is included in the return for the last year in which the taxpayer is subject to the tax. This rule applies to all corporations which elect to report on the installment basis. If a corporation on this basis desires to dissolve or to withdraw, it must comply with the provisions hereof prior to issuance of the tax clearance certificate.

B. Income reported under the provisions of Utah Code Ann. Section 59-7-119 and this rule shall be subject to the same treatment in the allocation of income; i.e., specific allocation or apportionment, as would have been accorded the original income from the sale under the provisions of the Uniform Division of Income for Tax Purposes Act. In case such income is subject to apportionment, the apportionment fraction for the year in which the income is reported applies rather than the year in which the sale was made.

R865-6F-16. Apportionment of Income of Long-Term Construction Contractors Pursuant to Utah Code Ann. Section 59-7-118.

A. When a taxpayer elects to use the percentage-of-completion method of accounting, or the completed contract method of accounting for long-term contracts, and has income from sources both within and without this state, the amount of business income derived from such long-term contracts from sources within this state is determined pursuant to this rule.

B. Business income is apportioned to this state by a three-factor formula consisting of property, payroll, and sales--regardless of the method of accounting for long-term contracts elected by the taxpayer. The total of the property, payroll, and sales percentages is divided by three to determine the apportionment percentage. The apportionment percentage is then applied to business income to determine the amount apportioned to this state.

1. Percentage-of-completion method. Under this method of accounting for long-term contracts, the amount included each year as business income from each contract is the amount by which the gross contract price (which corresponds to the percentage of the entire contract completed

during the income years) exceeds all expenditures made during the income year in connection with the contract. Beginning and ending material and supplies inventories must be appropriately accounted for in reporting expenditures.

2. Completed-contract method. Under this method of accounting, business income derived from long-term contracts is reported for the income year in which the contract is completed. A special computation is required to compute the amount of business income attributable to this state from each completed contract. All receipts and expenditures applicable to the contracts, whether complete or incomplete at the end of the income year, are excluded from other business income, which are apportioned by the regular three-factor formula of property, payroll, and sales.

C. Property factor. In general, the numerator and denominator of the property factor is determined as set forth in Utah Code Ann. Sections 59-7-312, 59-7-313, and 59-7-314 and the rules thereunder. However, the following special rules are also applicable:

1. The average value of the taxpayer's cost (including materials and labor) of construction in progress, to the extent these costs exceed progress billings, are included in the denominator of the property factor. The value of those construction costs attributable to construction projects in this state are included in the numerator of the property factor. It may be necessary to use monthly averages if yearly averages do not properly reflect the average value of the taxpayer's equity.

2. Rent paid for the use of equipment directly attributable to a particular construction project is included in the property factor at eight times the net annual rental rate, even though the rental expense may be capitalized into the cost of construction.

3. The property factor is computed in the same manner for all long-term-contract methods of accounting and is computed for each income year, even though under the completed-contract method of accounting business income is computed separately.

D. Payroll factor. In general, the numerator and denominator of the payroll factor are determined as set forth in Utah Code Ann. Sections 59-7-315 and 59-7-316 and the rules thereunder. However, the following special rules are also applicable.

1. Compensation paid to employees attributable to a particular construction project is included in the payroll factor even though capitalized into the cost of construction.

2. Compensation paid to employees who, in the aggregate, perform most of their services in a state to which their employer does not report them for unemployment tax purposes, is attributed to the state where the services are performed. For example, a taxpayer engaged in a long-term contract in State X sends several key employees to that state to supervise the project. The taxpayer, for unemployment tax purposes reports these employees to State Y where the main office is maintained and where the employees reside. For payroll factor purposes and in accordance with Utah Code Ann. Section 59-7-316 and the rule thereunder, the compensation is assigned to the numerator of State X.

3. The payroll factor is computed in the same manner for all long-term-contract methods of accounting and is computed for each income year, even though under the completed contract method of accounting, business income is computed separately.

E. Sales Factor. In general, the numerator and denominator of the sales factor shall be determined as set forth in Utah Code Ann. Sections 59-7-317, 59-7-318, and 59-7-319 and the rules thereunder. However, the following special rules are also applicable.

1. Gross receipts derived from the performance of a contract are attributable to this state if the construction project is located in this state. If the construction project is located partly within and partly without this state, the gross receipts attributable to this state are based upon the ratio which construction costs for the project in this state incurred during the coming year bears to the total of such construction costs for the entire project during the income year. Progress billings are ordinarily used to reflect gross receipts and must be shown in both the numerator and denominator of the sales factor.

2. If the percentage-of-completion method is used, the sales factor includes only that portion of the gross contract price which corresponds to the percentage of the entire contract which was completed during the income year. For example, a construction contractor which had elected the percentage-of-completion method of accounting entered into a $9,000,000 long-term construction contract. At the end of its current income year (the second since starting the project) it estimated that the project was 30 percent completed. The amount of gross receipts included in the sales factor for the current income year is $2,700,000 (30 percent of $9,000,000), regardless of whether the taxpayer uses the accrual method or the cash method of accounting for receipts and disbursements.

3. If the completed-contract method of accounting is used, the sales factor includes the portion of the gross receipts (progress billings) received under the cash basis or accrued, whichever is applicable, during the income year attributable to each contract. For example, a construction contractor which elected the completed-contract method of accounting entered into a long-term construction contract. At the end of its current income year (the second since starting the project) it had billed, and accrued on its books a total of $5,000,000 of which $2,000,000 had accrued in the first year the contract was undertaken, and $3,000,000 in the current (second) year. The amount of gross receipts included in the sales factor for the current income year is $3,000,000. If the taxpayer keeps its books on the cash basis, and as of the end of its current income year has received only $2,500,000 of the $3,000,000 billed during the current year, the amount of gross receipts to be included in the sales factor for the current year is $2,500,000.

4. The sales factor, except as noted above in subparagraphs 2. and 3., is computed in the same manner for all long-term contract methods of accounting and is computed for each income year--even though under the completed-contract method of accounting, business income is computed separately.

F. The total of the property, payroll, and sales

percentages is divided by three to determine the apportionment percentage which is then applied to business income to establish the amount apportioned to this state.

G. The completed-contract method of accounting provides that the reporting of income (or loss) is deferred until the year the construction project is completed. In order to determine the amount of income which is attributable to sources within this state, a separate computation is made for each contract completed during the income year, regardless of whether the project is located within or without this state. The amount of income from each contract completed during the income year apportioned to this state is added to other business income apportioned to this state by the regular three-factor formula, and that total together with all nonbusiness income allocated to this state becomes the measure of tax for the income year. The amount of income (or loss) from each contract which is derived from sources within this state using the completed-contract method of accounting is computed as follows.

1. In the income year the contract is completed, the income (or loss) therefrom is determined.

2. The income (or loss) determined at Paragraph G.1. is apportioned to this state by the following method:

(a) a fraction is determined for each year the contract was in progress (the numerator of which is the amount of construction costs paid or accrued each year the contract was in progress, and the denominator of which is the total of all construction costs for the project);

(b) each percentage determined in (a) is multiplied by the apportionment formula percentage for that particular year;

(c) these factors are totaled; and

(d) the total income is multiplied by this combined percentage, and the resulting income (or loss) is the amount of contract business income assigned to this state.

3. A corporation using the completed-contract method of accounting is required to include income derived from sources within this state from contracts within or without this state or income from incomplete contracts in progress outside this state in the year of withdrawal, dissolution, or cessation of business pursuant to Paragraph G.4.

4. The amount of income (or loss) from each such contract apportioned to this state is determined as if the percentage-of-completion method of accounting were used for all such contracts on the date of withdrawal, dissolution, or cessation of business. The amount of business income (or loss) for each such contract is the amount by which the gross contract price from each such contract from the commencement thereof to the date of withdrawal, dissolution, or cessation of business exceeds all expenditures made during such period in connection with each such contract. Beginning and ending material and supplies inventories must be appropriately accounted for in reporting expenditures in connection with each contract.

R865-6F-18. Corporations Exempt From The Franchise Tax Pursuant to Utah Code Ann. Section 59-7-105.

A. Corporations incorporated or qualified in Utah under the Nonprofit Corporation Act are taxable unless a valid Utah corporation franchise exemption is obtained. A corporation must be engaged in or organized to engage in one of the exempt categories provided in the Utah law in order to be eligible for exemption from Utah corporation franchise tax. In some instances, Utah exempt provisions are the same as those contained in federal law. Corporations that obtain a valid Utah exempt ruling are not required to file Utah corporation franchise tax returns (Form TC-20) nor pay Utah corporation franchise taxes, except as noted in Paragraph B, of this rule.

B. Corporations which meet the requirements of Section 501(c), as amended, of the Internal Revenue Code are exempt from the franchise tax. However, if an exempt corporation becomes subject to federal income tax, it must make a full disclosure of the items and amounts which have become subject to federal tax for a redetermination of its taxable status for Utah corporation franchise tax purposes.

1. The federal exempt ruling is used as the basis for determining Utah exemption, provided a copy of the ruling is submitted with a written request for Utah corporation franchise tax exemption.

2. The Tax Commission replies in writing to the written request.

C. If Utah law provides for exemption but federal law does not, the Tax Commission makes an exception upon receipt of a written request from corporations such as:

1. Homeowner associations not organized for profit, which are organized to maintain or operate common areas or facilities. (Corporations such as time share, recreation property, and business property associations formed to maintain common areas are not exempt.)

2. Holding companies are generally exempt from Corporation Franchise Tax under the provisions of Utah Code Ann. Section 59-7-105(c). However, several conditions must be met before the exemption applies. These conditions are as follows.

(a) Each of its subsidiary corporations required by Utah Code Ann. Section 59-7-102 to pay tax for the privilege of exercising its corporate franchise or for the privilege of doing business in the state must make the returns required by Utah Code Ann. Title 59, Chapter 7. For purposes of the foregoing, a corporation is a subsidiary of a second corporation if such second corporation owns, either directly or indirectly, more than 50 percent of the outstanding stock of any class of stock of the subsidiary and is entitled to vote in the election of directors of the subsidiary.

(b) The activities of such corporation are limited so as to be only such as are incidental to the business of holding stock of other corporations for the purpose of controlling the management of affairs of such other corporations (the controlled corporation being referred to herein as subsidiary corporation). By way of illustration and not limitation, such activities may include the following:

(1) acquiring and holding shares, stocks, debentures, debenture stock, bonds, obligations, and securities issued by its subsidiary corporations;

(2) acquiring and holding stock and securities of another corporation for the purpose of acquiring control of such other corporation;

(3) charging its subsidiary corporations management

fees for furnishing management, accounting, and other services;

(4) borrowing from and lending money to its subsidiary corporations, endorsing or otherwise guaranteeing obligations of its subsidiary corporations, and guaranteeing contractual or other performance obligations of its subsidiary corporations;

(5) having interlocking directors and officers between such corporation and its subsidiary corporations;

(6) monitoring and supervising the plans, methods, and operations of its subsidiary corporations;

(7) retaining and temporarily investing funds held for purposes incident to the management of affairs of its subsidiary corporations; provided, however, that such investments are handled in a manner so that any net income derived from investment of such funds is allocated so as to be included for purposes of the Utah corporation franchise tax in the income of the subsidiary corporations;

(8) the holding company may for its own use enter agreements concerning constructing, leasing, purchasing, holding, mortgaging or otherwise encumbering, and selling such real property as may be necessary or appropriate to the management of affairs of its subsidiary corporations; and

(9) employing persons and owning, leasing, or otherwise holding such personal property as may be necessary or appropriate to the management of affairs of its subsidiary corporations.

(c) The articles of association or incorporation of such corporation must limit the exercise of the corporation's franchise to those activities permitted under Paragraph C.2.b. of this rule.

(d) Unless permitted under Paragraph C.2 of this rule, any holding company claiming to be exempt from the Utah corporation franchise tax shall not carry on or undertake any business, undertakings, transactions, or operation commonly carried on or undertaken by capitalists, promoters, financiers, contractors, merchants, commercial men, or agents; nor carry on or undertake any investment or insurance business, or any business of any kind.

(e) The exemption applies only during that portion of a corporation's taxable year when these conditions are met. During any portion of its taxable year when a corporation does not meet all of the requirements, the corporation is subject to the tax imposed by Utah Code Ann. Section 59-7-102 based on such corporation's net income during the nonexempt portion of its taxable year. If a corporation, exempt for all or a portion of a taxable year, loses its exemption for such year, it may again be exempt by remedying the defect or defects and once again complying with all of the conditions and requirements. However, the exemption thus reestablished does not apply until the first day of the corporation's taxable year following the reestablishment of the exemption.

(f) Proof of Exemption. In order to establish its exemption under Paragraph C, each corporation claiming exemption must file with the Tax Commission:

(1) an affidavit showing the character of the corporation, the purpose for which it is organized, the nature of its activities, all of its subsidiary corporations and its subsidiary corporations which are subject to the Utah corporate franchise tax; and

(2) a copy of its article of association or incorporation.

(i) The foregoing filing must be made by what would otherwise be the due date of the corporation's franchise tax return for the first year for which exemption is claimed. When a corporation has established its right to exemption, it need not thereafter voluntarily make a return or any further showing with respect to its status unless it changes the character of its organization or operations from the purpose for which it is organized, or unless the Tax Commission requests the filing of returns or the furnishing of other information. Copies of supplemental or amended articles of association or incorporation should be forwarded promptly to the Tax Commission for study as to the effect upon exemption. The Tax Commission may, from time to time, require the corporation to file an affidavit, or a form which will reveal the corporation's current status.

(g) This rule is not intended to in any way limit the authority and power of the Tax Commission (pursuant to Utah Code Ann. Section 59-7-120) to distribute, apportion, or allocate gross income or deductions between or among the corporations specified in Utah Code Ann. Section 59-7-120, if the Tax Commission determines that such distribution, apportionment or allocation is necessary in order to prevent evasion of Utah corporate franchise taxes or to clearly reflect the Utah taxable income of any of such corporations. If the Tax Commission determines, as part of its exercise of the foregoing power, that the deduction for an intercompany transfer is unreasonable in nature or amount, the Tax Commission may deny a deduction for the unreasonable portion in order to prevent evasion of Utah corporate franchise taxes or clearly reflect the Utah taxable income of the transfer corporation. Furthermore, this rule in no way prohibits the Tax Commission from determining if a holding company is conducting a unitary business with any or all of its subsidiaries for the purpose of determining the amount of net income attributable to Utah from the entire unitary business operations. Exercise by the Tax Commission of its authority and power contained in this paragraph is not evidence that the corporation has failed to meet all of the requirements of this section.

3. Insurance companies which are required to pay Utah insurance premium taxes are exempt from corporation franchise tax requirements. Insurance companies that are exempt from payment of Utah insurance premium taxes or who have qualified as a Utah Corporation, but have not commenced doing business in Utah, are subject to the corporation franchise tax requirements including the minimum tax provisions.

R865-6F-19. Taxation of Trucking Companies Pursuant to Utah Code Ann. Sections 59-7-301 through 59-7-321.

A. Definitions:

1. "Average value" of property means the amount determined by averaging the values of real and personal property at the beginning and end of the income tax year. The Tax Commission may require the averaging of monthly values during the income year or other averaging as necessary to reflect properly the average value of the trucking

company's property.

2. "Business and nonbusiness income" are as defined in R865-6F-8(A).

3. "Mobile property" means all motor vehicles, including trailers, engaged directly in the movement of tangible personal property.

4. "Mobile property mile" means the movement of a unit of mobile property a distance of one mile, whether loaded or unloaded.

5. "Original cost" means the basis of the property for federal income tax purposes (prior to any federal income tax adjustments, except for subsequent capital additions, improvements thereto, or partial dispositions); or if the property has no such basis, or if the valuation of the property is unascertainable under the foregoing valuation standards, the property is included in the property factor at its fair market value as of the date of acquisition by the taxpayer.

6. "Property used during the course of the income year" means property that is available for use in the taxpayer's trade or business during the income year.

7. "Trucking company" means a corportion engaged in or transacting the business of transporting freight, merchandise, or other property for hire.

8. "Value of owned real and tangible personal property" means the original cost of owned real and tangible personal property.

9. "Value of rented real and tangible personal property" means the product of eight times the net annual rental rate of rented real and tangible personal property.

B. When a trucking company has income from sources both within and without this state, the amount of business income from sources within this state shall be determined pursuant to this rule. In those cases, the first step is to determine what portion of the trucking company's income constitutes business income and what portion constitutes nonbusiness income. Nonbusiness income is directly allocable to specific states and business income is apportioned among the states in which the business is conducted and pursuant to the property, payroll, and sales apportionment factors set forth in this rule. The sum of the items of nonbusiness income directly allocated to this state, plus the amount of business income apportioned to this state, constitutes the amount of the taxpayer's entire net income subject to tax in this state.

C. In general, the property factor shall be determined in accordance with R865-6F-8(7), the payroll factor in accordance with R865-6F-8(H), and the sales factor in accordance with R865-6F-8(I), except as modified by this rule.

D. The denominator of the property factor shall be the average value of the total of the taxpayer's real and tangible personal property owned or rented and used within and without this state during the income year. The numerator of the property factor shall be the average value of the taxpayer's real and tangible personal property owned or rented and used, or available for use, within this state during the income year.

1. In the determination of the numerator of the property factor, all property, except mobile property, shall be included in the numerator of the property factor.

2. Mobile property located within and without this state during the income year shall be included in the numerator of the property factor in the ratio that the mobile property's miles within this state bear to the total miles of mobile property within and without this state.

E. The denominator of the payroll factor is the compensation paid within and without this state by the taxpayer during the income year for the production of business income. The numerator of the payroll factor is the compensation paid within this state during the income year by the taxpayer for the production of business income.

1. With respect to all personnel, except those performing services within and without this state, compensation shall be included in the numerator as provided in R865-6F-8(H).

2. With respect to personnel performing services within and without this state, compensation shall be included in the numerator of the payroll factor in the ratio that their services performed within this state bear to their services performed within and without this state.

F. In general, all revenue derived from transactions and activities in the regular course of the taxpayer's trade or business that produce business income shall be included in the denominator of the revenue factor. The numerator of the revenue factor is the total revenue of the taxpayer in this state during the income year.

1. The total state revenue of the taxpayer, other than revenue from hauling freight, mail, and express, shall be attributable to this state in accordance with R865-6F-8(I).

2. The total revenue of the taxpayer attributable to this state during the income year from hauling freight, mail, and express shall be:

a) Intrastate: all receipts from any shipment that both originates and terminates within this state; and

b) Interstate: that portion of the receipts from movements or shipments passing through, into, or out of this state as determined by the ratio that the mobile property miles traveled by the movements or shipments within this state bear to the total mobile property miles traveled by the movements or shipments within and without this state.

G. The taxpayer shall maintain the records necessary to identify mobile property and to enumerate by state the mobile property miles traveled by mobile property. These records are subject to review by the Tax Commission or its agents.

H. This rule requires apportionment of income to this state if during the course of the income tax year, the trucking company:

1. owned or rented any real or personal property in this state;

2. made any pickups or deliveries within this state;

3. traveled more than 25,000 mobile property miles within this state, provided that the total mobile property miles traveled within this state during the income tax year exceeded three percent of the total mobile property miles traveled in all states by the trucking company during the period; or

4. made more than 12 trips into this state.

R865-6F-22. Treatment of Loss Carrybacks and Carryforwards Spanning a Change in Reporting Methods

Pursuant to Utah Code Ann. Sections 59-7-402 and 59-7-403.

A. For purposes of this rule, "worldwide year" means a year in which a corporation filed a worldwide combined report as set forth in Sections 59-7-101(34) and 59-7-403.

B. For purposes of this rule, "water's edge year" means a year in which a corporation filed a combined report as set forth in Sections 59-7-101(33) and 59-7-402.

C. A corporation that receives permission from the Tax Commission to change its filing method to the water's edge method after having elected the worldwide method will be required to forfeit any unused loss carryovers that were generated in any worldwide year as a condition precedent to making that change. Any losses generated in a subsequent water's edge year may not be carried back against income earned in any year prior to the change to the water's edge method, but must be carried to a post-change water's edge year.

D. A corporation that elects the worldwide filing method subsequent to adoption of this rule will be required to forfeit any unused loss carryovers that were generated in any water's edge year. Any losses generated in a subsequent worldwide year may not be carried back against income earned in any year prior to the change to the worldwide election method, but must be carried to a post-change worldwide year.

R865-6F-23. Utah Steam Coal Tax Credit Pursuant to Utah Code Ann. Section 59-7-604.

A. Definitions.

1. "Permitted mine" means a mine for which a permit has been issued by the Division of Oil, Gas, and Mining pursuant to Title 40, Chapter 10, Coal Mining and Reclamation.

2. "Purchaser outside of the United States" means any company that purchases coal for shipment outside of the fifty states or the District of Columbia.

B. To qualify for the steam coal tax credit for taxable years beginning on or after January 1, 1993, sales to a purchaser outside of the United States must exceed the permitted mine's sales to a purchaser outside of the United States in the taxable year beginning on or after January 1, 1992, regardless of any change in ownership of the mine.

C. To qualify for the steam coal tax credit the coal must be exported outside of the United States, within a reasonable period of time. A reasonable period of time is considered to be within 90 days after the end of the tax year.

R865-6F-24. Attribution of Sales of Tangible Property to the Sales Factor for Apportionment of Business Income Pursuant to Utah Code Ann. Section 59-7-317.

A. For purposes of 15 U.S.C. Section 381, the phrase "activities within such state by or on behalf of such person" means the activities of any member of a unitary business as that term is defined in Section 59-7-302.

B. If the activity in this state of any member of a unitary business exceeds the activity protected by 15 U.S.C. Section 381, sales of tangible property into this state, from an out-of-state location by any member of the unitary business shall be included in this state's sales factor numerator under Section 59-7-317.

C. If any member of a unitary business is taxable in another state under Section 59-7-305, sales of tangible property from a Utah location, into that state by any member of the unitary business shall not be thrown back to this state as ordinarily provided under Section 59-7-318.

D. This rule is effective for taxable years beginning after December 31, 1992.

R865-6F-26. Historic Preservation Tax Credits Pursuant to Utah Code Ann. Section 59-7-608.

A. Definitions:

1. "Qualified rehabilitation expenditures" includes architectural, engineering, and permit fees.

2. "Qualified rehabilitation expenditures" does not include movable furnishings.

3. "Residential" as used in Section 59-7-109.5 applies only to the use of the building after the project is completed.

B. Taxpayers shall file an application for approval of all proposed rehabilitation work with the Division of State History prior to the completion of restoration or rehabilitation work on the project. The application shall be on a form provided by the Division of State History.

C. Rehabilitation work must receive a unique certification number from the State Historic Preservation Office in order to be eligible for the tax credit.

D. In order to receive final certification and be issued a unique certification number for the project, the following conditions must be satisfied:

1. The project approved under B. must be completed.

2. Upon completion of the project, taxpayers shall notify the State Historic Preservation Office and provide that office an opportunity to review, examine, and audit the project. In order to be certified, a project shall be completed in accordance with the approved plan and the Secretary of the Interior's Standards for Rehabilitation.

3. Taxpayers restoring buildings not already listed on the National Register of Historic Places shall submit a complete National Register Nomination Form. If the nomination meets National Register criteria, the State Historic Preservation Office shall approve the nomination.

4. Projects must be completed, and the $10,000 expenditure threshold required by Section 59-7-608 must be met, within 36 months of the approval received pursuant to B.

5. During the course of the project and for three years thereafter, all work done on the building shall comply with the Secretary of the Interior's Standards for Rehabilitation.

E. Proof of State Historic Preservation Office certification shall be made by:

1. receiving an authorization form from the State Historic Preservation Office containing the certification number;

2. attaching that authorization form to the tax return for the year in which the credit is claimed.

F. Credit amounts shall be applied against Utah corporate franchise tax due in the tax year in which the project receives final certification under D.

G. Credit amounts greater than the amount of Utah corporate franchise tax due in a tax year shall be carried

forward to the extent provided by Section 59-7-608.

H. Carryforward historic preservation tax credits shall be applied against Utah franchise tax due before the application of any historic preservation credits earned in the current year and on a first-earned, first-used basis.

I. Original records supporting the credit claimed must be maintained for three years following the date the return was filed claiming the credit.

R865-6F-27. Order of Credits Applied Against Utah Corporate Franchise Tax Due Pursuant to Utah Code Ann. Sections 9-2-413, 59-6-102, 59-7-104, 59-7-109, 59-7-109.5, 59-7-110, 59-7-110.5, 59-7-110.7, 59-7-110.8, 59-10-603, and 59-13-202.

A. Taxpayers shall deduct credits authorized by Sections 9-2-413, 59-6-102, 59-7-104, 59-7-109, 59-7-109.5, 59-7-110, 59-7-110.5, 59-7-110.7, 59-7-110.8, 59-10-603, and 59-13-202 against Utah corporate franchise tax due in the following order:

1. nonrefundable credits;
2. nonrefundable credits with a carryforward;
3. refundable credits.

R865-6F-28. Enterprise Zone Corporate Franchise Tax Credits Pursuant to Utah Code Ann. Sections 9-2-401 through 9-2-414.

A. Definitions:

1. "Qualifying investment" means an investment in plant, equipment, or other depreciable property that is newly purchased or constructed.

2. "Nonretail capacity" means any position except those involved in selling directly to the public.

3. "Transfer" pursuant to Section 9-2-411, means the relocation of assets and operations of a business, including personnel, plant, property, and equipment.

4. "Individuals who, at the time of employment" pursuant to Section 9-2-412, means individuals who, prior to being employed by the manufacturing business claiming the tax credit, were residents of the enterprise zone.

B. Qualifying investments must meet the following:

1. The plant, equipment, or other depreciable property for which the credit is being taken must be located within the boundaries of the enterprise zone.

2. An investment in plant, equipment, or other depreciable property does not qualify for the investment tax credit until the manufacturing concern is operational within the enterprise zone.

3. A purchase of an already existing manufacturing concern located in an enterprise zone does not qualify as an investment in plant, equipment, or other depreciable property.

4. A qualifying investment may include:

a) The investment in storage facilities to store manufactured goods, raw materials or other items used in the manufacturing process if the storage facility is located in the same enterprise zone as the manufacturing business for which the storage facility is being used.

b) The investment in the retail portion of a primarily manufacturing business if the retail portion is located within the same enterprise zone as the manufacturing portion for which the qualifying investment is being made.

C. The replacement of existing assets does not qualify for the investment tax credit.

D. A business existing in an enterprise zone on the date of its designation shall use the higher of the following in determining its base number of employees to be used in calculating new full-time positions as indicated in Section 9-2-413:

1. The number of employees shall be calculated based on the average number of employees reported to the Department of Employment Security for the four quarters prior to the county's designation as an enterprise zone; or

2. The number of full-time positions on the date of the county's designation as an enterprise zone.

E. Corporate franchise tax credits may not be used to offset or reduce the $100 minimum tax per corporation.

F. Records and supporting documentation shall be maintained for three years after the date any returns are filed to support the credits taken. For example: If credits are originally taken in 1988 and unused portions are carried forward to 1992, records to support the original credits taken in 1988 must be maintained for three years after the date the 1992 return is filed.

G. Employees must be employed for six months prior to December 31, 1994 to be eligible for the tax credit allowed in Section 9-2-413.

H. If a county that has been designated an enterprise zone loses that designation prior to the expiration of the period for which it was so designated, no tax credits other than carryforward tax credits earned in a prior year in which the county was a designated enterprise zone will be allowed to any business in that county.

I. Enterprise zone credits claimed on returns with an original due date prior to July 1, 1993, may be carried forward for five years. Enterprise zone credits claimed on returns with an original due date on or after July 1, 1993, may be carried forward for three years.

R865-6F-29. Taxation of Railroads Pursuant to Utah Code Ann. Sections 59-7-301 through 59-7-321.

A. Definitions.

1. "Average value" of property means the amount determined by averaging the values of real and personal property at the beginning and ending of the income tax year. The Tax Commission may require the averaging of monthly values during the income year or other averaging as necessary to reflect properly the average value of the railroad's property.

2. "Business and nonbusiness income" are as defined in R865-6F-8(A).

3. "Car-mile" means a movement of a unit of car equipment a distance of one mile.

4. "Locomotive" means a self-propelled unit of equipment designed solely for moving other equipment.

5. "Locomotive-mile" means the movement of a locomotive a distance of one mile under its own power.

6. "Net annual rental rate" means the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

7. "Original cost" means the basis of the property for

federal income tax purposes (prior to any federal income tax adjustments except for subsequent capital additions, improvements thereto or partial dispositions). If the original cost of property is unascertainable under the foregoing valuation standards, the property is included in the property factor at its fair market value as of the date of acquisition by the taxpayer.

8. "Property used during the income year" means property that is available for use in the taxpayer's trade or business during the income year.

9. "Rent" does not include the per diem and mileage charges paid by the taxpayer for the temporary use of railroad cars owned or operated by another railroad.

10. "Value of owned real and tangible personal property" means the original cost of owned real and tangible personal property.

11. "Value of rented real and tangible personal property" means the product of eight times the net annual rental rate of rented real and tangible personal property.

B. When a railroad has income from sources both within and without this state, the amount of business income from sources within this state shall be determined pursuant to this rule. In those cases, the first step is to determine what portion of the railroad's income constitutes business income and what portion constitutes nonbusiness income. Nonbusiness income is directly allocable to specific states and business income is apportioned among the states in which the business is conducted and pursuant to the property, payroll, and sales apportionment factors set forth in this rule. The sum of the items of nonbusiness income directly allocated to this state, plus the amount of business income apportioned to this state, constitutes the amount of the taxpayer's entire net income subject to tax in this state.

C. In general, the property factor shall be determined in accordance with R865-6F-8(G), the payroll factor in accordance with R865-6F-08(H),and the sales factor in accordance with R865-6F-8(I), except as modified by this rule.

D. The denominator of the property factor shall be the average value of the total of the taxpayer's real and tangible personal property owned or rented and used within and without this state during the income year. The numerator of the property factor shall be the average value of the taxpayer's real and tangible personal property owned or rented and used within this state during the income year.

1. In determining the numerator of the property factor, all property except mobile or movable property such as passenger cars, freight cars, locomotives and freight containers located within and without this state during the income year shall be included in the numerator of the property factor.

2. Mobile or movable property such as passenger cars, freight cars, locomotives and freight containers located within and without this state during the income year shall be included in the numerator of the property factor in the ratio that locomotive-miles and car-miles in the state bear to the total of locomotive-miles and car-miles both within and without this state.

E. The denominator of the payroll factor is the total compensation paid within and without this state by the taxpayer during the income year for the production of business income. The numerator of the payroll factor is the amount of compensation paid within this state during the income year for the production of business income.

1. With respect to all personnel except engine men and trainmen performing services on interstate trains, compensation shall be included in the numerator as provided in R865-6F-8(H).

2. With respect to engine men and trainmen performing services on interstate trains, compensation shall be included in the numerator of the payroll factor in the ratio that their services performed in this state bear to their services performed within and without this state.

3. Compensation for services performed in this state shall be deemed to be the compensation reported or required to be reported by employees for determination of their income tax liability to this state.

F. In general, all revenue derived from transactions and activities in the regular course of the taxpayer's trade or business within and without this state that produce business income, except per diem and mileage charges that are calculated by the taxpayer, shall be included in the denominator of the revenue factor. The numerator of the revenue factor is the total revenue of the taxpayer within this state during the income year.

1. The total revenue of the taxpayer in this state during the income year, other than revenue from hauling freight, passengers, mail and express, shall be attributable to this state in accordance with R865-6F-8(I).

2. The total revenue of the taxpayer attributable to this state during the income year for the numerator of the revenue factor from hauling freight, mail and express shall be attributable to this state as follows:

a) Intrastate: all receipts from shipments that both originate and terminate within this state; and

b) Interstate: that portion of the receipts from each movement or shipment passing through, into, or out of this state is determined by the ratio that the miles traveled by the movement or shipment in this state bears to the total miles traveled by the movement or shipment from point of origin to destination.

3. The total revenue of the taxpayer attributable to this state during the income year for the numerator of the revenue factor from hauling passengers shall be attributable to this state as follows:

a) Intrastate: all receipts from the transportation of passengers, including mail and express handled in passenger service, that both originate and terminate within this state; and

b) Interstate: that portion of the receipts from the transportation of interstate passengers, including mail and express handled in passenger service, determined by the ratio that passenger miles in this state bear to the total of passenger miles within and without this state.

G. The taxpayer shall maintain the records necessary to identify mobile property and to enumerate by state the mobile property miles traveled by mobile property. These records are subject to review by the Tax Commission or its agents.

R865-6F-30. Higher Education Savings Incentive Program Tax Deduction Pursuant to Utah Code Ann. Sections 53B-8a-112, 59-7-105, and 59-7-106.

A. "Trust" means the Utah Educational Savings Plan Trust created pursuant to Section 53B-8a-103.

B. The trustee of the trust shall file a form TC-675H, Statement of Account with the Utah Educational Savings Plan Trust, with the commission, for each trust participant. The TC-675H shall contain the following information for the calendar year:

1. the amount contributed to the trust by the participant;

2. the income earned on the participant's contributions to the trust; and

3. the amount refunded to the participant pursuant to Section 53B-8a-109.

C. The trustee of the trust shall file form TC-675H with the commission on or before January 31 of the year following the calendar year on which the forms are based.

D. The trustee of the trust shall provide each trust participant with a copy of the form TC-675H on or before January 31 of the year following the calendar year on which the TC-675H is based.

E. The trustee of the trust shall maintain original records supporting the amounts listed on the TC-675H for the current year filing and the three previous year filings.

F. Trust participants must attach a copy of the TC-675H to their state tax return to qualify for the deduction allowed under Section 59-7-106.

R865-6F-31. Taxation of Publishing Companies Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.

A. Definitions.

1. "Outer-jurisdictional property" means certain types of tangible personal property, such as orbiting satellites, undersea transmission cables and the like, that are owned or rented by the taxpayer and used in the business of publishing, licensing, selling or otherwise distributing printed material, but that are not physically located in any particular state.

2. "Print" or "printed material" means the physical embodiment or printed version of any thought or expression, including a play, story, article, column or other literary, commercial, educational, artistic or other written or printed work. The determination of whether an item is or consists of print or printed material shall be made without regard to its content. Printed material may take the form of a book, newspaper, magazine, periodical, trade journal, or any other form of printed matter and may be contained on any medium or property.

3. "Purchaser" and "subscriber" mean the individual, residence, business or other outlet that is the ultimate or final recipient of the print or printed material. Neither term shall mean or include a wholesaler or other distributor of print or printed material.

4. "Terrestrial facility" shall include any telephone line, cable, fiber optic, microwave, earth station, satellite dish, antennae, or other relay system or device that is used to receive, transmit, relay or carry any data, voice, image or other information that is transmitted from or by any outer-jurisdictional property to the ultimate recipient thereof.

B. When a taxpayer in the business of publishing, selling, licensing or distributing books, newspapers, magazines, periodicals, trade journals, or other printed material has income from sources both within and without this state, the amount of business income from sources within this state shall be determined pursuant to this rule. In those cases, the first step is to determine what portion of the taxpayer's income constitutes business income and what portion constitutes nonbusiness income. Nonbusiness income is directly allocable to specific states and business income is apportioned among the states in which the business is conducted and pursuant to the property, payroll, and sales apportionment factors set forth in this rule. The sum of the items of nonbusiness income directly allocated to this state, plus the amount of business income apportioned to this state, constitutes the amount of the taxpayer's entire net income subject to tax in this state.

C. In general, the property factor shall be determined in accordance with R865-6F-8(G), the payroll factor in accordance with R865-6F-8(H), and the sales factor in accordance with R865-6F-8(I), except as modified by this rule.

D. All real and tangible personal property, including outer-jurisdictional property, whether owned or rented, that is used in the business shall be included in the denominator of the property factor.

E. All real and tangible personal property owned or rented by the taxpayer and used within this state during the tax period shall be included in the numerator of the property factor.

1. Outer-jurisdictional property owned or rented by the taxpayer and used in this state during the tax period shall be included in the numerator of the property factor in the ratio that the value of the property attributable to its use by the taxpayer in business activities within this state bears to the value of the property attributable to its use in the taxpayer's business activities within and without this state.

a) The value of outer-jurisdictional property attributed to the numerator of the property factor of this state shall be determined by the ratio that the number of uplinks and downlinks, or half-circuits, used during the tax period to transmit from this state and to receive in this state any data, voice, image or other information bears to the number of uplinks and downlinks or half-circuits used for transmissions within and without this state.

b) If information regarding uplink and downlink or half-circuit usage is not available or if measurement of activity is not applicable to the type of outer-jurisdictional property used by the taxpayer, the value of that property attributed to the numerator of the property factor of this state shall be determined by the ratio that the amount of time, in terms of hours and minutes of use, or other measurement of use of outer-jurisdictional property that was used during the tax period to transmit from this state and to receive within this state any data, voice, image or other information bears to the total amount of time or other measurement of use that was used for transmissions within and without this state.

c) Outer-jurisdictional property shall be considered to have been used by the taxpayer in its business activities

within this state when that property, wherever located, has been employed by the taxpayer in any manner in the publishing, sale, licensing or other distribution of books, newspapers, magazines or other printed material, and any data, voice, image or other information is transmitted to or from this state either through an earth station or terrestrial facility located within this state.

(i) One example of the use of outer-jurisdictional property is when the taxpayer owns its own communications satellite or leases the use of uplinks, downlinks or circuits or time on a communications satellite for the purpose of sending messages to its newspaper printing facilities or employees. The states in which any printing facility that receives the satellite communications are located and the state from which the communications were sent would, under this rule, apportion the cost of the owned or rented satellite to their respective property factors based upon the ratio of the in-state use of the satellite to its usage within and without the state.

(ii) Assume that ABC Newspaper Co. owns a total of $400,000,000 of property and, in addition, owns and operates a communication satellite for the purpose of sending news articles to its printing plant in this state, as well as for communicating with its printing plants and facilities or news bureaus, employees and agents located in other states and throughout the world. Also assume that the total value of its real and tangible personal property that was permanently located in this state for the entire income year was valued at $3,000,000. Assume also that the original cost of the satellite is $100,000,000 for the tax period and that of the 10,000 uplinks and downlinks or half-circuits of satellite transmissions used by the taxpayer during the tax period, 200 or 2% are attributable to its satellite communications received in and sent from this state. Assume further that the company's mobile property that was used partially within this state, consisting of 40 delivery trucks, was determined to have an original cost of $4,000,000 and was used in this state for 95 days. The total value of property attributed to this state is determined as follows:

TABLE

Value of property permanently in state =	$3,000,000
Value of mobile property:	
95/365 or (.260274) x $4,000,000 =	$1,041,096
Value of leased satellite property used in-state:	
(.02) x $100,000,000 =	$2,000,000
Total value of property attributable to state =	$6,041,096
Total property factor percentage:	
$6,041,096/$500,000,000 =	1.2082%

F. The payroll factor shall be determined in accordance with Sections 59-7-315 and 59-7-316.

G. The denominator of the sales factor shall include the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business, except receipts that may be excluded under R865-6F-8(J)(3).

H. The numerator of the sales factor shall include all gross receipts of the taxpayer from sources within this state, including the following:

1. Gross receipts derived from the sale of tangible personal property, including printed materials, delivered or shipped to a purchaser or a subscriber in this state; and

2. Except as provided in H.2.b), gross receipts derived from advertising and the sale, rental, or other use of the taxpayer's customer lists or any portion thereof shall be attributed to this state as determined by the taxpayer's circulation factor during the tax period. The circulation factor shall be determined for each publication of printed material containing advertising and shall be equal to the ratio that the taxpayer's in-state circulation to purchasers and subscribers of its printed material bears to its circulation to purchasers and subscribers within and without the state.

a) The circulation factor for an individual publication shall be determined by reference to the rating statistics as reflected in such sources as Audit Bureau of Circulations or other comparable sources, provided that the source selected is consistently used from year to year for that purpose. If none of the foregoing sources are available, or, if available, not in form or content sufficient for these purposes, the circulation factor shall be determined from the taxpayer's books and records.

b) When specific items of advertisements can be shown, upon clear and convincing evidence, to have been distributed solely to a limited regional or local geographic area in which this state is located, the taxpayer may petition, or the Tax Commission may require, that a portion of those receipts be attributed to the sales factor numerator of this state on the basis of a regional or local geographic area circulation factor and not upon the basis of the circulation factor provided by H.2.a). This attribution shall be based upon the ratio that the taxpayer's circulation to purchasers and subscribers located in this state of the printed material containing specific items of advertising bears to its total circulation of printed material to purchasers and subscribers located within the regional or local geographic area. This alternative attribution method shall be permitted only upon the condition that receipts are not double counted or otherwise included in the numerator of any other state.

c) If the purchaser or subscriber is the United States government or if the taxpayer is not taxable in a state, the gross receipts from all sources, including the receipts from the sale of printed material, from advertising, and from the sale, rental or other use of the taxpayer's customer lists, or any portion thereof that would have been attributed by the circulation factor to the numerator of the sales factor for that state, shall be included in the numerator of the sales factor of this state if the printed material or other property is shipped from an office, store, warehouse, factory, or other place of storage or business in this state.

R865-6F-32. Taxation of Financial Institutions Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.

A. Definitions.

1. "Billing address" means the location indicated in the books and records of the taxpayer on the first day of the taxable year, or on the later date in the taxable year when the customer relationship began, where any notice, statement or

bill relating to a customer's account is mailed.

2. "Borrower or credit card holder located in this state" means:

a) a borrower, other than a credit card holder, that is engaged in a trade or business that maintains its commercial domicile in this state; or

b) a borrower that is not engaged in a trade or business, or a credit card holder, whose billing address is in this state.

3. "Commercial domicile" means:

a) the place from which the trade or business is principally managed and directed; or

b) if a taxpayer is organized under the laws of a foreign country, or of the Commonwealth of Puerto Rico, or any territory or possession of the United States, that taxpayer's commercial domicile shall be deemed for the purposes of this rule to be the state of the United States or the District of Columbia from which that taxpayer's trade or business in the United States is principally managed and directed. It shall be presumed, subject to rebuttal, that the location from which the taxpayer's trade or business is principally managed and directed is the state of the United States or the District of Columbia to which the greatest number of employees are regularly connected or out of which they are working, irrespective of where the services of those employees are performed, as of the last day of the taxable year.

4. "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services that are included in the employee's gross income under the federal Internal Revenue Code. In the case of employees not subject to the federal Internal Revenue Code, the determination of whether payments constitute gross income under the federal Internal Revenue Code shall be made as though those employees were subject to the federal Internal Revenue Code.

5. "Credit card" means a credit, travel, or entertainment card.

6. "Credit card issuer's reimbursement fee" means the fee a taxpayer receives from a merchant's bank because one of the persons to whom the taxpayer has issued a credit card has charged merchandise or services to the credit card.

7. "Employee" means, with respect to a particular taxpayer, any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee of that taxpayer.

8. "Financial institution" means:

a) any corporation or other business entity registered under state law as a bank holding company or registered under the Federal Bank Holding Company Act of 1956, as amended, or registered as a savings and loan holding company under the Federal National Housing Act, as amended;

b) a national bank organized and existing as a national bank association pursuant to the provisions of the National Bank Act, 12 U.S.C. Sections21 et seq.;

c) a savings association or federal savings bank as defined in the Federal Deposit Insurance Act, 12 U.S.C. Section 1813(b)(1);

d) any bank, industrial loan corporation, or thrift institution incorporated or organized under the laws of any state;

e) any corporation organized under the provisions of 12 U.S.C. Sections611 through 631.

f) any agency or branch of a foreign depository as defined in 12 U.S.C. Section3101;

g) a production credit association organized under the Federal Farm Credit Act of 1933, all of whose stock held by the Federal Production Credit Corporation has been retired;

h) any corporation whose voting stock is more than 50 percent owned, directly or indirectly, by any person or business entity described in A.8.a) through A.8.g), other than an insurance company taxable under Title 59, Chapter 9, Taxation of Admitted Insurers;

i) a corporation or other business entity that derives more than 50 percent of its total gross income for financial accounting purposes from finance leases. For purposes of this subsection, a "finance lease" shall mean any lease transaction that is the functional equivalent of an extension of credit and that transfers substantially all of the benefits and risks incident to the ownership of property. The phrase shall include any direct financing lease or leverage lease that meets the criteria of Financial Accounting Standards Board Statement No. 13, Accounting for Leases, or any other lease that is accounted for as a financing lease by a lessor under generally accepted accounting principles. For this classification to apply:

(1) the average of the gross income in the current tax year and immediately preceding two tax years must satisfy the more than 50 percent requirement; and

(2) gross income from incidental or occasional transactions shall be disregarded;

j) any other person or business entity, other than an insurance company, a credit union exempt from the corporation franchise tax under Section 59-7-102, a real estate broker, or a securities dealer, that derives more than 50 percent of its gross income from activities that a person described in A.8.b) through A.8.g) and A.8.i) is authorized to transact.

(1) For purposes of this subsection, the computation of gross income shall not include income from non-recurring, extraordinary items; and

(2) The Tax Commission is authorized to exclude any person from the application of A.8.j) upon receipt of proof, by clear and convincing evidence, that the income-producing activity of that person is not in substantial competition with those persons described in A.8.b) through A.8.g) and A.8.i).

9. "Gross rents" means the actual sum of money or other consideration payable for the use or possession of property.

a) Gross rents includes:

(1) any amount payable for the use or possession of real property or tangible property whether designated as a fixed sum of money or as a percentage of receipts, profits or otherwise;

(2) any amount payable as additional rent or in lieu of rent, such as interest, taxes, insurance, repairs or any other amount required to be paid by the terms of a lease or other arrangement; and

(3) a proportionate part of the cost of any improvement to real property, made by or on behalf of the taxpayer, that

reverts to the owner or lessor upon termination of a lease or other arrangement. The amount included in gross rents is the amount of amortization or depreciation allowed in computing the taxable income base for the taxable year. However, where a building is erected on leased land by or on behalf of the taxpayer, the value of the land is determined by multiplying the gross rent by eight and the value of the building is determined in the same manner as if owned by the taxpayer.

b) Gross rents does not include:

(1) reasonable amounts payable as separate charges for water and electric service furnished by the lessor;

(2) reasonable amounts payable as service charges for janitorial services furnished by the lessor;

(3) reasonable amounts payable for storage, provided those amounts are payable for space not designated and not under the control of the taxpayer; and

(4) that portion of any rental payment applicable to the space subleased from the taxpayer and not used by the taxpayer.

10. "Loan" means any extension of credit resulting from direct negotiations between the taxpayer and the taxpayer's customer, or the purchase, in whole or in part, of an extension of credit from another.

a) Loan includes participations, syndications, and leases treated as loans for federal income tax purposes.

b) Loan does not include properties treated as loans under Section 595 of the federal Internal Revenue Code, futures or forward contracts, options, notional principal contracts such as swaps, credit card receivables, including purchased credit card relationships, non-interest bearing balances due from depository institutions, cash items in the process of collection, federal funds sold, securities purchased under agreements to resell, assets held in a trading account, securities, interests in a real estate mortgage investment conduit as defined in Section 860D of the Internal Revenue Code, or other mortgage-backed or asset-backed security, and other similar items.

11. "Loans secured by real property" means that fifty percent or more of the aggregate value of the collateral used to secure a loan or other obligation, when valued at fair market value as of the time the original loan or obligation was incurred, was real property.

12. "Merchant discount" means the fee, or negotiated discount, charged to a merchant by the taxpayer for the privilege of participating in a program whereby a credit card is accepted in payment for merchandise or services sold to the card holder.

13. "Participation" means an extension of credit in which an undivided ownership interest is held on a pro rata basis in a single loan or pool of loans and related collateral. In a loan participation, the credit originator initially makes the loan and then subsequently resells all or a portion of it to other lenders. The participation may or may not be known to the borrower.

14. "Person" means an individual, estate, trust, partnership, corporation, and any other business entity.

15. "Principal base of operations" means:

a) with respect to transportation property, the place of more or less permanent nature from which that property is regularly directed or controlled; and

b) with respect to an employee, the place of more or less permanent nature from which the employee regularly:

(1) starts his work and to which he customarily returns in order to receive instructions from his employer;

(2) communicates with his customers or other persons; or

(3) performs any other functions necessary to the exercise of his trade or profession at some other point or points.

16. a) "Real property owned" and "tangible personal property owned" mean real and tangible personal property, respectively:

(1) on which the taxpayer may claim depreciation for federal income tax purposes; or

(2) property to which the taxpayer holds legal title and on which no other person may claim depreciation for federal income tax purposes, or could claim depreciation if subject to federal income tax.

b) Real and tangible personal property do not include coin, currency, or property acquired in lieu of or pursuant to a foreclosure.

17. "Regular place of business" means an office at which the taxpayer carries on business in a regular and systematic manner and is continuously maintained, occupied, and used by employees of the taxpayer.

18. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country.

19. "Syndication" means an extension of credit in which two or more persons fund and each person is at risk only up to a specified percentage of the total extension of credit or up to a specified dollar amount.

20. "Taxable" means:

a) a taxpayer is subject in another state to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, a corporate stock tax, including a bank shares tax, a single business tax, an earned surplus tax, or any tax imposed upon or measured by net income; or

b) another state has jurisdiction to subject the taxpayer to taxes regardless of whether that state actually imposes those taxes.

21. "Transportation property" means vehicles and vessels capable of moving under their own power, such as aircraft, trains, water vessels and motor vehicles, as well as any equipment or containers attached to that property, such as rolling stock, barges, and trailers.

B. Apportionment and Allocation.

1. A financial institution whose business activity is taxable both within and without this state, or a financial institution whose business activity is taxable within this state and is a member of a unitary group that includes one or more financial institutions where any member of the group is taxable without this state, shall allocate and apportion its net income as provided in this rule. All items of nonbusiness income shall be allocated pursuant to the provisions of Section 59-7-306. A financial institution organized under the

laws of a foreign country, the Commonwealth of Puerto Rico, or a territory or possession of the United States, whose effectively connected income, as defined under the federal Internal Revenue Code, is taxable both within this state and within another state, other than the state in which it is organized, shall allocate and apportion its net income as provided in this rule.

2. All business income shall be apportioned to this state by multiplying that income by the apportionment percentage. The apportionment percentage is determined by adding the taxpayer's receipts factor described in C., property factor described in D., and payroll factor described in E., and dividing that sum by three. If one of the factors is missing, the two remaining factors are added and the sum is divided by two. If two of the factors are missing, the remaining factor is the apportionment percentage. A factor is missing if both its numerator and denominator are zero, but not merely because its numerator is zero.

3. Each factor shall be computed according to the cash or accrual method of accounting as used by the taxpayer for the taxable year.

4. If a unitary group of corporations filing a combined report includes one or more corporations meeting the definition of financial institution and one or more corporations that do not meet that definition, the provisions of this rule regarding the calculation of the property, payroll, and receipts factors of the apportionment fraction shall apply only to those corporations meeting the definition of financial institution. Those corporations not meeting the definition of financial institution shall compute their apportionment data based on Tax Commission rule R865-6f-8 or such other industry apportionment rule adopted by the Tax Commission that may be applicable. The apportionment data of all members of the unitary group shall be included in calculating a single apportionment fraction for the unitary group. The numerators and denominators of the property, payroll, and receipts factors of the financial institutions shall be added to the numerators and denominators, respectively, of the property, payroll, and sales factors of the nonfinancial institutions to determine the property, payroll, and sales factors of the unitary group.

C. Receipts Factor.

1. In general. The receipts factor is a fraction, the numerator of which is the receipts of the taxpayer in this state during the taxable year and the denominator of which is the receipts of the taxpayer within and without this state during the taxable year. The method of calculating receipts for purposes of the denominator is the same as the method used in determining receipts for purposes of the numerator. The receipts factor shall include only those receipts that constitute business income and are included in the computation of the apportionable income base for the taxable year.

2. Receipts from the lease of real property. The numerator of the receipts factor includes receipts from the lease or rental of real property owned by the taxpayer and receipts from the sublease of real property, if the property is located within this state.

3. Receipts from the lease of tangible personal property.

a) Except as described in C.4., the numerator of the receipts factor includes receipts from the lease or rental of tangible personal property owned by the taxpayer if the property is located within this state when it is first placed in service by the lessee.

b) Receipts from the lease or rental of transportation property owned by the taxpayer are included in the numerator of the receipts factor to the extent that the property is used in this state.

(1) The extent an aircraft will be deemed to be used in this state and the amount of receipts that shall be included in the numerator of this state's receipts factor are determined by multiplying all the receipts from the lease or rental of the aircraft by a fraction, the numerator of which is the number of landings of the aircraft in this state and the denominator of which is the total number of landings of the aircraft.

(2) If the extent of the use of any transportation property within this state cannot be determined, that property will be deemed to be used wholly in the state in which the property has its principal base of operations.

(3) A motor vehicle will be deemed to be used wholly in the state in which it is registered.

4. Interest from loans secured by real property.

a) The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from loans secured by real property if the property is located within this state. If the property is located both within this state and one or more other states, the receipts described in this subsection are included in the numerator of the receipts factor if more than fifty percent of the fair market value of the real property is located within this state. If more than fifty percent of the fair market value of the real property is not located within any one state, the receipts described in this subsection shall be included in the numerator of the receipts factor if the borrower is located in this state.

b) The determination of whether the real property securing a loan is located within this state shall be made as of the time the original agreement was made, and any and all subsequent substitutions of collateral shall be disregarded.

5. Interest from loans not secured by real property. The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from loans not secured by real property if the borrower is located in this state.

6. Net gains from the sale of loans. The numerator of the receipts factor includes net gains from the sale of loans. Net gains from the sale of loans includes income recorded under the coupon stripping rules of Section 1286 of the Internal Revenue Code.

a) The amount of net gains, but not less than zero, from the sale of loans secured by real property included in the numerator is determined by multiplying the net gains by a fraction the numerator of which is the amount included in the numerator of the receipts factor pursuant to C.4., and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.

b) The amount of net gains, but not less than zero, from the sale of loans not secured by real property included in the numerator is determined by multiplying the net gains by a fraction the numerator of which is the amount included in the

numerator of the receipts factor pursuant to C.5., and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.

7. Receipts from credit card receivables. The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from credit card receivables and receipts from fees charged to card holders, such as annual fees, if the billing address of the card holder is in this state.

8. Net gains from the sale of credit card receivables. The numerator of the receipts factor includes net gains, but not less than zero, from the sale of credit card receivables multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to C.7., and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders.

9. Credit card issuer's reimbursement fees. The numerator of the receipts factor includes all credit card issuer's reimbursement fees multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to C.7., and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders.

10. Receipts from merchant discount. The numerator of the receipts factor includes receipts from merchant discount if the commercial domicile of the merchant is in this state. The receipts shall be computed net of any cardholder charge backs, but shall not be reduced by any interchange transaction fees or by any issuer's reimbursement fees paid to another for charges made by its card holders.

11. Loan servicing fees.

a) The numerator of the receipts factor includes loan servicing fees derived from loans secured by real property multiplied by a fraction the numerator of which is the amount included in the numerator of the receipts factor pursuant to C.4., and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.

b) The numerator of the receipts factor includes loan servicing fees derived from loans not secured by real property multiplied by a fraction the numerator of which is the amount included in the numerator of the receipts factor pursuant to C.5., and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.

c) In circumstances in which the taxpayer receives loan servicing fees for servicing either the secured or the unsecured loans of another, the numerator of the receipts factor shall include those fees if the borrower is located in this state.

12. Receipts from services. The numerator of the receipts factor includes receipts from services not otherwise apportioned under this section if the service is performed in this state. If the service is performed both within and without this state, the numerator of the receipts factor includes receipts from services not otherwise apportioned under this section if a greater proportion of the income-producing activity is performed in this state based on cost of performance.

13. Receipts from investment assets and activities and trading assets and activities.

a) Interest, dividends, net gains, but not less than zero, and other income from investment assets and activities and from trading assets and activities shall be included in the receipts factor.

b) Investment assets and activities and trading assets and activities include investments securities, trading account assets, federal funds, securities purchased and sold under agreements to resell or repurchase, options, futures contracts, forward contracts, notional principal contracts such as swaps, equities, and foreign currency transactions.

c) The receipts factor shall include the following investment and trading assets and activities:

(1) The receipts factor shall include the amount by which interest from federal funds sold and securities purchased under resale agreements exceeds interest expense on federal funds purchased and securities sold under repurchase agreements.

(2) The receipts factor shall include the amount by which interest, dividends, gains and other income from trading assets and activities, including assets and activities in the matched book and arbitrage book, and foreign currency transactions, exceed amounts paid in lieu of interest, amounts paid in lieu of dividends, and losses from those assets and activities.

d) The numerator of the receipts factor includes interest, dividends, net gains, but not less than zero, and other income from investment assets and activities and from trading assets and activities described in C.13. that are attributable to this state.

(1) The amount of interest, dividends, net gains, but not less than zero, and other income from investment assets and activities in the investment accounts attributed to this state and included in the numerator is determined by multiplying all such income from assets and activities by a fraction, the numerator of which is the average value of the assets properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all those assets.

(2) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is determined by multiplying the amount of those funds and securities described in C.13.c)(1) by a fraction, the numerator of which is the average value of federal funds sold and securities purchased under agreements to resell that are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all those funds and securities.

(3) The amount of interest, dividends, gains, and other income from trading assets and activities, including assets and activities in the matched book and arbitrage book and foreign currency transactions, but excluding amounts described in C.13.d)(1) and C.13.d)(2), attributable to this state and included in the numerator is determined by multiplying the

amount described in C.13.c)(2) by a fraction, the numerator of which is the average value of those trading assets that are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all those assets.

(4) For purposes of this subsection, average value shall be determined using the rules for determining the average value of tangible personal property set forth in D.3. and D.4.

e) In lieu of using the method set forth in C.13.d), the taxpayer may elect, or the Tax Commission may require in order to fairly represent the business activity of the taxpayer in this state, the use of the method set forth in this subsection.

(1) The amount of interest, dividends, net gains, but not less than zero, and other income from investment assets and activities in the investment account attributed to this state and included in the numerator is determined by multiplying all income from those assets and activities by a fraction, the numerator of which is the gross income from those assets and activities properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all those assets and activities.

(2) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is determined by multiplying the amount of those funds and securities described in C.13.c)(1) by a fraction, the numerator of which is the gross income from those funds and securities properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all those funds and securities.

(3) The amount of interest, dividends, gains and other income from trading assets and activities, including assets and activities in the matched book and arbitrage book and foreign currency transactions, but excluding amounts described in C.13.e)(1) or C.13.e)(2), attributable to this state and included in the numerator is determined by multiplying the amount described in C.13.c)(2)by a fraction, the numerator of which is the gross income from those trading assets and activities properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all those assets and activities.

f) If the taxpayer elects or is required by the Tax Commission to use the method set forth in C.13.e), the taxpayer shall use this method on all subsequent returns unless the taxpayer receives prior permission from the Tax Commission to use, or the Tax Commission requires, a different method.

g) The taxpayer shall have the burden of proving that an investment asset or activity or trading asset or activity was properly assigned to a regular place of business outside of this state by demonstrating that the day-to-day decisions regarding the asset or activity occurred at a regular place of business outside this state. Where the day-to-day decisions regarding an investment asset or activity or trading asset or activity occur at more than one regular place of business and one regular place of business is in this state and one regular place of business is outside this state, that asset or activity shall be considered to be located at the regular place of business of the taxpayer where the investment or trading policies or guidelines with respect to the asset or activity are established. Unless the taxpayer demonstrates to the contrary, policies and guidelines shall be presumed to be established at the commercial domicile of the taxpayer.

14. All other receipts. The numerator of the receipts factor includes all other receipts pursuant to the rules set forth in Rule R865-6F-8(I) and (J).

15. Attribution of certain receipts to commercial domicile.

a) Except as provided in C.15.b), all receipts that would be assigned under this section to a state in which the taxpayer is not taxable shall be included in the numerator of the receipts factor if the taxpayer's commercial domicile is in this state.

b) (1) If a unitary group includes one or more financial institutions, and if any member of the unitary group is subject to the taxing jurisdiction of this state, the receipts of each financial institution in the unitary group shall be included in the numerator of this state's receipts factor as provided in C.1. through C.14. rather than being attributed to the commercial domicile of the financial institution as provided in C.15.a).

(2) If a unitary group includes one or more financial institutions whose commercial domicile is in this state, and if any member of the unitary group is taxable in another state under section 59-7-305, the receipts of each financial institution in the unitary group that would be included in the numerator of the other state's receipts factor under C.1. through C.14. may not be included in the numerator of this state's receipts factor.

D. Property Factor.

1. In General.

a) For taxpayers that do not elect to include the property described in D.7. through D.9. within the property factor, the property factor is a fraction, the numerator of which is the average value of real property and tangible personal property owned by or rented to the taxpayer that is located or used within this state during the taxable year, and the denominator of which is the average value of all that property located or used within and without this state during the taxable year .

b) For taxpayers that elect to include the property described in D.7. through D.9. within the property factor, the property factor is a fraction, the numerator of which is the average value of real property and tangible personal property owned by or rented to the taxpayer that is located or used within this state during the taxable year, and the average value of the taxpayer's loans and credit card receivables that are located within this state during the taxable year, and the denominator of which is the average value of all that property located or used within and without this state during the taxable year .

2. Property included. The property factor shall include only property the income or expenses of which are included, or would have been included if not fully depreciated or expensed, or depreciated or expensed to a nominal amount, in the computation of the apportionable income base for the taxable year.

3. Value of property owned by the taxpayer.

a) For taxpayers that do not elect to include the property

described in D.7. through D.9. within the property factor, the value of real property and tangible personal property owned by the taxpayer is the original cost or other basis of that property for federal income tax purposes without regard to depletion, depreciation or amortization.

b) For taxpayers that elect to include the property described in D.7. through D.9. within the property factor:

(1) The value of real property and tangible personal property owned by the taxpayer is the original cost or other basis of that property for federal income tax purposes without regard to depletion, depreciation or amortization.

(2) Loans are valued at their outstanding principal balance, without regard to any reserve for bad debts. If a loan is charged-off in whole or in part for federal income tax purposes, the portion of the loan charged off is not outstanding. A specifically allocated reserve established pursuant to regulatory or financial accounting guidelines that is treated as charged-off for federal income tax purposes shall be treated as charged-off for purposes of this rule.

(3) Credit card receivables are valued at their outstanding principal balance, without regard to any reserve for bad debts. If a credit card receivable is charged-off in whole or in part for federal income tax purposes, the portion of the receivable charged-off is not outstanding.

4. Average value of property owned by the taxpayer. The average value of property owned by the taxpayer is computed on an annual basis by adding the value of the property on the first day of the taxable year and the value on the last day of the taxable year and dividing the sum by two.

a) If averaging on this basis does not properly reflect average value, the Tax Commission may require averaging on a more frequent basis, or the taxpayer may elect to average on a more frequent basis.

b) When averaging on a more frequent basis is required by the Tax Commission or is elected by the taxpayer, the same method of valuation must be used consistently by the taxpayer with respect to property within and without this state and on all subsequent returns unless the taxpayer receives prior permission from the Tax Commission to use a different method, or the Tax Commission requires a different method of determining average value.

5. Average value of real property and tangible personal property rented to the taxpayer.

a) The average value of real property and tangible personal property that the taxpayer has rented from another and are not treated as property owned by the taxpayer for federal income tax purposes, shall be determined annually by multiplying the gross rents payable during the taxable year by eight.

b) If the use of the general method described in this subsection results in inaccurate valuations of rented property, any other method that properly reflects the value may be adopted by the Tax Commission or by the taxpayer when approved in writing by the Tax Commission. Once approved, that other method of valuation must be used on all subsequent returns unless the taxpayer receives prior approval from the Tax Commission to use a different method, or the Tax Commission requires a different method of valuation.

6. Location of real property and tangible personal property owned or rented to the taxpayer.

a) Except as described in D.6.b), real property and tangible personal property owned by or rented to the taxpayer are considered located within this state if they are physically located, situated, or used within this state.

b) Transportation property is included in the numerator of the property factor to the extent that the property is used in this state.

(1) The extent an aircraft will be deemed to be used in this state and the amount of value that shall be included in the numerator of this state's property factor is determined by multiplying the average value of the aircraft by a fraction, the numerator of which is the number of landings of the aircraft in this state and the denominator of which is the total number of landings of the aircraft everywhere.

(2) If the extent of the use of any transportation property within this state cannot be determined, the property will be deemed to be used wholly in the state in which the property has its principal base of operations.

(3) A motor vehicle will be deemed to be used wholly in the state in which it is registered.

7. Location of Loans.

a) A loan is considered located within this state if it is properly assigned to a regular place of business of the taxpayer within this state.

b) A loan is properly assigned to the regular place of business with which it has a preponderance of substantive contacts. A loan assigned by the taxpayer to a regular place of business without the state shall be presumed to have been properly assigned if:

(1) the taxpayer has assigned, in the regular course of its business, the loan on its records to a regular place of business consistent with federal or state regulatory requirements;

(2) the assignment on its records is based upon substantive contacts of the loan to the regular course of business; and

(3) the taxpayer uses the records reflecting assignment of loans for the filing of all state and local tax returns for which an assignment of loans to a regular place of business is required.

c) The presumption of proper assignment of a loan provided in D.7.b) may be rebutted upon a showing by the Tax Commission, supported by a preponderance of the evidence, that the preponderance of substantive contacts regarding the loan did not occur at the regular place of business to which it was assigned on the taxpayer's records. When the presumption has been rebutted, the loan shall then be located within this state if:

(1) the taxpayer had a regular place of business within this state at the time the loan was made; and

(2) the taxpayer fails to show, by a preponderance of the evidence, that the preponderance of substantive contacts regarding the loan did not occur within this state.

d) In the case of a loan assigned by the taxpayer to a place without this state that is not a regular place of business, it shall be presumed, subject to rebuttal by the taxpayer on a showing supported by the preponderance of the evidence, that the preponderance of substantive contacts regarding the loan occurred within this state if, at the time the loan was made the

taxpayer's commercial domicile, as defined in this rule, was within this state.

e) To determine the state in which the preponderance of substantive contacts relating to a loan have occurred, the facts and circumstances regarding the loan at issue shall be reviewed on a case-by-case basis, and consideration shall be given to activities such as the solicitation, investigation, negotiation, approval, and administration of the loan.

(1) Solicitation. Solicitation is either active or passive.

(a) Active solicitation occurs when an employee of the taxpayer initiates the contact with the customer. The activity is located at the regular place of business at which the taxpayer's employee is regularly connected or working out of, regardless of where the services of the employee were actually performed.

(b) Passive solicitation occurs when the customer initiates the contact with the taxpayer. If the customer's initial contact was not at a regular place of business of the taxpayer, the regular place of business, if any, where the passive solicitation occurred is determined by the facts in each case.

(2) Investigation. Investigation is the procedure whereby employees of the taxpayer determine the credit-worthiness of the customer as well as the degree of risk involved in making a particular agreement. The activity is located at the regular place of business at which the taxpayer's employees are regularly connected or working out of, regardless of where the services of those employees were actually performed.

(3) Negotiation. Negotiation is the procedure whereby employees of the taxpayer and its customer determine the terms of the agreement, such as amount, duration, interest rate, frequency of repayment, currency denomination, and security required. The activity is located at the regular place of business at which the taxpayer's employees are regularly connected or working out of, regardless of where the services of those employees were actually performed.

(4) Approval. Approval is the procedure whereby employees or the board of directors of the taxpayer make the final determination whether to enter into the agreement.

(a) The activity is located at the regular place of business at which the taxpayer's employees are regularly connected or working out of, regardless of where the services of those employees were actually performed.

(b) If the board of directors makes the final determination, the activity is located at the commercial domicile of the taxpayer.

(5) Administration. Administration is the process of managing the account.

(a) Administration includes bookkeeping, collecting the payments, corresponding with the customer, reporting to management regarding the status of the agreement and proceeding against the borrower or the security interest if the borrower is in default.

(b) The activity is located at the regular place of business that oversees this activity.

8. Location of credit card receivables. For purposes of determining the location of credit card receivables, credit card receivables shall be treated as loans and shall be subject to the provisions of D.7.

9. Period for which properly assigned loan remains assigned. A loan that has been properly assigned to a state shall, absent any change of material fact, remain assigned to that state for the length of the original term of the loan. Thereafter, the loan may be properly assigned to another state if the loan has a preponderance of substantive contact to a regular place of business in that state.

10. Each taxpayer shall make an initial election on whether to include the property described in D.7. through D.9. within the property factor. The initial election is the election made or the filing position taken on the first return filed after the effective date of this rule. This election is irrevocable for a period of three years from the time the initial election is made, except in the case where a substantial ownership change occurs and commission approval is obtained to change the election. After the initial three-year period, the election may be revocable only with the prior approval of the commission and shall require the showing of a significant change in circumstance.

E. Payroll factor.

1. In general. The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the taxable year by the taxpayer for compensation and the denominator of which is the total compensation paid by the taxpayer both within and without this state during the taxable year. The payroll factor shall include only that compensation included in the computation of the apportionable income tax base for the taxable year.

2. Compensation relating to nonbusiness income and independent contractors. The compensation of any employee for services or activities connected with the production of nonbusiness income, and payments made to any independent contractor or any other person not properly classifiable as an employee, shall be excluded from both the numerator and denominator of this factor.

3. When compensation paid in this state. Compensation is paid in this state if any one of the following tests, applied consecutively, is met:

a) The employee's services are performed entirely within this state.

b) The employee's services are performed both within and without the state, but the service performed without the state is incidental to the employee's service within the state. The term "incidental"means any service that is temporary or transitory in nature, or that is rendered in connection with an isolated transaction.

c) If the employee's services are performed both within and without this state, the employee's compensation will be attributed to this state:

(1) if the employee's principal base of operations is within this state;

(2) if there is no principal base of operations in any state in which some part of the services are performed, but the place from which the services are directed or controlled is in this state; or

(3) if the principal base of operations and the place from which the services are directed or controlled are not in any state in which some part of the service is performed but the employee's residence is in this state.

F. This rule is effective for taxable years beginning after December 31, 1997.

KEY: taxation, franchise, historic preservation, trucking industries
December 23, 1997
Notice of Continuation April 10, 1997

9-2-401
through
9-2-414
16-10-120
16-10a-1501
through
16-10a-1522
53B-8a-112
59-7-102
59-7-104
through
59-7-106
59-7-108
59-7-109
59-7-110
59-7-118
59-7-119
59-7-121
59-7-124
59-7-301
through
59-7-321
59-7-402
59-7-403
59-7-501
59-7-505
59-7-604
59-7-608
59-10-603
59-13-202

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. "Mining property" means all taxable interests in real property, improvements, and tangible personal property owned or used in mining, processing, or transportation of the product to the customary point of sale or to the implied point of sale in the case of a self-consumed mineral for both metalliferous and nonmetalliferous mines.

2. "Gross income" means actual receipts, plus the fair value of self-consumed minerals.

a. The fair value of self-consumed minerals is determined annually by the Property Tax Division to be either:

1) allowable costs, plus an amount equal to allowable costs times the capitalization rate. Where the taxpayer has outside sales and self-consumed minerals, the allowable costs shall be allocated between the two on the basis of the respective units of measure in each category; or

2) value based upon representative sales price per ton or other standard unit of measure of a like mineral.

b. The method approved cannot be changed from year to year unless approved by the Tax Commission.

3. "Allowable costs" means costs deductible in the respective year, limited to the following:

a. management salaries;
b. labor;
c. payroll taxes and benefits;
d. workers' compensation insurance;
e. general insurance;
f. taxes;
g. supplies and tools;
h. power;
i. maintenance and repairs;
j. office and accounting;
k. engineering;
l. sampling and assaying;
m. treatment;
n. legal fees;
o. royalties;
p. development expense;
q. transportation;
r. miscellaneous; and
s. capital expenditures.

1) No deduction is allowed for interest or mine exploration costs.

4. "Net revenue" means gross income minus allowable costs.

5. "Capital expenditure" means the total cost of purchasing an asset used in the mining operation and includes:

a. purchase price;
b. transportation costs;
c. installation charges; and
d. sales tax.

6. "Nonproducing mine" means a mine that has been closed for a continuous 12-month period, or land held in reserve under a mineral lease not reasonably necessary, indispensable, or needed in the actual mining and extraction process in the current tax year.

B. The capitalization rate shall be determined by the Tax Commission using the weighted cost of capital.

1. The cost of debt should consider current market yields.

2. The cost of equity shall be determined by the capital asset pricing model, risk premium model, discounted cash flow, or a combination thereof or any other accepted methodology.

C. The income indicator of value shall be computed as follows:

1. annual net revenue, both net losses and net gains, from the mining property for each of the immediate past five years or years in operation if less than five years, shall be adjusted by an appropriate index of inflation;

2. average annual net revenue is the sum of the values obtained above divided by the number of years; i.e., five or less;

3. the average annual net revenue is divided by the capitalization rate.

D. The method for determining the fair market value of productive mining property is the capitalized net revenue method outlined in C. above. If the taxpayer is unable to furnish the required information, or, if in the opinion of the Property Tax Division, the capitalized net revenue method outlined above is not reasonably determinative of fair market value, the Property Tax Division may use other valuation methods such as the discounting of future estimated cash flows, to estimate the fair market value of the productive mining property.

E. Reporting shall be on a calendar or fiscal year basis consistently followed, with Tax Commission approval.

F. The effective date of this rule is June 1, 1991.

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 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; and

g) Course H - Appraisal of Public Utilities and Railroads (WSATA).

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.

1. Ad Valorem Residential Appraiser:

a) Requires the successful completion of Courses A, B, C, D, and a comprehensive residential field practicum, and attainment of state registered or 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, and E and a comprehensive field practicum including both residential and commercial properties, and attainment of state registered or certified appraiser status.

b) Upon designation, the appraiser may value all types of real property for ad valorem taxation purposes.

3. Ad Valorem Personal Property Auditor/Appraiser:

a) Requires the successful completion of Courses A, B, and G, and a comprehensive auditing practicum.

b) Upon designation, the auditor/appraiser may value personal property for ad valorem taxation purposes.

4. Ad Valorem Centrally Assessed Valuation Analyst:

a) Requires the successful completion of Courses A, B, E, and H, and a comprehensive valuation practicum, and attainment of state registered or 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. A trainer, assigned by the Tax Commission, will oversee and administer the practicum.

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 20 hours of Tax Commission approved classroom work every two years. Beginning January 1, 1998, maintaining designated status will require 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 is no longer working 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, 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.

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-4.

2. The Notice of Property Valuation and Tax Changes, however modified, must contain the same information as the unmodified version. A legal 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. Calculations of the amount and percentage increase or decrease in the total budget shall be based on total budgeted revenues.

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. 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. 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, rollback 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. "Nonparametric" means data samples that are not normally distributed.

4. "Parametric" means data samples that are normally distributed.

5. "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. Adjustment shall be ordered 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 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 that sample size is at least 10 percent of the class or subclass population.

c) All input to the sample used to measure performance shall be completed by September first of each study cycle.

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. Leasehold improvements under the control of the lessee shall be taxed as personal property of the lessee.

B. If not taxed as personal property of the lessee, the value of leasehold improvements shall be included in the value of the real property.

R884-24P-33. 1998 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 Manufactured Housing Section of the Marshall Valuation Service, and vehicle valuation guides such as NADA.

B. Each year the Property Tax Division shall update and publish percent good schedules for use in computing personal property valuation.

1. Proposed schedules shall be transmitted to county assessors and interested parties for comment before adoption.

2. A public comment period will be scheduled each year and a public hearing will be scheduled if requested by ten or more interested parties or at the discretion of the Commission.

3. County assessors may deviate from the schedules when warranted by specific conditions affecting an item of personal property. When a deviation will affect an entire class or type of personal property, a written report, substantiating the changes with verifiable data, must be presented to the Commission. Alternative schedules may not be used without prior written approval of the Commission.

4. The assessor and the Commission may rely on other publications listing costs new or market values when valuing motor vehicles not found in the source guide recommended by the Commission.

C. Other taxable personal property that is not included in the listed classes includes:

1. Supplies on hand as of January 1 at 12:00 noon, including office supplies, shipping supplies, maintenance supplies, replacement parts, lubricating oils, fuel and consumable items not held for sale in the ordinary course of business. Supplies are assessed at total cost, including freight-in.

2. Equipment leased or rented from inventory is subject to ad valorem tax. Refer to the appropriate property class schedule to determine taxable value.

3. Property held for rent or lease is taxable, and is not exempt as inventory. For entities primarily engaged in rent-to-own, inventory on hand at January 1 is exempt and property out on rent-to-own contracts is taxable.

D. Personal property valuation schedules may not be appealed to, or amended by, county boards of equalization.

E. All taxable personal property is classified by expected economic life as follows:

1. Class 1 - Short Life Property. Property in this class has a typical life of more than one year and less than four years. It is fungible in that it is difficult to determine the age of an item retired from service.

a) Examples of property in the class include:

(1) barricades/warning signs;

(2) library materials;

(3) patterns, jigs and dies;

(4) pots, pans, and utensils;

(5) canned computer software;

(6) hotel linen;

(7) wood and pallets; and
(8) video tapes.
b) With the exception of video tapes, taxable value is calculated by applying the percent good factor against the acquisition cost of the property.
c) Video tapes are valued at $15.00 per tape for the first year and $3.00 per tape thereafter.

TABLE 1

Year of Acquisition	Percent Good of Acquisition Cost
97	70%
96	40%
95 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
97	87%
96	71%
95	61%
94	54%
93	46%
92	37%
91	27%
90 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) property subject to a rent-to-own agreement;
(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
97	83%
96	67%
95	52%
94	36%
93 and prior	18%

4. Class 4 - Service Equipment. Class 4 property is used by service industries and is subject to a high degree of functional obsolescence.
a) Examples of property in this class include:
(1) service station equipment;
(2) car wash equipment;
(3) bulk and holding tanks;
(4) tire and wheel service equipment;
(5) dry cleaning machines;
(6) mechanical and electrical signs;
(7) clothes washers and dryers;
(8) tanks; and
(9) pumps.
b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 4

Year of Acquisition	Percent Good of Acquisition Cost
97	88%
96	78%
95	69%
94	59%
93	49%
92	37%
91	25%
90 and prior	13%

5. 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; and
(9) water slides.
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

97	89%
96	81%
95	72%
94	64%
93	55%
92	45%
91	34%
90	23%
89 and prior	12%

6. 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 1998 percent good applies to 1998 models purchased in 1997.

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
98	90%
97	71%
96	66%
95	61%
94	56%
93	51%
92	46%
91	41%
90	36%
89	31%
88	26%
87	21%
86	16%
85 and prior	10%

7. 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
97	91%
96	84%
95	78%
94	71%
93	64%
92	56%
91	47%
90	38%
89	29%
88	21%
87 and prior	11%

8. 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) nonpetroleum drill rigs;

(7) machine shop equipment;

(8) incinerators;

(9) leased farm 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
97	91%
96	84%
95	78%
94	71%
93	64%
92	56%
91	47%
90	38%
89	29%
88	21%
87 and prior	11%

9. Class 9 - Off-Highway Recreational 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 1998 percent good applies to 1998 models purchased in 1997.

d) Off-Highway Recreational Vehicles have a minimum value of $500 and a minimum tax of $7.50.

TABLE 9

Year of Model	Percent Good of Cost New
98	90%
97	58%
96	55%
95	52%
94	49%
93	46%
92	43%
91	40%
90	37%
89	34%
88	31%
87	28%
86	25%
85 and prior	22%

10. Class 10 - Railroad Cars. The Class 10 schedule was developed to value the property of railroad car companies. Functional and economic obsolescence is recognized in the developing technology of the shipping industry. Heavy wear and tear is also a factor in valuing this class of property.

a) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 10

Year of Acquisition	Percent Good of Acquisition Cost
97	93%
96	87%
95	83%
94	78%
93	73%
92	67%
91	60%
90	53%
89	47%
88	41%
87	34%
86	26%
85	18%
84 and prior	10%

11. 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 1998 percent good applies to 1998 models purchased in 1997.

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
98	90%
97	71%
96	68%
95	66%
94	63%
93	60%
92	57%
91	55%
90	52%
89	49%
88	46%
87	44%
86	41%
85	38%
84	35%
83	33%
82 and prior	30%

12. 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
97	85%
96	57%
95	36%
94	23%
93	14%
92 and prior	9%

13. 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) 1998 model equipment purchased in 1997 is valued at 100 percent of acquisition cost.

TABLE 13

Year of Acquisition	Percent Good of Acquisition Cost
97	66%
96	62%
95	59%
94	55%
93	52%
92	48%
91	45%
90	41%
89	38%
88	35%
87	31%
86	28%

85	24%
84 and prior	21%

14. 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 1998 percent good applies to 1998 models purchased in 1997.

TABLE 14

Year of Model	Percent Good of Cost New
98	90%
97	67%
96	64%
95	61%
94	57%
93	54%
92	51%
91	48%
90	44%
89	41%
88	38%
87	35%
86	31%
85	28%
84	25%
83	22%
82 and prior	18%

15. 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
97	74%
96	54%
95	38%
94	24%
93 and prior	10%

16. 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
97	94%
96	91%
95	88%
94	86%
93	82%
92	78%
91	73%
90	68%
89	64%
88	62%
87	58%
86	52%
85	46%
84	40%
83	34%
82	28%
81	22%
80	16%
79 and prior	9%

17. 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 1998 percent good applies to 1998 models purchased in 1997.

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
98	90%
97	68%
96	66%
95	64%
94	61%
93	59%
92	56%
91	54%
90	52%
89	49%
88	47%
87	45%
86	42%
85	40%
84	37%
83	35%

82	33%
81	30%
80	28%
79	26%
78 and prior	23%

18. 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 1998 percent good applies to 1998 models purchased in 1997.

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
98	90%
97	71%
96	67%
95	64%
94	60%
93	57%
92	53%
91	50%
90	47%
89	43%
88	40%
87	36%
86	33%
85	29%
84	26%
83	22%
82 and prior	19%

19. Class 19 - Mobile Homes.

a) This class includes mobile homes assessed as personal property.

b) This schedule must be used in conjunction with the Personal Property Mobile Home Valuation Guide published by the Property Tax Division.

c) At the option of the county assessor, mobile homes may be valued applying the same methodology and schedules used in the valuation of mobile homes classified as real property.

TABLE 19

Year of Manufacture	Percent Good of Replacement Cost New
97	97%
96	94%
95	91%
94	88%
93	85%
92	82%
91	78%
90	75%
89	71%
88	68%
87	64%
86	60%
85	56%
84	52%
83	48%
82	45%
81	41%
80	37%
79	33%
78	29%
77	26%
76	24%
75	23%
74	21%
73 and prior	20%

20. 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
97	92%
96	86%
95	82%
94	77%
93	70%
92	63%
91	55%
90	48%
89	41%
88	35%
87	27%
86	18%
85 and prior	9%

21. 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 1998 percent good applies to 1998 models purchased in 1997.

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
98	95%
97	75%
96	71%
95	67%
94	63%
93	59%
92	54%
91	50%
90	46%
89	42%
88	38%
87	33%
86	29%
85	25%
84	21%
83	16%
82 and prior	12%

22. 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) Taxable value is calculated by applying the percent good factor against the manufacturer's suggested retail price in the January NADA book. For state assessed vehicles, the value of attached equipment will be included in the total vehicle valuation.

c) The 1998 percent good applies to 1998 models purchased in 1997.

d) A 20% reduction in value is applied to vehicles with a "rebuilt/restored" designation on the title and registration.

e) A residual value of $500 and a minimum tax of $7.50 applies to cars and light trucks over 18 years old, after all adjustments.

TABLE 22

Percent of M.S.R.P.

Model Year	Domestic	Foreign	Trucks/Utility	Vans
98	88%	92%	98%	88%
97	76%	79%	85%	80%
96	66%	71%	79%	72%
95	57%	63%	75%	65%
94	50%	57%	66%	60%
93	42%	51%	60%	53%
92	35%	43%	52%	48%
91	29%	35%	46%	40%
90	21%	26%	38%	36%
89	17%	23%	35%	30%
88	14%	20%	27%	26%
87	12%	18%	24%	21%
86	9%	14%	23%	16%
85	7%	12%	18%	13%
84	6%	9%	17%	10%
83	5%	8%	15%	9%
82	4%	7%	13%	8%
81	3%	6%	12%	7%
80	2%	5%	10%	6%
79 and older	$500 Recommended Residual Value			

23. 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
97	75%
96	71%
95	67%
94	63%
93	59%
92	55%
91	51%
90	47%
89	43%
88	39%
87	35%
86 and prior	31%

24. Class 24 - Leasehold Improvements.

a) This class includes short life leasehold improvements to real property installed by a tenant, including:

(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	Percent of

Installation	Installation Cost
97	94%
96	88%
95	82%
94	77%
93	71%
92	65%
91	59%
90	54%
89	48%
88	42%
87	36%
86 and prior	30%

F. The provision of this rule shall be implemented and become binding on taxpayers beginning January 1, 1998.

R884-24P-34. Use of Sales or Appraisal Information Gathered in Conjunction With Assessment/Sales Ratio Studies Pursuant to Utah Code Ann. Section 59-2-704.

A. Market data gathered for purposes of an assessment/sales ratio study may be used for valuation purposes only as part of a systematic reappraisal program whereby all similar properties are given equitable and uniform treatment.

B. Sales or appraisal data gathered in conjunction with a ratio study shall not be used for an isolated reappraisal of the sold or appraised properties.

C. Information derived from ratio studies regarding the values assigned to real property and personal property shall not be used to establish the apportionment between real and personal property in future assessments.

R884-24P-35. Annual Affidavit of Exempt Use Pursuant to Utah Code Ann. Section 59-2-1101.

A. The owner of property receiving a full or partial exemption from property tax based on exclusive use for religious, charitable or educational purposes, is required to file the annual affidavit prescribed in Utah Code Ann. Section 59-2-1101.

R884-24P-36. Contents of Real Property Tax Notice Pursuant to Utah Code Ann. Section 59-2-1317.

A. In addition to the information required by Section 59-2-1317, the tax notice for real property shall specify the following:

1. the property identification number;

2. the appraised value of the property and, if applicable, any adjustment for residential exemptions expressed in terms of taxable value;

3. if applicable, tax relief for taxpayers eligible for blind, veteran, or poor abatement or the circuit breaker, which shall be shown as credits to total taxes levied; and

4. itemized tax rate information for each taxing entity and total tax rate.

R884-24P-37. Separate Values of Land and Improvements Pursuant to Utah Code Ann. Sections 59-2-301 and 59-2-305.

A. The county assessor shall maintain an appraisal record of all real property subject to assessment by the county. The record shall include the following information:

1. owner of the property;

2. property identification number;

3. description and location of the property; and

4. full market value of the property.

B. Real property appraisal records shall show separately the value of the land and the value of any improvements.

R884-24P-38. Nonoperating Railroad Properties Pursuant to Utah Code Ann. Section 59-2-201(4).

A. Definitions.

1. "Railroad right of way" (RR-ROW) means a strip of land upon which a railroad company constructs the road bed.

a. RR-ROW within incorporated towns and cities shall consist of 50 feet on each side of the main line main track, branch line main track or main spur track. Variations to the 50-foot standard shall be approved on an individual basis.

b. RR-ROW outside incorporated towns and cities shall consist of the actual right-of-way owned if not in excess of 100 feet on each side of the center line of the main line main track, branch line main track, or main spur track. In cases where unusual conditions exist, such as mountain cuts, fills, etc., and more than 100 feet on either side of the main track is required for ROW and where small parcels of land are otherwise required for ROW purposes, the necessary additional area shall be reported as RR-ROW.

B. Assessment of nonoperating railroad properties. Railroad property formerly assessed by the unitary method which has been determined to be nonoperating, and which is not necessary to the conduct of the business, shall be assessed separately by the local county assessor. For purposes of this rule:

C. Assessment procedures.

1. Properties charged to nonoperating accounts are reviewed by the Property Tax Division, and if taxable, are assessed and placed on the local county assessment rolls separately from the operating properties.

2. RR-ROW is considered as operating and as necessary to the conduct and contributing to the income of the business. Any revenue derived from leasing of property within the RR-ROW is considered as railroad operating revenues.

3. Real property outside of the RR-ROW which is necessary to the conduct of the railroad operation is considered as part of the unitary value. Some examples are: company homes occupied by superintendents and other employees on 24-hour call, storage facilities for railroad operations, communication facilities, and spur tracks outside of RR-ROW.

4. Abandoned RR-ROW is considered as nonoperating and shall be reported as such by the railroad companies.

5. Real property outside of the RR-ROW which is not necessary to the conduct of the railroad operations is classified as nonoperating and therefore assessed by the local county assessor. Some examples are: land leased to service station operations, grocery stores, apartments, residences, and agricultural uses.

6. RR-ROW obtained by government grant or act of Congress is deemed operating property.

D. Notice of Determination. It is the responsibility of

the Property Tax Division to provide a notice of determination to the owner of the railroad property and the assessor of the county where the railroad property is located immediately after such determination of operating or nonoperating status has been made. If there is no appeal to the notice of determination, the Property Tax Division shall notify the assessor of the county where the property is located so the property may be placed on the roll for local assessment.

E. Appeals. Any interested party who wishes to contest the determination of operating or nonoperating property may do so by filing a request for agency action within ten days of the notice of determination of operating or nonoperating properties. Request for agency action may be made pursuant to Utah Code Ann. Title 63, Chapter 46b.

R884-24P-40. Exemption of Parsonages, Rectories, Monasteries, Homes and Residences Pursuant to Utah Code Annotated 59-2-1101(d) and Article XIII, Section 2 of the Utah Constitution.

A. Parsonages, rectories, monasteries, homes and residences if used exclusively for religious purposes, are exempt from property taxes if they meet all of the following requirements:

1. The land and building are owned by a religious organization which has qualified with the Internal Revenue Service as a Section 501(c)(3) organization and which organization continues to meet the requirements of that section.

2. The building is occupied only by persons whose full time efforts are devoted to the religious organization and the immediate families of such persons.

3. The religious organization, and not the individuals who occupy the premises, pay all payments, utilities, insurance, repairs, and all other costs and expenses related to the care and maintenance of the premises and facilities.

B. The exemption for one person and the family of such person is limited to the real estate that is reasonable for the residence of the family and which remains actively devoted exclusively to the religious purposes. The exemption for more than one person, such as a monastery, is limited to that amount of real estate actually devoted exclusively to religious purposes.

C. Vacant land which is not actively used by the religious organization, is not deemed to be devoted exclusively to religious purposes, and is therefore not exempt from property taxes.

1. Vacant land which is held for future development or utilization by the religious organization is not deemed to be devoted exclusively to religious purposes and therefore not tax exempt.

2. Vacant land is tax exempt after construction commences or a building permit is issued for construction of a structure or other improvements used exclusively for religious purposes.

R884-24P-41. Adjustment or Deferral of Property Taxes Pursuant to Utah Code Ann. Section 59-2-1347.

A. Requested adjustments to taxes for past years may not be made under Utah Code Ann. Section 59-2-1347 if the requested adjustment is based only on property valuation.

B. Utah Code Ann. Section 59-2-1347 applies only to taxes levied but unpaid and may not serve as the basis for refunding taxes already paid.

C. Utah Code Ann. Section 59-2-1347 may only be applied to taxes levied for the five most recent tax years except where taxes levied remain unpaid as a result of administrative action or litigation.

R884-24P-42. Farmland Assessment Audits and Personal Property Audits Pursuant to Utah Code Ann. Subsection 59-2-508(2), and Section 59-2-705.

A. The Tax Commission is responsible for auditing the administration of the Farmland Assessment Act to verify proper listing and classification of all properties assessed under the act. The Tax Commission also conducts routine audits of personal property accounts.

1. If an audit reveals an incorrect assignment of property, or an increase or decrease in value, the county assessor shall correct the assessment on the assessment roll and the tax roll.

2. A revised assessment notice or tax notice or both shall be mailed to the taxpayer for the current year and any previous years affected.

3. The appropriate tax rate for each year shall be applied when computing taxes due for previous years.

B. Assessors shall not alter results of an audit without first submitting the changes to the Tax commission for review and approval.

C. The Tax Commission shall review assessor compliance with this rule. Noncompliance may result in an order for corrective action.

R884-24P-44. Farm Machinery and Equipment Exemption Pursuant to Utah Code Ann. Sections 59-2-102 and 59-2-1101.

A. The use of the machinery and equipment, whether by the claimant or a lessee, shall determine the exemption.

1. For purposes of this rule, the term owner includes a purchaser under an installment purchase contract or capitalized lease where ownership passes to the purchaser at the end of the contract without the exercise of an option on behalf of the purchaser or seller.

B. Farm machinery and equipment is used primarily for agricultural purposes if it is used primarily for the production or harvesting of agricultural products.

C. Machinery and equipment used for processing of agricultural products or other nonproduction activities are not exempt.

R884-24P-46. 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. The uniform fee established in Section 59-2-405 is levied against the following classes of personal property:

1. passenger cars and light trucks;
2. motor homes;
3. street motorcycles;

4. trailers;
5. commercial trucks;
6. commercial trailers;
7. truck campers;
8. off-highway recreational vehicles;
9. motorboats and sailboats;
10. any other tangible personal property that is required by law to be registered with the state before it is used on a public highway, public waterway, or public land, and that is not specifically excluded by Section 59-2-405.

B. The following classes of personal property are not subject to the uniform fee, but remain subject to the ad valorem property tax:
1. antique vehicles;
2. interstate motor carriers;
3. mobile and manufactured homes;
4. any personal property that is neither required to be registered nor exempt from the ad valorem property tax;
5. machinery or equipment that can function only when attached to or used in conjunction with motor vehicles.

C. The fair market value of tangible personal property subject to the uniform fee is based on depreciated cost new as established for the following classes of property in Tax Commission rule R884-24P-33, "Personal Property Valuation Guides and Schedules," which is published annually by the Tax Commission.
1. passenger cars and light trucks;
2. motor homes;
3. street motorcycles;
4. trailers;
5. commercial trucks;
6. commercial trailers;
7. truck campers;
8. off-highway recreational vehicles;
9. motorboats and sailboats;
10. all other tangible personal property required to be registered with the state.

D. Upon proper documentation, the value used for calculating the uniform fee for personal property subject to the uniform fee and belonging to centrally assessed taxpayers shall be subtracted from the unit value of the centrally assessed property in arriving at the final assessment of the centrally assessed property not subject to the uniform fee.

E. 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, which is published annually by the Tax Commission.

F. The county assessor may change the fair market value of any individual vehicle in his jurisdiction for any of the following reasons:
1. The manufacturer's suggested retail price ("MSRP") was not included on the state printout, computer tape, or vehicle registration card;
2. The MSRP listed on the state records was inaccurate; or
3. In the assessor's judgment, an MSRP adjustment made as a result of a vehicle owner's informal request will continue year to year on a percentage basis.

G. If the personal property is of a type subject to annual registration, the uniform fee is due at the time the registration is due, even if the personal property is not registered at that time.
1. No additional uniform fee may be levied upon vehicles transferred during the current year and for which the 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 uniform fee shall be due annually.
3. The vehicle of a nonresident member of the armed forces stationed in Utah may be registered in Utah without payment of the uniform fee.
4. A vehicle belonging to a Utah resident member of the armed forces stationed in another state is not subject to the uniform fee as long as the vehicle is kept in the other state.
5. Noncommercial trailers weighing 750 pounds or less are not subject to the uniform fee or ad valorem property tax but may be registered at the request of the owner.

H. If the personal property is of a type subject to annual registration, registration of that personal property may not be completed unless the 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.

I. The situs of personal property subject to the uniform fee is determined in accordance with Section 59-2-104.
1. For purposes of Section 59-2-405, personal property kept in a tax area other than that of the domicile of the owner for more than six months of the year shall be assessed in the other tax area.
a) If personal property is to be registered in a county other than that in which the owner is domiciled, the assessor in the county of registration shall so notify the assessor in the county of domicile. Notification shall be accomplished through the means of a form prescribed by the Tax Commission. In addition, the assessor in the county of registration must provide documentation of situs if so requested. Upon agreement by the assessor in the county of domicile, the form listing the personal property under consideration shall be forwarded to the Motor Vehicle Division.
b) 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. A copy of the affidavit shall be forwarded to the Motor Vehicle Division.
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 a list of all personal property

subject to state registration and its corresponding taxable situs.

J. The veteran's and blind exemptions provided in Sections 59-2-1104, 59-2-1105, and 59-2-1106 are applicable to the uniform fee.

K. The provisions of this rule refer to the property tax year beginning January 1, 1992 and each succeeding year.

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. Subsection 59-2-201(1)(c) and Section 59-2-801.

A. Definitions.

1. "Commercial air carrier" means any air charter service, air contract service or airline as defined by Section 59-2-102.

2. "Mobile flight equipment" means the airframes, engines, and other personal property owned or operated by a commercial air carrier that are capable of flight or used as part of an aircraft capable of flight. Engines or spare parts that are not currently attached to an airframe or otherwise part of an aircraft are not part of the mobile flight equipment.

3. "Route" means the flight path, including landings and takeoffs, over the ground or water that a commercial air carrier's mobile flight equipment typically flies as determined by the Property Tax Division.

4. "Route miles" means the lineal ground distance in statute miles along a commercial air carrier's route as determined by the Property Tax Division.

5. "Designated taxing areas" means those taxing areas within a school district other than incorporated cities or towns. If, however, a school district's boundaries coincide with the boundaries of an incorporated city or town, the incorporated city or town shall be included in the designated taxing area.

B. The commission shall apportion the Utah portion of each commercial air carrier's mobile flight equipment valuation to the appropriate designated taxing areas. A designated taxing area's apportionment is determined by the proportion of route miles in that area compared to the total route miles within the state.

C. The valuation of a commercial air carrier's other personal and real property shall be allocated to the taxing area in which it is located on January 1 of each 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" is defined as the location where domicile has been established.

C. Except as provided in D., 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.

R884-24P-53. 1998 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.

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	675
2)	Cache	600
3)	Carbon	525
4)	Davis	750
5)	Emery	450
6)	Iron	625
7)	Kane	350
8)	Millard	700
9)	Salt Lake	700
10)	Utah	625
11)	Washington	650
12)	Weber	725

(Note: Some counties do not have Irrigated I property.)

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	575
2)	Cache	500
3)	Carbon	400
4)	Davis	650
5)	Duchesne	375
6)	Emery	350
7)	Grand	400
8)	Iron	525
9)	Juab	375
10)	Kane	200
11)	Millard	600
12)	Salt Lake	550
13)	Sanpete	475
14)	Sevier	525
15)	Summit	375
16)	Tooele	450
17)	Utah	475
18)	Wasatch	400
19)	Washington	550
20)	Weber	625

(Note: Some counties do not have Irrigated II property.)

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	375
2)	Box Elder	425
3)	Cache	350
4)	Carbon	250
5)	Davis	450
6)	Duchesne	275
7)	Emery	200
8)	Garfield	150
9)	Grand	250
10)	Iron	375
11)	Juab	225
12)	Kane	150
13)	Millard	400
14)	Morgan	325
15)	Piute	350
16)	Rich	225
17)	Salt Lake	350
18)	San Juan	200
19)	Sanpete	325
20)	Sevier	375
21)	Summit	250
22)	Tooele	275
23)	Uintah	300
24)	Utah	375
25)	Wasatch	250
26)	Washington	350
27)	Wayne	200
28)	Weber	425

(Note: Daggett County does not have Irrigated III property.)

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	275
2)	Box Elder	325
3)	Cache	250
4)	Carbon	125
5)	Daggett	200
6)	Davis	300
7)	Duchesne	175
8)	Emery	100
9)	Garfield	75
10)	Grand	150
11)	Iron	225
12)	Juab	150
13)	Kane	75
14)	Millard	300

15)	Morgan	225
16)	Piute	250
17)	Rich	150
18)	Salt Lake	200
19)	San Juan	50
20)	Sanpete	225
21)	Sevier	275
22)	Summit	150
23)	Tooele	125
24)	Uintah	150
25)	Utah	225
26)	Wasatch	175
27)	Washington	250
28)	Wayne	100
29)	Weber	325

2. Fruit orchards shall be assessed per acre based upon the following schedule:

TABLE 5
Fruit Orchards

a)	Box Elder	560
b)	Cache	650
c)	Davis	630
d)	Utah	510
e)	Washington	755
f)	Weber	605
g)	All other counties	580

3. Meadow IV property shall be assessed per acre based upon the following schedule:

TABLE 6
Meadow IV

1)	Beaver	160
2)	Box Elder	165
3)	Cache	210
4)	Carbon	115
5)	Daggett	140
6)	Davis	210
7)	Duchesne	140
8)	Emery	115
9)	Garfield	110
10)	Grand	110
11)	Iron	160
12)	Juab	115
13)	Kane	110
14)	Millard	115
15)	Morgan	140
16)	Piute	135
17)	Rich	115
18)	Salt Lake	165
19)	Sanpete	165
20)	Sevier	165
21)	Summit	165
22)	Tooele	165
23)	Uintah	140
24)	Utah	165
25)	Wasatch	165
26)	Washington	160
27)	Wayne	135
28)	Weber	210

(San Juan county does not have any Meadow IV property.)

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	90
2)	Box Elder	125
3)	Cache	250
4)	Carbon	90
5)	Daggett	90
6)	Davis	180
7)	Duchesne	125
8)	Emery	100
9)	Garfield	90
10)	Grand	90
11)	Iron	130
12)	Juab	135
13)	Kane	90
14)	Millard	160
15)	Morgan	250
16)	Piute	90
17)	Rich	165
18)	Salt Lake	110
19)	San Juan	60
20)	Sanpete	120
21)	Sevier	100
22)	Summit	100
23)	Tooele	125
24)	Uintah	140
25)	Utah	100
26)	Wasatch	100
27)	Washington	80
28)	Wayne	100
29)	Weber	225

a) Dry IV. The following counties shall assess Dry IV property based upon the per acre values listed below:

TABLE 8
Dry IV

1)	Beaver	55
2)	Box Elder	90
3)	Cache	215
4)	Carbon	55
5)	Daggett	55
6)	Davis	145
7)	Duchesne	90
8)	Emery	65
9)	Garfield	55
10)	Grand	55
11)	Iron	95
12)	Juab	100
13)	Kane	55
14)	Millard	125
15)	Morgan	215
16)	Piute	55
17)	Rich	130
18)	Salt Lake	75
19)	San Juan	25
20)	Sanpete	85
21)	Sevier	65
22)	Summit	65
23)	Tooele	90
24)	Uintah	105
25)	Utah	65
26)	Wasatch	65
27)	Washington	45
28)	Wayne	65
29)	Weber	190

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	40
b)	Graze II	
	2) All Counties	12
c)	Graze III	
	3) All Counties	8
d)	Graze IV	
	4) All Counties	4

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	4

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. Section 59-2-1328.

A. A judgment levy imposed on or after January 1, 1997, is exempt from the requirements of Sections 59-2-918 and 59-2-919, regardless of when the judgment underlying that levy was entered.

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 state 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 or judgmental model, based upon the availability of 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.

KEY: taxation, personal property, property tax, appraisal
December 23, 1997 **Art. XIII, Sec 2**
Notice of Continuation May 8, 1997 **9-2-201**
11-13-25
41-1a-202
41-1a-301
59-1-1
59-1-210
59-2-13

59-2-102
59-2-103
59-2-104
59-2-201
59-2-210
59-2-211
59-2-219
59-2-301
59-2-302
59-2-303
59-2-305
59-2-306
59-2-401
59-2-402
59-2-404
59-2-405
59-2-501 through 59-2-515
59-2-701
59-2-702
59-2-703
59-2-704
59-2-705
59-2-801
59-2-918 through 59-2-924
59-2-1002
59-2-1005
59-2-1101
59-2-1107 through 59-2-1109
59-2-1113
59-2-1202
59-2-1202(5)
59-2-1302
59-2-1303
59-2-1328
59-2-1317
59-2-1347
59-2-1351
59-3-1
59-5-1
59-5-501 through 59-5-515
63-18A-1 through 63-18A-6

R909. Transportation, Motor Carrier.
R909-75. Safety Regulations for Motor Carriers Transporting Hazardous Materials and/or Hazardous Wastes.
R909-75-1. Adoption of Federal Regulations.

Safety Regulations for Motor Carriers Transporting Hazardous Materials and/or Hazardous Wastes, 49 CFR, Sub-Chapter C, of the October 1, 1997, edition as printed in the Regulations Management Corporation Service, are incorporated by reference. This applies to all private, common, and contract carriers by highway in interstate and/or intrastate commerce.

KEY: hazardous materials transportation, hazardous substances, hazardous waste, safety regulation

December 1997	**27-17-103**
December 15, 1997	**27-17-104**

R914. Transportation, Operations, Aeronautics.
R914-1. Rules and Regulations of the Utah State Aeronautical Committee.
R914-1-1. Authority.

A. This rule is established as required by Section 2-1-12.

R914-1-2. Definitions.

A. As used in this rule:
(1) Committee - the Utah Aeronautical Committee
(2) FAA - Federal Aviation Administration
(3) Division - Aeronautical Operations Division

R914-1-3. Licensing, Inspection and Closure of Airports.

A. In accordance with Section 2-1-16, all public use airports will be licensed annually by the Aeronautical Operations Division.

1. A license will be granted provided the airport is found to meet all safety requirements.

2. The Division may refuse or revoke a license and close an airport if safety criteria is not met.

3. Safety criteria required:

a. No pot holes or rutting in the surface of the runway, taxiway, or parking area.

b. No break-up of paved surfaces or improperly maintained surface.

c. No obstructions in the approach path or near the airport that cause an unsafe condition.

d. No excessive growth of vegetation in the runway or taxiway surface.

e. No inoperative or obscured runway or taxiway lighting system.

f. No unsecured airport area that allows livestock, people, or vehicles uncontrolled access to the runways, taxiways, or airport area.

g. No improper or inadequate runway marking.

h. No other items that can be determined to be a hazard to the operation of aircraft.

R914-1-4. Establishment and Location of Navigational Aids.

A. Procedure
1. Location site is selected.
2. Site is surveyed for location and elevation.
3. Selected site is submitted to the FAA for approval.
4. Upon receiving FAA approval, navigational aid may be installed.
5. After installation, navigational aid is checked and certified for operation by the FAA.

R914-1-5. Operational Safety.

A. In order to enhance the safety of aircraft operations and protect people and property, the Committee imposes the following operational safety rules:

1. All pilots operating aircraft in the State of Utah will comply with Federal Aviation Regulations, Part 61, August 31, 1989; Part 91, April 6, 1989; Part 135, April 6, 1989; and Part 121, July 24, 1989.

2. Obstruction to flight: Any obstacle or structure which obstructs the airspace above the ground or water level which is determined to be a hazard to the safe flight of aircraft shall be plainly marked, lighted or removed.

3. Determination of obstruction: When an obstacle or structure is determined to be a hazard to flight, the owner will be notified and will have ten days after receipt of the notice to take action to correct the hazard or appeal the determination to the Committee.

KEY: aeronautics, air traffic, aviation saftety, private aviation, aircraft noise, airports, airspace
1990 2-1-12
Notice of Continuation December 10, 1997 2-1-17

R914. Transportation, Operations, Aeronautics.
R914-2. Safety Rules and Procedures for Aircraft Operations on Roads.
R914-2-1. Authority.

A. This rule establishes procedures as required by Section 2-1-16.5.

R914-2-2. Procedures.

A. Only lightly traveled roads will be used for aircraft operations. Counties will designate particular county road segments to be used.

B. The road to be used for aircraft operations will be inspected by ground personnel for safety prior to use.

C. The road segment to be used will be blocked off by ground personnel prior to aircraft operations to insure that there is no road traffic during the aircraft use period.

D. Landings will be permitted on roads during daylight hours only.

R914-2-3. Issuance of Special Licenses to Pilots Operating on Roads.

A. Applicant must be a holder of at least a private pilot certificate.

B. Applicant must have a minimum of 200 total flying hours and at least 25 hours in the type of aircraft to be used.

C. Applicant must have completed a proficiency review flight within the past 24 months.

D. Applicant must be familiar with short and soft field landing and take-off procedures and obstacle clearance procedures for the type aircraft used.

R914-2-4. Issuance of Special Licenses for Aircraft Landing on Roads.

A. Licenses will be issued only to those showing specific need to use roads for aircraft operations in order to accomplish a required service.

B. The applicant will be required to show proof of insurance pursuant to Section 2-1-16.5. Insurance must have no stipulations against off-airport operations.

KEY: licensing, aviation safety
1990 2-1-16.5
Notice of Continuation December 10, 1997

R918. Transportation, Operations, Maintenance.
R918-3. Snow Removal.
R918-3-1. On State Roads.

A. The Utah Department of Transportation will provide snow removal services on qualifying state roads. The followings types of state roads automatically qualify for snow removal services:

1. the road is part of a rural free delivery route;
2. the road is a farm to market route;
3. the road is a required school bus route;
4. the road serves an industrial area and/or complex;
5. the road services ten or more permanent families throughout the winter.

B. The removal of the normal snowfall and windrows on private road approaches, both on and off the highway right-of-way, is a responsibility of the property owner. When clearing these approaches, the property owner should not push or pile the snow onto the state right-of-way. Within towns and where curb and gutter exist, the normal parking area off the travel lane may be used for snow storage by state forces. If it is desired to remove this snow, it will be the responsibility of the city, county or the adjacent property owner. The state will not haul snow off the roadway except on structures where the length of structures makes removal of the snow by other means impracticable.

R918-3-2. On State Roads Leading to Winter Recreational Areas.

A. State roads leading to winter recreational areas not qualifying above may qualify for snow removal services upon consideration of developed analytical criteria as listed below. These criteria establish a procedure to equally evaluate all winter recreational areas throughout the State. Each winter recreational area will be evaluated individually on the basis of a benefit cost ratio and the resort facilities provided by the operator and/or their entrepreneurs.

B. To receive weekend and holiday snow removal services, a winter recreational area must meet a benefit cost ratio of 50 or greater as defined below, provide adequate parking area as defined below, and provide emergency accommodations. To receive weekday services, in addition to the above requirements the area must provide two of the following:

1. lift capacity of 700,000 vertical transport feet/hour;
2. on-site lodging facilities;
3. on-site eating accommodations;
4. gasoline, towing and automotive services.

C. The benefit cost ratio - as used herein, is the quotient obtained by dividing the amount of money spent by recreational area users by the cost of providing snow removal operations on access roads. To qualify for snow removal services the benefit cost ratio "K" as determined by the following formula shall be 50 or greater:

K = NU / 7C
N = Number of days of operation per week
ADT = Average daily traffic
U = (Average occupancy rate for each vehicle)
x (ADT for the road during the skiing season)
x (Length of season in days) x (Average amount spent at resorts by skiers per day)
C = Average daily cost of providing snow removal services
The number "7" is the number of days in a week

D. Parking Facilities: The resort operator is to provide and plow a minimum of 200 square feet of parking area (off of state right-of-way) for each unit of average daily traffic used in computing "K" in paragraph C., regardless of the number of operating days per week, "N". The state will plow state access roads but not open them until the winter recreational area operator has plowed the parking area to the required square footage and opened any access roads off the state highway system. Whenever the parking area is not satisfactorily plowed, the state will close the state access roads to inbound traffic except emergency vehicles.

E. Emergency Accommodations. The recreational area operator is to provide lodging and meal accommodations for emergencies.

F. Resort Facilities - To receive snow removal services each resort must have certain capabilities:

Capacity and Services: Snow removal based on benefit cost ratio will be limited to weekends and holidays. To receive weekday services the winter recreational resort operator must provide or have available for other concessionaires at least two of the following at the resort site:

1. lift capacity of 700,000 vertical transport feet/hour;
2. on-site lodging accommodations for 5% of (average daily traffic for the road during the skiing season), x (average occupancy rate for each vehicle);
3. on site eating accommodations for 10% of (average daily traffic for the road during the skiing season), x (average occupancy rate for each vehicle);
4. gasoline, towing and automotive services.

R918-3-3. Other Than Roadways on the State System.

A. Snow removal service will not be provided for the following, except where provided through written agreement with the Utah Department of Transportation:

1. sidewalks;
2. overhead crosswalk structures;
3. walkways attached to structures;
4. driveways;
5. parking lots;
6. roads not on the state system;
7. overhead vehicular structures not on the state system;

KEY: snow removal
1987 **27-12-7**
Notice of Continuation December 17, 1997

R920. Transportation, Operations, Traffic and Safety.
R920-1. Manual of Uniform Traffic Control Devices.
R920-1-1. Adoption by Reference.

Adopted by reference is the Manual of Uniform Traffic Control Devices (MUTCD). This manual was approved by the Federal Highway Administrator as the National standard for all highways open to public travel in accordance with Title 23, U.S. Code, Sections 109(d) and 402(a) and 23 CFT 1204.4.

KEY: traffic control
1987 **63-49-8(5)(c)**
Notice of Continuation December 18, 1997

R920. Transportation, Operations, Traffic and Safety.
R920-2. Traffic Control Systems for Railroad-Highway Grade Crossings.
R920-2-1. Traffic Control Systems for Railroad-Highway Grade Crossings; U.S. Department of Transportation, Federal Highway Administration, "Traffic Control Devices Handbook", Part VIII.

Traffic Control Systems for Railroad Highway Grade Crossings is Adopted by reference for all highways in the State under jurisdiction of the Utah Department of Transportation and/or as it applies to Railroad Companies

R920-2-2. Functions.

A. Traffic control systems for railroad-highway grade crossings include all signs, signals, markings, and illumination devices and their supports along highways approaching and at railroad crossings at grade. The function of these systems is to permit safe and efficient operation of rail and highway traffic over crossings. Traffic control devices shall be consistent with the design and application of the standards contained herein. For the purpose of installation, operation, and maintenance of devices constituting traffic control systems at railroad-highway grade crossings, it is recognized that any crossing of a public road and a railroad(s) is situated on right-of-way available for the use of both highway traffic and railroad traffic on their respective roadways and tracks.

B. With due regard for safety and for the integrity of operations by highway and railroad users, the highway agency and the railroad company are entitled to jointly occupy the right-of-way in the conduct of their assigned duties. This requires joint responsibility in the traffic control function between the public agency and the railroad. The determination of need and selection of devices at a grade crossing is made by the public agency with jurisdictional authority. Subject to such determination and selection, the design, installation and operation shall be in accordance with the national standards contained herein.

1. Use of Standard Devices. The grade crossing traffic control devices, systems, and practices described herein are intended for use both in new installations and at locations where general replacement of present apparatus is made, consistent with Federal and State laws and practices utilize the five basic considerations: design, placement, operation, maintenance, and uniformity employed generally for traffic control devices.

2. Uniform Provisions

C. Specifications, requisites, instruction, and plans for materials and methods referred to herein are those contained in the Traffic Control Devices Handbook. This handbook can be purchased from the U.S. Government Printing Office or it can be viewed at the Utah Department of Transportation Headquarters Office.

KEY: railroads, traffic control
1987 **63-49-8(5)(c)**
Notice of Continuation December 24, 1997

R920. Transportation, Operations, Traffic and Safety.
R920-3. Manual of Uniform Traffic Control Devices, Part VI.
R920-3-1. Adoption of Federal Manual.

Manual of Uniform Traffic Control Devices, Part VI, Standards and Guides for Traffic Controls for Street and Highway Construction, Maintenance, Utility, and Incident Management Operations, 1988 Edition, Revision 3, September 3, 1993 of the Federal Highway Administration is adopted by reference.

KEY: work zone traffic control
1987 **63-49-8(5)**
Notice of Continuation December 24, 1997

R920. Transportation, Operations, Traffic and Safety.
R920-4. Proposed Policy for Special Road Use.
R920-4-1. Special Road Use.

UDOT shall promote safe utilization of highways for parades, marathons, and bicycle races. Special Road Use permits shall be required for any use of state routes other than normal traffic movement. Permits may be obtained by fulfiling requirements of DOT form "Special Road Use Permit". Policy applies to all routes under jurisdiction of DOT. Permittee shall hold DOT harmless in event of litigation. A traffic control plan, in accordance with latest edition of the Manual on Uniform Traffic Control Devices and Barricading and Construction Standard Drawings, shall be provided to, and approved by Dept. District Traffic Engineer or Permittee shall restore the particular road segment to its' original condition, free from litter, etc. All applications for permits shall be made a minimum of 15 days prior to the specified activity.

KEY: parades, bicycle, races
1987 **41-6-114**
Notice of Continuation December 18, 1997 **41-22-15**
41-6-87.9

R920. Transportation, Operations, Traffic and Safety.
R920-5. Manual and Specifications on School Crossing Zones. Supplemental to Part VII of the Manual on Uniform Traffic Control Devices.
R920-5-1. Purpose.

A. To assure uniform design and application of all types of traffic control devices, Section 41-6-20 (1), requires the Utah Transportation Commission to adopt a manual and specifications for a uniform system of traffic control devices. The manual adopted (in R920-1-1, UAC) is the 1988 edition of the "Manual on Uniform Traffic Control Devices" (MUTCD), a Federal Highway Administration publication. In addition, Section 41-6-20(2), requires the Utah Transportation Commission to adopt a manual and specifications for a uniform system of traffic-control devices and school crossing guards for school crossing zones, which shall supplement Part VII of the MUTCD. In compliance with Section 41-6-20(2), a document titled "Manual and Specifications on School Crossing Zones" was prepared to supplement Part VII of the MUTCD and is hereby adopted by reference. Copies of this document are available at the Division of Traffic and Safety of the Utah Department of Transportation.

B. The intent of this supplement to the general guidelines contained in the MUTCD is to standardize, as much as possible, applications of traffic control devices and crossing guards at school areas on all public highways in the State of Utah.

C. This supplement is divided into sections that correspond to the applicable sections in the MUTCD. Where differences occur in language or intent, the supplement shall take precedence.

D. Reference to various Appendices found in R920-5 are Appendices to the supplement.

R920-5-2. General.

A. Need for Standards.

1. Each elementary school shall prepare and update annually a routing plan. The plan shall show, as a minimum, the walking routes on the street system within the school boundaries, the school location, existing traffic controls, and established school crossings. The plan also shall address the loading/unloading areas for students who ride the bus or arrive at school by another method of transportation. An explanation of the plan, instruction to parents to walk the route with their children, and an outline of areas of concern shall also be included. The plan shall be reviewed annually by the School Traffic Safety Committee. After review by the Committee, the plan shall be sent to each parent whose children attend the elementary school, and to the local and state jurisdictions that have responsibility for highways within the elementary school boundaries.

2. Each middle and junior high school shall prepare and update annually a child access routing plan. The plan shall show, as a minimum, the school crossings on the major highways and may include the elementary school routing plans within the junior high school boundaries.

3. Each senior high school may also prepare a school route plan.

4. Each elementary school shall, as a minimum, present a traffic safety program to it's students annually. The program shall include safe pedestrian behavior and limitations of drivers and traffic control devices.

B. Application of Standards.

1. A School Crossing is defined as a marked crosswalk designated on the child access routing plan without a reduced school speed limit. Typical signing includes Advance School signs (S1-1) and School Crossing signs (S2-1) (See Appendix C, TYPICAL APPLICATIONS, Sheets 1 through 3).

2. The school speed zone may include a school crosswalk. A Reduced Speed School Zone is defined as an area in advance of a school crosswalk designated on the school routing plan extending from a school speed limit sign while the warning lights are operating to an end school zone sign. The Reduced Speed School Zone may abut school grounds or may be at a remote school crossing location, which may include signalized intersections. Typical signing includes Advance School signs (S1-1), School Speed Limit signs (S5-1), School Crossing signs (S2-1), and End School Zone signs (S5-2) (See Appendix C, TYPICAL APPLICATIONS, Sheets 4 through 6).

3. A Narrow School Route is defined as a school route designated in a child access routing plan where there are no sidewalks and the paved shoulders of the existing highway are less than three feet wide. Typical signing includes Advance School sign (S1-1) and "Next Miles(s)" sign (See Appendix C, TYPICAL APPLICATIONS, Sheet 7). The distance shall be displayed in 1/4 mile increments up to a maximum of one mile in urban areas and in 1/2 mile increments up to a maximum of two miles in rural areas. An 8 inch solid white shoulder stripe may be placed on the edge of the outside lane for the length of the Narrow School Route.

C. Engineering Study Required.

1. A School Crossing may be installed where the volume of school children exceeds 10 during a period extending from not earlier than 45 minutes before school starts until warranted demand ceases, or a period extending from the beginning of warranted demand until not later than 30 minutes after school ends. In addition, the street average daily traffic shall exceed 500 vehicles and the criteria shown in Appendix A, SCHOOL ZONE PROTECTION, shall be met.

2. A Reduced Speed School Zone may only be installed where the criteria is met for both a school crossing and Appendix A, SCHOOL ZONE PROTECTION. Existing Reduced Speed School Zones that do not meet these criteria shall be removed.

3. A School Crosswalk is normally not placed within 600 feet of the following:

a. A signalized intersection or crosswalk

b. A stop sign controlled intersection or crosswalk

c. Another school or pedestrian crosswalk

4. School crossings may not be placed at any location that has inadequate stopping sight distance as indicated in the 1994 edition of "A Policy on Geometric Design of Highways and Streets", American Association of State Highway and Transportation Officials, which edition is incorporated by reference.

5. A Narrow School Route may be installed only after

the School Traffic Safety Committee has determined that boundary changes, alternate school routes, or supplemental methods of transportation are not feasible. A Narrow School Route is not intended as a permanent substitute for sidewalks or pavement widening in urban areas. Narrow School Routes shall be a maximum length of one mile in urban and two miles in rural areas.

R920-5-3. Signs.

A. Position of Signs and Cones.

1. For location of signs, see Appendix C, Sheets 1 through 7.

2. Portable school signs shall not be placed within the roadway at any time.

3. Cones shall be used at all locations when adult crossing guards are present. The cones shall be placed on the centerline of the roadway between opposing traffic lanes at each approach to the school crosswalk (See Appendix C, TYPICAL APPLICATIONS, Sheets 4 through 6). Cones may not be placed on lane lines separating traffic in the same direction. The cones shall have a height of 28 inches and shall be orange in color. Auxiliary flags, signs, or lights may not be used on the cones.

B. School Advance Sign (S1-1).

1. A School Advance sign (S1-1) shall be placed in advance of the School Crossing sign (S2-1) at school crossings (See Appendix C, TYPICAL APPLICATIONS, Sheets 1 through 3) and in advance of the School Speed Limit sign (S5-1) in Reduced Speed School Zones (See Appendix C, TYPICAL APPLICATIONS, Sheets 4 through 6). The sign shall have a minimum height and width of 36 inches for new and replacement installations.

2. A School Advance sign (S1-1) may be placed in advance of abutting school grounds on any highway that does not have a School Crossing or a Reduced Speed School Zone.

3. A supplementary plate of the same width, color, and border shall be placed below the School Advance sign (S1-1) for year around schools. The plate shall display the legend "ALL YEAR" (See Appendix C, TYPICAL APPLICATIONS, Sheets 1 through 6). The plate shall be 36 inches by 12 inches with 5 inch series "C" lettering.

4. A School Advance sign (S1-1) shall be used for narrow school routes.

5. A supplementary plate of the same width, color, and border shall be placed below the School Advance sign (S1-1) for Narrow School Routes. The plate shall display the legend "NEXT _ MILE(S)" (See Appendix C, TYPICAL APPLICATIONS, Sheet 7). The plate shall be 36 inches by 24 inches with series "C" lettering.

C. School Crossing Sign (S2-1).

1. A School Crossing sign (S2-1) shall be located as near as practical to the school crosswalk for each approach to the crosswalk, except that at crosswalks controlled by stop signs, the sign shall be omitted (See Appendix C, TYPICAL APPLICATIONS, Sheets 1 through 6). The sign shall have a minimum height and width of 36 inches for new and replacement installations.

2. A supplementary plate of the same width, color, and border shall be placed below the School Crossing sign (S2-1) for year around schools. The plate shall display the legend "ALL YEAR" (See Appendix C, TYPICAL APPLICATIONS, Sheets 1 through 6). The plate shall be 36 inches by 12 inches with 5 inch series "C" lettering.

D. School Speed Limit Sign (S5-1, S5-2).

1. The School Speed Limit sign (S5-1) shall be used only in conjunction with reduced speed school zones and shall be located as near as practical to the required distance from the school crosswalk (See Appendix C, TYPICAL APPLICATIONS, Sheets 4 through 6). The school speed limit displayed shall be 20 mph. The in-force periods of reduced speed in Reduced Speed School Zones shall be as short a duration as possible, with in-force periods only during pronounced usage. The in-force period shall be a time extending from not earlier than 45 minutes before school starts until warranted demand ceases, normally 15 minutes after school begins, and a period extending from the beginning of warranted demand, normally 15 minutes prior to the end of school, until not later than 30 minutes after school ends. These periods of operation may apply to all daily school programs. The School Speed Limit sign (S5-1) may not be flashed continuously throughout the school day.

2. At installations requiring an adult crossing guard, the School Speed Limit sign (S5-1) shall be operated manually and only while the crossing guard is present. Installations which do not require adult crossing guards shall be operated by an automatic timer with a programmable 365 day cycle. At such installations, the local authority shall be responsible to program and operate the automatic timer.

3. The Specific Periods of Operations panel (S4-1) and the When Children Are Present panel (S4-2) may not be used under any circumstances.

4. The End School Zone sign (S5-2) shall be located as near as practical to 50 feet on the far side of the school crosswalk in a Reduced Speed School Zone (See Appendix C, TYPICAL APPLICATIONS, Sheets 4 through 6).

E. Parking and Stopping Signs (R7 Series)

1. Parking and stopping or standing restrictions during school hours, in approach to the crosswalk, are recommended (See Appendix C, TYPICAL APPLICATIONS, Sheets 1 through 6). Parking may also be restricted beyond the crosswalk and in approach to any of the school signs.

2. Parking may be restricted upon all streets immediately abutting the school grounds during school hours.

3. Parking may be restricted upon any street within a Narrow School Route during school hours.

R920-5-4. Markings.

A. Crosswalk Lines.

1. Ladder type crosswalk markings shall be reserved for School Crossings and Reduced Speed School Zones, and other high emphasis pedestrian crossings that may require special consideration as determined by an engineering study.

B. Word and Symbol Markings

1. The pavement adjacent to the School Advance signs (S1-1) shall be marked and maintained with the message "SCHOOL" across the traffic lane(s) (See Appendix C, TYPICAL APPLICATIONS, Sheets 1 through 6).

C. Center Lines and Lane Lines

1. The School Crossing or Reduced Speed School Zone shall be marked as a "no-passing" and "no lane change" zone as follows (See Appendix C, TYPICAL APPLICATIONS, Sheets 1 through 6):

a. The center line shall be a double yellow line between any two travel lanes moving in opposing directions, for the entire length of a School Crossing or Reduced Speed School Zone (between the S1-1 signs).

b. Lane lines shall be solid white between any two travel lanes moving in the same direction approaching crosswalk.

2. A shoulder line, when placed along the edge of the outside lane for a narrow school route, shall be an 8 inch solid white line for the entire length of the route (See appendix C, TYPICAL APPLICATIONS, Sheet 7).

R920-5-5. Crossing Supervision.

A. Adult Guards.

1. Adult Crossing Guards shall be at all Reduced Speed School Zones for elementary schools. Crossing guards are optional at School Crossings and Reduced Speed School Zones for middle, junior high, and high schools, and at School Crossings for elementary schools.

2. See Appendix A, SCHOOL ZONE PROTECTION, for applications of crossing guards and signing.

B. Legal Authority for Adult Guards.

1. Adult crossing guards shall be provided, trained, and regulated by the local jurisdiction in the use of correct apparel/equipment, crossing techniques, pedestrian safety, and proper use of pedestrian crossing facilities.

C. Uniform of Adult Guards.

1. The minimum safety apparel/equipment for crossing guards shall be an orange vest with reflective white, or yellow, or yellow-orange striping and an 18-inch reflectorized "STOP" paddle.

D. Operating Procedures for Adult Guards.

1. Adult guards shall daily instruct elementary school children in safe crossing techniques while they are using the crosswalk.

E. Minimum Training for Crossing Guards.

1. Adult crossing guards shall be instructed, as a minimum, in the following:

a. Qualifications for crossing guards.

b. Safety apparel and equipment.

c. Responsibilities and safety procedures.

d. Traffic rules and regulations.

e. Emergency procedures.

The provisions of this rule shall become effective on July 1, 1992.

KEY: pedestrians, traffic control, traffic safety, traffic signs
February 28, 1997 41-6-20(2)
Notice of Continuation December 24, 1997

R920. Transportation, Operations, Traffic and Safety.
R920-6. Snow Tire and Chain Requirements.
R920-6-1. Purpose.

The purpose of this rule is to allow the Executive Director of the Utah Department of Transportation to designate travel restrictions on certain state highways located in canyon areas of the State of Utah, that may not be safely traversed by the public or which would tend to create hazard or hamper road maintenance activities of the Utah Department of Transportation, unless the vehicle or motor vehicle traversing said highway is adequately equipped with certain safety devices.

R920-6-2. Authority.

The authority for this rule is in Sections 27-12-21 and 41-6-21.

R920-6-3. Provisions.

A. Locations shall be requested by the Department's District Director after coordinating with the local Utah Highway Patrol office. The designations by the Executive Director shall be established through a Traffic Engineering Order (TEO) from the Division of Traffic and Safety to the District Director's office wherein the designated highway is located.

B. The Division of Traffic and Safety shall maintain and annually publish a listing of those highways so designated for distribution to:

1. Utah Department of Transportation District Offices;

2. Utah Highway Patrol;

3. county offices;

4. local law enforcement officials.

C. When any designated highway is so restricted, no vehicle or motor vehicle shall be allowed or permitted the use of the highway, during the period between November 1 and March 31, unless:

1. Said vehicle is equipped with either:

a. Steel link chains or have chains in possession; or

b. Mounted snow tires; or

c. Elastomeric tire chains, designed for use with radial tires.

2. Four-wheel drive vehicles must have a minimum of two mounted snow tires to meet the requirements.

3. Radial tires without snow tread do not meet the requirements.

R920-6-4. Responsibilities.

A. Personnel of the Utah Department of Transportation or the Utah Highway Patrol, on location to enforce this resolution, may permit vehicles or motor vehicles not equipped with the traction aids defined in the preceding paragraph to travel a designated state highway if, in the opinion of said personnel, the vehicle or motor vehicle may do so without endangering the public safety or creating a hazard to or interference with, highway maintenance operations.

B. The Utah Department of Transportation requests the Utah Highway Patrol, or designated local law enforcement agency, to enforce this rule.

C. The Utah Department of Transportation will notify the county officials of counties in which highways are so restricted, as outlined above.

D. All authority shall rest with the Transportation Commission to control use of highways where avalanche danger and other threats to the public safety are concerned.

E. The District Director or designee shall work with the Utah Highway Patrol in establishing working criteria for the adequate enforcement of the above provisions.

KEY: tires, snow*
1992 27-12-21
Notice of Continuation December 24, 1997 41-6-21

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 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 was 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.

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.

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 chair lift" means an aerial lift on which carriers alternately attach to and detach from a moving haul rope. The chair lift 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.

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.

B. The Application shall include the name, address and telephone number of operator of the tramway, name of tramway supervisor, operator's designation of the tramway, the uphill or downhill capability, summer use, overhauling in reverse or forward direction, and loading limitations. The application shall be submitted in accordance with R920-50-3.A and shall be accompanied by the following information and support documents:

1. A Pre-Operational Inspection Report shall be submitted by an approved Tramway Inspector, and shall contain 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 shall be submitted to the Committee before work begins.

3. A Certification of Tramway Design for New or Modified Passenger Tramways shall be submitted. This Certification shall be submitted before work begins and shall contain the following:

a. Name, Utah license number and seal of the Qualified Engineer.

b. Name, address and telephone number of operator of the tramway, name of tramway supervisor, operator's designation of the tramway and location of tramway.

c. Manufacturer and type of tramway and brief description of operating system.

d. Basic design data including slope length, vertical rise, type of prime mover, type of auxiliary power unit, design speed, line gauge and intermediate stations.

e. One complete set of calculations, drawings and specifications prepared for the design, fabrication and installation of the tramway, with an index of the data submitted. Each sheet of this set shall bear the seal of registration of the Qualified Engineer.

f. Certifying statement signed by the Qualified Engineer, to read as follows: "I hereby certify that the design for this tramway or tramway modification is in complete compliance with the 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."

4. A Certification of Compliance for Passenger Tramways shall be submitted and contain name, address and telephone number of operator of the tramway, name of tramway supervisor, operator's designation of the tramway, name and Utah license number of Tramway Inspector, date of inspection and date submitted. This Certification shall include the following statement, dated and signed by the owner or area operator: "I certify that the deficiencies under the B77.1 Standard and the Utah Tramway Operations Safety Rules noted in the inspection report have been corrected and that at the time of the inspection all visible and audible features of this tramway were found to be satisfactory except as noted. The structural condition of the towers and terminals was examined and no apparent defects were observed. The deficiencies have been corrected with the exception of those listed in the Request for Exception from Standards for Passenger Tramways. The Request for Exception from Standards for Passenger Tramways meets the requirements of R920-50-10."

5. The Annual Registration Fee listed on the Application shall be submitted in accordance with R920-50-11-A.

6. A Certification of Fabrication and Materials for Passenger Tramways shall be submitted by a Qualified Engineer of the manufacturing concern or concerns directly responsible for the supply of equipment for this tramway. 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.

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 drawings and specifications issued for this tramway or tramway modification by the Qualified Design Engineer."

d. Rope test certificates for the ropes furnished for the tramway, as stated in the Governing Standard.

e. A test certificate attesting that the gripping devices for this tramway conform with the Governing Standard.

7. A Certification of Construction for Passenger Tramways shall be submitted by a Qualified Engineer directly

responsible for the construction for the tramway. 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 shall be submitted to the Committee. A copy of the procedure to be used for testing shall be provided to the Committee for review before acceptance testing begins.

9. A Certification of "As-Built" Profile for Passenger Tramways shall be submitted by a Land surveyor or Civil Engineer licensed in the state of Utah. A certifying statement signed by the civil engineer or land surveyor, to 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 shall be submitted along with other supporting documents.

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 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 name, address and telephone number of operator of the tramway, name of tramway supervisor, operator's designation of the tramway, tramway identification number as assigned by the Committee, the uphill or downhill capability, summer use, overhauling in reverse or forward direction, and loading limitations.The Application shall be submitted in accordance with R920-50-3.A and shall be accompanied by the following supporting information and documents.

1. An Annual General Inspection Report shall be submitted by an approved Tramway Inspector, and shall contain the name and address of the Inspector and date of his or her inspection.

2. Any Request for Exception from Standards for Passenger Tramways shall be submitted in accordance with R920-50-10.

3. A Certification of Wire Rope Inspection For Passenger Tramways shall be submitted in accordance with R920-50-1.D.1.d. This Certification of Wire Rope Inspection for Passenger Tramway shall include name, address and telephone number of operator of the tramway, name of tramway supervisor, operator's designation of the tramway, tramway identification number as assigned by the Committee, description of wire rope that includes manufacturer, year new, previous use, year installed on lift, cumulative hours, rope specifications, splice information, operating condition, type of termination and any modification or service performed on termination. The Certification shall also include a current copy of the wire rope inspector's certifying statement contained in the inspection report.

4. A Certification of Compliance for Passenger Tramways shall be submitted and contain name, address and telephone number of operator of the tramway, name of tramway supervisor, operator's designation of the tramway, tramway identification number as assigned by the Committee, name and Utah license number of Tramway Inspector, date of inspection and date submitted. This Certification shall include the following statement, dated and signed by the tramway owner or area operator: "I certify that the deficiencies under the B77.1 Standard and the Utah Tramway Operations Safety Rules noted in the inspection report have been corrected and that at the time of the inspection all visible and audible features of this tramway were found to be satisfactory except as noted. The structural condition of the towers and terminals was examined and no apparent defects were observed. The deficiencies have been corrected with the exception of those listed in the Request for Exception from Standards for Passenger Tramways. The Request for Exception from Standards for Passenger Tramways meets the requirements of R920-50-10."

5. A Certification of Nondestructive Testing Inspection for Passenger Tramways shall be submitted and shall contain name, address and telephone number of operator of the tramway, name of tramway supervisor, operator's designation of the tramway, tramway identification number as assigned by the Committee, parts tested, sampling methods used, description of defects, notification of defects and name, title, level, agency and address of inspector. This Certification shall include the following statement, dated and signed by the inspector: "I hereby certify to the owner or area operator that the passenger tramway components indicated above were 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 Qualifed Engineer."

6. The Annual Registration Fee listed on the Application shall be submitted 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(A) 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(A) 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.

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) - $460.00 $440.00 each

2. Two-car or Multicar Aerial Passenger Tramway (100 HP or under) - $230.00 $220.00 each

3. Chair lift (Double) - $145.00 $140.00 each
4. Chair lift (Triple) - $170.00 $165.00 each
5. Chair lift (Quad) - $200.00 $195.00 each
6. Chair lift (Detachable) - $460.00 $440.00 each
7. Rope Tow - $55.00 each
8. J-bar, T-bar, or platter pull - $100.00 $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 R920-50-2(G) 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*
November 15, 1997 63-11-37 through 53
Notice of Continuation December 24, 1997 63-46b-1 et seq.
63-49-8(5)(c)

R920. Transportation, Operations, Traffic and Safety.
R920-51. Safety Regulations for Railroads.
R920-51-1. Adoption of Federal Regulations.

Safety Regulations for Railroads, Title 49 Federal Railroad Administration, Department of Transportation is adopted by reference as it applies to all private, common, and contract carriers by rail in Interstate and/or Intrastate Commerce.

R920-51-2. Part 200 - Informal Rules of Practice for Passenger Service.

A. General
B. Definition
C. Application
D. Objections
E. Hearings
F. Orders, approvals and determinations
G. Publication

R920-51-3. Part 201 - Formal Rules of Practice for Passenger Service.

A. General
B. Definitions
C. Scope of regulations
D. Application
E. Notice of hearing
F. Notification by interested persons
G. Presiding officer
H. Direct testimony submitted as written documents
I. Mailing address
J. Inspection and copying of documents
K. Ex parte communications
L. Prehearing conference
M. Final agenda of the hearing
N. Determination to cancel the hearing
O. Rebuttal testimony and new issues of fact in final agenda
P. Waiver of right to participate
Q. Conduct of the hearing
R. Direct testimony
S. Cross-examination
T. Oral and written arguments
U. Recommended decision, certification of the transcript, and submission of comments in the recommended decision.

R920-51-4. Railroad Safety Enforcement Procedures.

A. Subpart A - General
B. Subpart B - Hazardous Materials Penalties

R920-51-5. Part 210 - Railroad Noise Emission Compliance Regulations.

A. Subpart A - General Provisions
B. Subpart B - Inspection and testing

R920-51-6. Part 211 - Rules of Practice.

A. Subpart A - General
B. Subpart B - Rulemaking Procedures
C. Subpart C - Waivers

D. Subpart D - Emergency Orders
E. Subpart E - Miscellaneous Safety - Related Proceedings and Inquiries
F. Subpart F - Interim Procedures for the Review of Emergency Orders

R920-51-7. Part 212 - State Safety Participation Regulations.
A. Subpart A - General
B. Subpart B - State/Federal Roles
C. Subpart C - State Inspection Personnel
D. Subpart D - Grants in Aid

R920-51-8. Part 213 - Track Safety Standards.
A. Subpart A - General
B. Subpart B - Roadbed
C. Subpart C - Track Geometry
D. Subpart D - Track Structure
E. Subpart E - Track Appliances and Track Related Devices
F. Subpart F - Inspections

R920-51-9. Part 215 - Railroad Freight Car Safety Standards.
A. Subpart A - General
B. Subpart B - Freight Car Components
C. Subpart C - Restricted Equipment
D. Subpart D - Stenciling

R920-51-10. Part 216 - Special Notice and Emergency Order Procedures: Railroad Track, Locomotive and Equipment.
A. Subpart A - General
B. Subpart B - Special Notice for Repair
C. Subpart C - Emergency Order - Track

R920-51-11. Part 217 - Railroad Operating Rules.
A. Subpart A - General

R920-51-12. Part 218 - Railroad Operating Rules.
A. Subpart A - General
B. Subpart B - Blue Signal Protection of Workmen
C. Subpart C - Protection of Trains and Locomotives

R920-51-13. Part 220 - Radio Standards and Procedures.
A. Subpart A - General
B. Subpart B - Radio Procedures
C. Subpart C - Train Orders

R920-51-14. Part 221 - Rear End Marking Device - Passenger, Commuter and Freight Trains.
A. Subpart A - General
B. Subpart B - Marking Devices

R920-51-15. Part 223 - Safety Glazing Standards - Locomotives, Passenger Cars and Cabooses.
A. Subpart A - General
B. Subpart B - Specific Requirements

R920-51-16. Part 225 - Railroad Accidents/Incidents: Reports Classification, and Investigations.
A. Purpose
1. Applicability
2. Definitions
3. Public examination and use of reports
4. Telephonic reports of certain accidents/incidents
5. Reporting of accidents/incidents
6. Late reports
7. Accident/incidents not to be reported
8. Doubtful cases
9. Primary groups of accidents/incidents
10. Forms
11. Joint operations
12. Recordkeeping
13. Retention of records
14. Penalties

R920-51-17. Part 228 - Hours of Service of Railroad Employees.
A. Subpart A - General
B. Subpart B - Records and Reporting
C. Subpart C - Construction of Employee Sleeping Quarters

R920-51-18. Part 229 - Railroad Locomotive Safety Standards.
A. Subpart A - General
B. Subpart B - Inspections and Tests
C. Subpart C - Safety Requirements
D. Subpart D - Design Requirements

R920-51-19. Part 230 - Locomotive Inspection.
A. Steam Powered Locomotives

R920-51-20. Part 231 - Railroad Safety Appliance Standards.
A. Box and other house cars
B. Hopper cars and high-side gondolas with fixed ends
C. Drop-end high-side gondola cars
D. Fixed-end low-side gondola and low-side hopper cars
E. Drop-end low-side gondola cars
F. Flat cars
G. Tank cars with side platforms
H. Tank cars without side sills and tank cars with short side sills and end platforms
I. Tank cars without end sills
J. Caboose cars with platforms
K. Caboose cars without platforms
L. Passenger-train cars with wide vestibules
M. Passenger-train cars with open-end platforms
N. Passenger-train cars without end platforms
O. Steam locomotives used in switching service
P. Specifications common to all steam locomotives
Q. Cars of special construction
R. Definition of "Right" and "Left"
S. Variation in size permitted
T. Tank cars without under frames

U. Unidirectional passenger-train cars adoptable to van-type semi-trailer use

V. Box and other house cars with roofs, 16 feet 10 inches or more above top of rail

W. Track motorcars (self-propelled 4-wheel cars which can be removed from the rails by men)

X. Pushcars

Y. Box and other house cars without roof hatches

Z. Box and other house cars with roof hatches

AA. Road locomotives with corner stairways

AB. Locomotives used in switching service

R920-51-21. Part 232 - Railroad Power Brakes and Drawbars.

A. Power brakes; minimum percentage

B. Drawbars; standard height

C. Power brakes and appliances for operating power brake systems

D. Rules for Inspection, Testing and Maintenance of Air Brake Equipment

E. General rules; locomotives

F. Train air brake system tests

G. Initial terminal road train airbrake tests

H. Road train and intermediate terminal train airbrake tests

I. Inbound brake equipment inspection

J. Double heading and helper service

K. Running tests

L. Freight and passenger train car brakes

M. Appendix-Specifications and requirements for power brakes and appliances for operating power-brake systems for freight service

R920-51-22. Part 233 - Signal Systems Reporting Requirements.

A. Scope

1. Application
2. Accidents resulting from signal failure
3. Signal failure reports
4. Annual reports
5. Civil penalty
6. Criminal penalty

R920-51-23. Part 235 - Instructions Governing Applications for Approval of a Discontinuance or Material Modification for a Signal System.

A. Scope

1. Discontinuance or modification requiring filing of application
2. Discontinuance or modification not requiring filing of application
3. Form of application
4. Contents of application
5. Additional required information-prints
6. Filing procedure
7. Notice
8. Protests

R920-51-24. Part 236 - Installation, Specification, Maintenance, and Repair of Systems, Devices and Appliances.

A. Applicability of this part, relief and instructions governing applications for relief

B. Subpart A - Rules and Instructions: All Systems

C. Subpart B - Automatic Block Signal System

D. Subpart C - Interlocking

E. Subpart D - Traffic Control Systems

F. Subpart E - Automatic Train Stop, Train Control and Cab Signal Systems

G. Subpart F - Dragging Equipment and Slide Detectors and Other Similar Protective Devices

H. Subpart G - Definitions

KEY: railroads, safety regulation
1987 63-49-8(5)(C)
Notice of Continuation December 24, 1997

R930. Transportation, Preconstruction.
R930-5. Implementation of Agreements, Participation, Maintenance and Public Notice Responsibilities Relating to Railway-Highway Projects.
R930-5-1. Definitions.

A. "UDOT" means the Utah Department of Transportation

B. "FHPM" means the Federal-Aid Highway Program Manual, which can be reviewed at the agency office.

C. "FHWA" means the Federal Highway Administration

D. "PSC" means the Public Service Commission

E. "At-Grade Crossing" means the crossing of a highway and railway at the same elevation.

R930-5-2. Authority.

Under the Authority of Chapter 204, Laws of Utah, certain functions formerly the responsibility of the PSC have been transferred to UDOT, including those involving transportation planning, construction and safety generally. Also, prior to the initiation of actual construction of a project, an agreement between UDOT and the railroad company involved shall be prepared in accordance with the FHWA provisions of Volume 6, Chapter 4, Section 2 and Volume 1, Chapter 6, Section 3 of the FHPM. Railroad participation shall be in conformance with the FHWA provisions of Volume 6, Chapter 6, Section 2, Paragraph 6 of the FHPM.

R930-5-3. Grade Crossing Elimination.

A. When a highway project will eliminate existing at-grade intersections of railways and highways either by grade separation facilities or relocation of the highway, railroad participation shall be as described in the FHWA provisions of Volume 6, Chapter 6, Section 2, Paragraph 6b(3) and 6b(4) of the FHPM.

B. Limits of railroad participation of a highway-railway project shall be as described in the FHWA provisions of Volume 6, Chapter 6, Section 2, Paragraphs 6c(1), (2) and (3) of the FHPM. Responsibility for maintenance of a newly constructed grade separation facility shall be as follows:

1. Where a separation facility overpasses a railroad, maintenance responsibility for the entire structure and approaches shall be assumed by UDOT.

2. Where a grade separation structure underpasses a railroad, maintenance of the approaches and of the entire structure below and including the deck plate, hand rails, and parapets, shall be the responsibility of UDOT. Maintenance of the waterproofing, ballast, ties, rails and any portion of the supporting structure above the top of the ballast deck plate between parapets shall be the responsibility of the railroad company.

C. Cost of repairing damages to a structure, occasioned by collision, equipment failure or derailment of the railroad's equipment, shall be borne by the railroad company.

R930-5-4. Railway-Highway Projects.

A. Grade Crossing Protection: This group includes all projects for protection of existing at-grade crossings of highways and railways by automatic warning devices. Where it has been determined that active warning devices are warranted, automatic flashing light signals with gates at railroad crossings of two-lane highways and a combination of flashing light signals with gates and cantilever flashing light signals at railroad crossings of multilane highways will be placed. Exceptions may be allowed if recommended by the Railroad Crossing Surveillance Team. The Railroad Crossing Surveillance Team shall establish the priority in which existing crossing shall be upgraded to meet this standard insofar as funding will allow.

B. Participation:

1. As specified in the FHWA provisions of the FHPM, projects for grade crossing improvements, including crossing rehabilitation and surfacing improvements, are deemed to be of no ascertainable benefit to the railroads, and there shall be no required railroad share of the costs. However, nothing shall preclude a railroad from participating in the cost of a project if they so desire. Also, other parties may voluntarily participate in the cost of crossing improvement projects.

2. As specified in the National Surface Transportation Assistance Act, Federal funds are provided for railroad safety grade crossing improvement, which must be matched with state or local government funds. The local agency who owns the road shall provide the matching funds to improve the highway-railway crossing. When local funds are limited, special arrangements may be made with UDOT to spread payments over an appropriate period of time (up to three years). These funds will be repaid by automatically deducting them from the local governments' quarterly allotment of B and C funds.

C. Maintenance: The maintenance of automatic signal devices and the pavement area between rails including space between multiple tracks, if the railroad company owns the easement rights between the multiple tracks, and two feet beyond each outside rail shall become the responsibility of the railroad company involved. Maintenance of signals including the pavement between rails on temporary highway detours shall in all cases become the responsibility of the railroad company at the expense of the highway agency.

R930-5-5. Reconstruction of Existing Railway-Highway Grade Separation.

A project to reconstruct an existing overpass or underpass shall include the entire structure and railway and the highest approaches thereto. Since there is no railway liability for such projects, it is considered that there shall be no benefit to the railroad and railroad participation shall not be required. Responsibility for maintenance shall be the same as described under R930-5-4(C) of this rule.

R930-5-6. Existing Railroad Crossed by New Highway.

Where a new street or highway is proposed which is not essentially a relocation of an existing street or highway and it intersects an existing railroad, the UDOT will consider the new crossing in conformance with Section 54-4-15 of the Utah Code. Public notice will be made in conformance with R930-5-8 of this rule. If approved, construction of a separation structure or the installation of a signal device at such crossing will not be considered as a benefit to the railroad and consequently, railroad participation shall not be

required.

R930-5-7. Railway-Highway Project for an Existing Highway Crossed by a New Railroad.

A. Where a new railroad crosses an existing highway, UDOT will consider the new crossing in conformance with Section 54-4-15 of the Utah Code. Public notice will be made in conformance with Section R930-5-8 of this Rule. If approved, the required separation or warning devices, and any pavement work at the crossing shall not be considered to be of benefit to the road user and 100 percent railroad participation shall be required. The determination as to separation or type of protection shall be according to classification and traffic volume of the highway crossed and the predicted traffic hazard.

B. In order that a railway-highway project shall not become unduly delayed, UDOT shall consider a six-month period of time from issuance of a railroad agreement to be adequate for completion of execution by the railroad company involved. Should more than the specified period of time elapse, the UDOT shall require the railroad to proceed with the work covered by the agreement under the authority contained in Section 54-4-15 of the Utah Code and approval from FHWA will be solicited in conformance with Volume 6, Chapter 6, Section 2, Subsection 1, Paragraphs 9d(6) and 9d(7) of the FHPM.

R930-5-8. Public Notice of Intended Action.

When UDOT is considering the execution of, or actually executes, an agreement with a railroad or other common carriers involving construction, relocation or substantial modification of a railroad crossing, railroad separation structure, signal, sign, warning device or other facility, or when in any manner the elimination, substantial modification, construction or improvement of any crossing or other facility is contemplated in connection with existing or proposed contracts, UDOT shall give notice of its intended action (signed by its Executive Director). UDOT shall publish such notice in a newspaper of general circulation and, if necessary, in the county involved at least twice with a provision that written protests may be filed with UDOT 15 days from the date of the last publication of the notice. The notice shall identify the project, briefly describe the changes proposed, and contain general information relating to the proposed action.

R930-5-9. Public Hearing Requirements.

All requests for a hearing shall be in writing and shall detail how a proposed action will adversely affect a group of people, firm or corporation, and if it appears that the adverse affect cannot be alleviated by UDOT, such a hearing will be conducted informally by UDOT. Any party aggrieved by any determination made by UDOT shall have their statutory right under Section 54-4-15, as amended, to petition the PSC for a hearing to be governed by the procedures of the PSC.

R930-5-10. Waive the Requirement to Publish Notice of Intended Action.

In instances where the action proposed by UDOT does not substantially affect the general public, UDOT may waive the requirement to publish notice as provided in R930-5-8, provided all parties affected concur in writing with the action proposed. For the purposes of this section, parties affected shall mean railroads or other common parties (state, county, city or other environmental agencies, boards or commissions) having jurisdiction over any property rights or facilities, and private persons or directly affected.

R930-5-11. UDOT Authorized to Issue Notice of Intended Action.

The Executive Director of UDOT shall be authorized to issue all notices referred to herein in the name of the UDOT.

KEY: railroads
1991 63-49-8(5)(b) and (5)(c)
Notice of Continuation December 22, 1997 54-4-15

R966. Treasurer, Unclaimed Property.
R966-1. Requirements for Claims where no Proof of Stock Ownership Exists.
R966-1-2. Proof Requirements and Bonds.

A. For verified claims with a value less than $250.00, the person may file an affidavit entitled "Uniform Affidavit of Lost Certificate". Such affidavit will constitute and provide sufficient indemnification to permit the administrator to allow the verified claim in accordance with the provisions of R966-1-1(c) above.

B. For verified claims with a value equal to or greater than $250.00, the person may obtain a bond issued by a licensed surety company rated at least "A" or better by A.M. Best and Co., called an abandoned property bond. The bond shall be a fixed bond for dividends and other definite dollar value items. The bond shall be an open bond for stock certificates and shares claimed. Presentation of the proper bond, or both bonds if both are required, will constitute and provide sufficient indemnification to allow the administrator to allow the verified claim in accordance with the provisions of R966-1-1(c) above.

KEY: stocks, bonds, property claims*
1990 **78-44-25.1**
Notice of Continuation December 31, 1997 **78-44-34**