R15. Administrative Services, Administrative Rules.
R15-4. Administrative Rulemaking Procedures.
R15-4-1. Authority and Purpose.

(1) This rule establishes procedures for filing and publication of agency rules under Sections 63-46a-4, 63-46a-6, and 63-46a-7, as authorized under Subsection 63-46a-10(1).

(2) The procedures of this rule constitute minimum requirements for rule filing and publication. Other governing statutes, federal laws, or federal regulations may require additional rule filing and publication procedures.

R15-4-2. Definitions.

(1) Terms used in this rule are defined in Section 63-46a-2.

(2) Other terms are defined as follows:

(a) "Anniversary date" means the date that is five years from the original effective date of the rule, or the date that is five years from the date the agency filed with the division the most recent five-year review required under Subsection 63-46a-9(3), whichever is sooner.

(b) "Digest" means the Utah State Digest that summarizes the content of the bulletin as required by Subsection 63-46a-10(1)(f);

(c) "Codify" means the process of collecting and arranging administrative rules systematically in the Utah Administrative Code, and includes the process of verifying that each amendment was marked as required under Subsection 63-46a-4(2)(b);

(d) "Compliance cost" means expenditures a regulated person will incur if a rule or change is made effective;

(e) "Cost" means the aggregated expenses persons as a class affected by a rule will incur if a rule or change is made effective;

(f) "Savings" means:

(i) an aggregated monetary amount that will no longer be incurred by persons as a class if a rule or change is made effective;

(ii) an aggregated monetary amount that will be refunded or rebated if a rule or change is made effective;

(iii) an aggregated monetary amount of anticipated revenues to be generated for state budgets, local governments, or both if a rule or change is made effective; or

(iv) any combination of these aggregated monetary amounts.

(g) "Unmarked change" means a change made to rule text that was not marked as required by Subsection 63-46a-4(2)(b).

R15-4-3. Publication Dates and Deadlines.

(1) For the purposes of Subsections 63-46a-4(2) and 63-46a-6(1), an agency shall file its rule and rule analysis by 11:59:59 p.m. on the fifteenth day of the month for publication in the bulletin and digest issued on the first of the next month, and by 11:59:59 p.m. on the first day of the month for publication on the fifteenth of the same month.

(a) If the first or fifteenth day is a Saturday, or a Tuesday, Wednesday, Thursday, or Friday holiday, the agency shall file the rule and rule analysis by 11:59:59 p.m. on the previous regular business day.

(b) If the first or fifteenth day is a Sunday or Monday holiday, the agency shall file the rule and rule analysis by 11:59:59 p.m. on the next regular business day.

(2) For all purposes, the official date of publication for the bulletin and digest shall be the first and fifteenth days of each month.

R15-4-4. Thirty-day Comment Period.

(1) For the purposes of Subsections 63-46a-4(6) and 63-46a-4(7), and in conformity with Utah Rules of Civil Procedures, Rule 6 (a), "30 days" shall be computed by:

(a) counting the day after publication of the rule as the first day; and

(b) counting the thirtieth consecutive day after the day of publication as the thirtieth day, unless

(c) the thirtieth consecutive day is a Saturday, Sunday, or holiday, in which event the comment period runs until 5 p.m. the next regular business day.

(2) A rule may be made effective on the day after the comment period expires.

R15-4-5. Notice of the Effective Date of a Rule.

(1) (a) Upon expiration of the comment period designated on the rule analysis and filed with the rule, and before expiration of 120 days after publication of a proposed rule, the agency proposing the rule shall notify the division of the date the rule is to become effective and enforceable.

(b) The agency shall notify the division after determining that the proposed rule, in the form published, shall be the final form of the rule, and after informing the division of any nonsubstantive changes in the rule as provided for in Section R15-4-6.

(2) (a) The agency shall notify the division by filing with the division a form designated for that purpose indicating the effective date.

(b) If the form designated is unavailable to the agency, the agency may notify the division by any other form of written communication clearly identifying the proposed rule, stating the date the rule was filed with the division or published in the bulletin, and stating its effective date.

(3) The date designated shall be after the comment period specified on the rule analysis.

(4) The division shall publish the effective date in the next issue of the bulletin and digest. There is no publication deadline for a notice of effective date, nor requirement that it be published prior to the effective date.

R15-4-6. Nonsubstantive Changes in Rules.

(1) Pursuant to Subsections 63-46a-3(4)(d) and 63-46a-6(2), for the purpose of making rule changes that are grammatical or do not materially affect the application or outcome of agency procedures and standards, agencies shall comply with the procedures of this section.

(2) The agency proposing a change shall determine if the change is substantive or nonsubstantive according to the criteria cited in Subsection R15-4-6(1).

(a) The agency may seek the advice of the Attorney General or the division, but the agency is responsible for compliance with the cited criteria.

(3) Without complying with regular rulemaking

procedures, an agency may make nonsubstantive changes in:

(a) proposed rules already published in the bulletin and digest but not made effective, or

(b) rules already effective.

(4) To make a nonsubstantive change in a rule, the agency shall:

(a) notify the division by filing with the division the form designated for nonsubstantive changes;

(b) include with the notice the rule text to be changed, with changes marked as required by Section R15-4-9; and

(c) include with the notice the name of the agency head or designee authorizing the change.

(5) A nonsubstantive change becomes effective on the date the division makes the change in the Utah Administrative Code.

(6) The division shall record the nonsubstantive change and its effective date in the administrative rules register.

R15-4-7. Substantive Changes in Proposed Rules.

(1) Pursuant to Section 63-46a-6, agencies shall comply with the procedures of this section when making a substantive change in a proposed rule.

(a) The procedures of this section apply if:

(i) the agency determines a change in the rule is necessary;

(ii) the change is substantive under the criteria of Subsection 63-46a-2(18);

(iii) the rule was published as a proposal in the bulletin and digest; and

(iv) the rule has not been made effective under the procedures of Subsection 63-46a-6(1)(d) and Section R15-4-5.

(b) If the rule is already effective, the agency shall comply with regular rulemaking procedures.

(2) To make a substantive change in a proposed rule, the agency shall file with the division:

(a) a rule analysis, marked to indicate the agency intends to change a rule already published, and describing the change and reasons for it; and

(b) a copy of the proposed rule previously published in the bulletin marked to show only those changes made since the proposed rule was previously published as described in Section R15-4-9.

(3) The division shall publish the rule analysis in the next issue of the bulletin, subject to the publication deadlines of Section R15-4-3. The division may also publish the changed text of the rule.

(4) The agency may make a change in proposed rule effective by following the requirements of Section R15-4-5, or may further amend the rule by following the procedures of Sections R15-4-6 or R15-4-7.

R15-4-8. Temporary 120-day Rules.

(1) Pursuant to Section 63-46a-7, for the purpose of filing a temporary rule, an agency shall comply with the procedures of this section.

(2) The agency proposing a temporary rule shall determine if the need for the rule complies with the criteria of Subsection 63-46a-7(1).

(a) The division interprets the criteria of Subsection 63-46a-7(1) to include under "welfare" any substantial material loss to the classes of persons or agencies the agency is mandated to regulate, serve, or protect.

(3) The agency shall use the same procedures for filing and publishing a temporary rule as for a permanent rule, except:

(a) the rule shall become effective and enforceable on the day and hour it is recorded by the division unless the agency designates a later effective date on the rule analysis;

(b) no comment period is necessary;

(c) no public hearing is necessary; and

(d) the rule shall expire 120 days after the rule's effective date unless the filing agency notifies the division, on the form or by memorandum, of an earlier expiration date.

(4) A temporary rule is separate and distinct from a rule filed under regular rulemaking procedures, though the language of the two rules may be identical. To make a temporary rule permanent, the agency shall propose a separate rule for regular rulemaking.

(5) When a temporary rule and a similar regular rule are in effect at the same time, any conflict between the provisions of the two are resolved in favor of the rule with the most recent effective date, unless the agency designates otherwise as part of the rule analysis.

(6) A temporary rule has the full force and effect of a permanent rule while in effect, but a temporary rule is not codified in the Utah Administrative Code.

R15-4-9. Underscoring and Striking Out.

(1) (a) Pursuant to Subsection 63-46a-4(2)(b), an agency shall underscore language to be added and strike out language to be deleted in proposed rules.

(b) Consistent with Subsection 63-46a-4(2)(b), an agency shall underscore language to be added and strike out language to be deleted in changes in proposed rules, 120-day rules, and nonsubstantive changes.

(c) Consistent with legislative bill drafting technique, the struck out language shall be surrounded by brackets.

(2) When an agency proposes to make a new rule or section, the entire proposed text shall be underscored.

(3)(a) When an agency proposes to repeal a complete rule it shall include as part of the information provided in the rule analysis a brief summary of the deleted language and a brief explanation of why the rule is being repealed.

(b) The agency shall include with the rule analysis a copy of the text to be deleted in one of the following formats:

(i) each page annotated "repealed in its entirety" or

(ii) the entire text struck out in its entirety and surrounded by one set of brackets.

(c) The division shall not publish repealed rules unless space is available within the page limits of the bulletin.

(4) When an agency fails to mark a change as described in this section, the director or his designee may refuse to codify the change. When determining whether or not to codify an unmarked change, the director shall consider:

(a) whether the unmarked change is substantive or nonsubstantive; and

(b) if the purpose of public notification has been adequately served.

(5) The director's refusal to codify an unmarked change means that the change is not operative for the purposes of Section 63-46a-16 and that the agency must comply with regular

rulemaking procedures to make the change.

R15-4-10. Estimates of Anticipated Cost or Savings, and Compliance Cost.

(1) Pursuant to Subsections 63-46a-4(3), 63-46a-6(1), 63-46a-7(2), and 53C-1-201(3), when an agency files a proposed rule, change in proposed rule, 120-day (emergency) rule, or expedited rule and provides anticipated cost or savings, and compliance cost information in the rule analysis, the agency shall:

(a) estimate the incremental cost or savings and incremental compliance cost associated with the changes proposed by the rule or change;

(b) estimate the incremental cost or savings and incremental compliance cost in dollars, except as otherwise provided in Subsections R15-4-10(4) and (5);

(c) indicate that the amount is either a cost or a savings; and

(d) estimate the incremental cost or savings expected to accrue to "state budgets," "local governments," or "other persons" as aggregated cost or savings;

(2) In addition, an agency may:

(a) provide a narrative description of anticipated cost or savings, and compliance cost;

(b) compare anticipated cost or savings, and compliance cost figures, for the rule or change to:

(i) current budgeted costs associated with the existing rule,

(ii) figures reported on a fiscal note attached to a related legislative bill, or

(iii) both (i) and (ii).

(3) If an agency chooses to provide comparison figures, it shall clearly distinguish comparison figures from the anticipated cost or savings, and compliance cost figures.

(4) If dollar estimates are unknown or not available, or the obtaining thereof would impose a substantial unbudgeted hardship on the agency, the agency may substitute a reasoned narrative description of cost-related actions required by the rule or change, and explain the reason or reasons for the substitution.

(5) If no cost, savings, or compliance cost is associated with the rule or change, an agency may enter "none," "no impact," or similar words in the rule analysis followed by a written explanation of how the agency estimated that there would be no impact, or how the proposed rule, or changes made to an existing rule does not apply to "state budgets," "local government," "other persons," or any combination of these.

(6) If an agency does not provide an estimate of cost, savings, compliance cost, or a reasoned narrative description of cost information; or a written explanation as part of the rule analysis in compliance with this section, the Division may, after making an attempt to obtain the required information, refuse to register and publish the rule or change. If the Division refuses to register and publish a rule or change, it shall:

(a) return the rule or change to the agency with a notice indicating that the Division has refused to register and publish the rule or change;

(b) identify the reason or reasons why the Division refused to register and publish the rule or change; and

(c) indicate the filing deadlines for the next issue of the Bulletin.

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

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

R81-1-2. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

R81-1-3. General Policies.

(1) Administrative Policy.

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

(2) Official State Label.

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

(3) Labeling.

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

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

(4) Manner of Paying Fees.

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

(5) Copy of Commission Rules.

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

(6) Interest Assessment on Delinquent Accounts.

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

(7) Returned Checks.

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

(a) Insufficient Funds;

(b) Refer to Maker; and

(c) Account Closed.

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

(8) Disposition of unsaleable merchandise.

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

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

R81-1-4. Employees.

The department is an Equal Opportunity Employer.

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

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

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

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

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

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

R81-1-6. Violation Schedule.

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

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

(3) Application of Rule.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

TABLE

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

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

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

R81-1-7. Disciplinary Hearings.

(1) General Provisions.

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

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

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

(d) Utah Administrative Procedures Act. Proceedings under this rule shall be in accordance with Title 63, Chapter 46b, Utah Administrative Procedures Act (UAPA), and Section 32A-1-119 insofar as it does not conflict with the UAPA.

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

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

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

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

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

(ii) Posting of the document or a notice of certified mail upon a licensed premises; or

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

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

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

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

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

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

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

(iv) At any time during a formal or informal adjudicative proceeding the presiding officer may hold a conference with the parties to:

(A) encourage settlement;

(B) clarify issues;

(C) simplify the evidence;

(D) facilitate discovery, if a formal proceeding; or

(E) expedite the proceedings.

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

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

(m) Default.

(i) The presiding officer may enter an order of default against a party if:

(A) a party in an informal adjudicative proceeding fails to participate in the proceeding;

(B) a party to a formal adjudicative proceeding fails to attend or participate in a hearing; or

(C) a respondent in a formal adjudicative proceeding fails to file a response to a notice of agency action.

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

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

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

(2) Pre-adjudication Proceedings.

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

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

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

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

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

(A) The case number assigned to the action;

(B) The name of the respondent;

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

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

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

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

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

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

(A) The case number assigned to the action;

(B) The name of the respondent;

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

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

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

(c) Designation of Formal and Informal Adjudicative Proceedings.

(i) If the decision officer determines that the alleged violation warrants an administrative fine exceeding $5,000, a suspension of the license or permit for more than thirty days, or a revocation of the license or permit, the matter shall be referred to a presiding officer who shall commence formal adjudication proceedings.

(ii) If the decision officer determines that the alleged violation warrants an administrative fine not exceeding $5,000, or a suspension of the license or permit for thirty days or less, the matter shall be referred to a presiding officer who shall commence informal adjudicative proceedings.

(iii) At any time before a final order is issued, the presiding officer may convert the formal proceeding to an informal proceeding or vice versa if conversion is in the public interest and does not unfairly prejudice the rights of any party.

(3) The Informal Process.

(a) Notice of agency action.

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

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

(B) The agency's case number;

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

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

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

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

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

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

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

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

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

(II) the penalty sought, which may include assessment of costs under Section 32A-1-119(5)(c), if the respondent is found guilty of the alleged violation;

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

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

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

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

department file.

(iv) The notice of agency action shall be mailed to each party.

(b) The Prehearing Conference.

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

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

(iii) A settlement agreement approved by the commission shall constitute a final resolution of all issues agreed upon in the settlement. No further proceedings shall be required for any issue settled. The approved settlement shall take effect by its own terms and shall be binding upon both parties. Any breach of a settlement agreement by a respondent shall be grounds for immediate imposition of the full penalty sought in the original complaint. Additional sanctions stipulated in the settlement agreement may also be imposed.

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

(c) The Informal Hearing.

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

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

(iii) The parties named in the notice of agency action shall be permitted to testify, present evidence, and comment on the issues. Formal rules of evidence shall not apply. Irrelevant, immaterial or unduly repetitious evidence shall be excluded.

(iv) All testimony shall be under oath.

(v) Discovery is prohibited.

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

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

(viii) Intervention is prohibited.

(ix) The hearing shall be open to all parties. It shall also be open to the public, provided that the presiding officer may order the hearing closed upon a written finding that the public interest in an open meeting is clearly outweighed by factors enumerated in the closure order.

(x) The hearing shall be electronically or stenographically recorded at the agency's expense. Any party, at his own expense, may employ a reporter or have a reporter approved by the agency prepare a transcript from the agency's record of the hearing. The department shall retain the record of the hearing for a minimum of one year from the date of the hearing or until the completion of any court proceeding on the matter.

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

(d) Disposition.

(i) Presiding Officer's Order; Objections.

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

(I) the decision;

(II) the reasons for the decision;

(III) findings of facts;

(IV) conclusions of law;

(V) recommendations for final commission action. The order shall not recommend a penalty more severe than that sought in the notice of agency action;

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

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

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

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

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

(ii) Commission Action.

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

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

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

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

(I) the decision;

(II) the reasons for the decision;

(III) findings of fact;

(IV) conclusions of law;

(V) a statement of the effective date of the action taken;

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

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

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

(G) A copy of the commission's order shall be promptly mailed to the parties.

(e) Judicial Review.

(i) Respondent may file a petition for judicial review of the commission's final order within thirty days from the date the order is issued.

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

(4) The Formal Process.

(a) Notice of Agency Action.

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

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

(B) The agency's case number;

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

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

(E) A statement that the adjudicative proceeding is to be conducted formally according to the provisions of this rule and Sections 63-46b-6 to 63-46b-11;

(F) A statement that a written response must be filed within thirty days of the mailing date of the notice of agency action and failure to do so may result in an order of default and entry of a final order of the case;

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

(H) The date, time, and place of the scheduled formal hearing;

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

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

(K) A statement of the purpose of the hearing and questions to be decided including:

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

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

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

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

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

(iv) The notice of agency action shall be mailed to each party.

(b) The Response and Other Pleadings.

(i) A respondent shall file a written response to the notice of agency action at the department offices within thirty days of the mailing date of the notice of agency action. Extensions of time to file a response are not favored, but may be granted by the presiding officer for good cause shown. The response shall be signed by the respondent, or by an authorized agent or attorney of the respondent, and shall set forth in clear and concise terms:

(A) the case number assigned to the action;

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

(C) the name of the respondent;

(D) whether the respondent admits, denies, or lacks sufficient knowledge to admit or deny each allegation stated in the notice of agency action, in which event the allegation shall be deemed denied;

(E) any facts in defense or mitigation of the alleged violation or possible penalty;

(F) a brief summary of any attached evidence. Any supporting documents, exhibits, signed statements, transcripts, etc., to be considered as evidence shall accompany the answer;

(G) a statement of the relief the respondent seeks;

(H) a statement summarizing the reasons that the relief requested should be granted.

(ii) Failure to file a timely response shall waive the respondent's right to contest the matters stated in the notice of agency action, and the presiding officer may enter an order of default and proceed to prepare and serve his final order pursuant to R81-1-7(4)(g).

(iii) The presiding officer may permit or require pleadings in addition to the notice of agency action, and the response. All additional pleadings shall be filed with the presiding officer, with copies sent by mail to each party.

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

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

(c) Intervention.

(i) Any person not a party may file a signed, written petition to intervene in a formal adjudicative proceeding with the agency. The person who wishes to intervene shall mail a copy of the petition to each party. The petition shall include:

(A) the agency's case number;

(B) a statement of facts demonstrating that the petitioner's legal rights or interests are substantially affected by the formal adjudicative proceedings or that the petitioner qualifies as an intervenor under any provision of law; and

(C) a statement of the relief that the petitioner seeks from the agency.

(ii) Response to Petition. Any party to a proceeding into which intervention is sought may make an oral or written response to the petition for intervention. The response shall state the basis for opposition to intervention and may suggest limitations to be placed upon the intervenor if intervention is granted. The response must be presented or filed at or before the hearing.

(iii) Granting of Petition. The presiding officer shall grant a petition for intervention if it determines that:

(A) the petitioner's legal interests may be substantially affected by the formal adjudicative proceeding; and

(B) the interests of justice and the orderly and prompt conduct of the adjudicative proceedings will not be materially impaired by allowing the intervention.

(iv) Order Requirements.

(A) Any order granting or denying a petition to intervene shall be in writing and sent by mail to the petitioner and each party.

(B) An order permitting intervention may impose conditions on the intervenor's participation in the adjudicative proceeding that are necessary for a just, orderly, and prompt conduct of the adjudicative proceeding.

(C) The presiding officer may impose conditions at any time after the intervention.

(D) If it appears during the course of the proceeding that an intervenor has no direct or substantial interest in the proceeding and that the public interest does not require the intervenor's participation, the presiding officer may dismiss the intervenor from the proceeding.

(E) In the interest of expediting a hearing, the presiding officer may limit the extent of participation of an intervenor. Where two or more intervenors have substantially like interests and positions, the presiding officer may at any time during the hearing limit the number of intervenors who will be permitted to testify, cross-examine witnesses or make and argue motions and objections.

(d) The Prehearing Conference.

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

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

(iii) A settlement agreement approved by the commission shall constitute a final resolution of all issues agreed upon in the settlement. No further proceedings shall be required for any issue settled. The approved settlement shall take effect by its own terms and shall be binding upon both parties. Any breach of a settlement agreement by a respondent shall be grounds for immediate imposition of the full penalty sought in the original complaint. Additional sanctions stipulated in the settlement agreement may also be imposed.

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

(e) Discovery and Subpoenas.

(i) Discovery. Upon the motion of a party and for good cause shown that it is to obtain relevant information necessary to support a claim or defense, the presiding officer may authorize the manner of discovery against another party or person, including the staff, as may be allowed by the Utah Rules of Civil Procedure.

(ii) Subpoenas. Subpoenas and orders to secure the attendance of witnesses or the production of evidence in formal adjudicative proceedings shall be issued by the presiding officer when requested by any party, or may be issued by the presiding officer on his own motion.

(f) The Formal Hearing.

(i) Notice. The parties shall be notified in writing of the date, time, and place of the hearing at least ten days in advance of the hearing. Notice may appear in the notice of agency action, or may appear in a separate notice issued by the presiding officer. Continuances of scheduled hearings are not favored, but may be granted by the presiding officer for good cause shown. Failure to appear at the hearing after notice has been given shall be grounds for default and shall waive both the respondent's right to contest the allegations, and his right to the hearing. The presiding officer shall proceed to prepare and serve on respondent his order pursuant to R81-1-7(4)(g).

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

(iii) Rights of Parties. The presiding officer shall regulate the course of the hearings to obtain full disclosure of relevant facts and to afford all the parties reasonable opportunity to present their positions, present evidence, argue, respond, conduct cross-examinations, and submit rebuttal evidence.

(iv) Public Participation. The presiding officer may give

persons not a party to the adjudication proceeding the opportunity to present oral or written statements at the hearing.

(v) Rules of Evidence. Technical rules of evidence shall not apply. Any reliable evidence may be admitted subject to the following guidelines. The presiding officer:

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

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

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

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

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

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

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

(H) Oath. All testimony presented at the hearing, if offered as evidence to be considered in reaching a decision on the merits, shall be given under oath.

(I) Order of presentation. Unless otherwise directed by the presiding officer at the hearing, the order of procedure and presentation of evidence will be as follows: (1) agency; (2) respondent; (3) intervenors (if any); (4) rebuttal by agency.

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

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

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

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

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

(II) The record of the proceedings may also be made by means of a tape recorder or other recording device if the agency determines that it is unnecessary or impracticable to employ a certified shorthand reporter or the parties do not desire to employ a certified shorthand reporter.

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

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

(N) Failure to appear. Inexcusable failure of the respondent to appear at a scheduled evidentiary hearing after receiving proper notice constitutes an admission of the charged violation. The validity of any hearing is not affected by the failure of any person to attend or remain in attendance pursuant to Section 32A-1-119(4)(c).

(g) Disposition.

(i) Presiding Officer's Order; Objections.

(A) Within a reasonable time of the close of the hearing, or after the filing of any post hearing papers permitted by the presiding officer, the presiding officer shall sign and issue a written order that includes the following:

(I) the findings of fact based exclusively on evidence found in the record of the adjudicative proceedings, or facts officially noted. No finding of fact that was contested may be based solely on hearsay evidence. The findings of fact shall be based upon a preponderance of the evidence, except if the respondent fails to respond as per R81-1-7(4)(b)(ii), then the findings of fact shall adopt the allegations in the notice of agency action.

(II) conclusions of law;

(III) reasons for the decision;

(IX) recommendations for final commission action. The order shall not recommend a penalty more severe than that sought in the notice of agency action;

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

(B) A copy of the presiding officer's order shall be promptly mailed to the parties.

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

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

(ii) Commission Action.

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

order and any objections submitted.

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

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

(D) After the commission has reached a final decision, it shall issue a signed, written order pursuant to Section 32A-1-119(5) and 63-46b-10(1) that includes:

(I) findings of fact based exclusively on evidence found in the record of the adjudicative proceedings, or facts officially noted. No finding of fact that was contested may be based solely on hearsay evidence. The findings of fact shall be based upon a preponderance of the evidence, except if the respondent fails to respond as per R81-1-7(4)(b)(ii), then the findings of fact shall adopt the allegations in the notice of agency action and the respondent is considered in default;

(II) conclusions of law;

(III) reasons for the decision;

(IV) action ordered by the commission and effective date of the action taken. The order shall not impose a penalty more severe than that sought in the notice of agency action;

(V) notice of the right to file a written request for reconsideration within ten days of the service of the order;

(VI) notice of the right to seek judicial review of the order within thirty days of the date of its issuance in the court of appeals in accordance with Sections 32A-1-120 and 63-46b-16, -17, and -18.

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

(F) The commission may use its experience, technical competence and specialized knowledge to evaluate the evidence.

(G) A copy of the commission's order shall be promptly mailed to the parties.

(H) A respondent having objections to the order of the commission may file, within ten days of service of the order, a request for reconsideration with the commission, setting forth the particulars in which the order is unfair, unreasonable, unlawful, or not supported by the evidence. If the request is based upon newly discovered evidence, the petition shall be accompanied by a summary of the new evidence, with a statement of reasons why the respondent could not with reasonable diligence have discovered the evidence prior to the formal hearing, and why the evidence would affect the commission's order.

(I) The filing of a request for reconsideration is not a prerequisite for seeking judicial review of the commission's order.

(J) Within twenty days of the filing of a request for reconsideration, the commission may issue a written order granting the request or denying the request in whole or in part. If the request is granted, it shall be limited to the matter specified in the order. Upon reconsideration, the commission may confirm its former order or vacate, change or modify the same in any particular, or may remand for further action. The order and decision shall have the same force and effect as the original order.

(K) If the commission does not issue an order within twenty days after the filing of the request, the request for reconsideration shall be considered denied.

(h) Judicial Review.

(i) Respondent may file a petition for judicial review of the commission's final order within thirty days from the date the order is issued.

(ii) Appeals from formal adjudicative proceedings shall be to the Utah Court of Appeals in accordance with Sections 63-46b-16, -17, and -18, and Section 32A-1-120.

R81-1-8. Advertising.

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

(2) General Provisions.

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

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

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

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

(i) persons with children and alcoholic beverages;

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

(iii) any reference to price, except:

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

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

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

(D) on displays at the site of a temporary special event for which a single event liquor permit has been obtained from the commission or a temporary special event beer permit has been obtained from a local authority, to inform attendees of the

location where alcoholic beverages are being dispensed.

(iv) drinking scenes; or

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

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

R81-1-9. Liquor Dispensing Systems.

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

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

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

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

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

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

(3) Method of approval.

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

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

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

(4) Operational restrictions.

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

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

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

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

(e) All dispensing systems and devices must conform to the federal Bureau of Alcohol Tobacco and Firearms (BATF) ruling 77-32 which states in part that bar dispensing systems for use by retail liquor dealers "(1) must avoid an in-series hookup which would permit the contents of liquor bottles to flow from bottle to bottle before reaching the dispensing spigot or nozzle, (2) must not dispense from or utilize containers other than original liquor bottles filled, stamped, and labeled in conformity with ATF regulations, (3) must prohibit the intermixing of different kinds of products or brands in the liquor bottles from which they are being dispensed...." BATF ruling 77-32 (1977) is incorporated by reference.

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

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

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

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

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

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

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

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

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

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

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

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

A licensee or his employee shall not:

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

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

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

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

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

R81-1-10. Wine Dispensing.

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

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

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

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

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

(2) The licensee or his agent shall not:

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

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

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

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

(1) For the purposes of this rule:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) recognizing the problem drinker;

(c) an overview of state alcohol laws;

(d) dealing with problem customers; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Definitions.

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

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

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

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

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

(4) Filing of Complaints.

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

effective date of this rule, may be filed within 60 days of the effective date of this rule.

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

(c) Each complaint shall:

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

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

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

(iv) describe the action and accommodation desire; and

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

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

(5) Investigation of Complaint.

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

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

(6) Issuance of Decision.

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

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

(7) Appeals.

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

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

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

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

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

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

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

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

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

R81-1-15. Commission Declaratory Orders.

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

(2) Petition Procedure.

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

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

(3) Petition Form. The petition shall:

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

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

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

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

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

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

(g) be signed by the petitioner.

(4) Petition Review and Disposition.

(a) The commission shall:

(i) review and consider the petition;

(ii) prepare a declaratory order stating:

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

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

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

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

(b) The commission may:

(i) interview the petitioner;

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

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

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

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

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

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

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

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

(c) any crime involving moral turpitude.

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

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

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

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

R81-1-17. Advertising.

(1) Purpose.

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

(b) No provision of this rule shall be construed as a concession that any current law or rule is unconstitutional. To the extent any statute or rule is inconsistent with this rule, this rule shall govern.

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

(a) labels on products; or

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

(3) Application.

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

to or inconsistent with the provisions of the statutes and rules of this state.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(g) May not encourage or condone drunk driving;

(h) May not depict the act of drinking;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

R81-1-18. Pilot Wine Tasting Program.

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

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

(3) Definitions.

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

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

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

(4) Check-out procedures.

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

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

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

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

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

(5) Special order and transfer procedures.

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

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

(6) Procedures for tasting sessions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

KEY: alcoholic beverages

July 1, 1998	**32A-1-107**
Notice of Continuation January 10, 1997	**32A-1-119(5)(c)**
	32A-3-103(1)(a)

32A-4-103(1)(a)
32A-4-203(1)(a)
32A-5-103(3)(c)
32A-6-103(2)(a)
32A-7-103(2)(a)
32A-8-103(1)(a)
32A-9-103(1)(a)
32A-10-203(1)(a)
32A-11-103(1)(a)

R137. Career Service Review Board, Administration.
R137-2. Government Records Access and Management Act.
R137-2-1. Purpose.

The purpose of this rule is to provide procedures for access to government records of the Career Service Review Board.

R137-2-2. Authority.

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

R137-2-3. Definitions.

A. "Administrator" means the Administrator of the Career Service Review Board as set forth at Sections 67-19a-101(1) and 67-19a-204.

B. "CSRB" means the Career Service Review Board.

C. "Chairman" means the person mentioned at Section 67-19a-201(5).

D. "GRAMA" means the Government Records Access and Management Act as enacted by the 1992 Utah Legislature, Sections 63-2-1 through -909, Utah Code Annotated.

E. "Records Officer" means the individual responsible to fulfill Section 63-2-103(21) of the GRAMA.

R137-2-4. Records Officer.

A. The records officer for the CSRB shall be the administrator.

B. The records officer shall review and respond to requests for access to CSRB records, according to Section 63-2-903.

R137-2-5. Requests for Access.

A. Requests for access to CSRB records shall be in writing and must include the requester's name, mailing address, daytime telephone number if available, and a brief but reasonably specific description of the records being requested. A records access form may be obtained from the CSRB upon request, but this form is not required in order to petition for access to CSRB records.

B. Requests should be directed to either Records Officer or Administrator, Career Service Review Board, 1120 State Office Building, Salt Lake City, UT 84114.

C. The CSRB is not required to respond to requests submitted to the wrong person, agency or location within the time limits set by the GRAMA.

R137-2-6. Fees.

A. Reasonable fees may be charged for copies of records provided upon request. Fees for photocopying may be charged as authorized by Section 63-2-203. A fee schedule may be obtained from the CSRB office by telephoning (801) 538-3048 or by making a personal inquiry at the CSRB office during regular business hours.

B. The CSRB may require payment of past fees and future fees before beginning to process a request if fees are expected to exceed $50.00, or if the requester has not paid fees from previous requests.

R137-2-7. Waiver of Fees.

Fees for duplication and compilation of a record may be waived under certain circumstances described in Section 63-2-203(3). Requests for application of a waiver of a fee may be made to the CSRB records officer.

R137-2-8. Requests to Amend a Record.

A. An individual may contest the accuracy or completeness of a document pertaining to the requester, pursuant to Section 63-2-603. Requests to amend a record shall be processed as informal adjudications under the Utah Administrative Procedures Act. All requests to amend a record must include the requester's name, mailing address, daytime telephone number if available, and a brief but reasonably specific description of the record to be amended.

B. Adjudicative proceedings concerning requests to amend a record or records under the GRAMA shall be informal adjudicative proceedings and shall comply with Section 63-2-401 et seq.

R137-2-9. Time Periods under GRAMA.

The provisions of Rule 6 of the Utah Rules of Civil Procedure shall apply to calculate time periods specified in GRAMA.

R137-2-10. Appeal of Agency Decision.

A. If a requester is dissatisfied with the CSRB's initial decision, the requester may appeal that decision to the CSRB chairman under the procedures of Section 63-2-401 et seq.

B. A person may contest the accuracy or completeness of a document pertaining to that individual according to Section 63-2-603. The initial request must be made to the CSRB administrator. An appeal from the CSRB administrator's decision may be made to the CSRB chairman under the procedures of Section 63-2-603.

C. Appeals of requests to amend a record shall be informal adjudications under the Utah Administrative Procedures Act.

R137-2-11. Request for Access for Research Purposes.

Access to private or controlled records for research purposes is allowed by GRAMA under Section 63-2-202(8). Requests for access to such records for research purposes may be made directly to the CSRB records officer.

KEY: public records, records access*
1993 **63-2-101 through**
Notice of Continuation July 1, 1998 **63-2-909**
67-19a-203(8)

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

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

R156-1-102. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) replaces a temporary license;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) division concerns;

(b) allegations upon which those concerns are based;

(c) potential for administrative or judicial action; and

(d) disposition of division concerns.

R156-1-103. Authority - Purpose.

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

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

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

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

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

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

R156-1-109. Presiding Officers.

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

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

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

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

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

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

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

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

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

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

R156-1-110. Issuance of Investigative Subpoenas.

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

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

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

(2) The investigative subpoena authority may quash or

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

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

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

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

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

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

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

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

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

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

(3) Except for ad hoc peer committees whose members shall be appointed on a case-by-case basis, the term of office of peer committee members shall be for five years; however, in making initial appointments, the terms of office of the first members appointed shall be one year, the terms of office of the second members appointed shall be two years, the terms of office of the third members appointed shall be three years, the terms of office of the fourth members appointed shall be four years, and the terms of office of the fifth members appointed shall be five years. If a peer committee does not consist of five members, the director shall establish a schedule of appointments to membership on the peer committee as consistent as possible with the schedule established in this Subsection.

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

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

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

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

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

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

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

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

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

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

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

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

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

R156-1-301. Cheating on Examinations.

(1) Policy.

The passing of an examination, when required as a condition of obtaining or maintaining a license issued by the division, is considered to be a critical indicator that an applicant or licensee meets the minimum qualifications for licensure. Failure to pass an examination is considered to be evidence that an applicant or licensee does not meet the minimum qualifications for licensure. Accordingly, the accuracy of the

examination result as a measure of an applicant's or licensee's competency must be assured. Cheating by an applicant or licensee on any examination required as a condition of obtaining a license or maintaining a license shall be considered unprofessional conduct and shall result in imposition of an appropriate penalty against the applicant or licensee.

(2) Cheating Defined.

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

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

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

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

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

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

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

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

(3) Action Upon Detection of Cheating.

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

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

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

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

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

(4) Notification.

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

R156-1-305. Inactive Licensure.

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

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

(a) Agency performing animal euthanasia;

(b) Analytical laboratory;

(c) Branch pharmacy;

(d) Certified professional accountant firm;

(e) Controlled substance;

(f) Controlled substance precursor distributors and purchasers;

(g) Cosmetologist/barber school;

(h) Employee leasing company;

(i) Funeral service establishment;

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

(k) Licensed substance abuse counselor;

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

(m) Preneed funeral arrangement provider; and

(n) Veterinary pharmaceutical outlet.

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

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

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

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

R156-1-308a. Renewal Dates.

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

TABLE
RENEWAL DATES

(1)	Acupuncturist	May 31	even years
(2)	Advanced Practice Registered Nurse	January 31	even years

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

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

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

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

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

The procedures for renewal of licensure shall be as follows:

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

(2) Renewal notices shall be sent by letter deposited in the post office with postage prepaid, addressed to the last address shown on the division's automated license system. Such mailing shall constitute legal notice. It shall be the duty and responsibility of each licensee to maintain a current address with the division.

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

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

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

(6) Renewal notices shall further advise each licensee that if the licensee fails to return the renewal application to the division or its designee by the renewal application due date, the

licensee's license may expire before it is renewed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Petitions for reinstatement of licensure during the term of a disciplinary order imposing restriction, suspension, or

probation, shall be treated as a request to modify the terms of the disciplinary order, not as an application for licensure.

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

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

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

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

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

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

An applicant for relicensure following revocation of licensure shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(11) Diversion committee members shall perform their duties and responsibilities as public service and shall not receive a per diem allowance, or traveling or accommodations expenses

incurred in diversion committees business, except as otherwise provided in Title 58 or Title R156.

R156-1-404b. Diversion Committees Duties.

The duties of diversion committees shall include:

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

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

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

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

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

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

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

R156-1-404d. Diversion - Procedures.

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

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

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

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

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

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

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

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

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

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

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

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

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

R156-1-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

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

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

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

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

R156-1-503. Reporting Disciplinary Action.

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

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R156. Commerce, Occupational and Professional Licensing.
R156-31b. Nurse Practice Act Rules.
R156-31b-101. Title.

These rules are known as the "Nurse Practice Act Rules".

R156-31b-102. Definitions.

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

(1) "APRN" means an advanced practice registered nurse.

(2) "Approved continuing education" in Subsection R156-31b-303(3) means:

(a) continuing education that has been approved by a professional nationally recognized approver of health related continuing education; and

(b) nursing education courses taken from an approved education program as defined in Section R156-31b-601.

(3) "Approved education program" as defined in Subsection 58-31b-102(3) is further defined to include any nursing education program published in the documents entitled "State-Approved Schools of Nursing RN", 1997, and "State-Approved Schools of Nursing PN", 1997, published by the National League for Nursing Accrediting Commission, which are hereby adopted and incorporated by reference as a part of these rules.

(4) "CCNE" means the Commission on Collegiate Nursing Education.

(5) "Contact hour" means 50 minutes.

(6) "CGFNS" means the Commission on Graduates of Foreign Nursing Schools.

(7) "CRNA" means a certified registered nurse anesthetist.

(8) "Delegation" means transferring to an individual the authority to perform a selected nursing task in a selected situation. The nurse retains accountability for the delegation.

(9) "Direct supervision" is the supervision required in Subsection 58-31b-306(1)(a)(iii) and means:

(a) the person providing supervision shall be available on the premises at which the supervisee is engaged in practice; or

(b) if the supervisee is specializing in psychiatric mental health nursing, the supervisor may be remote from the supervisee if there is personal direct voice communication between the two prior to administering or prescribing a prescription drug.

(10) "Generally recognized scope and standards of advanced practice registered nursing" means the scope and standards of practice set forth in the "Scope and Standards of Advanced Practice Registered Nursing", 1996, published by the American Nurses Association, which is hereby adopted and incorporated by reference, or as established by the professional community.

(11) "Generally recognized scope of practice of licensed practical nurses" means the scope of practice set forth in the "Model Nursing Administrative Rules", 1994, published by the National Council of State Boards of Nursing, which is hereby adopted and incorporated by reference, or as established by the professional community.

(12) "Generally recognized scope of practice of registered nurses" means the scope of practice set forth in the "Standards of Clinical Nursing Practice", 1991, published by the American Nurses Association, which is hereby adopted and incorporated by reference, or as established by the professional community.

(13) "Licensure by equivalency" as used in these rules means licensure as a licensed practical nurse after successful completion of course work in a registered nurse program which meets the criteria established in Section R156-31b-601.

(14) "LPN" means a licensed practical nurse.

(15) "NLNAC" means the National League for Nursing Accrediting Commission.

(16) "NCLEX" means the National Council Licensure Examination of the National Council of State Boards of Nursing.

(17) "Non-approved education program" means any foreign nurse education program.

(18) "Other specified health care professionals", as used in Subsection 58-31b-102(12), who may direct the licensed practical nurse means:

(a) advanced practice registered nurse;
(b) certified nurse midwife;
(c) chiropractic physician;
(d) dentist;
(e) osteopathic physician;
(f) physician assistant;
(g) podiatric physician; and
(h) optometrist.

(19) "RN" means a registered nurse.

(20) "Supervision" in Section R156-31-701 means the provision of guidance or direction, evaluation and follow up by the licensed nurse for accomplishment of a task delegated to unlicensed assistive personnel or other licensed individuals.

(21) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 31b, is further defined in Section R156-31b-502.

R156-31b-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 31b.

R156-31b-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.

R156-31b-201. Advisory Peer Committees Created - Membership - Duties.

There is created in accordance with Subsection 58-1-203(6) and Section 58-31b-202(2), the Advanced Practice Advisory Peer Committee whose duties and responsibilities include reviewing APRN applications and advising regarding practice issues.

R156-31b-202. Prescriptive Practice Peer Committee Audits.

In accordance with Subsection 58-31b-202(1)(b)(ii), the Prescriptive Practice Peer Committee shall audit and review the prescribing records of APRNs by reviewing the controlled substance data bank. The prescribing records of five percent of APRNs with a controlled substance license will be reviewed on a quarterly basis.

R156-31b-301. License Classifications - Professional

Upgrade.

Upon issuance and receipt of an increased scope of practice license, the increased licensure supersedes the lesser license which shall automatically expire and must be immediately destroyed by the licensee.

R156-31b-302a. Qualifications for Licensure - Education Requirements.

In accordance with Sections 58-31b-302 and 58-31b-303, the education requirements for licensure are defined as follows:

(1) Applicants for licensure by equivalency shall submit written verification from an approved registered nurse education program, verifying the applicant is currently enrolled and has completed course work which is equivalent to the course work of an NLNAC accredited practical nurse program.

(2) Applicants from foreign education programs shall submit a credentials evaluation report from one of the following credentialing services which verifies that the program completed by the applicant is equivalent to an approved practical nurse or registered nurse education program.

(a) Commission on Graduates of Foreign Nursing Schools;

(b) Foundation for International Services, Inc; or

(c) International Consultants of Delaware, Inc.

R156-31b-302b. Qualifications for Licensure - Experience Requirements for APRNs Specializing as Psychiatric Mental Health Nurse Specialists.

In accordance with Subsection 58-31b-302(3)(g), the supervised clinical practice in mental health therapy and psychiatric and mental health nursing shall:

(1) be a minimum of 4,000 hours, including 1,000 hours of mental health therapy and one hour of face to face supervision for every 20 hours of mental health therapy services provided;

(a) 1,000 hours shall be credited for completion of clinical experience in an approved education program in psychiatric mental health nursing. The remaining 3,000 hours shall:

(i) be completed while an employee, unless otherwise approved by the board and division, under the supervision of an approved supervisor; and

(ii) be completed under a program of supervision by a supervisor who meets the requirements under Subsection (3). At least 2,000 hours must be under the supervision of an APRN specializing as a psychiatric mental health nurse specialist.

(2) An applicant who has obtained all or part of the clinical practice hours outside of the state, may receive credit for that experience if it is demonstrated by the applicant that the training completed is equivalent to and in all respects meets the requirements under this section.

(3) An approved supervisor shall verify practice as a licensee engaged in the practice of mental health therapy for not less than 4,000 hours in a period of not less than two years.

(4) Duties and responsibilities of a supervisor include:

(a) being independent from control by the supervisee such that the ability of the supervisor to supervise and direct the practice of the supervisee is not compromised;

(b) supervising not more than three supervisees unless otherwise approved by the division in collaboration with the board; and

(c) submitting appropriate documentation to the division with respect to all work completed by the supervisee, including the supervisor's evaluation of the supervisee's competence to practice.

(5) An applicant for licensure by endorsement as an APRN specializing as a psychiatric mental health nurse specialist under the provisions of Section 58-1-302 shall demonstrate compliance with the clinical practice in psychiatric and mental health nursing requirement under Subsection 58-31b-302(3)(g) by demonstrating that the applicant has successfully engaged in active practice as a psychiatric mental health nurse specialist for not less than 4,000 hours in the three years immediately preceding the application for licensure.

R156-31b-302c. Qualifications for Licensure - Examination Requirements.

(1) In accordance with Section 58-31b-302, the examination requirements for graduates of approved nursing programs are as follows.

(a) An applicant for licensure as an LPN or RN shall pass the applicable NCLEX examination.

(i) Candidates who fail to pass the NCLEX licensing examination within two years following completion of their educational program shall be required to submit a plan of action for approval by the division in collaboration with the board before being allowed to sit for additional examinations.

(b) An applicant for licensure as an APRN shall pass one of the following national certification examinations consistent with his educational specialty:

(i) one of the following examinations administered by the American Nurses Credentialing Center Certification:

(A) Adult Nurse Practitioner;

(B) Family Nurse Practitioner;

(C) School Nurse Practitioner;

(D) Pediatric Nurse Practitioner;

(E) Gerontological Nurse Practitioner;

(F) Acute Care Nurse Practitioner;

(G) Clinical Specialist in Medical-Surgical Nursing;

(H) Clinical Specialist in Gerontological Nursing;

(I) Clinical Specialist in Community Health Nursing;

(J) Clinical Specialist in Adult Psychiatric and Mental Health Nursing;

(K) Clinical Specialist in Child and Adolescent Psychiatric and Mental Health Nursing;

(ii) National Certification Board of Pediatric Nurse Practitioners and Nurses;

(iii) American Academy of Nurse Practitioners; and

(iv) The National Certification Corporation for the Obstetric, Gynecologic and Neonatal Nursing Specialties.

(c) An applicant for licensure as a CRNA shall pass the examination of the Council on Certification of the American Association of Nurse Anesthetists.

(2) In accordance with Section 58-31b-303, the examination requirements for graduates of nonapproved nursing programs are as follows.

(a) An applicant for licensure as an LPN or RN shall pass the applicable NCLEX examination.

(i) Candidates who fail to pass the NCLEX licensing examination within two years following initial application for

licensure shall be required to submit, for approval by the division in collaboration with the board, a plan of action detailing steps to be taken by the applicant to prepare to retake the examination, before being allowed to sit for additional examinations.

(b) If an applicant for licensure as an RN cannot document satisfactory practice for 4,000 hours in an approved jurisdiction, the applicant shall also pass the CGFNS examination.

R156-31b-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two year renewal cycle applicable to licensees under Title 58, Chapter 31b, is established by rule in Section R156-1-308.

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

(3) Each applicant for renewal shall comply with the following continuing competence requirements:

(a) An LPN or RN shall complete one of the following during the two years immediately preceding the application for renewal:

(i) licensed practice for not less than 400 hours;

(ii) licensed practice for not less than 200 hours and completion of 15 contact hours of approved continuing education; or

(iii) completion of 30 contact hours of approved continuing education hours.

(b) An APRN shall complete the following:

(i) be currently certified or recertified in their specialty area of practice; and

(ii) actively participate in a quality review program defined in Section R156-31b-304.

(c) A CRNA shall complete the following:

(i) be currently certified or recertified as a CRNA; and

(ii) produce evidence of continuing participation in an anesthesia quality assurance program which meets the criteria set forth in the document "Implementing a Quality Assurance Program in Anesthesia Departments, an Action Plan of the Council on Nurse Anesthesia Practice", which is hereby adopted and incorporated by reference.

R156-31b-304. Quality Review Program.

In accordance with Subsection 58-31b-305(3)(b), quality review programs must meet the following criteria for division approval.

(1) The program shall consist of a program provider (provider), program staff, and APRNs, and shall be under the direction of the quality review provider.

(2) The provider shall clearly demonstrate that its personnel have the knowledge and expertise in the practice of advanced practice registered nursing and quality review to permit the provider to competently conduct a quality review program.

(3) The review process shall be conducted on a regular, systematic basis.

(4) A quality review program shall provide in its agreement between the provider and the licensee that:

(a) Upon a finding of gross incompetence, gross negligence, or a pattern of incompetence or negligence, the provider shall submit its findings to the division for appropriate action.

(b) If the licensee fails to substantially comply with a corrective action plan determined appropriate by the provider after a negative review by the provider, said failure shall be reported to the division for appropriate action.

(c) The provider shall make available to the division the results of a quality review upon the proper issuance of a subpoena by the division.

R156-31b-306. Inactive Licensure.

(1) A licensee may apply for inactive licensure status in accordance with Sections 58-1-305 and R156-1-305.

(2) To reactivate a license which has been inactive for five years or less, the licensee must document current compliance with the continuing competency requirements as established in Subsection R156-31b-303(3).

(3) To reactivate a license which has been inactive for more than five years, the licensee must document active licensure in another state or jurisdiction or pass the required examinations as defined in Section R156-31b-302c within six months prior to making application to reactivate a license.

R156-31b-307. Reinstatement of Licensure.

In addition to Section 58-1-308 and Subsections R156-1-308(e), (f), (g), (h) and (i), an applicant for reinstatement of licensure shall meet the following:

(1) To reinstate a license which has been expired for five years or less, the applicant must document current compliance with the continuing competency requirements as established in Subsection R156-31b-303(3).

(2) To reinstate a license which has been expired for more than five years, the applicant must document active licensure in another state or jurisdiction or pass the required examinations as defined in Section R156-31b-302c within six months prior to making application to reinstate a license.

R156-31b-309. Intern Licensure.

(1) In accordance with Section 58-31b-306, an intern license shall expire:

(a) immediately upon failing to take the first available examination;

(b) 30 days after notification, if the applicant fails the first available examination; or

(c) upon issuance of an APRN license.

(2) Regardless of the provisions of Subsection (1) of this section, the division in collaboration with the board may extend the term of any intern license upon a showing of extraordinary circumstances beyond the control of the applicant.

R156-31b-401. Disciplinary Proceedings.

(1) An individual licensed as an LPN who is currently under disciplinary action and qualifies for licensure as an RN may be issued an RN license under the same restrictions as the LPN.

(2) A nurse whose license is suspended under Subsection 58-31b-401(2)(d) may petition the division at any time that he can demonstrate that he can resume the competent practice of nursing.

R156-31b-402. Administrative Penalties.

In accordance with Subsections 58-31b-102(1) and 58-31b-402(1), unless otherwise ordered by the presiding officer, the following fine schedule shall apply.

(1) Using a protected title:
initial offense: $100 - $300
subsequent offense(s): $250 - $500

(2) Using any title that would cause a reasonable person to believe the user is licensed under this chapter:
initial offense: $50 - $250
subsequent offense(s): $200 - $500

(3) Conducting a nursing education program in the state for the purpose of qualifying individuals for licensure without board approval:
initial offense: $1,000 - $3,000
subsequent offense(s): $5,000 - $10,000

(4) Practicing or attempting to practice nursing without a license or with a restricted license:
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000

(5) Impersonating a licensee or practicing under a false name:
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000

(6) Knowingly employing an unlicensed person:
initial offense: $500 - $1,000
subsequent offense(s): $1,000 - $5,000

(7) Knowingly permitting the use of a license by another person:
initial offense: $500 - $1,000
subsequent offense(s): $1,000 - $5,000

(8) Obtaining a passing score, applying for or obtaining a license, or otherwise dealing with the division or board through the use of fraud, forgery, intentional deception, misrepresentation, misstatement, or omission:
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000

(9) violating or aiding or abetting any other person to violate any statute, rule, or order regulating nursing:
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000

(10) violating, or aiding or abetting any other person to violate any generally accepted professional or ethical standard:
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000

(11) Engaging in conduct that results in convictions or, or a plea of nolo contendere to a crime of moral turpitude or other crime:
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000

(12) Engaging in conduct that results in disciplinary action by any other jurisdiction or regulatory authority:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000

(13) Engaging in conduct, including the use of intoxicants, drugs to the extent that the conduct does or may impair the ability to safely engage in practice as a nurse:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000

(14) Practicing or attempting to practice as a nurse when physically or mentally unfit to do so:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000

(15) Practicing or attempting to practice as a nurse through gross incompetence, gross negligence, or a pattern of incompetency or negligence:
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000

(16) Practicing or attempting to practice as a nurse by any form of action or communication which is false, misleading, deceptive, or fraudulent:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000

(17) Practicing or attempting to practice as a nurse beyond the individual's scope of competency, abilities, or education:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000

(18) Practicing or attempting to practice as a nurse beyond the scope of licensure:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000

(19) Verbally, physically, mentally, or sexually abusing or exploiting any person through conduct connected with the licensee's practice:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000

(20) Failure to safeguard a patient's right to privacy:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000

(21) Failure to provide nursing service in a manner that demonstrates respect for the patient's human dignity:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000

(22) Engaging in sexual relations with a patient:
initial offense: $5,000 - $10,000
subsequent offense(s): $10,000

(23) Unlawfully obtaining, possessing, or using any prescription drug or illicit drug:
initial offense: $200 - $1,000
subsequent offense(s): $500 - $2,000

(24) Unauthorized taking or personal use of nursing supplies from an employer:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000

(25) Unauthorized taking or personal use of a patient's personal property:
initial offense: $200 - $1,000
subsequent offense(s): $500 - $2,000

(26) Knowingly entering false or misleading information into a medical record or altering a medical record:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000

(27) Unlawful or inappropriate delegation of nursing care:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000

(28) Failure to exercise appropriate supervision:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000

(29) Employing or aiding and abetting the employment of unqualified or unlicensed person to practice:

initial offense: $100 - $500

subsequent offense(s): $200 - $1,000

(30) Failure to file or impeding the filing of required reports:

initial offense: $100 - $500

subsequent offense(s): $200 - $1,000

(31) Breach of confidentiality:

initial offense: $200 - $1,000

subsequent offense(s): $500 - $2,000

(32) Failure to pay a penalty:

Double the original penalty amount up to $10,000

(33) Prescribing a schedule II-III controlled substance without a consulting physician or outside of a consultation and referral plan:

initial offense: $500 - $1,000

subsequent offense(s): $500 - $2,000

(34) Failure to confine practice within the limits of competency:

initial offense: $500 - $1,000

subsequent offense(s): $500 - $2,000

(35) Any other conduct which constitutes unprofessional or unlawful conduct:

initial offense: $100 - $500

subsequent offense(s): $200 - $1,000

R156-31b-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) failing to destroy a license which has expired due to the issuance and receipt of an increased scope of practice license;

(2) an RN issuing a prescription for a prescription drug to a patient except in accordance with the provisions of Section 58-17a-620, or as may be otherwise provided by law;

(3) failing as the nurse accountable for directing nursing practice of an agency to verify any of the following:

(a) that standards of nursing practice are established and carried out so that safe and effective nursing care is provided to patients;

(b) that guidelines exist for the organizational management and management of human resources needed for safe and effective nursing care to be provided to patients;

(c) nurses' knowledge, skills and ability and determine current competence to carry out the requirements of their jobs.

R156-31b-601. Nursing Education Program Standards.

In accordance with Subsection 58-31b-601(2), the minimum standards that a nursing education program must meet to qualify graduates for licensure under this chapter, which are hereby adopted and incorporated by reference, are respectively:

(1) the "Criteria and Guidelines for the Evaluation of Practical Nursing Programs", 1996, published by the NLNAC.

(2) the "Criteria and Guidelines for the Evaluation of Associate Degree Programs in Nursing", 1996, published by the NLNAC.

(3) the "Criteria and Guidelines for the Evaluation of Baccalaureate and Higher Degree Programs in Nursing", 1996, published by the NLNAC, or the "Standards of Accreditation of Baccalaureate and Graduate Nursing Education Programs", published by the CCNE.

R156-31b-602. Nursing Education Program Full Approval.

(1) Full approval of a nursing program shall be granted when it becomes accredited by the NLNAC or the CCNE.

(2) Programs which have been granted full approval as of the effective date of these rules and are not accredited, must become accredited within five years or be placed on probationary status.

R156-31b-603. Nursing Education Program Provisional Approval.

(1) The division may grant provisional approval to a nursing education program for a period not to exceed three years after the date of the first graduating class, provided the program:

(a) is located or available within the state;

(b) is newly organized;

(c) meets all standards for approval except accreditation; and

(d) is progressing in a reasonable manner to qualify for full approval by obtaining accreditation.

(2) Programs which have been granted provisional approval as of the effective date of these rules and are not accredited, must become accredited within five years.

R156-31b-604. Nursing Education Program Probationary Approval.

(1) The division may place on probationary approval status a nursing education program for a period not to exceed three years provided the program:

(a) is located or available within the state;

(b) is found to be out of compliance with the standards for full approval to the extent that the ability of the program to competently educate nursing students is impaired; and

(c) provides a plan of correction which is reasonable and includes an adequate safeguard of the student and public.

(2) The division may place on probationary approval status a program which implements an outreach program or satellite program without prior approval of the board.

(3) Programs which have been granted probationary approval as of the effective date of these rules and are not accredited, must become accredited within five years or be discontinued.

R156-31b-605. Nursing Education Program Notification of Change.

(1) A nursing education program wishing to begin a new program or to extend or expand existing programs shall submit an application to the division for approval at least one year prior to the implementation of the program.

(2) An approved program that expands onto a satellite campus or implements an outreach program shall submit an application to expand to the division for approval at least one year prior to the expansion. Programs who fail to notify the division of expansion plans may be placed on probationary approval status.

R156-31b-606. Nursing Education Program Surveys.

The division may conduct a survey of nursing education

programs to monitor compliance with these rules.

R156-31b-701. Delegation of Nursing Tasks.

In accordance with Subsection 58-31b-102(10)(g), the delegation of nursing tasks is further defined, clarified, or established as follows:

(1) The nurse delegating tasks retains the accountability for the appropriate delegation of tasks and for the nursing care of the patient/client. The licensed nurse shall not delegate any task requiring the specialized knowledge, judgment and skill of a licensed nurse to an unlicensed assistive personnel. It is the licensed nurse who shall use professional judgment to decide whether or not a task is one that must be performed by a nurse or may be delegated to an unlicensed assistive personnel. This precludes a list of nursing tasks that can be routinely and uniformly delegated for all patients/clients in all situations. The decision to delegate must be based on careful analysis of the patient's/client's needs and circumstances.

(2) The licensed nurse who is delegating a nursing task shall:

(a) verify and evaluate the orders;

(b) perform a nursing assessment;

(c) determine whether the task can be safely performed by an unlicensed assistive personnel or whether it requires a licensed health care provider;

(d) verify that the delegatee has the competence to perform the delegated task prior to performing it;

(e) provide instruction and direction necessary to safely perform the specific task; and

(f) provide ongoing supervision and evaluation of the delegatee who is performing the task.

(3) The delegator shall evaluate the situation to determine the degree of supervision required to ensure safe care.

(a) The following factors shall be evaluated to determine the level of supervision needed:

(i) the stability of the condition of the patient/client;

(ii) the training and capability of the delegatee;

(iii) the nature of the task being delegated; and

(iv) the proximity and availability of the delegator to the delegatee when the task will be performed.

(b) The delegating nurse or another qualified nurse shall be readily available either in person or by telecommunication. The delegator responsible for the care of the patient/client shall make supervisory visits at appropriate intervals to:

(i) evaluate the patient's/client's health status;

(ii) evaluate the performance of the delegated task;

(iii) determine whether goals are being met; and

(iv) determine the appropriateness of continuing delegation of the task.

(4) Nursing tasks, to be delegated, shall meet the following criteria as applied to each specific patient/client situation:

(a) be considered routine care for the specific patient/client;

(b) pose little potential hazard for the patient/client;

(c) be performed with a predictable outcome for the patient/client;

(d) be administered according to a previously developed plan of care; and

(e) not inherently involve nursing judgment which cannot be separated from the procedure.

(5) If the nurse, upon review of the patient's/client's condition, complexity of the task, ability of the unlicensed assistive personnel and other criteria as deemed appropriate by the nurse, determines that the unlicensed assistive personnel cannot safely provide care, the nurse shall not delegate the task.

R156-31b-702. Scope of Practice.

(1) The lawful scope of practice for an RN employed by a department of health shall include implementation of standing orders and protocols, and completion and providing to a patient of prescriptions which have been prepared and signed by a physician in accordance with the provisions of Section 58-17a-620.

(2) An APRN who chooses to change or expand from a primary focus of practice must be able to document competency within that expanded practice based on education, experience and certification. The burden to demonstrate competency rests upon the licensee.

KEY: licensing, nurses

July 1, 1998 **58-31b-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 while under 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 in accordance with the following hours designated by code and/or classification may be credited towards the direct supervision hours.

(iii) Building Inspector-in-training III required direct supervision hours.

(A) Uniform Building Code: 70 hours, 50 of which can be waived with documented experience and/or education.

(B) National Electrical Code: 70 hours, 50 of which can be waived with documented experience and/or education.

(C) Uniform Plumbing Code/International Plumbing Code: 60 hours, 50 of which can be waived with documented experience and/or education.

(D) Uniform Mechanical Code: 60 hours, 50 of which can be waived with documented experience and/or education.

(iv) Building Inspector-in-training II required direct supervision hours.

(A) Uniform Building Code: 80 hours, 60 of which can be waived with documented experience and/or education.

(B) National Electrical Code: 80 hours, 60 of which can be waived with documented experience and/or education.

(C) Uniform Plumbing Code/International Plumbing Code: 70 hours, 60 of which can be waived with documented experience and/or education.

(D) Uniform Mechanical Code: 70 hours, 60 of which can be waived with documented experience and/or education.

(v) Building Inspector-in-training I required direct supervision hours.

(A) Uniform Building Code: 100 hours, 70 of which can be waived with documented experience and/or education.

(B) National Electrical Code: 100 hours, 70 of which can be waived with documented experience and/or education.

(C) Uniform Plumbing Code/International Plumbing Code: 80 hours, 70 of which can be waived with documented experience and/or education.

(D) Uniform Mechanical Code: 80 hours, 70 of which can be waived with documented experience and/or education.

(vi) 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.

(vii) 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 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 305.2.3 is amended as follows:

The following section is added after the title of Section 305.2.3 Special Provisions:

305.2.3.1 Kindergarten, first- or second-grade pupils.

Delete in its entirety the last paragraph of Section 305.2.3 which reads "Stages and platforms shall be construed in accordance with Chapter 4. For attic space partitions and draft stops, see Section 708".

Chapter 3, Section 305.2.3.2 is added as follows:

305.2.3.2 Day Care for 7 to 12 persons. Areas used for 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 shall be provided with 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 3, Section 305.2.3.3 is added as follows:

305.2.3.3 Other. Stages and platforms shall be constructed in accordance with Chapter 4. For attic space partitions and draft stops, see Section 708.

Chapter 10, Section 1004.3.4.3.2.1, Doors is amended by renumbering the existing exception as No. 1 and adding Exception 2. as follows:

2. 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 1003.3.3.6 is amended by adding an exception to the third paragraph as follows:

Exception: 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 1612.3.2, Exception 2 is amended to read as follows:

2. Snow loads over 30 psf may be reduced in accordance with Section 1630.1.1, Item 3 (amended), and snow loads 30 psf or less need not be combined with seismic.

Chapter 16, Section 1630.1.1, Item 3 is amended as follows:

3. Design snow loads of 30 psf or less need not be included. Where the snow load exceeds 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 = Design roof snow load, psf.

Chapter 23, Section 2316.2, Item 6 is amended by adding footnote 3, reference from "two months", to read as follows:

(6) 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:

3 as for snow below 5000 feet elevation.

Chapter 23, Section 2307 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 after the exceptions:

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 forces specified in Table 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 1995. 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 1639 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-C

S = Change in ground snow load with elevation (psf/1000 ft), from Table A-16-C

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-C

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-C
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 fire sprinkler standard, NFPA-13, 1996 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 fire sprinkler standard, NFPA-13R, 1996 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 5:

5 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 3 Division II, Chapter 4 Division II, Chapter 12 Division II, Chapter 13, Chapter 15, Chapter 30, Chapter 31 Division I and Chapter 33.

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.

(1) Statewide Amendments

Section 107.1.1 is deleted in its entirety.

Section 109 is retitled as "Board of Appeal".

Section 109.1 is deleted and replaced with the following:

109.1 General. In order to hear and decide appeals of orders, decisions or determinations made by the code official relative to the application and interpretation of this code, there shall be and is hereby created a local board of appeals consisting of members who are qualified by experience and training to pass on matters pertaining to building construction and who are not employees of the jurisdiction. The code official shall be an ex officio member of and shall act as secretary to said board but shall have no vote on any matter before the board. The board of appeals shall be appointed by the governing body and shall hold office at its pleasure. The board shall adopt rules of procedure for conducting its business, and shall render all decisions and finding in writing to the appellant with a duplicate copy to the code official.

Sections 109.2 through 109.7 are deleted in their entirety.

Section 202 General Definitions is revised as follows:

The definition for "Backflow Backpressure, Low Head" is deleted in its entirety.

The definition for "Backsiphonage" is deleted and replaced with the following:

Backsiphonage. The backflow of potentially contaminated, polluted or used water into the potable water system as a result of the pressure in the potable water system falling below atmospheric pressure of the plumbing fixtures, pools, tanks or vats connected to the potable water distribution piping.

The following definition is added:

Certified Backflow Preventer Assembly Tester. A person who has shown competence to test Backflow prevention assemblies to the satisfaction of the authority having jurisdiction under Subsection 19-4-104(4), Utah Code Ann. (1953), as amended.

The definition for "Code Official" is deleted and replaced with the following:

Code Official. The individual official, board, department or agency established and authorized by a state, county, city or other political subdivision created by law to administer and enforce the provisions of the plumbing code as adopted or amended. This definition shall include the code official's duly authorized representative.

The definition for "Cross Connection" is deleted and replaced with the following:

Cross Connection. Any physical connection or potential connection or arrangement between two otherwise separate piping systems, one of which contains potable water and the other either water of unknown or questionable safety or steam, gas or chemical, whereby there exists the possibility for flow from one system to the other, with the direction of flow depending on the pressure differential between the two systems (see "Backflow").

The following definition is added:

Emergency Floor Drain. A floor drain installed for the primary purpose of collecting water from emergency spills or water line breaks.

The following definition is added:

Heat Exchanger (Potable Water). A device to transfer heat between two physically separated fluids (liquid or steam), one of which is potable water.

The definition for "Potable Water" is deleted and replaced with the following:

Potable Water. Water free from impurities present in amounts sufficient to cause disease or harmful physiological effects and conforming to the Titles 19-4 and 19-5, Utah Code Ann. (1953), as amended and the regulations of the public health authority having jurisdiction.

The definition for "Water Heater" is deleted and replaced with the following:

Water Heater. A closed vessel in which water is heated by the combustion of fuels or electricity and is withdrawn for use external to the system at pressures not exceeding 160 psig (1100 kPa (gage)), including the apparatus by which heat is generated, and all controls and devices necessary to prevent water temperatures from exceeding 210 degrees Fahrenheit (99 degrees Celsius).

Section 305.10 is added as follows:

Section 305.10 Improper Connections. No drain, waste, or vent piping shall be drilled and tapped for the purpose of making connections.

Section 312.9 is deleted in its entirety.

Section 403.1 is deleted and replaced with the following:

403.1 Minimum number of fixtures. Plumbing fixtures shall be provided for the type of occupancy and in the minimum number shown in Appendix Chapter 29, Uniform Building

Code.

Table 403.1 is deleted in its entirety.

Section 403.2 is deleted and replaced with the following:

403.2 Hand sink location. Hand sinks in commercial food establishments shall be located accessible to food preparation areas, food service areas, dishwashing areas, and toilet rooms in accordance with Rule R392-100-5, Utah Administrative Code. Hand sinks in child care facilities shall be installed in accordance with R430-5(19)(5) a and b, Utah Administrative Code.

Sections 403.4, 403.5 and 403.6 are deleted in their entirety.

Section 409.1 is deleted and replaced with the following:

409.1 Approval. Domestic dishwashing machines shall conform to ASSE (American Society of Sanitary Engineering) 1006. Commercial dishwashing machines shall conform to ASSE 1004, NSF (National Sanitary Foundation) 3 or NSF 26.

Section 409.3 is deleted and replaced with the following:

Section 409.3 Waste connection. 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 counter top before it is connected to the branch tailpiece located above the trap or to an approved food waste disposal unit.

Section 412.5 is added as follows:

412.5 Public toilet rooms. All public toilet rooms shall be equipped with at least one emergency floor drain.

Section 418.1 is deleted and replaced with the following:

418.1 Approval. Sinks shall conform to ANSI Z124.6, ASME A112.19.1, ASME A112.19.2, ASME A112.19.3, ASME A112.19.4, ASME A112.19.9, CSA B45.1, CSA B45.2, CSA B45.3, CSA B45.4 or NSF 2.

Section 425.1.1 - The following exception is added after the paragraph.

Exception: Multiple urinals with an automatic flushing device.

Section 502.6 is added as follows:

502.6 Water Heater Seismic Bracing. In seismic zones 3 and 4, water heaters shall be anchored or strapped in the upper third of the appliance to resist a horizontal force equal to one third the operating weight of the water heater, acting in any horizontal direction, or in accordance with the appliance manufacturers recommendations.

Section 504.8.1 is amended as follows:

The measurement of "1 inch" in the last sentence of the paragraph is replaced with the measurement "1 1/2 inch".

Section 602.3 is deleted and replaced with the following:

602.3 Individual water supply. Where a potable public water supply is not available, individual sources of potable water supply shall be utilized provided that the source has been developed in accordance with Sections 73-3-1 and 73-3-25, Utah Code Ann. (1953), as amended, as administered by the Department of Natural Resources, Division of Water Rights. In addition, the quality of the water shall be approved by the local health department having jurisdiction. The source shall supply sufficient quantity of water to comply with the requirements of this chapter.

Sections 602.3.1, 602.3.3, 602.3.4, 602.3.5 and 602.3.5.1 are deleted in their entirety.

Section 604.4.1 is added as follows:

604.4.1 Metering faucets. Self closing or metering faucets shall provide a flow of water for at least 15 seconds without the need to reactivate the faucet.

Section 606.2 is deleted and replaced with the following:

606.2 Location of shutoff valves. Shutoff valves shall be installed in the following locations:

1. On the fixture supply to each plumbing fixture.

Exception: 1) bath tubs and showers.

Exception: 2) in individual guest rooms that are provided with unit shutoff valves in hotels, motels, boarding houses and similar occupancies.

2. On the water supply pipe to each sillcock.

3. On the water supply pipe to each appliance or mechanical equipment.

Section 606.5 is deleted and replaced with the following:

606.5 Water pressure booster systems. Water pressure booster systems shall be provided as required by Section 606.5.1 through 606.5.11.

Section 606.5.11 is added as follows:

606.5.11 Prohibited installation. In no case shall a booster pump be allowed that will lower the pressure in the public main to less than 20 psi.

Section 608.1 - The following sentence is added at the end of the paragraph: Connection without an air gap between potable water piping and sewer-connected waste shall not exist under any condition.

Table 608.1 is deleted and replaced with the following:

TABLE
General Methods of Protection

Assembly (applicable standard)	Degree of Hazard	Application	Installation Criteria
Air Gap (ASME A112.2)	High or Low	Backsiphonage	See Table 608.15.1
Reduced Pressure Principle Backflow Preventer (AWWA C511, USC-FCCCHR, ASSE 1013 CSA CNA/CSA-B64.4) and Reduced Pressure Detector Assembly (ASSE 1047, USC-FCCCHR)	High or Low	Backpressure or Backsiphonage 1/2" - 16"	a. The bottom of each RP assembly shall be a minimum of 12 inches above the ground or floor. b. RP assemblies shall NOT be installed in a pit. c. The relief valve on each RP assembly shall not be directly connected to any waste disposal line, including sanitary sewer, storm drains, or vents. d. The assembly shall be installed in a horizontal position only unless listed or approved for vertical installation.
Double Check Backflow	Low	Backpressure or Backsiphonage	a. If installed in a pit, the DC assembly

Prevention Assembly (AWWA C510, USC-FCCCHR, ASSE 1015) Double Check Detector Assembly Backflow Preventer (ASSE 1048, USC-FCCCHR)		1/2" - 16"	shall be installed with a minimum of 12 inches of clearance between all sides of the vault including the floor and roof or ceiling with adequate room for testing and maintenance. b. Shall be installed in a horizontal position unless listed or approved for vertical installation.
Pressure Vacuum Breaker Assembly (ASSE 1020, USC-FCCCHR)	High or Low	Backsiphonage 1/2" - 2"	a. Shall not be installed in an area that could be subjected to backpressure or back drainage conditions. b. Shall be installed a minimum of 12 inches above all downstream piping and the highest point of use. c. Shall not be installed below ground or in a vault or pit. d. Shall be installed in a vertical position only.
Spill Resistant Vacuum Breaker (ASSE 1056, USC-FCCCHR)	High or Low	Backsiphonage 1/4" - 2"	a. Shall not be installed in an area that could be subjected to backpressure or back drainage conditions. b. Shall be installed a minimum of 6 inches above all downstream piping and the highest point of use. c. Shall not be installed below ground or in a vault or pit. d. Shall be installed in a vertical position only.
Atmospheric Vacuum Breaker (ASSE 1001 USC-FCCCHR, CSA CAN/CSA-B64.1.1	High or Low	Backsiphonage	a. Shall not be installed in an area that could be subjected to backpressure or back drainage conditions. b. Shall not be installed where it may be subjected to continuous pressure for more than 12 consecutive hours at any time. c. Shall be installed a minimum of six inches above all downstream piping and the highest point of use. d. Shall be installed on the discharge (downstream) side of any valves. e. The AVB shall be installed in a vertical position only.
General Installation Criteria			The assembly owner, when necessary, shall provide devices or structures to facilitate testing, repair, and/or maintenance and to insure the safety of the backflow technician. Assemblies shall not be installed more than five feet off the floor unless a permanent platform is installed. The body of the assembly shall not be closer than 12 inches to any wall, ceiling or incumbrance, and shall be accessible for testing, repair and/or maintenance. In cold climates, assemblies shall be protected from freezing by a means acceptable to the code official. Assemblies shall be maintained as an intact assembly.

Table 608.1.2 is added as follows:

TABLE 608.1.2
Specialty Backflow Devices for low hazard use only

Device	Degree of Hazard	Application	Applicable Standard
Antisiphon-type Water Closet Flush Tank Ball Cock	Low	Backsiphonage	ASSE 1002 CSA CAN/ CSA-B125
Dual check valve Backflow Preventer	Low	Backsiphonage or Backpressure 1/4" - 1"	ASSE 1024
Backflow Preventer with Intermediate Atmospheric Vent	Low Residential Boiler	Backsiphonage or Backpressure 1/4" - 3/4"	ASSE 1012 CSA CAN/ CSA-B64.3
Dual check valve type Backflow Preventer for Carbonated Beverage Dispensers/Post Mix Type	Low	Backsiphonage or Backpressure 1/4" - 3/8"	ASSE 1032
Hose-connection Vacuum Breaker	Low	Backsiphonage 1/2", 3/4", 1"	ASSE 1011 CSA CAN/ CSA-B64.2
Vacuum Breaker Wall Hydrants, Frost-resistant, Automatic Draining Type	Low	Backsiphonage 3/4", 1"	ASSE 1019 CSA CAN/ CSA-B64.2.2

Laboratory Faucet Backflow Preventer	Low	Backsiphonage	ASSE 1035 CSA CAN/ CSA-B64.7

Installation Guidelines: The above specialty devices shall be installed in accordance with their listing and the manufacturer's instructions and the specific provisions of this chapter.

Section 608.3.1 - The following sentence is added at the end of the paragraph: All piping and hoses shall be installed below the atmospheric vacuum breaker.

Section 608.7 is deleted in its entirety.

Section 608.8 - The following sentence is added at the end of the paragraph: In addition each nonpotable water outlet shall be labeled with the words "CAUTION: UNSAFE WATER, DO NOT DRINK".

Section 608.11 - The following sentence is added at the end of the paragraph: The coating shall conform to NSF Standard 61 and application of the coating shall comply with the manufacturers instructions.

Section 608.13.3 is deleted and replaced with the following:

608.13.3 Backflow preventer with intermediate atmospheric vent. Backflow preventers with intermediate atmospheric vents shall conform to ASSE 1012 or CAS CAN/CAS-B64.3. These devices shall be permitted to be installed on residential boilers only where subject to continuous pressure conditions. The relief opening shall discharge by air gap and shall be prevented from being submerged.

Section 608.15.3 is deleted and replaced with the following:

608.15.3 Protection by a backflow preventer with intermediate atmospheric vent. Opening and outlets to residential boilers only shall be protected by a backflow preventer with an intermediate atmospheric vent.

Section 608.15.4 is deleted and replaced with the following:

608.15.4 Protection by a vacuum breaker. Openings and outlets shall be protected by atmospheric-type or pressure-type vacuum breakers. The critical level of the vacuum breaker shall be set a minimum of 6 inches (152 mm) above the flood level rim of the fixture or device. The critical level of the pressure vacuum breaker shall be set a minimum of 12 inches (304 mm) above the flood level rim of the fixture or device. Ball cocks shall be set in accordance with Section 425.3.1. Vacuum breakers shall not be installed under exhaust hoods or similar locations that will contain toxic fumes or vapors. Pipe-applied vacuum breakers shall be installed not less than 6 inches (152 mm) above the flood level rim of the fixture, receptor or device served. No valves shall be installed downstream of the atmospheric vacuum breaker.

Section 608.15.4.2 - The following is added at the end of the paragraph: In climates where freezing temperatures occur, a listed, self-draining frost proof hose bibb with an integral backflow preventer shall be used.

Section 608.16.1 is deleted and replaced with the following:

608.16.1 Beverage dispensers. Potable water supply to carbonators shall be protected by a stainless steel vented dual check valve installed according to the requirements of this chapter.

Section 608.16.2 - The first sentence of the paragraph is deleted and replaced as follows:

608.16.2 The potable water supply to the residential boiler shall be equipped with a backflow preventer with an intermediate atmospheric vent complying with ASSE 1012 or CSA CAN/CSA B64.3.

Section 608.16.7 is deleted and replaced with the following:

608.16.7 Chemical dispensers. Where chemical dispensers connect to the water distribution system, the water supply system shall be protected against backflow in accordance with Section 608.13.1, Section 608.13.2, Section 608.13.5, Section 608.13.6 or Section 608.13.8.

Section 608.16.8 is deleted and replaced with the following:

608.16.8 Portable cleaning equipment. Where the portable cleaning equipment connects to the water distribution system, the water supply system shall be protected against backflow in accordance with Section 608.13.1, Section 608.13.2 or Section 608.13.8.

Section 608.16.9 is deleted and replaced with the following:

608.16.9 Dental pump equipment or water syringe. Where dental pumping equipment or water syringes connects to the water distribution system, the water supply system shall be protected against backflow in accordance with Section 608.13.1, Section 608.13.2, Section 608.13.5, Section 608.13.6 or Section 608.13.8.

Section 608.16.10 is added as follows:

608.16.10 Automatic and coin operated car washes. The water supply to an automatic or coin operated car wash shall be protected in accordance with Section 608.13.1 or Section 608.13.2.

Section 608.17 is deleted in its entirety.

Section 608.18 is added as follows:

608.18 Backflow assembly testing. The premise owner or his designee shall have backflow prevention assemblies operation tested at the time of installation, repair and relocation and at least on an annual basis thereafter, or more frequently as required by the authority having jurisdiction. Testing shall be performed by a Certified Backflow Preventer Assembly Tester. The assemblies that are subject to this paragraph are the Spill Resistant Vacuum Breaker, the Pressure Vacuum Breaker Assembly, the Double Check Backflow Prevention Assembly, the Double Check Detector Assembly Backflow Preventer, the Reduced Pressure Principle Backflow Preventer, and the Reduced Pressure Detector Assembly.

Section 612 is added as follows:

612. Gray Water

Gray Water Recycling Systems, Appendix C of the IPC, cannot be adopted by any jurisdiction until January 1, 1999.

Section 701.2 - The following is added at the end of the paragraph: The sewer is considered as available when within 300 feet of the property line in accordance with Section 10-8-38, Utah Code Ann. (1953), as amended. Private sewage disposal systems shall conform with Rule R317-501 through R317-513 and Rule R317-5, Utah Administrative Code, as administered by the Department of Environmental Quality, Division of Water Quality.

Section 802.1.1 is deleted and replaced with the following:

802.1.1 Food handling. Equipment and fixtures utilized for the storage, preparation and handling of food or food equipment shall discharge through an indirect waste pipe by means of an air gap.

Exception: This requirement shall not apply to dishwashing machines and dishwashing sinks. This requires commercial dishwashing machines and dishwashing sinks to discharge through an air gap or an air break.

Section 802.3 is amended as follows:

The term "waste receptors" in the last sentence of the paragraph is replaced with the term "floor sinks".

Section 802.3.2 is deleted in its entirety.

Section 904.6 - The following sentence is added at the end of the paragraph: Vents extending through the wall shall terminate not less than 12 inches from the wall with an elbow pointing downward.

Section 917.2 is deleted and replaced with the following:

917.2 Installation. The valves may be installed in accordance with the requirements of this section and the manufacturers installation instructions when approved by the code official. Air admittance valves shall be installed after the DWV testing required by Section 312.2 or 312.3 has been performed.

Section 1002.4.1 is added as follows:

1002.4.1 Emergency floor drains. Each emergency floor drain shall be installed with a trap seal primer. Trap seal primer shall conform to ASSE 1018 or ASSE 1044.

Section 1003.3.3 is added as follows:

1003.3.3 Grease trap restriction. Unless specifically required or permitted by the code official, no food waste grinder or dishwasher shall be connected to or discharge into any grease trap.

Section 1104.2 is deleted and replaced with the following:

1104.2 Combining storm with sanitary drainage. The sanitary and storm drainage systems of a structure shall be entirety separate.

Section 1108 is deleted in its entirety.

Section 1201.2 is deleted and replaced with the following:

1201.2 Fuel piping systems. All fuel piping systems shall be sized, installed, tested and placed in operation in accordance with the requirements of Appendix B, Chapter 13 of the 1994 Uniform Mechanical Code.

Appendix G, Section G110 is deleted, renumbered and replaced with the following:

Section 1202 CNG GAS-DISPENSING SYSTEMS

1202.1 Dispenser protection. The gas dispenser shall have an emergency switch to shut off the power to the dispenser. An approved backflow device that prevents the reverse flow of gas shall be installed on the gas supply pipe or in the gas dispenser.

1202.2 Ventilation. Gas-dispensing systems installed inside the structure shall be ventilated by mechanical means in accordance with the Uniform Mechanical Code.

1202.3 Compressed natural gas vehicular fuel systems. Compressed natural gas (CNG) fuel-dispensing systems for CNG-fueled vehicles shall be designed and installed in accordance with NFPS 52 and the uniform fire code.

Chapter 14, Referenced Standards, is amended as follows:

NSF - Standard Reference Number 61-95 - The following referenced in code section number is added: 608.11

The following reference standard is added:

TABLE

USC-FCCCHR 9th Edition Manual of Cross Connection	Foundation for Cross-Connection Control and Hydraulic Research University of Southern California Kaprielian Hall 300 Los Angeles CA 90089-2531	Control Table 608.1

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 909(g) is deleted and replaced with the following:

(g) Shower valves. Shower and tub-shower combination valves shall be balanced pressure, thermostatic or combination mixing valves that conform to the requirements of ASSE 1016 or CSA CAN/CSA-B 125. Such valves shall be equipped with handle position stops that are field adjusted in accordance with the manufacturer's instructions to a maximum hot water setting of 120 degrees Fahrenheit (49 degrees Celsius).

Exception: Balanced pressure, thermostatic or combination mixing valves shall not be required for showers and tub-shower combinations in one- or two-family dwellings and multiple showers supplied with a single tempered water supply provided the hot water supply for such showers is controlled by an approved master thermostatic mixing valve adjusted in accordance with the manufacturer's instructions to a maximum hot water setting of 120 degrees Fahrenheit (49 degrees Celsius). Such master thermostatic mixing valves shall be sized according to the peak demand of fixtures located downstream of the valve and shall comply with ASSE 1016. The water heater thermostat shall not be used as the temperature-control device for compliance with this section.

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)

EHD(2) Flow Designation	Tubing Length (ft) 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

EHD(2) Flow Designation	Tubing Length (ft) 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

July 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)

R156. Commerce, Occupational and Professional Licensing.
R156-60a. Social Worker Licensing Act Rules.
R156-60a-101. Title.

These rules are known as the "Social Worker Licensing Act Rules".

R156-60a-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 60, as used in Title 58, Chapters 1 and 60, or these rules:

(1) "AASSWB" means the American Association of State Social Work Boards."

(2) "CSW" means a licensed certified social worker.

(3) "Clinical social work concentration and practicum", "clinical concentration and practicum" "case work", "group work", or "family treatment course sequence with a clinical practicum", "clinical practicum" or "practicum", as used in Subsections 58-60-205(1)(g) and (2)(d)(ii), means a track of professional education which is specifically established to prepare an individual to practice or engage in mental health therapy.

(4) "Earned a masters or doctoral degree in a discipline which is a prerequisite for licensure under this chapter", as used in Subsection 58-60-107(7) and 58-60-116(1)(b), means completion of the education requirements set forth in Subsections 58-60-205(1)(d) and (g) and Subsection R156-60a-102(3).

(5) "LCSW" means a licensed clinical social worker.

(6) "SSW" means a licensed social service worker.

(7) "Supervised practice of mental health therapy by a clinical social worker", as used in Subsection 58-60-202(3)(a), means that the CSW or LCSW-temporary is supervised by a LCSW meeting the requirements of Sections R156-60a-302e and R156-60a-601.

(8) "Temporary certificate", as used in Section 58-60-116, means a temporary license issued by the division to practice as a LCSW-temporary under the supervision of a LCSW in accordance with Section 58-60-116 and Sections R156-60a-302c, R156-60a-302e and R156-60a-601.

R156-60a-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 60.

R156-60a-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.

R156-60a-302a. Education Requirements for Licensure as a SSW.

In accordance with Subsection 58-60-205(3)(d)(ii), a master's degree qualifying an applicant for licensure as a SSW shall be in a field of social work, psychology, marriage and family therapy, or professional counseling.

R156-60a-302b. Experience Requirements for Licensure as a SSW.

In accordance with Subsection 58-60-205(3)(d)(iii) and (iv), the 2000 hours of supervised social work activity or the one year of qualifying experience for licensure as a SSW shall:

(1) be performed as an employee of an agency providing social work services and activities; and

(2) be performed according to a written social work job description approved by the LCSW or CSW supervisor.

R156-60a-302c. Training Requirements for Licensure as a LCSW.

In accordance with Subsections 58-60-205(1)(d),(e),(f) and (g), and 58-60-202(3)(a), the 4000 hours of clinical social work and mental health therapy training qualifying an applicant for licensure as a LCSW shall:

(1) be obtained after completion of the education requirement set forth in Subsections 58-60-205(d) and (g) and shall not include any clinical practicum hours obtained as part of the education program;

(2) be completed over a duration of not less than two years;

(3) be completed while the CSW or LCSW-temporary is an employee of a public or private agency engaged in mental health therapy;

(4) be completed under a program of supervision by a LCSW meeting the requirements of Sections R156-60a-302e and R156-60a-601; and

(5) include the following training requirements:

(a) individual, family, and group therapy;

(b) crisis intervention;

(c) intermediate treatment; and

(d) long term treatment.

R156-60a-302d. Examination Requirements.

(1) In accordance with Subsection 58-60-205(1)(h), the examination requirements for licensure as a LCSW include passing the Clinical Examination of the AASSWB or the Clinical Social Workers Examination of the State of California.

(2) In accordance with Subsection 58-60-205(2)(e), the examination requirements for licensure as a CSW shall include passing the Intermediate, Advanced, or Clinical Examination of the AASSWB.

(3) In accordance with Subsection 58-60-205(3)(e), the examination requirements for licensure as a SSW shall include passing the Basic Examination of the AASSWB.

(4) In accordance with Section 58-1-309, all applicants for licensure as a SSW, CSW and LCSW shall pass the Utah Social Work Law, Rules and Ethics Examination with a passing score of 75%.

R156-60a-302e. Requirements to Become a LCSW Supervisor.

In accordance with Subsections 58-60-202(2)(c), 58-60-202(3)(a) and 58-60-205(1)(e) and (f), in order for an LCSW to supervise a CSW or LCSW-temporary, the LCSW shall:

(1) be currently licensed in good standing as a LCSW; and

(2) have engaged in active practice as a LCSW, including mental health therapy, for a period of not less than two years prior to supervising a CSW or LCSW-temporary.

R156-60a-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the

renewal date for the two-year renewal cycle applicable to licenses under Title 58, Chapter 60, is established by rule in Section R156-1-308.

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

R156-60a-304. Continuing Education Requirements for LCSW.

In accordance with Subsection 58-60-105(1), the continuing education requirements for LCSWs are defined, clarified and established as follows:

(1) During each two year period commencing January 1st of each even numbered year, a LCSW shall be required to complete not less than 40 hours of continuing education.

(2) The required number of hours of continuing education for an individual who first becomes licensed during the two year period shall be decreased in a pro-rata amount equal to any part of that two year period preceding the date on which that individual first became licensed.

(3) Continuing education under this section shall:

(a) be relevant to the licensee's professional practice;

(b) be prepared and presented by individuals who are qualified by education, training, and experience; and

(c) have a method of verification of attendance.

(4) Credit for continuing education shall be recognized in accordance with the following:

(a) unlimited hours shall be recognized for continuing education completed in blocks of time of not less than 50 minutes in formally established classroom courses, seminars, lectures, conferences, or training sessions which are approved by, conducted by or under sponsorship of:

(i) the National Association of Social Workers;

(ii) mental health agencies;

(iii) recognized universities and colleges; and

(iv) professional associations, societies and organizations representing a licensed profession whose program objectives relate to the practice of social work; and

(b) a maximum of ten hours per two year period may be recognized for teaching continuing education relevant to clinical social work or mental health therapy.

(5) A licensee is responsible to complete relevant continuing education, to document completion of the continuing education, and to maintain the records of the continuing education completed for a period of four years after close of the two year period to which the records pertain.

(6) A licensee who documents he is engaged in full time activities or is subjected to circumstances which prevent that licensee from meeting the continuing education requirements established under this section may be excused from the requirement for a period of up to three years. However, it is the responsibility of the licensee to document the reasons and justify why the requirement could not be met.

R156-60a-308. Reinstatement of a LCSW License which has Expired Beyond Two Years.

In accordance with Subsection 58-1-308(6) and Section R156-1-308e, an applicant for reinstatement for licensure as a LCSW, whose license expired after two years following the expiration of that license, shall:

(1) upon request, meet with the board to evaluate the applicant's ability to safely and competently practice clinical social work and mental health therapy;

(2) upon recommendation of the board, establish a plan of supervision under an approved supervisor which may include up to 4000 hours of clinical social work and mental health therapy training as a CSW or LCSW-temporary before qualifying for reinstatement of the LCSW license;

(3) pass the Utah Social Work Law, Rules and Ethics Examination with a passing score of 75%;

(4) pass the Clinical Examination of the AASSWB if it is determined by the board that examination or reexamination is necessary to demonstrate the applicant's ability to safely and competently practice clinical social work and mental health therapy; and

(5) complete a minimum of 40 hours of continuing education in subjects determined by the board as necessary to ensure the applicant's ability to safely and competently practice clinical social work and mental health therapy.

R156-60a-309. Exemption from Licensure Clarified.

The exemption specified in Subsection 58-60-107(5) does not permit an individual to engage in the 4000 hours of clinical social work and mental health therapy training without first becoming licensed as a CSW or LCSW-temporary, except as provided in Subsection 58-60-107(7).

R156-60a-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) using the abbreviated title of LCSW unless licensed as a LCSW;

(2) using the abbreviated title of CSW unless licensed as a CSW;

(3) using the abbreviated title of SSW unless licensed as a SSW;

(4) acting as a supervisor or accepting supervision of a supervisor without complying with or ensuring the compliance with the requirements of Sections R156-60a-302d and R156-60a-601.

(5) engaging in the supervised practice of mental health therapy as a licensed CSW or LCSW-temporary unless:

(a) the licensee has completed a clinical practicum as part of the Council on Social Work Education (CSWE) accredited master's degree program; and

(b) the scope of practice is otherwise within the licensee's competency, abilities and education;

(6) engaging in the supervised practice of mental health therapy when not in compliance with Subsections R156-60a-302c(4) and R156-60a-601(7);

(7) engaging in or aiding or abetting conduct or practices which are dishonest, deceptive or fraudulent;

(8) engaging in or aiding or abetting deceptive or fraudulent billing practices;

(9) failing to establish and maintain professional boundaries with a client or former client;

(10) engaging in dual or multiple relationships with a client or former client in which there is a risk of or potential harm to the client;

(11) engaging in sexual activities or sexual contact with a

client with or without client consent;

(12) engaging in sexual activities or sexual contact with a former client within two years of documented termination of services when there is no risk of exploitation or potential harm to the client;

(13) engaging in sexual activities or sexual contact with client's relatives or other individuals with whom the client maintains a personal relationship when there is a risk of exploitation or potential harm to the client;

(14) embracing, massaging, cuddling, caressing, or performing any other act of physical contact with a client when there is a risk of exploitation or potential harm to the client resulting from the contact;

(15) engaging in or aiding or abetting sexual harassment or any conduct which is exploitive or abusive with respect to a student, trainee, employee, or colleague with whom the licensee has supervisory or management responsibility;

(16) failing to exercise professional discretion and impartial judgement required for the performance of professional activities, duties and functions;

(17) failing to render impartial, objective, and informed services, recommendations or opinions with respect to custodial or parental rights, divorce, domestic relationships, adoptions, sanity, competency, mental health or any other determination concerning an individual's civil or legal rights;

(18) exploiting a client or former client for personal gain;

(19) exploiting a person who has a personal relationship with a client for personal gain;

(20) failing to maintain client records including records of assessment, treatment, progress notes and billing information for a period of not less than ten years from the documented termination of services to the client;

(21) failing to provide client records in a reasonable time upon written request of the client, or legal guardian;

(22) failing to obtain informed consent from the client or legal guardian before taping, recording or permitting third party observations of client activities or records;

(23) failing to protect the confidences of other persons named or contained in the client records; and

(24) failing to abide by the provisions of the Code of Ethics of the National Association of Social Workers (NASW) as adopted by the Delegate Assembly of August 1996, which is adopted and incorporated by reference.

R156-60a-601. Duties and Responsibilities of a LCSW Supervisor.

The duties and responsibilities of a LCSW supervisor, are further defined, clarified or established as follows:

(1) be professionally responsible for the acts and practices of the CSW or LCSW-temporary;

(2) be engaged in a relationship with the CSW or LCSW-temporary in which the supervisor is independent from control by the CSW or LCSW-temporary and in which the ability of the supervisor to supervise and direct the practice of the CSW or LCSW-temporary is not compromised;

(3) be available for advice, consultation, and direction consistent with the standards and ethics of the profession;

(4) provide periodic review of the client records assigned to the CSW or LCSW-temporary;

(5) comply with the confidentiality requirements of Section 58-60-114;

(6) monitor the performance of the CSW or LCSW-temporary for compliance with laws, rules, standards and ethics applicable to the practice of social work;

(7) supervise only a CSW or LCSW-temporary who is an employee of a public or private mental health agency;

(8) supervise not more than three individuals who are lawfully engaged in mental health therapy training, unless otherwise approved by the board;

(9) not begin supervision of a CSW or LCSW-temporary until having met the requirements of Section R156-60a-302e; and

(10) in accordance with Subsections 58-60-205(1)(e) and (f), submit to the division on forms made available by the division:

(a) documentation of the training hours completed by the CSW or LCSW-temporary; and

(b) an evaluation of the CSW or LCSW-temporary, with respect to the quality of the work performed and the competency of the CSW or LCSW-temporary to practice clinical social work and mental health therapy.

R156-60a-602. Supervision - Scope of Practice - SSW.

In accordance with Subsections 58-60-202(4) and (5), supervision and scope of practice of a SSW is further defined, clarified and established as follows:

(1) supervision of an SSW by a licensed mental health therapist is only required where mental health therapy services are provided; and

(2) the scope of practice of the SSW shall be in accordance with a written social work job description approved by the licensed mental health therapy supervisor, except that the SSW may not engage in the supervised or unsupervised practice of mental health therapy.

KEY: licensing, social workers

June 4, 1998 **58-60-201**
58-1-106(1)
58-1-202(1)

R156. Commerce, Occupational and Professional Licensing.
R156-60b. Marriage and Family Therapist Licensing Act Rules.
R156-60b-101. Title.

These rules are known as the "Marriage and Family Therapist Licensing Act Rules".

R156-60b-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 60, as used in Title 58, Chapters 1 and 60, or these rules:

(1) "AAMFT" means the American Association for Marriage and Family Therapy.

(2) "Candidacy status by the COAMFTE" means that an education program leading to an earned master's or doctor's degree in marriage and family therapy has been formally recognized by COAMFTE as a candidate for accreditation.

(3) "COAMFTE" means the Commission on Accreditation for Marriage and Family Therapy Education.

(4) "Earned a masters or doctoral degree in a discipline which is a prerequisite for licensure under this chapter", as used in Subsection 58-60-116(1)(b), means completion of the education requirements set forth in Subsections 58-60-305(4) and R156-60b-302a(2).

(5) "Face to face supervision", as used in Subsection 58-60-305(6), means one to one supervision between the supervisor and the supervisee or group supervision between the supervisor and up to two supervisees. During group supervision, one and a half hours is equivalent to one clock hour of supervision.

(6) "Temporary certificate", as used in Section 58-60-116, means a temporary license issued by the division to practice as a marriage and family therapist-temporary under the supervision of an approved supervisor in accordance with Section 58-60-116 and Sections R156-60b-302b and R156-60b-302d.

(7) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 60, is further defined, in accordance with Subsection 58-1-203(5), in Section R156-60b-502.

R156-60b-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 60, Part 3.

R156-60b-104. Organization - Relationship to R156-1.

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

R156-60b-302a. Qualifications for Licensure - Education Requirements.

(1) An institution or program of higher education qualifying an applicant for licensure as a marriage and family therapist, to be recognized or approved by the division in collaboration with the board under Subsections 58-60-305(4)(a) and (c), shall be a marriage and family therapy education program accredited by or in candidacy status by the COAMFTE at the time the applicant received the required earned degree.

(2) An earned doctorate or master's degree in a field of education emphasizing human behavioral studies and skill in therapy or counseling qualifying an applicant for licensure as a marriage and family therapist under Subsections 58-60-305(4)(b) and (d), shall:

(a) be accredited by a regional institutional accrediting body identified in the "Accredited Institutions of Postsecondary Education", 1996-97 edition, published for the Commission of Recognition of Postsecondary Accreditation of the American Council on Education; and

(b) include successful completion of the following graduate level course work and a clinical practicum:

(a) six semester hours/nine quarter hours of course work in theoretical foundations of marital and family therapy;

(b) nine semester hours/12 quarter hours of course work in assessment and treatment in marriage and family therapy;

(c) six semester hours/nine quarter hours of course work in human development and family studies which include ethnic minority issues, and gender issues including sexuality, sexual functioning, and sexual identity;

(d) three semester hours/three quarter hours in professional ethics;

(e) three semester hours/three quarter hours in research methodology and data analysis;

(f) three semester hours/three quarter hours in electives in marriage and family therapy; and

(g) a clinical practicum of not less than 500 hours of face to face supervised clinical practice of which not less than 250 hours shall be with couples or families who are physically present in the therapy room.

(3) An earned doctorate or master's degree in a field of religious study with a documented emphasis in marriage and family therapy qualifying an applicant for licensure as a marriage and family therapist under Subsection 58-60-305(4)(e), shall meet the requirements set forth under Subsections (2)(a) through (g).

R156-60b-302b. Qualifications for Licensure - Experience Requirements.

(1) In accordance with Subsections 58-60-305(5) and (6), each individual entering into supervised marriage and family therapy training and mental health therapy training under an approved supervisor shall obtain a license as a marriage and family therapist-temporary under Section 58-60-116.

(2) A change in supervisor must be submitted to the Division on forms prescribed by the Division.

(3) Marriage and family therapy and mental health therapy training consisting of a minimum of 4,000 hours qualifying an applicant for licensure as a marriage and family therapist under Subsections 58-60-305(5) and (6), to be approved by the division in collaboration with the board, shall:

(a) be completed in not less than two years;

(b) be completed while the applicant is an employee of a public or private agency engaged in mental health therapy;

(c) be completed under a program of supervision by a marriage and family therapist meeting the requirements under Sections R156-60b-302(e) and R156-60b-302(f);

(d) in accordance with Subsection 58-60-305(6), include a minimum of 500 hours in conjoint, couple or family therapy; and

(e) hours completed in a group therapy session may count only if the supervisee functions as the primary therapist.

(4) An applicant for licensure as a marriage and family

therapist, who is not seeking licensure by endorsement based upon licensure in another jurisdiction, who has completed all or part of the marriage and family therapy training requirements under Subsection (3) outside the state, may receive credit for that training completed outside of the state if it is demonstrated by the applicant that the training completed outside the state is equivalent to and in all respects meets the requirements for training under Subsections 58-60-305(5) and (6), and Subsection R156-60b-302b(3). The applicant shall have the burden of demonstrating by evidence satisfactory to the division and board that the training completed outside the state is equivalent to and in all respects meets the requirements under this subsection.

R156-60b-302c. Qualifications for Licensure - Examination Requirements.

The examination requirement which must be met by an applicant for licensure as a marriage and family therapist under Subsection 58-60-305(7) is passing the Examination of Marital and Family Therapy written for the Association of Marital and Family Therapy Regulatory Boards.

R156-60b-302d. Qualifications for Designation as an Approved Marriage and Family Therapist Training Supervisor and Mental Health Therapist Training Supervisor.

To be approved by the division in collaboration with the board as a supervisor of marriage and family therapist and mental health therapy training required under Subsections 58-60-305(5) and (6) and Section 58-60-116, an individual shall:

(1) be currently approved by AAMFT as a marriage and family therapist supervisor; or

(2) be currently licensed or certified in good standing as a marriage and family therapist in the state in which the supervised training is being performed; and meet the following requirements:

(a) demonstrate practice as a licensed marriage and family therapist engaged in the practice of mental health therapy for not less that 4,000 hours in a period of not less than two years;

(b) successfully complete 30 clock hours of instruction approved by the division in collaboration with the board in the theory, practice, and process of supervision;

(c) successfully complete 36 clock hours of training related to the practice of supervision under the direction of an approved marriage and family therapist training supervisor; and

(d) if providing supervision within the state, submit an application on forms available from the division and be approved as a supervisor by the division in collaboration with the board prior to engaging in supervision of training required for licensure; or

(3) if supervision was provided outside the state, submit evidence of qualifications as a supervisor on forms available from the division providing evidence that during the period of supervision of an applicant for licensure, that the supervisor in all respect met the qualifications for a supervisor within the state under this section.

(4) A marriage and family therapist approved as a supervisor under Subsection (2) must reapply for approval every five years.

R156-60b-302e. Duties and Responsibilities of a Supervisor of Marriage and Family Therapist and Mental Health Therapy Training.

The duties and responsibilities of a marriage and family therapist supervisor are further defined, clarified or established as follows:

(1) be professionally responsible for the acts and practices of the supervisee which are a part of the required supervised training;

(2) be engaged in a relationship with the supervisee in which the supervisor is independent from control by the supervisee and in which the ability of the supervisor to supervise and direct the practice of the supervisee is not compromised;

(3) be available for advice, consultation, and direction consistent with the standards and ethics of the profession and the requirements suggested by the total circumstances including the supervisee's level of training, diagnosis of patients, and other factors known to the supervisee and supervisor;

(4) provide periodic review of the client records assigned to the supervisee;

(5) comply with the confidentiality requirements of Section 58-60-114;

(6) monitor the performance of the supervisee for compliance with laws, standards, and ethics applicable to the practice of marriage and family therapy and report violations to the division;

(7) supervise only a supervisee who is an employee of a public or private mental health agency;

(8) submit appropriate documentation to the division with respect to all work completed by the supervisee evidencing the performance of the supervisee during the period of supervised marriage and family therapist training and mental health therapist training, including the supervisor's evaluation of the supervisee's competence in the practice of marriage and family therapy and mental health therapy;

(9) complete four hours of the required 40 hours of continuing professional education directly related to marriage and family therapy supervisor training in each two year continuing professional education period established; and

(10) supervise not more than three supervisees at any given time unless approved by the board and division.

R156-60b-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licenses under Title 58, Chapter 60, is established by rule in Section R156-1-308.

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

R156-60b-304. Continuing Education.

(1) There is hereby established a continuing professional education requirement for all individuals licensed under Title 58, Chapter 60, Part 3, as a marriage and family therapist.

(2) During each two year period commencing September 30th of each even numbered year, a marriage and family therapist shall be required to complete not less than 40 hours of qualified professional education directly related to the licensee's

professional practice.

(3) 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.

(4) Qualified 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 mental health therapist;

(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.

(5) Credit for 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 14 hours per two year period may be recognized for teaching in a college or university, teaching qualified continuing professional education courses in the field of mental health therapy, or supervision of an individual completing his experience requirement for licensure in a mental health therapist license classification;

(c) a maximum of six hours per two year period may be recognized for clinical readings directly related to practice as a mental health therapist;

(6) A licensee shall be responsible for maintaining competent records of completed qualified professional education for a period of four years after close of the two year period to which the records pertain. It is the responsibility of the licensee to maintain such information with respect to qualified professional education to demonstrate it meets the requirements under this section.

(7) A licensee who documents he is engaged in full time activities or is subjected to circumstances which prevent that licensee from meeting the continuing 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.

R156-60b-306. License Reinstatement - Requirements.

An applicant for reinstatement of his license after two years following expiration of that license shall be required to meet the following reinstatement requirements:

(1) upon request, meet with the board for the purpose of evaluating the applicant's current ability to engage safely and competently in practice as a marriage and family therapist and to make a determination of any additional education, experience or examination requirements which will be required before reinstatement;

(2) upon the recommendation of the board, establish a plan of supervision under an approved supervisor which may include up to 4000 hours of marriage and family therapy and mental health therapy training as a marriage and family therapist-temporary;

(3) pass the Examination of Marital and Family Therapy of the American Association for Marriage and Family Therapists if it is determined by the board that current taking and passing of the examination is necessary to demonstrate the applicant's ability to engage safely and competently in practice as a marriage and family therapist; and

(4) complete a minimum of 40 hours of professional education in subjects determined by the board as necessary to ensure the applicant's ability to engage safely and competently in practice as a marriage and family therapist.

R156-60b-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) acting as a supervisor or accepting supervision of a supervisor without complying with or ensuring the compliance with the requirements of Sections R156-60b-302e and R156-60b-302f;

(2) engaging in the supervised practice of mental health therapy when not in compliance with Subsections R156-60b-302b(3) and R156-60b-302f(7);

(3) engaging in and aiding or abetting conduct or practices which are dishonest, deceptive or fraudulent;

(4) engaging in or aiding or abetting deceptive or fraudulent billing practices;

(5) failing to establish and maintain appropriate professional boundaries with a client or former client;

(6) engaging in dual or multiple relationships with a client or former client in which there is a risk of exploitation or potential harm to the client;

(7) engaging in sexual activities or sexual contact with a client with or without client consent;

(8) engaging in sexual activities or sexual contact with a former client within two years of documented termination of services;

(9) engaging in sexual activities or sexual contact at any time with a former client who is especially vulnerable or susceptible to being disadvantaged because of the client's personal history, current mental status, or any condition which could reasonably be expected to place the client at a disadvantage recognizing the power imbalance which exists or may exist between the marriage and family therapist and the client;

(10) engaging in sexual activities or sexual contact with client's relatives or other individuals with whom the client maintains a relationship when that individual is especially vulnerable or susceptible to being disadvantaged because of his personal history, current mental status, or any condition which could reasonably be expected to place that individual at a disadvantage recognizing the power imbalance which exists or may exist between the marriage and family therapist and that individual;

(11) physical contact with a client when there is a risk of

exploitation or potential harm to the client resulting from the contact;

(12) engaging in or aiding or abetting sexual harassment or any conduct which is exploitive or abusive with respect to a student, trainee, employee, or colleague with whom the licensee has supervisory or management responsibility;

(13) failing to render impartial, objective, and informed services, recommendations or opinions with respect to custodial or parental rights, divorce, domestic relationships, adoptions, sanity, competency, mental health or any other determination concerning an individual's civil or legal rights;

(14) exploiting a client for personal gain;

(15) use of a professional client relationship to exploit a person that is known to have a personal relationship with a client for personal gain;

(16) failing to maintain appropriate client records for a period of not less than ten years from the documented termination of services to the client;

(17) failing to obtain informed consent from the client or legal guardian before taping, recording or permitting third party observations of client care or records;

(18) failure to cooperate with the Division during an investigation;

(19) failure to abide by the provisions of the Model Code of Ethics for Marriage and Family Therapists as adopted by the American Association of Marriage and Family Therapy Regulatory Boards (AAMFTRB) effective October 7, 1993, which is adopted and incorporated by reference; and

(20) failure to abide by the provisions of the Code of Ethics of the American Association for Marriage and Family Therapy (AAMFT) as adopted by the AAMFT effective August 1, 1991, which is adopted and incorporated by reference.

KEY: licensing, therapists, marriage and family therapist*
June 16, 1998 **58-1-106(1)**
58-1-202(1)
58-60-301

R156. Commerce, Occupational and Professional Licensing.
R156-60c. Professional Counselor Licensing Act Rules.
R156-60c-101. Title.

These rules are known as the "Professional Counselor Licensing Act Rules".

R156-60c-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 60, as used in Title 58, Chapters 1 and 60, or these rules:

(1) "Internship" means:

(a) 600 clock hours of supervised counseling experience of which 200 hours must be in the provision of mental health therapy; or

(b) five years of supervised experience engaged in the practice of mental health therapy.

(2) "Practicum" means a supervised counseling experience in an appropriate setting of at least three semester or five quarter hours duration for academic credit.

(3) "Temporary certificate", as used in Section 58-60-116, means a temporary license issued by the division to practice as a professional counselor-temporary under the supervision of an approved supervisor in accordance with Section 58-60-116 and Sections R156-60c-302b and R156-60c-401.

(4) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 60 is further defined, in accordance with Subsection 58-1-203(5), in Section R156-60c-502.

R156-60c-103. Authority - Purpose.

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 60, Part 4.

R156-60c-104. Organization - Relationship to Rule R156-1.

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

R156-60c-302a. Qualifications for Licensure - Education Requirements.

(1) The recognized accredited institution of higher education in Subsection 58-60-405(4) is one which is accredited by a regional institutional accrediting body identified in the "Accredited Institutions of Postsecondary Education", 1996-97 edition, published for the Commission of Recognition of Postsecondary Accreditation of the American Council on Education.

(2) The core curriculum in Subsection 58-60-405(4)(a) shall consist of the following courses:

(a) a minimum of two semester or three quarter hours shall be in ethical standards, issues, behavior and decision-making;

(b) a minimum of two semester or three quarter hours shall be in professional roles and functions, trends and history, professional preparation standards and credentialing;

(c) a minimum of two semester or three quarter hours shall be in individual theory;

(d) a minimum of two semester or three quarter hours shall be in group theory;

(e) a minimum of six semester or nine quarter hours shall be in human growth and development. Examples are:

(i) physical, social and psychosocial development;

(ii) personality development;

(iii) learning theory and cognitive development;

(iv) emotional development;

(v) life-span development;

(vi) enhancing wellness;

(vii) human sexuality; and

(viii) career development;

(f) a minimum of three semester or five quarter hours shall be in cultural foundations. Examples are:

(i) human diversity;

(ii) multicultural issues and trends;

(iii) gender issues;

(iv) exceptionality;

(v) disabilities;

(vi) aging; and

(vii) discrimination;

(g) a minimum of six semester or nine quarter hours shall be in the application of individual and group therapy and other therapeutic methods and interventions. Examples are:

(i) building, maintaining and terminating relationships;

(ii) solution-focused and brief therapy;

(iii) crisis intervention;

(iv) prevention of mental illness;

(v) treatment of specific syndromes;

(vi) case conceptualization;

(vii) referral, supportive and follow-up services; and

(viii) lab not to exceed four semester or six quarter hours;

(h) a minimum of two semester or three quarter hours shall be in psychopathology and DSM classification;

(i) a minimum of two semester or three quarter hours shall be in dysfunctional behaviors. Examples are:

(i) addictions;

(ii) substance abuse;

(iii) cognitive dysfunction;

(iv) sexual dysfunction; and

(v) abuse and violence;

(j) a minimum of two semester or three quarter hours shall be in a foundation course in test and measurement theory;

(k) a minimum of two semester or three quarter hours shall be in an advanced course in assessment of mental status;

(l) a minimum of three semester or five quarter hours shall be in research and evaluation. This shall not include a thesis, dissertation, or project, but may include:

(i) statistics;

(ii) research methods, qualitative and quantitative;

(iii) use and interpretation of research data;

(iv) evaluation of client change; and

(v) program evaluation;

(m) a minimum of three semester or five quarter hours of practicum as defined in Subsection R156-60c-102(2);

(n) a minimum of six semester or nine quarter hours of internship as defined in Subsection R156-60c-102(1); and

(o) a minimum of 16 semester or 23 quarter hours of course work in the behavioral sciences. No more than six semester or nine quarter hours of credit for thesis, dissertation or project hours shall be counted toward the required core curriculum hours in this subsection. These hours are required beginning January 1, 1997.

(3) The supplemental course work shall consist of formal

graduate level work meeting the requirements of Subsections (1) and (2) in regularly offered and scheduled classes. University based directed reading courses may be approved at the discretion of the board.

(4) Professional counseling course work required in the core curriculum may be completed post degree.

R156-60c-302b. Qualifications for Licensure - Experience Requirements.

(1) In accordance with Subsections 58-60-405(5) and (6), each individual entering into supervised professional counselor training under an approved supervisor shall obtain a license as a professional counselor-temporary under Section 58-60-116.

(2) A change in supervisor must be submitted to the Division on forms prescribed by the Division.

(3) Professional counselor and mental health therapy training consisting of a minimum of 4,000 hours qualifying an applicant for licensure as a professional counselor under Subsections 58-60-405(5) and (6), to be approved by the division in collaboration with the board, shall:

(a) be completed in not less than two years;

(b) be completed while the applicant is an employee of a public or private agency engaged in mental health therapy under the supervision of an approved professional counselor, psychiatrist, psychologist, clinical social worker, registered psychiatric mental health nurse specialist, or marriage and family therapist; and

(c) be completed under a program of supervision by a mental health therapist meeting the requirements under Sections R156-60c-401 and R156-60c-402.

(4) An applicant for licensure as a professional counselor, who is not seeking licensure by endorsement based upon licensure in another jurisdiction, who has completed all or part of the professional counselor and mental health therapy training requirements under Subsection (3) outside the state may receive credit for that training completed outside of the state if it is demonstrated by the applicant that the training completed outside the state is equivalent to and in all respects meets the requirements for training under Subsections 58-60-405(5) and (6), and Subsections R156-60c-302b(3). The applicant shall have the burden of demonstrating by evidence satisfactory to the division and board that the training completed outside the state is equivalent to and in all respects meets the requirements under this Subsection.

R156-60c-302c. Qualifications for Licensure - Examination Requirements.

(1) The examination requirements which must be met by an applicant for licensure as a professional counselor under Subsection 58-60-405(7) are established as follows:

(a) the Utah Professional Counselor Law, Rules and Ethics Examination with a score of at least 75;

(b) the National Counseling Examination of the National Board for Certified Counselors with the minimum criterion score as set by the National Board for Certified Counselors; and

(c) the National Clinical Mental Health Counseling Examination of the National Board of Certified Counselors with the minimum criterion score as set by the National Board for Certified Counselors. This examination is required beginning January 1, 1997.

R156-60c-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licenses under Title 58, Chapter 60, is established by rule in Section R156-1-308.

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

R156-60c-304. Continuing Education.

(1) There is hereby established a continuing professional education requirement for all individuals licensed under Title 58, Chapter 60, Part 4, as a professional counselor.

(2) During each two year period commencing September 30th of each even numbered year, a professional counselor shall be required to complete not less than 40 hours of qualified professional education directly related to the licensee's professional practice.

(3) 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.

(4) Qualified 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 mental health therapist professional counselor;

(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.

(5) Credit for 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 10 hours per two year period may be recognized for teaching in a college or university, teaching qualified continuing professional education courses in the field of mental health therapy professional counseling, or supervision of an individual completing his experience requirement for licensure in a mental health therapist license classification; and

(c) a maximum of six hours per two year period may be recognized for clinical readings directly related to practice as a mental health therapist professional counselor.

(6) A licensee shall be responsible for maintaining competent records of completed qualified professional education for a period of four years after close of the two year period to which the records pertain. It is the responsibility of the licensee to maintain such information with respect to

qualified professional education to demonstrate it meets the requirements under this Section.

(7) A licensee who documents he is engaged in full time activities or is subjected to circumstances which prevent that licensee from meeting the continuing 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.

R156-60c-306. License Reinstatement - Requirements.

In addition to the requirements established in Section R156-1-308e, an applicant for reinstatement of his license after two years following expiration of that license shall be required to meet the following reinstatement requirements:

(1) if deemed necessary, meet with the board for the purpose of evaluating the applicant's current ability to engage safely and competently in practice as a professional counselor and to make a determination of any additional education, experience or examination requirements which will be required before reinstatement;

(2) upon the recommendation of the board, establish a plan of supervision under an approved supervisor which may include up to 4,000 hours of professional counselor and mental health therapy training as a professional counselor-temporary;

(3) pass the Utah Professional Counselor Law, Rules and Ethics Examination;

(4) pass the National Counseling Examination of the National Board for Certified Counselors if it is determined by the board that current taking and passing of the examination is necessary to demonstrate the applicant's ability to engage safely and competently in practice as a professional counselor;

(5) pass the National Clinical Mental Health Counseling Examination if it is determined by the board that current taking and passing of the examination is necessary to demonstrate the applicant's ability to engage safely and competently in practice as a professional counselor; and

(6) complete a minimum of 40 hours of professional education in subjects determined by the board as necessary to ensure the applicant's ability to engage safely and competently in practice as a professional counselor.

R156-60c-401. Qualifications for Designation as an Approved Professional Counselor Training Supervisor and Mental Health Therapist Training Supervisor.

To be approved by the division in collaboration with the board as a supervisor of professional counselor and mental health therapy training required under Subsections 58-60-405(5) and (6), an individual shall:

(1) be currently licensed in good standing in a profession set forth for a supervisor under Subsection 58-60-405(5) in the state in which the supervised training is being performed;

(2) demonstrate practice as a licensee engaged in the practice of mental health therapy for not less than 4,000 hours in a period of not less than two years, or equivalent experience as approved by the division and board;

(3) if providing supervision within the state, submit an application on forms available from the division and be approved as a supervisor by the division in collaboration with the board prior to engaging in supervision of training required for licensure; and

(4) if supervision was provided outside the state, submit evidence of qualifications as a supervisor on forms available from the division providing evidence that during the period of supervision of an applicant for licensure, that the supervisor in all respects met the qualifications for a supervisor within the state under this section.

R156-60c-402. Duties and Responsibilities of a Supervisor of Professional Counselor and Mental Health Therapy Training.

The duties and responsibilities of a licensee providing supervision to an individual completing supervised professional counselor and mental health therapy training requirements for licensure as a professional counselor are to:

(1) be professionally responsible for the acts and practices of the supervisee which are a part of the required supervised training;

(2) be engaged in a relationship with the supervisee in which the supervisor is independent from control by the supervisee and in which the ability of the supervisor to supervise and direct the practice of the supervisee is not compromised;

(3) be available for advice, consultation, and direction consistent with the standards and ethics of the profession and the requirements suggested by the total circumstances including the supervisee's level of training, diagnosis of patients, and other factors known to the supervisee and supervisor;

(4) provide periodic review of the client records assigned to the supervisee;

(5) comply with the confidentiality requirements of Section 58-60-114;

(6) monitor the performance of the supervisee for compliance with laws, standards, and ethics applicable to the practice of professional counseling and report violations to the division;

(7) supervise only a supervisee who is an employee of a public or private mental health agency;

(8) submit appropriate documentation to the division with respect to all work completed by the supervisee evidencing the performance of the supervisee during the period of supervised professional counselor and mental health therapy training, including the supervisor's evaluation of the supervisee's competence in the practice of professional counseling and mental health therapy; and

(9) supervise not more than three supervisees at any given time unless approved by the board and division.

R156-60c-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) acting as a supervisor or accepting supervision of a supervisor without complying with or ensuring the compliance with the requirements of Sections R156-60c-401 and R156-60c-402;

(2) engaging in the supervised practice of mental health therapy when not in compliance with Subsections R156-60c-302b(3) and R156-60c-402(7);

(3) engaging in and aiding or abetting conduct or practices

which are dishonest, deceptive or fraudulent;

(4) engaging in or aiding or abetting deceptive or fraudulent billing practices;

(5) failing to establish and maintain appropriate professional boundaries with a client or former client;

(6) engaging in dual or multiple relationships with a client or former client in which there is a risk of exploitation or potential harm to the client;

(7) engaging in sexual activities or sexual contact with a client with or without client consent;

(8) engaging in sexual activities or sexual contact with a former client within two years of documented termination of services;

(9) engaging in sexual activities or sexual contact at any time with a former client who is especially vulnerable or susceptible to being disadvantaged because of the client's personal history, current mental status, or any condition which could reasonably be expected to place the client at a disadvantage recognizing the power imbalance which exists or may exist between the professional counselor and the client;

(10) engaging in sexual activities or sexual contact with client's relatives or other individuals with whom the client maintains a relationship when that individual is especially vulnerable or susceptible to being disadvantaged because of his personal history, current mental status, or any condition which could reasonably be expected to place that individual at a disadvantage recognizing the power imbalance which exists or may exist between the professional counselor and that individual;

(11) physical contact with a client when there is a risk of exploitation or potential harm to the client resulting from the contact;

(12) engaging in or aiding or abetting sexual harassment or any conduct which is exploitive or abusive with respect to a student, trainee, employee, or colleague with whom the licensee has supervisory or management responsibility;

(13) failing to render impartial, objective, and informed services, recommendations or opinions with respect to custodial or parental rights, divorce, domestic relationships, adoptions, sanity, competency, mental health or any other determination concerning an individual's civil or legal rights;

(14) exploiting a client for personal gain;

(15) use of a professional client relationship to exploit a person that is known to have a personal relationship with a client for personal gain;

(16) failing to maintain appropriate client records for a period of not less than ten years from the documented termination of services to the client;

(17) failing to obtain informed consent from the client or legal guardian before taping, recording or permitting third party observations of client care or records;

(18) failure to cooperate with the Division during an investigation; and

(19) failure to abide by the provision of the American Counseling Association's Ethical Standards, March 1988, which is adopted and incorporated by reference.

KEY: licensing, counselors, mental health, professional counselors*

June 16, 1998 **58-60-401**
58-1-106(1)
58-1-202(1)

R156. Commerce, Occupational and Professional Licensing.
R156-63. Security Personnel Licensing Act Rules.
R156-63-101. Title.

These rules are known as the "Security Personnel Licensing Act Rules."

R156-63-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 63, as used in Title 58, Chapters 1 and 63 or these rules:

(1) "Approved basic education and training programs" as used in these rules means basic education and training that meets the standards set forth in Sections R156-63-602, R156-63-603 and R156-63-604 and that is approved by the division.

(2) "Contract security company" includes:

(a) a peace officer who engages in providing security or guard services when acting in a capacity other than as an employee of the law enforcement agency by whom he is employed, or for other than the regular salary, whether at regular pay or overtime pay, from the law enforcement agency by whom he is employed; but does not include:

(b) a company which hires as employees, individuals to provide security or guard services for the purpose of protecting tangible personal property, real property, or the life and well being of personnel employed by, or animals owned by or under the responsibility of the that company, as long as the security or guard services provided by the company do not benefit any person other than the employing company.

(3) "Employee" means an individual providing services in the security guard industry for compensation when the amount of compensation is based directly upon the security guard services provided and upon which the employer is required under law to withhold federal and state taxes, and for whom the employer is required under law to provide worker's compensation insurance coverage and pay unemployment insurance.

(4) "Immediate supervision" means the supervisor is available for immediate voice communication and can be available for in-person consultation within a reasonable period of time with an on-the-job trainee.

(5) "Officer" as used in Subsections 58-63-201(1)(a) and R156-63-302a(1)(b) means a manager, director, or administrator of a contract security company.

(6) "Qualified continuing education" as used in these rules means continuing education that meets the standards set forth in Subsection R156-63-304.

(7) "Qualifying agent" means an individual who is an officer, director, partner, proprietor or manager of a contract security company who exercises material authority in the conduct of the contract security company's business by making substantive technical and administrative decisions relating to the work performed for which a license is required under this chapter.

(8) "Supervised on-the-job training" means training of an armed or unarmed private security officer or alarm response runner, under the immediate supervision of a licensed private security officer who has been assigned to train and develop the on-the-job trainee.

(9) "Unprofessional conduct," as defined in Title 58, Chapters 1 and 63, is further defined, in accordance with Subsection 58-1-203(5), in Section R156-63-502.

R156-63-103. 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 63.

R156-63-104. 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.

R156-63-302a. Qualifications for Licensure - Application Requirements.

(1) An application for licensure as a contract security company shall be accompanied by:

(a) a certification of criminal record history for the applicant's qualifying agent issued by the Bureau of Criminal Identification, Utah Department of Public Safety, in accordance with the provisions of Subsection 53-5-214(1)(f)(ii);

(b) two fingerprint cards for the applicant's qualifying agent, and all of the applicant's officers, directors, shareholders owning more than 5% of the stock, partners, proprietors, and responsible management personnel;

(c) a fee established in accordance with Section 63-38-3.2 equal to the cost of conducting a check of records of the Federal Bureau of Investigation, and Bureau of Criminal Identification, Utah Department of Public Safety, for each of the applicant's qualifying agent, officers, directors, shareholders owning more than 5% of the stock, partners, proprietors, and responsible management personnel; and

(d) a copy of the driver license or Utah identification card issued to the applicant's qualifying agent, officers, directors, shareholders owning more than 5% of the stock, partners, proprietors, and responsible management personnel.

(2) An application for licensure as an armed private security officer or alarm response runner shall be accompanied by:

(a) a certification of criminal record history for the applicant issued by the Bureau of Criminal Identification, Utah Department of Public Safety, in accordance with the provisions of Subsection 53-5-214(1)(f)(ii);

(b) two fingerprint cards for the applicant;

(c) a fee established in accordance with Section 63-38-3.2 equal to the cost of conducting a check of records of:

(i) the Federal Bureau of Investigation for the applicant; and

(ii) the Bureau of Criminal Identification of the Utah Department of Public Safety; and

(d) a copy of the driver license or Utah identification card issued to the applicant.

(3) An application for licensure as an unarmed private security officer or alarm response runner shall be accompanied by:

(a) a certification of criminal record history for the applicant issued by the Bureau of Criminal Identification, Utah Department of Public Safety, in accordance with the provisions of Subsection 53-5-214(1)(f)(ii);

(b) two fingerprint cards for the applicant;

(c) a fee established in accordance with Section 63-38-3.2

equal to the cost of conducting a check of records of:

(i) the Federal Bureau of Investigation for the applicant; and

(ii) the Bureau of Criminal Identification of the Utah Department of Public Safety; and

(d) a copy of the driver license or Utah identification card issued to the applicant.

(4) An applicant for licensure as an armed private security officer, unarmed private security officer, alarm response runner, or as a qualifying agent for a contract security company by a person currently licensed under Title 58, Chapter 63, shall submit an application for change in license classification and shall be required to only document compliance with those requirements for licensure which have not been previously met in obtaining the currently held license.

R156-63-302b. Qualifications for Licensure - Basic Education and Training Requirements.

In accordance with Subsections 58-1-203(2) and 58-1-301(3), the basic education and training requirements for licensure in Section 58-63-302 are defined, clarified, or established as follows:

(1) each applicant for licensure as an armed private security officer shall successfully complete a basic education and training program approved by the division, the content of which is set forth in Section R156-63-603; and

(2) each applicant for licensure as an unarmed private security officer shall successfully complete a basic education and training program approved by the division, the content of which is set forth in Section R156-63-604.

R156-63-302c. Qualifications for Licensure - Examination Requirements.

In accordance with Subsections 58-1-203(2) and 58-1-301(3), the examination requirements for licensure in Section 58-63-302 are defined, clarified, or established as follows:

(1) the qualifying agent for each applicant who is a contract security company shall pass the Utah Security Personnel Law and Rules Examination; and

(2) each applicant for licensure as an armed private security officer or an unarmed private security officer shall obtain a score of at least 75% on the basic education and training final examination approved by the division and offered by each provider of basic education and training as a part of the program.

R156-63-302d. Qualification for Licensure - Liability Insurance for a Contract Security Company.

In accordance with Subsections 58-1-203(2) and 58-1-301(3), the insurance requirements for licensure as a contract security company in Subsection 58-63-302(1)(j)(i) are defined, clarified, or established as follows.

(1) An applicant shall file with the division a "Certificate of Insurance" demonstrating comprehensive public liability coverage issued by the insurance carrier showing coverage of at least $300,000 for each incident and $1,000,000 in total.

(2) All contract security companies shall have a current insurance certificate of coverage as defined in Subsection (1) on file at all times and available for immediate inspection by the division during normal working hours.

R156-63-302e. Qualifications for Licensure - Age Requirement for Armed Private Security Officer.

An armed private security officer must be 18 years of age or older at the time of submitting an application for licensure in accordance with Subsection 76-10-509(1).

R156-63-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 63 is established by rule in Section R156-1-308.

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

R156-63-304. Continuing Education for Armed and Unarmed Private Security Officers as a Condition of Renewal.

(1) In accordance with Subsections 58-1-203(7) and 58-1-308(3)(b), there is created a continuing education requirement as a condition of renewal or reinstatement of licenses issued under Title 58, Chapter 63 in the classifications of armed private security officer and unarmed private security officer.

(2) Qualified continuing education for armed private security officers and unarmed private security officers shall consist of not less than eight hours of formal classroom education or practical experience in each calendar year.

(3) Continuing firearms education and training for armed private security officers shall consist of not less than eight hours during each calendar year. Firearms education and training shall comply with the provisions of Public Law 103-54, the Armored Car Industry Reciprocity Act of 1993.

(4) If a renewal period is shortened or lengthened to effect a change of renewal cycle, the continuing education hours required for that renewal period shall be increased or decreased accordingly as a pro rata amount of the requirements of a two-year period.

(5) Continuing education to qualify under the provisions of Subsection (2) shall include:

(a) company operational procedures manual;

(b) applicable state laws and rules;

(c) legal powers and limitations of private security officers;

(d) observation and reporting techniques;

(e) ethics; and

(f) emergency techniques.

R156-63-305. Demonstration of Clear Criminal History for Licensees as Renewal Requirement.

(1) In accordance with Subsections 58-1-203(7) and 58-1-308(3)(b), there is created a demonstration of a clear criminal history as a condition of renewal or reinstatement of licenses issued under Title 58, Chapter 63 in the classifications of armed private security officer, unarmed private security officer, alarm response runner, and for the qualifying agent for a contract security company.

(2) Each application for renewal or reinstatement of the license of a contract security company shall be conditioned

upon the licensee having obtained within 120 days prior to submission of the application for renewal or reinstatement, a clear criminal history certification from the Bureau of Criminal Identification, Utah Department of Public Safety, for the licensee's qualifying agent.

(3) Each application for renewal or reinstatement of the license of an armed private security officer, unarmed private security officer, or alarm response runner shall be conditioned upon the licensee having obtained within 120 days prior to submission of the application for renewal or reinstatement, a clear criminal history certification from the Bureau of Criminal Identification, Utah Department of Public Safety.

R156-63-306. Change of Qualifying Agent.

Within 30 days after a qualifying agent for a licensed contract security company ceases employment with the licensee, or for any other reason is not qualified to be the licensee's qualifier, the contract security company shall file with the division an application for change of qualifier on forms provided by the division, accompanied by a fee established in accordance with Section 63-38-3.2.

R156-63-307. Exemptions from Licensure.

In accordance with Subsection 58-1-307(1)(c), an applicant who has applied for licensure as an unarmed or armed private security officer or alarm response runner is exempt from licensure and may engage in practice as an unarmed or armed private security officer or alarm response runner in a supervised on-the-job training capacity, for a period of time not to exceed the earlier of 30 days or action by the division upon the application.

R156-63-502. Unprofessional Conduct.

"Unprofessional conduct" includes the following:

(1) making any statement that would reasonably cause another person to believe that a private security officer functions as a law enforcement officer or other official of this state or any of its political subdivisions or any agency of the federal government;

(2) employment of an unarmed or armed private security office or alarm response runner by a contract security company, as an on-the-job trainee pursuant to Section R156-63-307, who has been convicted of a felony or a misdemeanor crime of moral turpitude; and

(3) a judgment on, or a judicial or prosecutorial agreement concerning a felony, or a misdemeanor involving moral turpitude, entered against an individual by a federal, state or local court, regardless of whether the court has made a finding of guilt, accepted a plea of guilty or nolo contendere by an individual, or an individual has entered into participation in a first offender, deferred adjudication or other program or arrangement where judgment of conviction is withheld.

R156-63-601. Operating Standards - Firearms.

(1) An armed private security officer shall carry only that firearm with which he has passed a firearms qualification course as defined in Section R156-63-603.

(2) Shotguns and rifles, owned and issued by the contract security company, may be used in situations where they would constitute an appropriate defense for the armed private security officer and where the officer has completed an appropriate qualification course in their use.

(3) An armed private security officer shall not carry a firearm except when acting on official duty as an employee of a contract security company, unless the licensee is otherwise qualified under the laws of the state to carry a firearm.

R156-63-602. Operating Standards - Approved Basic Education and Training Program for Armed and Unarmed Private Security Officers.

To be designated by the division as an approved basic education and training program for armed private security officers and unarmed private security officers, the following standards shall be met.

(1) There shall be a written education and training manual which includes performance objectives.

(2) The program for armed private security officers shall provide content as established in Section R156-63-603 of these rules.

(3) The program for unarmed private security officers shall provide content as established in Section R156-63-604 of these rules.

(4) All instructors providing the basic classroom instruction shall have at least three years of training and experience reasonably related to providing of security guard services.

(5) All instructors providing firearms training shall have the following qualifications:

(a) current Peace Officers Standards and Training firearms instructors certification; or

(b) current certification as a firearms instructor by the National Rifle Association, a Utah law enforcement agency, a Federal law enforcement agency, a branch of the United States military, or other qualification or certification found by the director to be equivalent.

(6) All approved basic education and training programs shall maintain training records on each individual trained including the dates of attendance at training, a copy of the instruction given, and the location of the training. These records shall be maintained in the files of the education and training program for at least three years.

(7) In the event an approved provider of basic education and training ceases to engage in business, the provider shall establish a method approved by the division by which the records of the education and training shall continue to be available for a period of at least three years after the education and training is provided.

R156-63-603. Operating Standards - Content of Approved Basic Education and Training Program for Armed Private Security Officers.

An approved basic education and training program for armed private security officers shall have the following components:

(1) at least eight hours of basic classroom instruction to include the following:

(a) the nature and role of private security;

(b) state laws and rules applicable to private security;

(c) legal responsibilities of private security;
(d) civil and criminal considerations;
(e) situational response evaluations;
(f) case law;
(g) use of deadly force;
(h) observation and description;
(i) report writing;
(j) witness statements;
(k) courtroom testimony;
(l) industrial accidents;
(m) civil and criminal incidents;
(n) crimes in progress;
(o) armed patrol techniques;
(p) unarmed patrol techniques;
(q) fixed post techniques;
(r) first aid including cardiopulmonary resuscitation, accident, injury, and illness;
(s) sexual harassment in the work place; and
(t) a final examination which competently examines the student in the subjects included in the approved program of education and training.

(2) at least six hours of classroom firearms instruction to include the following:
(a) the weapon and its ammunition;
(b) the use of factory loaded ammunition only;
(c) the care and cleaning of the weapon;
(d) cleaning equipment options;
(e) barrel and cylinder maintenance;
(f) no alterations of firing mechanism;
(g) weapons inspection review procedures;
(h) firearm safety on duty;
(i) firearm safety at home;
(j) firearm safety on range;
(k) ethical restraints on weapon use;
(l) legal restraints on weapon use;
(m) use of deadly force under Utah law and the provisions of Title 76, Chapter 2, Part 4 and;
(n) the instruction that armed private security officers shall not fire their weapon unless there is an eminent threat to life and at no time will the weapon be drawn as a threat or means to force compliance with any verbal directive; and

(3) at least six hours of firearms instruction on the range to include the following:
(a) demonstration of appropriate techniques of shooting;
(b) explanation of the difference between flash sight and sight picture; and
(c) a recognized practical pistol course on which the applicant achieves a minimum score of 80%.

R156-63-604. Operating Standards - Content of Approved Basic Education and Training Program for Unarmed Private Security Officers.

An approved basic education and training program for unarmed private security officers shall have the following components:

(1) at least eight hours of basic classroom instruction to include the following:
(a) the nature and role of private security;
(b) state laws and rules applicable to private security;
(c) legal responsibilities of private security;
(d) civil and criminal considerations;
(e) situational response evaluations;
(f) case law;
(g) use of deadly force;
(h) observation and description;
(i) report writing;
(j) witness statements;
(k) courtroom testimony;
(l) industrial accidents;
(m) civil and criminal incidents;
(n) crimes in progress;
(o) armed patrol techniques;
(p) unarmed patrol techniques;
(q) fixed post techniques;
(r) first aid including cardiopulmonary resuscitation, accident, injury, and illness;
(s) sexual harassment in the work place;
(t) a final examination which competently examines the student in the subjects included in the approved program of education and training.

R156-63-605. Operating Standards - Uniforms.

(1) All unarmed and armed private security officers while on duty shall wear the uniform of their contract security company employer unless assigned to work undercover.

(2) Uniforms worn by armed or unarmed private security officers shall be easily distinguished from the uniform of any public law enforcement agency.

R156-63-606. Operating Standards - Badges.

Badges may be worn under the following conditions:

(1) they do not carry the seal of the state of Utah nor have the words "State of Utah";

(2) they shall contain the word "Security" and may contain the name of the company; and

(3) the use of a star badge with any number of points on a uniform, in writing, advertising, letterhead, or other written communication is prohibited.

R156-63-607. Operating Standards - Criminal Status of Officer, Qualifying Agent, Director, Partner, Proprietor, Private Security Officer or Manager of Contract Security Companies.

In the event an officer, qualifying agent, director, partner, proprietor, private security officer, or any management personnel having direct responsibility for managing operations of the contract security company is found guilty of a felony, or of a misdemeanor which impacts upon that individual's ability to function within the security industry, said company shall within ten days reorganize and exclude said individual from participating at any level or capacity in the management, operations, sales, ownership, or employment of that company.

R156-63-608. Operating Standards - Implying an Association with Public Law Enforcement Prohibited.

(1) No contract security company shall use any name which implies intentionally or otherwise that they are connected or associated with any public law enforcement agency.

(2) No contract security company shall permit the use of the words "special police", "special officer", "cop", or any other words of a similar nature whether used orally or appearing in writing or on any uniform, badge, or cap.

(3) No person licensed under this chapter shall use words or designations which would cause a reasonable person to believe he is associated with a public law enforcement agency.

R156-63-609. Operating Standards - Proper Identification of Private Security Officers.

All armed and unarmed private security officers shall carry a valid security license together with a Utah identification card issued by the Division of Driver License or a current Utah driver license whenever he is performing the duties of an armed or unarmed private security officer and shall exhibit said license and identification upon request.

R156-63-610. Operating Standards - Vehicles.

No contract security company or its personnel shall utilize a vehicle bearing a red or blue emergency light or containing a siren, bell, or other non-standard signaling device.

R156-63-611. Operating Standards - Operational Procedures Manual.

(1) Each contract security company shall develop and maintain an operational procedures manual which includes the following topics:

(a) detaining or arresting;
(b) restraining, detaining, and search and seizure;
(c) felony and misdemeanor definitions;
(d) observing and reporting;
(e) ingress and egress control;
(f) natural disaster preparation;
(g) alarm systems, locks, and keys;
(h) radio and telephone communications;
(i) crowd control;
(j) public relations;
(k) personal appearance and demeanor;
(l) bomb threats;
(m) fire prevention;
(n) mental illness;
(o) supervision;
(p) criminal justice system;
(q) code of ethics for private security officers; and
(r) sexual harassment in the workplace.

(2) The operations and procedures manual shall be immediately available to the division upon request.

R156-63-612. Operating Standards - Display of License.

The license issued to a contract security company shall be prominently displayed in the company's principal place of business and a copy of the license shall be displayed prominently in all branch offices.

KEY: licensing, security guards
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58-63-101

R156. Commerce, Occupational and Professional Licensing.
R156-67. Utah Medical Practice Act Rules.
R156-67-101. Title.

These rules shall be known as the "Utah Medical Practice Act Rules".

R156-67-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 67, as used in Title 58, Chapters 1 and 67 or these rules:

(1) "ABMS" means American Board of Medical Specialties.

(2) "ACCME" means the Accreditation Council for Continuing Medical Education.

(3) "Alternate medical practices" as used in Section R156-67-603, means treatment or therapy which is determined in an adjudicative proceeding conducted in accordance with Title 63, Chapter 46b, Administrative Procedures Act, to be:

(a) not generally recognized as standard in the practice of medicine;

(b) not shown by current generally accepted medical evidence to present a greater risk to the health, safety, or welfare of the patient than does prevailing treatment considered to be the standard in the profession of medicine; and

(c) supported by a body of current generally accepted written documentation demonstrating the treatment or therapy has reasonable potential to be of benefit to the patient to whom the therapy or treatment is to be given.

(4) "AMA" means the American Medical Association.

(5) "FLEX" means the Federation of State Medical Boards Licensing Examination.

(6) "FMGEMS" means the Foreign Medical Graduate Examination in Medical Science.

(7) "FSMB" means the Federation of State Medical Boards.

(8) "Homeopathic medicine" means a system of medicine employing and limited to substances prepared and prescribed in accordance with the principles of homeopathic pharmacology as described in the Homeopathic Pharmacopoeia of the United States, its compendia, addenda, and supplements, as officially recognized by the federal Food, Drug and Cosmetic Act, Public Law 717.21 U.S. Code Sec. 331 et seq., as well as the state of Utah's food and drug laws and Controlled Substances Act.

(9) "LMCC" means the Licentiate of the Medical Council of Canada.

(10) "NBME" means the National Board of Medical Examiners.

(11) "NPDB" means the National Practitioner Data Bank.

(12) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 67 is further defined in accordance with Subsection 58-1-203(5), in Section R156-67-502.

(13) "USMLE" means the United States Medical Licensing Examination.

R156-67-103. 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 67.

R156-67-104. 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.

R156-67-302a. Qualifications for Licensure - Application Requirements.

(1) In accordance with Subsection 58-67-302(1)(a)(i), submissions by the applicant of information maintained by practitioner data banks for those seeking licensure under Subsections 58-67-302(1)(f)(i) and 58-67-302(2) or (3) shall include the following:

(a) American Medical Association Profile;

(b) Federation Credentials Verification Service (FCVS) form; and

(c) National Practitioner Data Bank Report of Action.

(2) In accordance with Subsections 58-67-302(1)(a)(i), submissions by the applicant of information maintained by practitioner data banks for those seeking licensure under Subsection 58-67-302(1)(f)(ii) shall include the following:

(a) American Medical Association Profile; and

(b) Federation of State Medical Boards Disciplinary Inquiry form.

R156-67-302d. Qualifications for Licensure - Examination Requirements.

(1) In accordance with Subsection 58-67-302(1)(g), the required licensing examination sequence is the following:

(a) the FLEX components I and II on which the applicant shall have achieved a score of not less than 75 on each component part; or

(b) the NBME examination parts I, II, and III on which the applicant shall achieve a passing score of not less than 75 on each part; or

(c) the USMLE, steps 1, 2 and 3 on which the applicant shall achieve a score of not less than 75 on each step; or

(d) the LMCC examination, Parts 1 and 2; or

(e) the NBME part I or the USMLE step 1 and the NBME part II or the USMLE step 2 and the NBME part II or the USMLE step 3; or

(f) the FLEX component 1 and the USMLE step 3; or

(g) the NBME part I or the USMLE step 1 and the NBME part II or the USMLE step 2 and the FLEX component 2.

((h)) In addition all applicants who are foreign medical graduates shall pass the FMGEMS unless they pass the USMLE steps 1 and 2.

(2) In accordance with Subsection 58-67-302(2)(c), the passing score on the SPEX examination is at least a score of 75.

(3) In accordance with Subsection 58-67-302(2)(c), the medical specialty certification shall be in a ABMS member specialty board.

R156-67-302e. Qualifications for Licensure - Requirements for Admission to the Examinations.

(1) Admission to the USMLE steps 1 and 2 shall be in accordance with policies and procedures of the FSMB and the NBME.

(2) Requirements for admission to the USMLE step 3 are:

(a) completion of the education requirements as set forth in Subsections 58-67-302(1)(d) and (e);

(b) passing scores on USMLE steps 1 and 2, or the FLEX component 1, or the NBME parts I and II;

(c) have passed the first USMLE step taken, either 1 or 2, within seven years; and

(d) have not failed a combination of USMLE step 3, FLEX component 2 and NBME part III, three times.

(3) Candidates who fail a combination of USMLE step 3, FLEX component 2 and NBME part III three times must successfully complete additional education as required by the board before being allowed to sit for USMLE step 3.

R156-67-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 67 is established by rule in Section R156-1-308.

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

R156-67-304. Qualified Continuing Professional Education.

(1) The qualified continuing professional education set forth in Subsection 58-67-304(1) shall consist of 40 hours in category 1 offerings as established by the ACCME in each preceding two year licensure cycle.

(2) The standard for qualified continuing professional education is that it consist of offerings or courses approved by institutions accredited by the ACCME to approve continuing medical education.

(3) Documentation of completed qualified continuing professional education shall consist of any of the following:

(a) certificates from sponsoring agencies;

(b) transcripts of participation on applicable institutions letterhead; and

(c) "CME Self-Reporting Log".

(4) Participation in an ACGME approved residency program shall be considered to meet the continuing education requirement in a pro-rata amount equal to any part of that two year period.

R156-67-305. Quality Review Program.

(1) In accordance with Subsection 58-67-304(2), a quality review program shall be approved based on the following criteria;

(a) the quality review program shall consist of a provider, reviewers, and participating physicians and surgeons;

(b) program personnel shall have such knowledge and expertise to permit the provider to competently conduct a quality review program;

(c) the provider shall conduct the program objectively, showing no bias with respect to any individual subjected to review;

(d) the provider shall provide in its agreement with the subscribing physicians and surgeons that:

(i) upon a finding of gross incompetence in the practice of medicine, the provider shall report its findings to the division for appropriate action;

(ii) if the subscribing physician fails to substantially comply with a plan of corrective action determined appropriate by the provider following quality review, the provider shall report such to the division and the board; and

(iii) the provider shall make available to the division and the board the results of a quality review upon the proper issuance of a Subpoena Duces Tecum by the division in accordance with the provisions if Title 58, Chapter 1.

(e) any fees charged by the quality review program shall be reasonable and necessary.

R156-67-306. Exemptions from Licensure.

In accordance with Subsection 58-1-307(1), exemptions from licensure as a physician and surgeon include the following:

(1) any physician excepted from licensure, who engages in prescribing, dispensing, or administering a controlled substance outside of a hospital, shall be required to apply for and obtain a Utah Controlled Substance License as a condition precedent to them administering, dispensing or prescribing a controlled substance;

(2) any physician appointed to a graduate medical education or training program which is not accredited by the ACGME, for which exception from licensure is requested under the provisions of Subsection 58-1-307(1)(c) shall apply for registration with and receive approval of the division and board as a condition precedent to that individual engaging in any activity included in the practice of medicine;

(3) any person engaged in a competent public screening program making measures of physiologic conditions including serum cholesterol, blood sugar and blood pressure, shall be exempt from licensure and shall not be considered to be engaged in the practice of medicine conditioned upon compliance with all of the following:

(a) all instruments or devices used in making measures are approved by the Food and Drug Administration of the U.S. Department of Health, to the extent an approval is required, and the instruments and devices are used in accordance with those approvals;

(b) the facilities and testing protocol meet any standards or personnel training requirements of the Utah Department of Health;

(c) unlicensed personnel shall not interpret results of measures or tests nor shall they make any recommendation with respect to treatment or the purchase of any product;

(d) licensed personnel shall act within the lawful scope of practice of their license classification;

(e) unlicensed personnel shall conform to the referral and follow-up protocol approved by the Utah Department of Health for each measure or test; and

(f) information provided to those persons measured or tested for the purpose of permitting them to interpret their own test results shall be only that approved by the Utah Department of Health;

(4) non-licensed public officials not having emergency medical technician (EMT) certification who are designated by appropriate county officials as first responders may be issued and allowed to carry the Mark I automatic antidote injector kits and may administer the antidote to himself or his designated first response "buddy". Prior to being issued the kits, the certified first responders would successfully complete the Army/FEMA course on the "Use of Auto-Injectors by Civilian Emergency Medical Personnel". The kits would be issued to the responder only by his employing government agency and procured through the Utah Division of Comprehensive

Emergency Management. No other individuals, whether licensed or not, shall prescribe or issue these antidote kits.

R156-67-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) prescribing for oneself any Schedule II or III controlled substance; however, nothing in these rules shall be interpreted by the division or the board to prevent a licensee from using, possessing or administering to himself a Schedule II or III controlled substance which was legally prescribed for him by a licensed practitioner acting within his scope of licensure when it is used in accordance with the prescription order and for the use for which it was intended;

(2) knowingly prescribing, selling, giving away or administering, directly or indirectly, or offering to prescribe, sell, furnish, give away or administer any scheduled controlled substance as defined in Title 58, Chapter 37 to a drug dependent person, as defined in Subsection 58-37-2(14) unless permitted by law and when it is prescribed, dispensed or administered according to a proper medical diagnosis and for a condition indicating the use of that controlled substance is appropriate;

(3) knowingly engaging in billing practices which are abusive and represent charges which are grossly excessive for services rendered;

(4) directly or indirectly giving or receiving any fee, commission, rebate or other compensation for professional services not actually and personally rendered or supervised; however, nothing in this section shall preclude the legal relationships within lawful professional partnerships, corporations or associations or the relationship between an approved supervising physician and physician assistants or advanced practice nurses supervised by them;

(5) knowingly failing to transfer a copy of pertinent and necessary medical records or a summary thereof to another physician when requested to do so by the subject patient or by his legally designated representative;

(6) failing to furnish to the board information requested by the board which is known by a licensee with respect to the quality and adequacy of medical care rendered to patients by physicians licensed under the Medical Practice Act;

(7) failing as an operating surgeon to perform adequate pre-operative and primary post-operative care of the surgical condition for a patient in accordance with the standards and ethics of the profession or to arrange for competent primary post-operative care of the surgical condition by a licensed physician and surgeon who is equally qualified to provide that care;

(8) billing a global fee for a procedure without providing the requisite care;

(9) supervising the providing of breast screening by diagnostic mammography services or interpreting the results of breast screening by diagnostic mammography to or for the benefit of any patient without having current certification or current eligibility for certification by the American Board of Radiology. However, nothing in this subsection shall be interpreted to prevent a licensed physician and surgeon from reviewing the results of any breast screening by diagnostic mammography procedure upon a patient for the purpose of considering those results in determining appropriate care and treatment of that patient if the results are interpreted by a physician and surgeon qualified under this subsection and a timely written report is prepared by the interpreting physician and surgeon in accordance with the standards and ethics of the profession;

(10) failing of a licensee under Title 58, Chapter 67, without just cause to repay as agreed any loan or other repayment obligation legally incurred by the licensee to fund the licensee's education or training as a medical doctor;

(11) failing of a licensee under Title 58, Chapter 67, without just cause to comply with the terms of any written agreement in which the licensee's education or training as a medical doctor is funded in consideration for the licensee's agreement to practice in a certain locality or type of locality or to comply with other conditions of practice following licensure;

(12) a physician providing services to a department of health by participating in a system under which the physician provides the department with completed and signed prescriptions without the name and address of the patient, or date the prescription is provided to the patient when the prescription form is to be completed by authorized registered nurses employed by the department of health which services are not in accordance with the provisions of Section 58-17a-620;

(13) failing to keep the division informed of a current address and telephone number; and

(14) engaging in alternate medical practice except as provided in Section R156-67-603.

R156-67-602. Medical Records.

In accordance with Subsection 58-67-803(1), medical records shall be maintained to be consistent with the following:

(1) all applicable laws, regulations, and rules; and

(2) the Code of Medical Ethics of the Council on Ethical and Judicial Affairs as published in the AMA Policy Compendium, 1996 edition, which is hereby incorporated by reference.

R156-67-603. Alternate Medical Practice.

(1) A licensed physician and surgeon may engage in alternate medical practices as defined in Subsection R156-67-102(2) and shall not be considered to be engaged in unprofessional conduct on the basis that it is not in accordance with generally accepted professional or ethical standards as unprofessional conduct defined in Subsection 58-1-501(2)(b), if the licensed physician and surgeon:

(a) possesses current generally accepted written documentation, which in the opinion of the board, demonstrates the treatment or therapy has reasonable potential to be of benefit to the patient to whom the therapy or treatment is to be given;

(b) possesses the education, training, and experience to competently and safely administer the alternate medical treatment or therapy;

(c) has advised the patient with respect to the alternate medical treatment or therapy, in writing, including:

(i) that the treatment or therapy is not in accordance with generally recognized standards of the profession;

(ii) that on the basis of current generally accepted medical evidence, the physician and surgeon finds that the treatment or therapy presents no greater threat to the health, safety, or

welfare of the patient than prevailing generally recognized standard medical practice; and

(iii) that the prevailing generally recognized standard medical treatment or therapy for the patient's condition has been offered to be provided, or that the physician and surgeon will refer the patient to another physician and surgeon who can provide the standard medical treatment or therapy; and

(d) has obtained from the patient a voluntary informed consent consistent with generally recognized current medical and legal standards for informed consent in the practice of medicine, including:

(i) evidence of advice to the patient in accordance with Subsection (c); and

(ii) whether the patient elects to receive generally recognized standard treatment or therapy combined with alternate medical treatment or therapy, or elects to receive alternate medical treatment or therapy only.

(2) Alternate medical practice includes the practice of homeopathic medicine.

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58-1-106(1)
58-1-202(1)

R156. Commerce, Occupational and Professional Licensing.
R156-68. Utah Osteopathic Medical Practice Act Rules.
R156-68-101. Title.

These rules shall be known as the "Utah Osteopathic Medical Practice Act Rules."

R156-68-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 68, as used in Title 58, Chapters 1 and 68 or these rules:

(1) "ABMS" means American Board of Medical Specialties.

(2) "ACCME" means Accreditation Council for Continuing Medical Education.

(3) "Alternate medical practices" as used in Section R156-68-603, means treatment or therapy which is determined in an adjudicative proceeding conducted in accordance with Title 63, Chapter 46b, Administrative Procedures Act, to be:

(a) not generally recognized as standard in the practice of medicine;

(b) not shown by current generally accepted medical evidence to present a greater risk to the health, safety or welfare of the patient than does prevailing treatment considered to be the standard in the profession of medicine; and

(c) supported by a body of current generally accepted written documentation demonstrating the treatment or therapy has reasonable potential to be of benefit to the patient to whom the therapy or treatment is to be given.

(4) "AMA" means the American Medical Association.

(5) "AOA" means American Osteopathic Association.

(6) "COMLEX" means the Comprehensive Osteopathic Medical Licensing Examination.

(7) "FLEX" means the Federation of State Medical Boards Licensure Examination.

(8) "FMGEMS" means the Foreign Medical Graduate Examination in Medical Science.

(9) "FSMB" means the Federation of State Medical Boards.

(10) "Homeopathic medicine" means a system of medicine employing and limited to substances prepared and prescribed in accordance with the principles of homeopathic pharmacology as described in the Homeopathic Pharmacopoeia of the United States, its compendia, addenda, and supplements, as officially recognized by the federal Food, Drug and Cosmetic Act, Public Law 717.21 U.S. Code Sec. 331 et seq., as well as the state of Utah's food and drug laws and Controlled Substances Act.

(11) "LMCC" means the Licentiate of the Medical Council of Canada.

(12) "NBME" means the National Board of Medical Examiners.

(13) "NBOME" means the National Board of Osteopathic Medical Examiners.

(14) "NPDB" means the National Practitioner Data Bank.

(15) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 68, is further defined, in accordance with Subsection 58-1-203(5), in Section R156-68-502.

(16) "USMLE" means the United States Medical Licensing Examination.

R156-68-103. 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 68.

R156-68-104. 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.

R156-68-302a. Qualifications for Licensure - Application Requirements.

In accordance with Subsections 58-68-301(1)(a)(i), submissions by the applicant of information maintained by practitioner data banks shall include the following:

(1) American Osteopathic Association Profile or American Medical Association Profile;

(2) Federation of State Medical Boards Disciplinary Inquiry form; and

(3) National Practitioner Data Bank Report of Action.

R156-68-302b. Qualifications for Licensure - Examination Requirements.

(1) In accordance with Subsection 58-68-302(1)(g), the required licensing examination sequence is the following:

(a) the NBOME parts I, II and III; or

(b) the NBOME parts I, II and the NBOME COMPLEX Level III; or

(c) the NBOME part I and the NBOME COMLEX Level II and III; or

(d) the NBOME COMLEX Level I, II and III; or

(e) the FLEX components I and II on which the applicant shall achieve a score of not less than 75 on each component; or

(f) the NBME examination parts I, II and III on which the applicant shall achieve a score of not less than 75 on each part; or

(g) the USMLE, steps 1, 2 and 3 on which the applicant shall achieve a score of not less than 75 on each step; or

(h) the LMCC examination, Parts 1 and 2; or

(i) the NBME part I or the USMLE step 1 and the NBME part II or the USMLE step 2 and the NBME part II or the USMLE step 3; or

(j) the FLEX component 1 and the USMLE step 3; or

(k) the NBME part I or the USMLE step 1 and the NBME part II or the USMLE step 2 and the FLEX component 2.

(2) In accordance with Subsection 58-68-302(2)(c), the passing score on the SPEX examination is at least a score of 75.

(3) In accordance with Subsection 58-68-302(2)(c), the medical specialty certification shall be current certification in an AOA or ABMS member specialty board.

R156-68-302c. Qualifications for Licensure - Requirements for Admission to the Examinations.

(1) Admission to the NBOME examination shall be in accordance with policies and procedures of the NBOME. The division and the board have no responsibility for or ability to facilitate an individual's admission to the NBOME examination.

(2) Admission to the USMLE steps 1 and 2 shall be in accordance with policies and procedures of the FSMB and the NBME. The division and the board have no responsibility for or ability to facilitate an individual's admission to steps 1 and 2

of the USMLE.

(3) Requirements for admission to the USMLE step 3 are:

(a) completion of the education requirements as set forth in Subsection 58-68-302(1)(d) and (e);

(b) passing scores on USMLE steps 1 and 2, or the FLEX component I, or the NBME parts I and II;

(c) have passed the first USMLE step taken, either 1 or 2, within seven years; and

(d) have not failed a combination of USMLE step 3, FLEX component II and NBME part III, three times.

(4) Candidates who fail a combination of USMLE step 3, FLEX component II and NBME part III three times must successfully complete additional education as required by the board before being allowed to retake the USMLE step 3.

R156-68-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 68, is established by rule in Section R156-1-308.

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

R156-68-304. Qualified Continuing Professional Education.

(1) The qualified continuing professional education set forth in Subsection 58-68-304(1) shall consist of 40 hours in category 1 offerings as established by the AOA or ACCME in each preceding two year licensure cycle.

(2) The standard for qualified continuing professional education is that it consist of offerings or courses approved by institutions accredited by the AOA or ACCME to approve continuing medical education.

(3) Documentation of completed qualified continuing professional education shall consist of any of the following:

(a) certificates from sponsoring agencies;

(b) transcripts of participation on applicable institutions letterhead; and

(c) "CME Self-Reporting Log".

(4) Participation in an AOA or ACGME approved residency program shall be considered to meet the continuing education requirement in a pro-rata amount equal to any part of that two year period.

R156-68-305. Quality Review Program.

In accordance with Subsection 58-68-304(2), a quality review program shall be approved based on the following criteria:

(a) the quality review program shall consist of a provider, reviewers, and participating physicians;

(b) program personnel shall have such knowledge and expertise to permit the provider to competently conduct a quality review program;

(c) the provider shall conduct the program objectively, showing no bias with respect to any individual subjected to review;

(d) the provider shall provide in its agreement with the subscribing physicians that:

(i) upon a finding of gross incompetence in the practice of osteopathic medicine, the provider shall report its findings to the division and the board for appropriate action;

(ii) if the subscribing physician fails to substantially comply with a plan of corrective action determined appropriate by the provider following quality review, the provider shall report such to the division and the board;

(iii) the provider shall make available to the division and the board the results of a quality review upon the proper issuance of a Subpoena Duces Tecum by the division in accordance with the provisions if Title 58, Chapter 1; and

(e) any fees charged by the quality review program shall be reasonable and necessary.

R156-68-306. Exemptions From Licensure.

In accordance with Subsection 58-1-307(1), exemptions from licensure as an osteopathic physician include the following:

(1) any physician excepted from licensure, who engages in prescribing, dispensing, or administering a controlled substance outside of a hospital, shall be required to apply for and obtain a Utah Controlled Substance License as a condition precedent to them administering, dispensing or prescribing a controlled substance;

(2) any physician appointed to a graduate medical education or training program which is not accredited by the AOA or ACGME, for which exception from licensure is requested under the provisions of Subsection 58-1-307(1)(c), shall apply for registration with and receive approval of the division and board as a condition precedent to that individual engaging in any activity included in the practice of osteopathic medicine;

(3) any person engaged in a competent public screening program making measures of physiologic conditions including serum cholesterol, blood sugar and blood pressure, shall be exempt from licensure and shall not be considered to be engaged in the practice of osteopathic medicine conditioned upon compliance with all of the following:

(a) all instruments or devices used in making measures are approved by the Food and Drug Administration of the U.S. Department of Health, to the extent approval is required, and the instruments and devices are used in accordance with those approvals;

(b) the facilities and testing protocol meet any standards or personnel training requirements of the Utah Department of Health;

(c) unlicensed personnel shall not interpret results of measures or tests nor shall they make any recommendation with respect to treatment or the purchase of any product;

(d) licensed personnel shall act within the lawful scope of practice of their license classification;

(e) unlicensed personnel shall conform to the referral and follow-up protocol approved by the Utah Department of Health for each measure or test; and

(f) information provided to those persons measured or tested for the purpose of permitting them to interpret their own test results shall be only that approved by the Utah Department of Health.

(4) non-licensed public officials not having emergency medical technician (EMT) certification who are designated by appropriate county officials as first responders may be issued

and allowed to carry the Mark I automatic antidote injector kits and may administer the antidote to himself or his designated first response "buddy". Prior to being issued the kits, the certified first responders would successfully complete the Army/FEMA course on the "Use of Auto-Injectors by Civilian Emergency Medical Personnel". The kits would be issued to the responder only by his employing government agency and procured through the Utah Division of Comprehensive Emergency Management. No other individuals, whether licensed or not, shall prescribe or issue these antidote kits.

R156-68-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) the prescribing for oneself any Schedule II or III controlled substance; however, nothing in these rules shall be interpreted by the division or the board to prevent a licensee from using, possessing, or administering to himself a Schedule II or III controlled substance which was legally prescribed for him by a licensed practitioner acting within his scope of licensure when it is used in accordance with the prescription order and for the use for which it was intended;

(2) knowingly, prescribing, selling, giving away or administering, directly or indirectly, or offering to prescribe, sell, furnish, give away or administer any scheduled controlled substance as defined in Title 58, Chapter 37 to a drug dependent person, as defined in Subsection 58-37-2(14) unless permitted by law and when it is prescribed, dispensed, or administered according to a proper medical diagnosis and for a condition indicating the use of that controlled substance is appropriate;

(3) knowingly engaging in billing practices which are abusive and represent charges which are grossly excessive for services rendered;

(4) directly or indirectly giving or receiving any fee, commission, rebate or other compensation for professional services not actually and personally rendered or supervised; however, nothing in this section shall preclude the legal relationships within lawful professional partnerships, corporations, or associations or the relationship between an approved supervising physician and physician assistants or advanced practice nurses supervised by them;

(5) knowingly failing to transfer a copy of pertinent and necessary medical records or a summary thereof to another physician when requested to do so by the subject patient or by his legally designated representative;

(6) failing to furnish to the board information requested by the board which is known by a licensee with respect to the quality and adequacy of medical care rendered to patients by osteopathic physicians licensed under the Utah Osteopathic Medical Practice Act;

(7) failing as an operating surgeon to perform adequate pre-operative and primary post-operative care of the surgical condition for a patient in accordance with the standards and ethics of the profession or to arrange for competent primary post-operative care of the surgical condition by a licensed physician and surgeon or osteopathic physician who is equally qualified to provide that care;

(8) billing a global fee for a procedure without providing the requisite care;

(9) supervising the providing of breast screening by diagnostic mammography services or interpreting the results of breast screening by diagnostic mammography to or for the benefit of any patient without having current certification or current eligibility for certification by the American Osteopathic Board of Radiology or the American Board of Radiology. However, nothing in this subsection shall be interpreted to prevent a licensed physician from reviewing the results of any breast screening by diagnostic mammography procedure upon a patient for the purpose of considering those results in determining appropriate care and treatment of that patient if the results are interpreted by a physician qualified under this subsection and a timely written report is prepared by the interpreting physician in accordance with the standards and ethics of the profession;

(10) failing of a licensee under Title 58, Chapter 68, without just cause to repay as agreed any loan or other repayment obligation legally incurred by the licensee to fund the licensee's education or training as an osteopathic physician;

(11) failing of a licensee under Title 58, Chapter 68, without just cause to comply with the terms of any written agreement in which the licensee's education or training as an osteopathic physician is funded in consideration for the licensee's agreement to practice in a certain locality or type of locality or to comply with other conditions of practice following licensure;

(12) a physician providing services to a department of health by participating in a system under which the physician provides the department with completed and signed prescriptions without the name and address of the patient, or date the prescription is provided to the patient when the prescription form is to be completed by authorized registered nurses employed by the department of health which services are not in accordance with the provisions of Section 58-17a-620; and

(13) engaging in alternative medical practice except as provided in Section R156-68-603.

R156-68-602. Medical Records.

In accordance with Subsection 58-68-803(1), medical records shall be maintained to be consistent with the following:

(1) all applicable laws, regulations, and rules; and

(2) the Code of Medical Ethics of the Council on Ethical and Judicial Affairs as published in the AMA Policy Compendium, 1996 edition, which is hereby incorporated by reference.

R156-68-603. Alternate Medical Practice.

(1) A licensed osteopathic physician may engage in alternate medical practices as defined in Subsection R156-68-102(2) and shall not be considered to be engaged in unprofessional conduct on the basis that it is not in accordance with generally accepted professional or ethical standards as unprofessional conduct defined in Subsection 58-1-501(2)(b), if the licensed osteopathic physician:

(a) possesses current generally accepted written documentation, which in the opinion of the board, demonstrates the treatment or therapy has reasonable potential to be of benefit to the patient to whom the therapy or treatment is to be given;

(b) possesses the education, training, and experience to

competently and safely administer the alternate medical treatment or therapy;

(c) has advised the patient with respect to the alternate medical treatment or therapy, in writing, including:

(i) that the treatment or therapy is not in accordance with generally recognized standards of the profession;

(ii) that on the basis of current generally accepted medical evidence, the physician and surgeon finds that the treatment or therapy presents no greater threat to the health, safety, or welfare of the patient than prevailing generally recognized standard medical practice; and

(iii) that the prevailing generally recognized standard medical treatment or therapy for the patient's condition has been offered to be provided, or that the physician and surgeon will refer the patient to another physician and surgeon who can provide the standard medical treatment or therapy; and

(d) has obtained from the patient a voluntary informed consent consistent with generally recognized current medical and legal standards for informed consent in the practice of medicine, including:

(i) evidence of advice to the patient in accordance with Subsection (c); and

(ii) whether the patient elects to receive generally recognized standard treatment or therapy combined with alternate medical treatment or therapy, or elects to receive alternate medical treatment or therapy only.

(2) Alternate medical practice includes the practice of homeopathic medicine.

KEY: osteopaths, licensing, osteopathic physician*
June 4, 1998 **58-1-106(1)**
58-1-202(1)
58-68-101

R251. Corrections, Administration.
R251-112. Americans With Disabilities Act Implementation and Complaint Process.
R251-112-1. Authority and Purpose.

(1) This rule is promulgated pursuant to Section 63-46a-3(2) of the State Administrative Rulemaking Act. As required by 28 CFR 35.107 (1992 ed.), the Department of Corrections, as a public entity that employs more than 50 persons, adopts, defines, and publishes the complaint procedures within this rule for the prompt and equitable resolution of complaints alleging any action prohibited by the applicable provisions of the Americans With Disabilities Act.

(2) The applicable provisions of 29 C.F.R. 1630 implement the Americans With Disabilities Act, 42 U.S.C. 12101 through 12213, which provide that no qualified individual with a disability, by reason of such disability, be denied employment, be excluded from participation in, or be denied the benefits of services, programs, or activities of the Department of Corrections.

R251-112-2. Definitions.

(1) "ADA" means Americans With Disabilities Act.

(2) "ADA Coordinator" means the Director or designee of the Division of Administrative Services within the Department of Corrections who has responsibility for investigating and providing prompt and equitable resolution of complaints filed by qualified individuals with disabilities.

(3) "ADA State Coordinating Committee" means that committee with representatives designated by the directors of the following agencies:

(a) Office of Planning and Budget;

(b) Department of Human Resource Management;

(c) Division of Risk Management;

(d) Division of Facilities Construction Management; and

(e) Office of the Attorney General.

(4) "Department" means the Department of Corrections.

(5) "Disability" means with respect to an individual with a physical or mental impairment that substantially limits one or more major life activities; has a record of such an impairment; or is regarded as having such an impairment, as defined by ADA.

(6) "HRM Representative" means the Director or designee of the Bureau of Human Resource Management within the Division of Administrative Services of the Department who has responsibility for the Department's compliance with ADA as it relates to employees.

(7) "Major life activities" means functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(8) "Individual with a disability", hereinafter individual, means a person who has a disability as defined by the Americans with Disabilities Act and who would otherwise be an eligible applicant for a vacant Department position or is currently employed by the Department and is able to perform the essential functions of the job with or without reasonable accommodations or who meets the essential eligibility requirement for the receipt of services or the participation in programs or activities provided by the Department.

R251-112-3. Filing of Complaints.

(1) Any qualified individual with a disability should file a complaint with the Department no later than 60 days of the alleged act of discrimination in order to expedite resolution of the complaint. Any complaint alleging an act of discrimination occurring between January 26, 1992, and the effective date of this rule should be filed within 60 days of the effective date of this rule.

(2) The complaint shall be filed with the Department's ADA Coordinator in writing or in another accessible format suitable to the individual.

(3) Each complaint shall:

(a) include the individual's name, address, and phone number;

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

(c) describe the Department's alleged discriminatory action in sufficient detail to inform the Department of the nature and date of the alleged violation;

(d) describe the action and accommodation desired; and

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

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

R251-112-4. Investigation of Complaint.

(1) The ADA Coordinator or designee shall investigate complaints received to the extent necessary to assure all relevant facts are collected and documented. This may include gathering all information listed in Section R251-112-3(3), if it is not made available by the individual.

(2) When conducting the investigation, the ADA Coordinator or designee may seek assistance from the Department's legal, human resource, and budget staff in determining what action, if any, shall be taken on the complaint. The ADA Coordinator or designee may also consult with the Executive Director in reaching a recommendation.

(3) Before making any decision that would involve:

(a) an expenditure of funds which is not absorbable within the Department's budget and would require appropriation authority;

(b) facility modifications which require an expenditure of funds which is not absorbable within the Department's budget and would require appropriation authority; or

(c) reclassification or reallocation in grade; the coordinator shall consult with the ADA State Coordinating Committee.

R251-112-5. Issuance of Decision.

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

(2) If the ADA Coordinator or designee is unable to reach a decision within the 15 working day period, he shall notify the individual in writing, or by another accessible format suitable to the individual, why the decision is being delayed and what additional time is needed to reach a decision.

R251-112-6. Appeals.

(1) The individual may appeal the decision of the ADA Coordinator or designee by filing an appeal within five working days from the receipt of the decision.

(2) The appeal shall be filed in writing or another accessible format suitable to the individual with the Executive Director of the Department. The Executive Director may name a designee other than the ADA Coordinator to assist on the appeal.

(3) The appeal shall describe in sufficient detail why the ADA Coordinator's decision does not meet the individual's needs without undue hardship to the Department, is incomplete or ambiguous, is not supported by the evidence, or is otherwise improper.

(4) The Executive Director or designee shall review the ADA Coordinator or designee's decision and the individual's statement regarding the inappropriateness of the decision. The Executive Director may direct additional investigation as necessary before arriving at an independent conclusion.

(5) Prior to making any decision that would involve:

(a) an expenditure of funds which is not absorbable and would require appropriation authority;

(b) facility modifications; or

(c) reclassification or reallocation in grade; the Executive Director or designee shall also consult with the State ADA Coordinating Committee.

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

(7) If the Executive Director or designee is unable to reach a decision within the ten working day period, he shall notify the individual in writing or by another accessible format suitable to the individual why the decision is being delayed and the additional time needed to reach a decision.

R251-112-7. Classification of Records.

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 Executive Director, ADA Coordinator, 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 Executive Director, ADA Coordinator or their designees shall be classified as public information.

R251-112-8. Relationship to Other Laws.

This rule does not prohibit or limit the use of remedies available to individuals under the Utah State Anti-Discrimination Complaint Procedures; the Federal Americans with Disabilities Act Complaint Procedures; or any other Utah State or federal law that provides equal or greater protection for the rights of individuals with disabilities.

KEY: complaint procedures, disabled persons
June 15, 1998 67-19-32

Notice of Continuation March 6, 1998 34A-5-101 to 34A-5-108
63-46a-3(2)

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

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

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

R251-304-2. Definitions.

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

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

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

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

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

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

R251-304-3. Policy.

It is the policy of the Department that:

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

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

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

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

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

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

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

(8) contracts may be terminated by the Department with or without cause, for noncompliance, or for lack of funds;

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

(a) zoning ordinances,

(b) building codes,

(c) applicable health codes,

(d) life and safety codes,

(e) professional licenses,

(f) business licenses, or

(g) other applicable federal, state, and local laws;

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

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

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

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

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

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

(16) decisions to terminate contracts may be appealed by contractors to the executive director of the Department of Corrections; the Director of Purchasing; or the district court of the State of Utah.

KEY: corrections, contracts
June 15, 1998 **64-13-25**
Notice of Continuation March 6, 1998

R251. Corrections, Administration.
R251-307. Community Service.
R251-307-1. Authority and Purpose.

(1) This rule is authorized by Section 64-13-10.

(2) The purpose of this rule is to provide the Department's rules for the Community Service Program within the Field Operations Division.

R251-307-2. Definitions.

(1) "Department" means the Department of Corrections.

(2) "Field Operations" means a Division within the Department of Corrections which supervises offenders in Community Correctional Centers or in the community on probation or parole.

(3) "Placement agency" means a selected non-profit or governmental organization.

R251-307-3. Policy.

It is the policy of the Department that:

(1) the Field Operations Division shall provide supervision for offenders convicted of a Class B or A misdemeanor or felony and ordered to complete community service hours;

(2) community service hours shall be completed at a placement agency where an offender is not currently receiving treatment;

(3) placement agencies shall be non-profit or governmental and possess adequate Worker's Compensation Insurance or a similar private insurance;

(4) placement agencies shall:

(a) provide notification to the Department if an offender fails to report as scheduled;

(b) inform the Department of non-satisfactory performance or behavior;

(c) provide immediate notification if injury occurs to or is caused by an offender, followed by written documentation within three working days; and

(d) prohibit staff from assigning personal work to offenders; and

(5) failure by a placement agency to comply with this rule shall result in removal from the approved placement agency list.

KEY: corrections, community service*
1993 **64-13-10**
Notice of Continuation June 11, 1998

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

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

R270-1-2. Funeral and Burial Award.

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

B. Transportation of immediate family members (spouse, father, mother, stepparents, child, brother, sister, stepchild, stepbrother and stepsister) or legal guardian to attend a funeral and burial service shall be considered as an allowable expense in addition to the $4,000.

C. Loss of earnings for immediate family members (spouse, father, mother, stepparents, child, brother, sister, stepchild, stepbrother and stepsister) or legal guardian, to attend a funeral and burial service shall be allowed as follows:

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

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

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

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

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

R270-1-4. Counseling Awards.

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

1. Primary victims of a crime shall be eligible for a $2500 maximum mental health counseling award. The reparation officer shall approve a standardized treatment plan based on these limitations. Extenuating circumstances warranting consideration of counseling beyond the $2500 maximum may be submitted by the mental health provider after the maximum award has been reached. The cost of a mental health evaluation may not exceed $300 and shall be part of the $2500 maximum. For purposes herein, an evaluation shall be defined as a diagnostic interview examination including history, mental status, or disposition, in order to determine a plan of mental health treatment.

2. Secondary victims who are not primary victims pursuant to Subsections 63-25a-402(37)(39) and who witness or are traumatically affected by the violent crime shall be eligible for a $1000 maximum mental health counseling award only under the following circumstances:

(a) counseling for immediate family members (spouse, father, mother, stepparents, child, brother, sister, stepchild, stepbrother and stepsister) or legal guardian of homicide victims, and victims of child physical or sexual abuse;

(b) counseling for children of domestic violence crimes.

The reparation officer shall approve a standardized treatment plan based on these limitations. Extenuating circumstances warranting consideration of counseling beyond the $1000 maximum may be submitted by the mental health provider after the maximum award has been reached. The cost of a mental health evaluation may not exceed $300 and shall be part of the $1000 maximum. For purposes herein, an evaluation shall be defined as diagnostic interview examination including history, mental status, or disposition, in order to determine a plan of mental health treatment.

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

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

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

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

7. Payment for mental health counseling shall only be made to licensed therapists; or to individuals working towards a license, registered with the State of Utah Department of

Commerce, Division of Professional and Occupational Licensing and supervised by a licensed therapist.

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

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

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

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

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

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

10. Chemical dependency specific treatment will not be compensated unless the Reparation Officer determines that it is directly related to the crime. The CVR Board may review extenuating circumstance cases.

R270-1-5. Attorney Fees.

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

R270-1-6. Reparation Awards.

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

R270-1-7. Abortion.

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

R270-1-8. Emergency Awards.

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

R270-1-9. Loss of Earnings.

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

B. Loss of earnings by parents on behalf of child victims can be reimbursed if the losses were incurred on behalf of a dependent.

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

R270-1-10. Moving, Transportation Expenses.

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

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

R270-1-11. Witnesses.

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

R270-1-12. Collateral Source.

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

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

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

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

R270-1-13. Record Retention.

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

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

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

State Records Center for ten years and then destroyed.

R270-1-14. Awards.

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

R270-1-15. Essential Personal Property.

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

R270-1-16. Subrogation.

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

R270-1-17. Unjust Enrichment.

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

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

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

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

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

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

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

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

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

R270-1-19. Peer Review Committee.

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

R270-1-20. Medical Awards.

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

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

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

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

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

5. The Workers' Compensation fee schedule shall be used to set limits on out-patient medical procedures.

R270-1-21. Reasonable and Customary Rates.

Pursuant to Section 63-25a-411 the Crime Victim Reparations Board may establish reasonable and customary rates for various types of reparations through the writing of internal policy and procedures. (Examples: eyeglasses, tooth implants, headstones, etc.)

R270-1-22. Misconduct.

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

R270-1-23. Three Year Limitation.

Pursuant to Subsections 63-25a-406(1)(c) and 63-25a-428(2) a claim for benefits expires and no further payments will be made with regard to the claim after three years have elapsed from the date of application with the CVR office. All claimants who have filed a claim for benefits with the CVR office prior to

the effective date of this rule shall be notified in writing of the three year limitation for payment of benefits. Any claimant who filed a claim for benefits more than two and one-half years prior to the effective date of this rule, other than a claim for benefits for permanent disability or loss of support, shall be notified in writing that they have six months in which to submit any remaining expenses before the three year limitation is imposed and the claim is closed. Claims for benefits for permanent disability or loss of support filed prior to the effective date of this rule shall not be subject to the three year limitation. The Crime Victim Reparations Board may review extenuating circumstances on claims that have been closed because of the Three Year Limitation rule. Extenuating circumstances may be further defined by the CVR Board by written internal policy and procedures.

R270-1-24. Sexual Assault Forensic Examinations.

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

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

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

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

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

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

6. A request for reimbursement shall include the law enforcement case number or be signed by a law enforcement officer or victim/witness coordinator.

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

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

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

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

c. itemize services and fees for services.

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

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

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

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

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

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

i. history;

ii. physical;

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

iv. treatment for the prevention of venereal disease.

b. Emergency department services to include:

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

ii. cultures for gonorrhea, chlamydia, trichomonas, and other sexually transmitted disease for children under 14 years of age;

iii. serum blood test for pregnancy; and

iv. morning after pill for the prevention of pregnancy.

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

R270-1-25. Loss of Support Awards.

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

R270-1-26. Rent Awards.

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

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

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

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

This rule may be further defined through written internal policy and procedures.

KEY: victim compensation, victims of crimes
July 1, 1998 63-25a-401 et seq.
Notice of Continuation December 23, 1996

R277. Education, Administration.
R277-104. USOE ADA Complaint Procedure.
R277-104-1. Definitions.

A. "ADA" means the Americans with Disabilities Act, 42 U.S.C. 12201, which provides that no qualified individual with a disability, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by this or any such entity.

B. "The ADA Coordinator" means the designee of the State Board of Education, 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.

C. "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 the Attorney General.

D. "Disability" means, with respect to an individual 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. The definition of "disability" specifically excludes: transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, other sexual behavior disorders, compulsive gambling, kleptomania, pyromania, and psychoactive substance use disorders resulting from current illegal use of drugs.

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

F. "Individual with a disability" (hereinafter individual) means a person who has a disability which limits one of his major life activities and who meets the essential eligibility requirement for the receipt of services or the participation in programs or activities provided by the USOE or the State Board of Education, or who would otherwise be an eligible applicant for vacant state positions, as well as those who are employees of the state.

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

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

R277-104-2. Authority and Purpose.

A. This rule is authorized pursuant to 28 CFR 35.107, 1992 edition, which adopts, defines, and publishes complaint procedures providing for prompt and equitable resolution of complaints filed in accordance with Title II of the Americans with Disabilities Act, 28 CFR 35, 1992 edition.

B. The purpose of this rule is to establish a USOE procedure for filing complaints under the federal ADA law, provide an appeals procedure, and for appropriate classification of the records of complaints and appeals.

C. 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 the USOE, or be subjected to discrimination by the USOE.

R277-104-3. Filing of Complaints.

A. The complaint shall be filed in a timely manner to assure prompt, effective assessment and consideration of the facts, but not 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 USOE'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 USOE's alleged discriminatory action in sufficient detail to inform the USOE 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 legal representative.

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

R277-104-4. 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 USOE's legal, human resource and budget staff in determining what action, if any, shall be taken on the complaint. Before making any decision that would involve an expenditure of funds which is not absorbable within the USOE's budget and would require appropriation authority, facility modifications, or reclassification or reallocation in grade, the coordinator shall consult with the ADA State Coordinating Committee.

R277-104-5. Issuance of Decision.

A. Within 30 working days after receiving the complaint, the ADA coordinator shall issue a decision outlining in writing or in another acceptable suitable format stating what action, if any, shall be taken on the complaint.

B. If the coordinator is unable to reach a decision within the 30 working day period, he shall notify the individual with a disability in writing or by another acceptable suitable format why the decision is being delayed and what additional time is needed to reach a decision.

R277-104-6. Appeals.

A. The individual may appeal the decision of the ADA coordinator by filing an appeal within 10 working days from the receipt of the decision. **63-2-304 63-2-302 63-2-303 67-19-32**

B. The appeal shall be filed in writing with the Superintendent.

C. The filing of an appeal shall be considered as authorization by the individual to allow review of all information, including information classified as private or controlled, by the Superintendent or designee.

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 Superintendent 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 Superintendent to direct an expenditure of funds which is not absorbable and would require appropriation authority, facility modifications, or reclassification or reallocation in grade, he shall also consult with the State ADA Coordinating Committee.

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

G. If the Superintendent is unable to reach a decision within the ten working day period, he shall notify the individual in writing or by another acceptable suitable format why the decision is being delayed and the additional time needed to reach a decision.

R277-104-7. Classification of Records.

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, U.C.A. 1953, until the ADA coordinator or Superintendent issues 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, U.C.A. 1953, or controlled as defined in Section 63-2-303, U.C.A. 1953. All other information gathered as part of the complaint record shall be classified as private information. Only the written decision of the coordinator or Superintendent shall be classified as public information.

R277-104-8. Relationship to Other Laws.

This rule does not prohibit or limit the use of remedies available to the individuals under the State Anti-Discrimination Complaint Procedures, Section 67-19-32, U.C.A. 1953; the Federal ADA Complaint Procedures (28 CFR Subpart F, beginning with Part 35.170, 1992 edition); or any other Utah state or federal law that provided equal or greater protection for the rights of individuals with disabilities.

KEY: complaints, disabled persons
1993 **28 CFR 35**
Notice of Continuation June 4, 1998 **28 CFR 35.107**
42 U.S.C. 12201

R277. Education, Administration.
R277-116. USOE Internal Audit Procedure.
R277-116-1. Definitions.

A. "Audit" means performance audits, including economy and efficiency audits and program audits or financial-related audits as outlined in GOVERNMENT AUDITING STANDARDS, Comptroller General of the United States, 1988 revision which is hereby incorporated by reference, and available from the USOE Internal Auditor and at the Utah Attorney General's Office.

B. "Board" means the 15 member elected Utah State Board of Education/Utah State Board for Applied Technology Education.

C. "Yellow Book Standards" means the auditing standards outlined in the GOVERNMENT AUDITING STANDARDS (complete citation above).

D. "Internal Auditor" means the Board's Internal Auditor who is direct staff, has a personal and confidential relationship to the Board, and who is appointed by the Board for the purpose of conducting performance audits, including economy and efficiency audits and program audits or financial-related audits as outlined in GOVERNMENT AUDITING STANDARDS. The Internal Auditor may conduct other auditing assignments as directed by the Board. The Internal Auditor cooperates and coordinates with the Audit Committee. The Internal Auditor's performance is evaluated by the Board or a committee of Board members.

E. "Audit Committee" means the audit committee of the Board composed of the Chairman, Vice Chairman and three Standing Committee Chairs of the Board given the responsibility to determine the relative importance of audit requests, receive reports from the internal auditor, and release audit reports to Board members and other interested parties.

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

G. "LEA" means any local education agency under the supervision of the Board including local school districts, regional service centers, area technology centers and vocational programs.

R277-116-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, Section 53A-1-401(4) which directs the Board to adopt rules to promote quality, efficiency and productivity and to eliminate unnecessary duplication in the public education system, Section 53A-1-405 which makes the Board responsible for verifying audits of local school districts, Section 53A-1-402(1)(f) which directs the Board to develop rules and minimum standards regarding cost effectiveness measures, school budget formats and financial accounting requirements for the local school districts and by Section 53A-17a-147(2) which directs the Board to assess the progress and effectiveness of local school districts and programs funded under the Minimum School Program and report its findings to the Legislature.

B. The purpose of this rule is to outline the Board's criteria and procedures for internal audits of programs under its supervision.

R277-116-3. Audit Committee Responsibilities.

The Audit Committee shall:

A. determine the priority for audits to be performed based on recommendations from the Internal Auditor, Audit Committee requests or correspondence, other Board member requests, or USOE staff recommendations;

B. distribute drafts or preliminary versions of audits only to other Board members, as requested, or auditees. Internal audits that have not been reviewed in final form by the Audit Committee and the auditee are drafts and, as such, are not public records;

C. determine the distribution of audit findings in any or all stages or reports to other Board members as well as to other interested parties;

D. review the findings and recommendations of the Internal Auditor and make recommendations for action on the findings to the Board.

R277-116-4. Internal Auditor Authority and Responsibilities.

A. The Internal Auditor reports directly to and is responsible solely to the Board, in cooperation with the Audit Committee.

B. The Internal Auditor shall conduct audits as may be recommended by the Audit Committee, and as directed by the Board, including economy and efficiency audits, program audits, and financial-related audits of any program, function, LEA, or division under the Board's supervision, or as otherwise directed by the Board.

C. The Internal Auditor shall have access to all records, personnel, and physical materials relevant and necessary to conduct audits of all programs and agencies supervised by the Board.

D. The Internal Auditor shall notify the Audit Committee and the Board in a timely manner of any irregularity or serious deficiency discovered in the audit process.

E. The Internal Auditor shall submit a written report to the Audit Committee and the Board of each authorized audit within a reasonable time after completion of the audit.

F. The Internal Auditor shall review, upon the Board's direction, the implementation of recommendations or alternative actions taken as a result of an audit.

R277-116-5. Scope of Internal Audits.

A. An audit conducted by the Internal Auditor may include any or all of the following:

(1) an examination of any Board-supervised program or entity records or financial books to determine the accuracy and completeness of fiscal affairs, the accuracy and reliability of financial statements and reports, and the adequacy and effectiveness of financial controls to properly and professionally record the acquisition, custody, and use of public funds;

(2) an examination to determine whether program or entity administrators and staff have adhered to state law and Board rules;

(3) an examination to determine if operations of a program or entity have been accomplished lawfully and efficiently; and

(4) an examination to determine whether management control and information systems are adequate to guarantee

compliance with the law and Board rules.

KEY: educational administration

June 17, 1998	**Art X Sec 3**
Notice of Continuation September 12, 1997	**53A-1-401(3)**
	53A-1-401(4)
	53A-1-405
	53A-1-402(1)(f)
	53A-17a-147(2)

R277. Education, Administration.
R277-436. Gang Prevention and Intervention Programs in the Schools.
R277-436-1. Definitions.

A. "Student at risk" means any student who because of his individual needs requires some kind of uniquely designed intervention in order to achieve literacy, graduate and be prepared for transition from school to post-school options.

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

C. "Gang" means a group of people who form an allegiance and engage in a range of anti-social behaviors that may include violent or unlawful activity or both. These groups may have a name, turf, colors, symbols, or distinct dress, or any combination of the preceding characteristics.

D. "Gang prevention" means instructional and support strategies, activities, programs, or curricula designed and implemented to provide successful experiences for youth and families. These components shall promote cultural and social competence, self-management skills, citizenship, preparation for life skills, academic achievement, literacy, and interpersonal relationship skills required for school completion and full participation in society.

E. "Gang intervention" means specially designed services required by an individual student experiencing difficulty in cultural and social competence, self-management skills, citizenship, preparation for life skills, academic achievement, literacy, and interpersonal relationships within or outside of the school which may impact the individual's susceptibility to gang membership or gang-like activities or both.

F. "Gang Prevention and Intervention Program" means specifically designed projects and activities to help at-risk students stay in school and enhance their cultural and social competence, self-management skills, citizenship, preparation for life skills, academic achievement, literacy, and interpersonal relationship skills required for school completion and full participation in society.

G. "In kind services" means those materials, staff and equipment which are required to develop and implement gang prevention and intervention services, strategies, activities, programs, and curricula with individual students, families, or both. In kind services do not include office space and related office support.

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

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

R277-436-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and authority over public education in the Board, by Section 53A-1-401(4) which directs the Board to adopt rules mandating school productivity and cost effective measures, Section 53A-15-601 which appropriates funds to be used for Gang Prevention and Intervention Programs in the Schools, allows the Board to develop an application process, and to distribute funds, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to establish standards and procedures for distributing funding for gang prevention and intervention programs in the schools.

R277-436-3. Distribution of Applications and Funds.

A. Awards shall be made to individual schools and funds allocated to school districts to distribute to designated schools.

B. Applications shall be provided by the USOE.

C. Schools shall submit applications to the Director of Services for At Risk Students or designee who shall make final funding recommendations to the USOE Finance Committee by July 1 of the year prior to the fiscal year in which the money is available.

D. Applicants shall provide evidence and intent of their ability to supply the required school contribution percentage as designated in 53A-15-601(5).

E. In kind services shall be provided consistent with Section 53A-15-601(5) and R277-436-1G.

F. Awards per school shall be based on funds available and specific funding limits shall be prescribed in the application provided by the USOE.

G. Schools may submit joint applications.

H. Priority shall be given to applications reflecting interagency collaboration.

I. Projects receiving funding shall be notified by July 1.

R277-436-4. Limitation on Funds.

A. Funds shall be used exclusively for purposes set forth in Section 53A-15-601.

B. Transfer of funds between line items or the extension of project completion dates may be made only with prior written approval of the USOE At Risk Director or designee.

R277-436-5. Evaluation and Reports.

A. A school in a district that accepts Gang Prevention and Intervention Program funds shall provide the USOE with a year-end evaluation report by June 30 of the fiscal year in which the award was made.

B. The year-end report shall include:

(1) an expenditure report;

(2) a narrative description of all activities funded;

(3) copies of any and all products developed;

(4) effectiveness report detailing evidence of individual and overall program impact on gang and gang-related activities and involvement;

(5) verification that the required school contribution percentage of program costs were provided by the individual school; and

(6) other information or data as required by the USOE At Risk Director.

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

R277-436-6. Waivers.

The Superintendent may grant a written request for a waiver of a requirement or deadline which a district finds unduly restrictive. The waiver shall be consistent with the Utah Public Education Strategic Plan, January 1992, pages 17 and 21, or the express purpose of this rule.

KEY: public schools, disciplinary problems, students at risk*, gangs*

1994	**Art X Sec 3**
Notice of Continuation June 4, 1998	**53A-1-401(4)**
	53A-15-601
	53A-1-401(3)

R307. Environmental Quality, Air Quality.
R307-10. National Emission Standards for Hazardous Air Pollutants.
R307-10-1. Part 61 Sources.

The provisions of 40 Code of Federal Regulations (CFR) Part 61, National Emission Standards for Hazardous Air Pollutants, effective as of October 20, 1994, are incorporated into these rules by reference. For source categories delegated to the State, references in 40 CFR Part 61 to "the Administrator" shall refer to the Executive Secretary.

R307-10-2. Part 63 Sources.

The provisions listed below of 40 CFR Part 63, National Emission Standards for Hazardous Air Pollutants for Source Categories, effective as of January 1, 1998, are incorporated into these rules by reference. References in 40 CFR Part 63 to "the Administrator" shall refer to the Executive Secretary, unless by federal law the authority is specific to the Administrator and cannot be delegated.

(a) 40 CFR Part 63, Subpart A, General Provisions.

(b) 40 CFR Part 63, Subpart B, Requirements for Control Technology Determinations for Major Sources in Accordance with 42 U.S.C. 7412(g) and (j).

(c) 40 CFR Part 63, Subpart F, National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry.

(d) 40 CFR Part 63, Subpart G, National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater.

(e) 40 CFR Part 63, Subpart H, National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks.

(f) 40 CFR Part 63, Subpart I, National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.

(g) 40 CFR Part 63, Subpart L, National Emission Standards for Coke Oven Batteries.

(h) 40 CFR Part 63, Subpart M, National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities.

(i) 40 CFR Part 63, Subpart N, National Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks.

(j) 40 CFR Part 63, Subpart O, National Emission Standards for Hazardous Air Pollutants for Ethylene Oxide Commercial Sterilization and Fumigation Operations.

(k) 40 CFR Part 63, Subpart Q, National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers.

(l) 40 CFR Part 63, Subpart R, National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations).

(m) 40 CFR Part 63, Subpart T, National Emission Standards for Halogenated Solvent Cleaning.

(n) 40 CFR Part 63, Subpart CC, National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries.

(o) 40 CFR Part 63, Subpart DD, National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations.

(p) 40 CFR Part 63, Subpart EE, National Emission Standards for Magnetic Tape Manufacturing Operations.

(q) 40 CFR Part 63, Subpart GG, National Emission Standards for Aerospace Manufacturing and Rework Facilities.

(r) 40 CFR Part 63, Subpart JJ, National Emission Standards for Wood Furniture Manufacturing Operations.

(s) 40 CFR Part 63, Subpart KK, National Emission Standards for the Printing and Publishing Industry.

(t) 40 CFR Part 63, Subpart OO, National Emission Standards for Tanks - Level 1.

(u) 40 CFR Part 63, Subpart PP, National Emission Standards for Containers.

(v) 40 CFR Part 63, Subpart QQ, National Emission Standards for Surface Impoundments.

(w) 40 CFR Part 63, Subpart RR, National Emission Standards for Individual Drain Systems.

(x) 40 CFR Part 63, Subpart VV, National Emission Standards for Oil-Water Separators and Organic-Water Separators.

KEY: air pollution, hazardous air pollutants*, MACTs*
June 26, 1998 19-2-104

R309. Environmental Quality, Drinking Water.
R309-113. Drinking Water Source Protection.
R309-113-1. Authority.

Under authority of Section 19-4-104(1)(a)(iv), the Drinking Water Board adopts this rule which governs the protection of ground-water sources of drinking water.

R309-113-2. Purpose.

Public Water Systems (PWSs) are responsible for protecting their sources of drinking water from contamination. R309-113 sets forth minimum requirements to establish a uniform, statewide program for implementation by PWSs to protect their ground-water sources of drinking water. PWSs are encouraged to enact more stringent programs to protect their sources of drinking water if they decide they are necessary.

R309-113 applies to all ground-water sources of drinking water which are used by PWSs to supply their systems except sources which are under the direct influence of surface water and are treated in accordance with surface water treatment rules (refer to R309-206 through R309-208). Additionally, compliance with this rule is voluntary for existing ground-water sources of drinking water which are used by public (transient) non-community water systems.

R309-113-3. Implementation.

(1) New Ground-Water Sources - Each PWS shall submit a Preliminary Evaluation Report (PER) in accordance with R309-113-13(2) for each of its new ground-water sources to the Division of Drinking Water (DDW).

(2) Existing Ground-Water Sources - Each PWS shall submit a Drinking Water Source Protection (DWSP) Plan in accordance with R309-113-7(1) for each of its existing ground-water sources to DDW according to the following schedule. Well fields or groups of springs may be considered to be a single source.

TABLE 1

Population Served By PWS:	Percent Of Sources:	DWSP Plans Due By:
Over 10,000	50% of wells	December 31, 1995
Over 10,000	100% of wells	December 31, 1996
3,300-10,000	100% of wells	December 31, 1997
Less than 3,300	100% of wells	December 31, 1998
Springs and other sources	100%	December 31, 1999

(3) PWSs shall maintain all land use agreements which were established under previous rules to protect their ground-water sources of drinking water from contamination. Additionally, PWSs shall maintain land ownership and land-use agreements established under previous rules with new owners which prohibit these new owners from locating pollution sources within protection zones.

R309-113-4. Exceptions.

(1) Exceptions to the requirements of R309-113 or parts thereof may be granted by the Executive Secretary to PWSs if: due to compelling factors (which may include economic factors), a PWS is unable to comply with these requirements, and the granting of an exception will not result in an unreasonable risk to health.

(2) The Executive Secretary may prescribe a schedule by which the PWS must come into compliance with the requirements of R309-113.

R309-113-5. Designated Person.

(1) A designated person shall be appointed and reported in writing to the Executive Secretary by each PWS within 180 days of the effective date of R309-113. The designated person's address and telephone number shall be included in the written correspondence. Additionally, the above information must be included in each DWSP Plan and PER that is submitted to DDW.

(2) Each PWS shall notify the Executive Secretary in writing within 30 days of any changes in the appointment of a designated person.

R309-113-6. Definitions.

(1) The following terms are defined for the purposes of this rule:

(a) "Collection area" means the area surrounding a ground-water source which is underlain by collection pipes, tile, tunnels, infiltration boxes, or other ground-water collection devices.

(b) "Controls" means the codes, ordinances, rules, and regulations currently in effect to regulate a potential contamination source.

(c) "Criteria" means the conceptual standards that form the basis for DWSP area delineation to include distance, ground-water time of travel, aquifer boundaries, and ground-water divides.

(d) "Criteria threshold" means a value or set of values selected to represent the limits above or below which a given criterion will cease to provide the desired degree of protection.

(e) "DDW" means Division of Drinking Water.

(f) "DWSP Program" means the program to protect drinking water source protection zones and management areas from contaminants that may have an adverse effect on the health of persons.

(g) "DWSP Zone" means the surface and subsurface area surrounding a ground-water source of drinking water supplying a PWS, through which contaminants are reasonably likely to move toward and reach such ground-water source.

(h) "Designated person" means the person appointed by a PWS to ensure that the requirements of R309-113 are met.

(i) "Executive Secretary" means the individual authorized by the Drinking Water Board to conduct business on its behalf.

(j) "Existing ground-water source of drinking water" means a public supply ground-water source for which plans and specifications were submitted to DDW on or before July 26, 1993.

(k) "Ground-water Source" means any well, spring, tunnel, adit, or other underground opening from or through which ground-water flows or is pumped from subsurface water-bearing formations.

(l) "Hydrogeologic methods" means the techniques used to translate selected criteria and criteria thresholds into mappable delineation boundaries. These methods include, but are not limited to, arbitrary fixed radii, analytical calculations

and models, hydrogeologic mapping, and numerical flow models.

(m) "Land management strategies" means zoning and non-zoning controls which include, but are not limited to, the following: zoning and subdivision ordinances, site plan reviews, design and operating standards, source prohibitions, purchase of property and development rights, public education programs, ground-water monitoring, household hazardous waste collection programs, water conservation programs, memoranda of understanding, written contracts and agreements, and so forth.

(n) "Land use agreement" means a written agreement wherein the owner(s) agrees not to locate or allow the location of uncontrolled potential contamination sources or pollution sources within zone one of new wells in protected aquifers. The owner(s) must also agree not to locate or allow the location of pollution sources within zone two of new wells in unprotected aquifers and new springs unless the pollution source agrees to install design standards which prevent contaminated discharges to ground water. This restriction must be binding on all heirs, successors, and assigns. Land use agreements must be recorded with the property description in the local county recorder's office. Refer to R309-113-13(2)(d).

Land use agreements for protection areas on publicly owned lands need not be recorded in the local county recorder office. However, a letter must be obtained from the Administrator of the land in question and meet the requirements described above.

(o) "Management area" means the area outside of zone one and within a two-mile radius where the Optional Two-mile Radius Delineation Procedure has been used to identify a protection area.

For wells, land may be excluded from the DWSP management area at locations where it is more than 100 feet lower in elevation than the total drilled depth of the well.

For springs and tunnels, the DWSP management area is all land at elevation equal to or higher than, and within a two-mile radius, of the spring or tunnel collection area. The DWSP management area also includes all land lower in elevation than, and within 100 horizontal feet, of the spring or tunnel collection area. The elevation datum to be used is the point of water collection. Land may also be excluded from the DWSP management area at locations where it is separated from the ground-water source by a surface drainage which is lower in elevation than the spring or tunnel collection area.

(p) "New ground-water source of drinking water" means a public supply ground-water source of drinking water for which plans and specifications are submitted to DDW after July 26, 1993.

(q) "Nonpoint source" means any conveyance not meeting the definition of point source.

(r) "PWS" means public water system.

(s) "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, animal feeding operation with more than ten animal units, landfill, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

(t) "Pollution source" means point source discharges of contaminants to ground water or potential discharges of the liquid forms of "extremely hazardous substances" which are stored in containers in excess of "applicable threshold planning quantities" as specified in SARA Title III. Examples of possible pollution sources include, but are not limited to, the following: storage facilities that store the liquid forms of extremely hazardous substances, septic tanks, drain fields, class V underground injection wells, landfills, open dumps, landfilling of sludge and septage, manure piles, salt piles, pit privies, drain lines, and animal feeding operations with more than ten animal units.

The following definitions are part of R309-113 and clarify the meaning of "pollution source:"

(i) "Animal feeding operation" means a lot or facility where the following conditions are met: animals have been or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12 month period, and crops, vegetation forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility. Two or more animal feeding operations under common ownership are considered to be a single feeding operation if they adjoin each other, if they use a common area, or if they use a common system for the disposal of wastes.

(ii) "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 55 pounds multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0.

(iii) "Extremely hazardous substances" means those substances which are identified in the Sec. 302(EHS) column of the "TITLE III LIST OF LISTS - Consolidated List of Chemicals Subject to Reporting Under SARA Title III," (EPA 550-B-96-015). A copy of this document may be obtained from: NCEPI, PO Box 42419, Cincinnati, OH 45202. Online ordering is also availabe at http://www.epa.gov/ncepihom/orderpub.html.

(u) "Potential contamination source" means any facility or site which employs an activity or procedure which may potentially contaminate ground water. A pollution source is also a potential contamination source.

(v) "Protected aquifer" means a producing aquifer in which the following conditions are met:

(i) A naturally protective layer of clay, at least 30 feet in thickness, is present above the aquifer;

(ii) the PWS provides data to indicate the lateral continuity of the clay layer to the extent of zone two; and

(iii) the public-supply well is grouted with a grout seal that extends from the ground surface down to at least 100 feet below the surface, and through the protective clay layer.

(w) "Replacement well" means a public-supply well drilled for the sole purpose of replacing an existing public-supply well which is impaired or made useless by structural difficulties and in which the following conditions are met:

(i) no new right in the use of water accrues;

(ii) the proposed well location shall be within a radius of 150 feet from an existing ground-water supply well, as defined

in R309-113-6(1)(j);

(iii) the PWS provides a copy of the replacement application approved by the State Engineer (refer to Section 73-3-28 of the Utah Code Annotated);and

(iv) the existing well(s) that is being replaced must be permanently abandoned in accordance with R655-4-7.12 and R655-4-12 through R655-4-12.12.

(x) "Time of travel" means the time required for a particle of water to move in the producing aquifer from a specific point to a ground-water source of drinking water.

(y) "Unprotected aquifer" means any aquifer that does not meet the definition of a protected aquifer.

(z) "Wellhead" means the physical structure, facility, or device at the land surface from or through which ground-water flows or is pumped from subsurface, water-bearing formations.

R309-113-7. DWSP Plans.

(1) Each PWS shall develop, submit, and implement a DWSP Plan for each of its ground-water sources of drinking water.

Required Sections for DWSP Plans - DWSP Plans should be developed in accordance with the "Standard Report Format for Existing Wells and Springs." This document may be obtained from DDW. DWSP Plans must include the following seven sections:

(a) DWSP Delineation Report - A DWSP Delineation Report in accordance with R309-113-9(5) is the first section of a DWSP Plan.

(b) Potential Contamination Source Inventory and Assessment of Controls - A Prioritized Inventory of Potential Contamination Sources and an assessment of their controls in accordance with R309-113-10 is the second section of a DWSP Plan.

(c) Management Program to Control Each Preexisting Potential Contamination Source - A Management Program to Control Each Preexisting Potential Contamination Source in accordance with R309-113-11 is the third section of a DWSP Plan.

(d) Management Program to Control or Prohibit Future Potential Contamination Sources for Existing Drinking Water Sources - A Plan for Controlling or Prohibiting Future Potential Contamination Sources is the fourth section of a DWSP Plan. This must be in accordance with R309-113-12, consistent with the general provisions of this rule, and implemented to an extent allowed under the PWS's authority and jurisdiction.

(e) Implementation Schedule - Each PWS shall develop a step-by-step implementation schedule which lists each of its proposed land management strategies with an implementation date for each strategy.

(f) Resource Evaluation - Each PWS shall assess the financial and other resources which may be required for it to implement each of its DWSP Plans and determine how these resources may be acquired.

(g) Recordkeeping - Each PWS shall document changes in each of its DWSP Plans as they are continuously updated to show current conditions in the protection zones and management areas. As a DWSP Plan is executed, the PWS shall document any land management strategies that are implemented. These documents may include any of the following: ordinances, codes, permits, memoranda of understanding, public education programs, and so forth.

(2) DWSP Plan Administration - DWSP Plans shall be submitted, corrected, retained, implemented, updated, and revised according to the following:

(a) Submitting DWSP Plans - Each PWS shall submit a DWSP Plan to DDW in accordance with the schedule in R309-113-3(2) for each of its ground-water sources of drinking water.

(b) Correcting Deficiencies - Each PWS shall correct any deficiencies in a disapproved DWSP Plan and resubmit it to DDW within 90 days of the disapproval date.

(c) Retaining DWSP Plans - Each PWS shall retain on its premises a current copy of each of its DWSP Plans. DWSP Plans shall be made available to the public upon request.

(d) Implementing DWSP Plans - Each PWS shall begin implementing each of its DWSP Plans in accordance with its schedule in R309-113-7(1)(e), within 180 days after submittal if they are not disapproved by DDW.

(e) Updating and Resubmitting DWSP Plans - Each PWS shall update its DWSP Plans as often as necessary to ensure they show current conditions in the DWSP zones and management areas. Updated plans also document the implementation of land management strategies in the recordkeeping section. DWSP Plans are initially due according to the schedule in R309-113-3. Thereafter, updated DWSP Plans are due every six years from their original due date. This applies even though a PWS may have been granted an extension beyond the original due date.

(f) Revising DWSP Plans - Each PWS shall submit a revised DWSP Plan to DDW within 180 days after the reconstruction or redevelopment of any ground-water source of drinking water which addresses changes in source construction, source development, hydrogeology, delineation, potential contamination sources, and proposed land management strategies.

R309-113-8. DWSP Plan Review.

(1) DDW shall review each DWSP Plan submitted by PWSs and "concur," "concur with recommendations," "conditionally concur" or "disapprove" the plan.

(2) DDW may "disapprove" DWSP Plans for any of the following reasons:

(a) An inaccurate DWSP Delineation Report, a report that uses a non-applicable delineation method, or a DWSP Plan that is missing this report or any of the information and data required in it (refer to R309-113-9(5));

(b) an inaccurate Prioritized Inventory of Potential Contamination Sources or a DWSP Plan that is missing this report or any of the information required in it (refer to R309-113-10(1));

(c) an inaccurate assessment of current controls or a DWSP Plan that is missing this assessment or any of the information required in it (refer to R309-113-10(2));

(d) a missing Management Program to Control Each Preexisting Potential Contamination Source which has been assessed as "not adequately controlled" by the PWS (refer to R309-113-11(1));

(e) a missing Management Program to Control or Prohibit Future Potential Contamination Sources (refer to R309-113-12);

(f) a missing Implementation Schedule, Resource Evaluation, Recordkeeping Section, or Contingency Plan (refer to R309-113-7(1)(e)-(g) and R309-113-14).

(3) DDW may "concur with recommendations" when PWSs propose management programs to control preexisting potential contamination sources or management programs to control or prohibit future potential contamination sources for existing or new drinking water sources which appear inadequate or ineffective.

(4) DDW may "conditionally concur" with a DWSP Plan or PER. The PWS must implement the conditions and report compliance the next time the DWSP Plan is due and submitted to DDW.

R309-113-9. Delineation of Protection Zones and Management Areas.

(1) PWSs shall delineate protection zones or a management area around each of their ground-water sources of drinking water using the Preferred Delineation Procedure or the Optional Two-mile Radius Delineation Procedure. The hydrogeologic method used by PWSs shall produce protection zones or a management area in accordance with the criteria thresholds below. PWSs may also choose to verify protected aquifer conditions to reduce the level of management controls applied in applicable protection areas.

(2) Criteria Thresholds for Ground-water Sources of Drinking Water:

(a) Preferred Delineation Procedure - Four zones are delineated for management purposes:

(i) Zone one is the area within a 100-foot radius from the wellhead or margin of the collection area.

(ii) Zone two is the area within a 250-day ground-water time of travel to the wellhead or margin of the collection area, the boundary of the aquifer(s) which supplies water to the ground-water source, or the ground-water divide, whichever is closer. If the available data indicate a zone of increased ground-water velocity within the producing aquifer(s), then time-of-travel calculations shall be based on this data.

(iii) Zone three (waiver criteria zone) is the area within a 3-year ground-water time of travel to the wellhead or margin of the collection area, the boundary of the aquifer(s) which supplies water to the ground-water source, or the ground-water divide, whichever is closer. If the available data indicate a zone of increased ground-water velocity within the producing aquifer(s), then time-of-travel calculations shall be based on this data.

(iv) Zone four is the area within a 15-year ground-water time of travel to the wellhead or margin of the collection area, the boundary of the aquifer(s) which supplies water to the ground-water source, or the ground-water divide, whichever is closer. If the available data indicate a zone of increased ground-water velocity within the producing aquifer(s), then time-of-travel calculation shall be based on this data.

(b) Optional Two-mile Radius Delineation Procedure - In place of the Preferred Delineation Procedure, PWSs may choose to use the Optional Two-mile Radius Delineation Procedure to delineate a management area. This procedure is best applied in rural areas where few if any potential contamination sources are located. Refer to R309-113-6(1)(o) for the definition of a management area.

(3) Protected Aquifer Classification - PWSs may choose to verify protected aquifer conditions to reduce the level of management controls for a public-supply well which produces water from a protected aquifer(s). Refer to R309-113-6(1)(v) for the definition of a "protected aquifer."

(4) Special Conditions - Special scientific or engineering studies may be conducted to support a request for an exception (refer to R309-113-4) due to special conditions. These studies must be approved by DDW before the PWS begins the study. Special studies may include confined aquifer conditions, ground-water movement through protective layers, wastewater transport and fate, etc.

(5) DWSP Delineation Report - Each PWS shall submit a DWSP Delineation Report to DDW for each of its ground-water sources using the Preferred Delineation Procedure or the Optional Two-mile Radius Delineation Procedure.

(a) Preferred Delineation Procedure - Delineation reports for protection zones delineated using the Preferred Delineation Procedure shall include the following information and a list of all sources or references for this information:

(i) Geologic Data - A brief description of geologic features and aquifer characteristics observed in the well and area of the potential protection zones. This should include the formal or informal stratigraphic name(s), lithology of the aquifer(s) and confining unit(s), and description of fractures and solution cavities (size, abundance, spacing, orientation) and faults (brief description of location in or near the well, and orientation). Lithologic descriptions can be obtained from surface hand samples or well cuttings; core samples and laboratory analyses are not necessary. Fractures, solution cavities, and faults may be described from surface outcrops or drill logs.

(ii) Well Construction Data - If the source is a well, the report shall include the well drillers log, elevation of the wellhead, borehole radius, casing radius, total depth of the well, depth and length of the screened or perforated interval(s), well screen or perforation type, casing type, method of well construction, type of pump, location of pump in the well, and the maximum projected pumping rate of the well. The maximum pumping rate of the well must be used in the delineation calculations. Averaged pumping rate values shall not be used.

(iii) Spring Construction Data - If the source is a spring or tunnel the report shall include a description or diagram of the collection area and method of ground-water collection.

(iv) Aquifer Data for New Wells - A summary report including the calculated hydraulic conductivity of the aquifer, transmissivity, hydraulic gradient, direction of ground-water flow, estimated effective porosity, and saturated thickness of the producing aquifer(s). The PWS shall obtain the hydraulic conductivity of the aquifer from a constant-rate aquifer test and provide the data as described in R309-204-6(10)(b). Estimated effective porosity must be between 1% and 30%. Clay layers shall not be included in calculations of aquifer thickness or estimated effective porosity. This report shall include graphs, data, or printouts showing the interpretation of the aquifer test.

(v) Aquifer Data for Existing Wells - A summary report including the calculated hydraulic conductivity of the aquifer, transmissivity, hydraulic gradient, direction of ground-water

flow, estimated effective porosity, and saturated thickness of the producing aquifer(s). The PWS shall obtain the hydraulic conductivity of the aquifer from a constant-rate aquifer test using the existing pumping equipment. Aquifer tests using observation wells are encouraged, but are not required. If a previously performed aquifer test is available and includes the required data described below, data from that test may be used instead. Estimated effective porosity must be between 1% and 30%. Clay layers shall not be included in calculations of aquifer thickness or estimated effective porosity. This report shall include graphs, data, or printouts showing the interpretation of the aquifer test.

If a constant-rate aquifer test is not practical, then the PWS shall obtain hydraulic conductivity of the aquifer using another appropriate method, such as data from a nearby well in the same aquifer, specific capacity of the well, published hydrogeologic studies of the same aquifer, or local or regional ground-water models. A constant-rate test may not be practical for such reasons as insufficient drawdown in the well, inaccessibility of the well for water-level measurements, or insufficient overflow capacity for the pumped water.

The constant-rate test shall:

(A) Provide for continuous pumping for at least 24 hours or until stabilized drawdown has continued for at least six hours. Stabilized drawdown is achieved when there is less than one foot of change of ground-water level in the well within a six-hour period.

(B) Provide data as described in R309-204-6(10)(b)(v) through (vii).

(vi) Additional Data for Observation Wells - If the aquifer test is conducted using observation wells, the report shall include the following information for each observation well: location and surface elevation; total depth; depth and length of the screened or perforated intervals; radius, casing type, screen or perforation type, and method of construction; prepumping ground-water level; the time-drawdown or distance-drawdown data and curve; and the total drawdown.

(vii) Hydrogeologic Methods and Calculations - These include the ground-water model or other hydrogeologic method used to delineate the protection zones, all applicable equations, values, and the calculations which determine the delineated boundaries of zones two, three, and four. The hydrogeologic method or ground-water model must be reasonably applicable for the aquifer setting. For wells, the hydrogeologic method or ground-water model must include the effects of drawdown (increased hydraulic gradient near the well) and interference from other wells.

(viii) Map Showing Boundaries of the DWSP Zones - A map showing the location of the ground-water source of drinking water and the boundary for each DWSP zone. The base map shall be a 1:24,000-scale (7.5-minute series) topographic map, such as is published by the U.S. Geological Survey. Although zone one (100-foot radius around the well or margin of the collection area) need not be on the map, the complete boundaries for zones two, three, and four must be drawn and labeled. More detailed maps are optional and may be submitted in addition to the map required above.

The PWS shall also include a written description of the distances which define the delineated boundaries of zones two, three, and four. These written descriptions must include the maximum distances upgradient from the well, the maximum distances downgradient from the well, and the maximum widths of each protection zone.

(b) Optional Two-Mile Radius Delineation Procedure - Delineation Reports for protection areas delineated using the Optional Two-mile Radius Delineation Procedure shall include the following information:

(i) Map Showing Boundaries of the DWSP Management Area - A map showing the location of the ground-water source of drinking water and the DWSP management area boundary. The base map shall be a 1:24,000-scale (7.5-minute series) topographic map, such as is published by the U.S. Geological Survey. Although zone one (100-foot radius around the well or margin of the collection area) need not be on the map, the complete two-mile radius must be drawn and labeled. More detailed maps are optional and may be submitted in addition to the map required above.

(ii) Hydrogeologic Report for Potential Contamination Sources - Unless the PWS chooses the option in R309-113-9(5)(b)(iii) below, it shall submit a hydrogeologic report for each potential contamination source within zone one and the management area. This report must explain the potential for contamination to move from the contamination source to the ground-water source and its potential impact on the drinking water quality of the ground-water source.

(iii) Hydrogeologic Report Not Required - A hydrogeologic report for pollution sources within zone one and the management area is not required if these pollution sources implement design standards which prevent contaminated discharges to ground water. Additionally, a hydrogeologic report is not required for potential contamination sources if the PWS meets the requirements in R309-113-11 and 12.

(6) Protected Aquifer Conditions - If a PWS chooses to verify protected aquifer conditions, it shall submit the following additional data to DDW for each of its ground-water sources for which the protected aquifer conditions apply. The report must state that the aquifer meets the definition of a protected aquifer based on the following information:

(a) thickness, depth, and lithology of the protective clay layer;

(b) data to indicate the lateral continuity of the protective clay layer over the extent of zone two. This may include such data as correlation of beds in multiple wells, published hydrogeologic studies, stratigraphic studies, potentiometric surface studies, and so forth; and

(c) evidence that the well has been grouted or otherwise sealed from the ground surface to a depth of at least 100 feet and for a thickness of at least 30 feet through the protective clay layer in accordance with R309-113-6(1)(v) R309-204-6(6)(i).

R309-113-10. Potential Contamination Source Inventory and Identification and Assessment of Controls.

(1) Prioritized Inventory of Potential Contamination Sources - Each PWS shall list all potential contamination sources within each DWSP zone or management area in priority order and state the basis for this order. This priority ranking shall be according to relative risk to the drinking water source. The name and address of each commercial and industrial

potential contamination source is required. Additional information should include the name and phone number of a contact person and a list of the chemical, biological, and/or radiological hazards associated with each potential contamination source. Additionally, each PWS shall identify each potential contamination source as to its location in zone one, two, three, four or in a management area and plot it on the map required in R309-113-9(5)(a)(viii) or R309-113-9(5)(b)(i).

(a) List of Potential Contamination Sources - A List of Potential Contamination Sources is found in the "Source Protection User's Guide." This document may be obtained from DDW. This list may be used by PWSs as a guide to inventorying potential contamination sources within their DWSP zones and management areas.

(b) Refining, Expanding, Updating, and Verifying Potential Contamination Sources - Each PWS shall update its list of potential contamination sources to show current conditions within DWSP zones or management areas. This includes adding potential contamination sources which have moved into DWSP zones or management areas, deleting potential contamination sources which have moved out, improving available data about potential contamination sources, and all other appropriate refinements.

(2) Identification and Assessment of Current Controls - PWSs are not required to plan and implement land management strategies for potential contamination source hazards that are assessed as "adequately controlled." If controls are not identified, the potential contamination source will be considered to be "not adequately controlled." Additionally, if the hazards at a potential contamination source cannot be identified, the potential contamination source must be assessed as "not adequately controlled." Identification and assessment should be limited to one of the following controls for each applicable hazard: regulatory, best management/pollution prevention, physical, and negligible quantity controls. Each of the following topics for a control must be addressed before identification and assessment will be considered to be complete. Refer to the "Source Protection User's Guide" for a list of government agencies and the programs they administer to control potential contamination sources. This guide may be obtained from DDW.

(a) Regulatory Controls - Identify the enforcement agency and verify that the hazard is being regulated by them; cite and/or quote applicable references in the regulation, rule or ordinance which pertain to controlling the hazard; explain how the regulatory control prevents ground-water contamination; assess the hazard; and set a date to reassess the hazard.

(b) Best Management/Pollution Prevention Practice Controls - List the specific best management/pollution prevention practices which have been implemented by potential contamination source management to control the hazard and indicate that they are willing to continue the use of these practices; explain how these practices prevent ground-water contamination; assess the hazard; and set a date to reassess the hazard.

(c) Physical Controls - Describe the physical control(s) which have been constructed to control the hazard; explain how these controls prevent contamination; assess the hazard; and set a date to reassess the hazard.

(d) Negligible Quantity Control - Identify the quantity of the hazard that is being used, disposed, stored, manufactured, and/or transported; explain why this amount should be considered a negligible quantity; assess the hazard; and set a date to reassess the hazard.

(3) For the purpose of meeting the requirements of R309-113, DDW will consider a PWS's assessment that a potential contamination source which is covered by a permit or approval under one of the regulatory programs listed below sufficient to demonstrate that the source is adequately controlled unless otherwise determined by the Executive Secretary. For all other state programs, the PWS's assessment is subject to review by DDW; as a result, a PWS's DWSP Plan may be disapproved if DDW does not concur with its assessment(s).

(a) The Utah Ground-Water Quality Protection program established by Section 19-5-104 and R317-6;

(b) closure plans or Part B permits under authority of the Resource Conservation and Recovery Act (RCRA) of 1984 regarding the monitoring and treatment of ground water;

(c) the Utah Pollutant Discharge Elimination System (UPDES) established by Section 19-5-104 and R317-8;

(d) the Underground Storage Tank Program established by Section 19-6-403 and R311-200 through R311-208; and

(e) the Underground Injection Control (UIC) Program for classes I-IV established by Sections 19-5-104 and 40-6-5 and R317-7 and R649-5.

R309-113-11. Management Program to Control Each Preexisting Potential Contamination Source.

(1) PWSs shall plan land management strategies to control each preexisting potential contamination source in accordance with their authority and jurisdiction. Land management strategies must be consistent with the provisions of R309-113, designed to control potential contamination, and may be regulatory or non-regulatory. Each potential contamination source listed on the inventory required in R309-113-10(1) and assessed as "not adequately controlled" must be addressed. Land management strategies must be implemented according to the schedule required in R309-113-7(1)(e).

(2) PWSs with overlapping protection zones and management areas may cooperate in controlling a particular preexisting potential contamination source if one PWS will agree to take the lead in planning and implementing land management strategies and the remaining PWS(s) will assess the preexisting potential contamination source as "adequately controlled."

R309-113-12. Management Program to Control or Prohibit Future Potential Contamination Sources for Existing Drinking Water Sources.

(1) PWSs shall plan land management strategies to control or prohibit future potential contamination sources within each of its DWSP zones or management areas consistent with the provisions of R309-113 and to an extent allowed under its authority and jurisdiction. Land management strategies must be designed to control potential contamination and may be regulatory or non-regulatory. Additionally land management strategies must be implemented according to the schedule required in R309-113-7(1)(e).

(2) Protection areas may extend into neighboring cities, towns, and counties. Since it may not be possible for some PWSs to enact regulatory land management strategies outside of their jurisdiction, except as described below, it is recommended that these PWSs contact their neighboring cities, towns, and counties to see if they are willing to implement protective ordinances to prevent ground-water contamination under joint management agreements.

(3) Cities and towns have extraterritorial jurisdiction in accordance with Section 10-8-15 of the Utah Code Annotated to enact ordinances to protect a stream or "source" from which their water is taken... "for 15 miles above the point from which it is taken and for a distance of 300 feet on each side of such stream..." Section 10-8-15 includes ground-water sources.

(4) Zoning ordinances are an effective means to control potential contamination sources that may want to move into protection areas. They allow PWSs to prohibit facilities that would discharge contaminants directly to ground water. They also allow PWSs to review plans from potential contamination sources to ensure there will be adequate spill protection and waste disposal procedures, etc. If zoning ordinances are not used, PWSs must establish a plan to contact potential contamination sources individually as they move into protection areas, identify and assess their controls, and plan land management strategies if they are not adequately controlled.

R309-113-13. New Ground-water Sources of Drinking Water.

(1) Prior to constructing a new ground-water source of drinking water, each PWS shall develop a PER which demonstrates whether the source meets the requirements of this section and submit it to DDW. Additionally, engineering information in accordance with R309-204-6(5)(a) or R309-204-7(4) must be submitted to DDW. DDW will not grant plan approval until both source protection and engineering requirements are met. Construction standards relating to protection zones and management areas (fencing, diversion channels, sewer line construction, and grouting, etc.) are found in R309-204. After the source is constructed a DWSP Plan must be developed, submitted, and implemented accordingly.

(2) Preliminary Evaluation Report for New Sources of Drinking Water - PERs shall cover all four zones or the entire management area. PERs should be developed in accordance with the "Standard Report Format for New Wells and Springs." This document may be obtained from DDW. PWSs shall include the following four sections in each PER:

(a) Delineation Report for Estimated DWSP Zones - The same requirements apply as in R309-113-9(5), except that the hydrogeologic data for the PER must be developed using the best available data which may be obtained from: surrounding wells, published information, or surface geologic mapping. PWSs must use the Preferred Delineation Procedure to delineate protection zones for new wells.

(b) Inventory of Potential Contamination Sources and Identification and Assessment of Controls - The same requirements apply as in R309-113-10(1) and (2). Additionally, the PER must demonstrate that the source meets the following requirements:

(i) Protection Areas Delineated using the Preferred Delineation Procedure in Protected Aquifers - A PWS shall not locate a new ground-water source of drinking water where an uncontrolled potential contamination source or a pollution source exists within zone one.

(ii) Protection Areas Delineated using the Preferred Delineation Procedure in Unprotected Aquifers - A PWS shall not locate a new ground-water source of drinking water where an uncontrolled potential contamination source or a pollution source exists within zone one. Additionally, a new ground-water source of drinking water may not be located where a pollution source exists within zone two unless the pollution source implements design standards which prevent contaminated discharges to ground water.

(iii) Management Areas Delineated using the Optional Two-Mile Radius Delineation Procedure - A PWS shall not locate a new spring where an uncontrolled potential contamination source or a pollution source exists within zone one. Additionally, a new spring may not be located where a pollution source exist within the management area unless: a hydrogeologic report in accordance with R309-113-9(5)(b)(ii) which verifies that it does not impact the spring; or the pollution source implements design standards which prevent contaminated discharges to ground water.

(c) Land Ownership Map - A land ownership map which includes all land within zones one and two or the entire management area. Additionally, include a list which exclusively identifies the land owners in zones one and two or the management area, the parcel(s) of land which they own, and the zone in which they own land. A land ownership map and list are not required if ordinances are used to protect these areas.

(d) Land Use Agreements, Letters of Intent, or Zoning Ordinances - Land use agreements which meet the requirements of the definition in R309-113-6(1)(n). Zoning ordinances which are already in effect or letters of intent may be substituted for land use agreements; however, they must accomplish the same level of protection that is required in a land use agreement. Letters of intent must be notarized, include the same language that is required in land use agreements, and contain the statement that "the owner agrees to record the land use agreement in the county recorder's office, if the source proves to be an acceptable drinking water source." The PWS shall not introduce a new source into its system until copies of all applicable recorded land use agreements are submitted to DDW.

(3) Sewers Within DWSP Zones and Management Areas - Sewer lines may not be located within zones one and two or a management area unless the criteria identified below are met. If sewer lines are located or planned to be located within zones one and two or a management area, the PER must demonstrate that they comply with this criteria. Sewer lines that comply with this criteria may be assessed as adequately controlled potential contamination sources.

(a) Zone One - If the conditions specified in R309-113-13(3)(a)(i and ii) below are met, all sewer lines within zone one shall be constructed in accordance with R309-204-6(4) and must be at least 10 feet from the wellhead.

(i) There is at least 5 feet of suitable soil between the bottom of the sewer lines and the top of the maximum seasonal ground-water table or perched water table. (Suitable soils contain adequate sand/silt/clay to act as an effective effluent

filter within its depth for the removal of pathogenic organisms and fill the voids between coarse particles such as gravel, cobbles, and angular rock fragments); and

(ii) there is at least 5 feet of suitable soil between the bottom of the sewer lines the top of any bedrock formations. (For the purposes of this rule, unsuitable soils or bedrock formations shall include soil or bedrock formations which have such low permeability that they prevent downward passage of effluent, or 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.)

(b) Zones One and Two - If the conditions identified in R309-113-13(3)(a)(i and ii) above cannot be met, any sewer lines with zones one and two or a management area shall be constructed in accordance with R309-204-6(4) and must be at least 300 feet from the wellhead or margin of the collection area.

(4) Use waivers for the VOC and pesticide parameter groups may be issued if the inventory of potential contamination sources indicates that the chemicals within these parameter groups are not used, disposed, stored, transported, or manufactured within zones one, two, and three or the management area.

(5) Replacement Wells - A PER is not required for proposed wells, if the PWS receives written notification from DDW that the well is classified as a replacement well. The PWS must submit a letter requesting that the well be classified as a replacement well and include documentation to show that the conditions required in R309-113-6(1)(w) are met. If a proposed well is classified as a replacement well, the PWS is still required to submit and obtain written approval for all other information as required in:

(a) DWSP Plan for New Sources of Drinking Water (refer to R309-113-13(6), and

(b) the Outline of Well Approval Process (refer to R309-204-6(5)).

(6) DWSP Plan for New Sources of Drinking Water - The PWS shall submit a DWSP Plan in accordance with R309-113-7(1) for any new ground-water source of drinking water within one year after the date of DDW's concurrence letter. In developing this DWSP Plan, PWSs shall refine the information in the PER by applying any new, as-constructed characteristics of the source (i.e., pumping rate, aquifer test, etc.).

R309-113-14. Contingency Plans.

PWSs shall submit a Contingency Plan which includes all sources of drinking water for their entire water system to DDW concurrently with the submission of their first DWSP Plan. Guidance for developing Contingency Plans may be found in the "Source Protection User's Guide." This document may be obtained from DDW.

R309-113-15. Waivers.

Current use and susceptibility waivers for the VOC, pesticide, and unregulated parameter groups will expire, if they are not addressed in a source's DWSP Plan. Guidance for addressing waivers is found in the "Source Protection User's Guide." This document may be obtained from DDW.

KEY: drinking water, environmental health
June 15, 1998 19-4-104(1)(a)(iv)
Notice of Continuation April 10, 1997

R309. Environmental Quality, Drinking Water.
R309-114. Drinking Water Source Protection Funding.
R309-114-1. Authority and Purpose.

(1) Under authority granted in Subsection 19-4-104(1)(a)(iv), the Drinking Water Board adopts this rule which governs the pass through of federal funds to small public water systems to assist them in developing source protection plans required by R309-113.

(2) The Federal Safe Drinking Water Act Amendments of 1996 make certain federal funds available to states to assist them in completing source water assessments required by the Act. It is the intent of the Drinking Water Board to pass most of these funds through to small public water systems to assist them by covering part of the costs they incur in preparing Drinking Water Source Protection Plans ("DWSP Plans") required by R309-113.

(3) This rule sets forth the guidelines and requirements that the Drinking Water Board and staff will adhere to in determining the eligibility for and amounts of federal funding that small public water systems shall be granted.

R309-114-2. Definitions.

(1) "Small public water system" means a public water system serving less than 3,300 persons.

(2) "DDW" means the Department of Environmental Quality, Division of Drinking Water.

R309-114-3. Funds Availability - Time Period.

(1) Federal funds shall be available to be granted to small public water systems as soon as this rule becomes effective and federal funds are made available to the State of Utah. Subject to their availability, funds shall be dispersed until all small public water systems meeting the eligibility requirements of this rule have received funds, or until the total amount of funds passed through to water systems equals $1,000,000, whichever occurs first. In any case, DWSP Plans submitted to DDW after December 31, 1999, shall not receive funding.

(2) Any federal funds set aside for the purposes described in this rule and not used for the same shall be used for other source water assessment or protection purposes or revert to the federal Drinking Water State Revolving Loan Fund as provided for by federal Safe Drinking Water Act.

R309-114-4. Funding Amounts.

(1) Small public water systems shall be eligible for 50%, not to exceed $2,500, of the actual costs for each ground-water source of drinking water for which they prepare and submit to DDW a complete DWSP Plan. Funds shall not be granted until DDW determines that the Plan is complete, i.e., meets all the requirements of R309-113.

(2) Systems located in the same geographic areas are encouraged to have their source protection plans prepared together, as a group, by a single consultant or vendor. This should help to reduce costs and increase the effectiveness of plans.

R309-114-5. Eligibility Criteria and Application for Funds.

(1) In order to be eligible for these funds, a small public water system must:

(a) Have been in existence as of the initial effective date of R309-113 (July 26, 1993);

(b) have more than 50% of the dwelling units served by the system occupied by permanent, year-round residents;

(c) have a median adjusted gross income that is less than the state-wide median adjusted gross income for Utah; however, if a group of small public water systems located in the same geographic area selects a single consultant who prepares and submits all their source protection plans together, and at least 50% of the systems in the group meet this income level criterion, then all systems in the group, or the group as a whole, shall be deemed to meet this criterion;

(d) be a community water system, or a non-transient, non-community water system that is not associated with or owned by a for-profit entity, and is not owned/operated by a federal or state government agency; and

(e) submit complete DWSP Plans to DDW by the due dates indicated in R309-113-3. No DWSP Plans submitted to DDW after December 31, 1999 shall be eligible for these funds.

(2) In addition, only DWSP Plans prepared for drinking water sources that were existing (approved by DDW) as of July 26, 1993 shall be eligible for these funds.

(3) Application for Funds - In order to apply for and receive funds, small public water systems must submit a letter of application, with the complete DWSP Plan, to DDW. The letter of application must be accompanied by documentation of actual costs incurred in preparing the DWSP Plan(s), and certify that these costs are actual and correct. The letter must also certify that the water system meets the eligibility criteria stated above, and be signed by the water system manager or designated person (R309-113-5).

R309-114-6. Order of Dispersal of Funds.

(1) Funds shall be granted to small public water systems by DDW in the order in which complete DWSP Plans along with a letter of application for funds are received by DDW.

(2) Funds shall be dispersed until the total amount granted reaches $1,000,000, or until all DWSP Plans submitted by December 31, 1999, and determined to be eligible for funding have been funded, whichever occurs first.

KEY: drinking water, environmental health
June 15, 1998 19-4-104(1)(a)(iv)

R309. Environmental Quality, Drinking Water.
R309-352. Drinking Water Capacity Development Funding.
R309-352-1. Authority and Purpose.

(1) Under authority granted in Section 19-4-104(1)(a)(v), the Drinking Water Board adopts this rule governing the allotment of federal funds to public water systems to assist them to comply with the Federal 1996 Reauthorized Safe Drinking Water Act (SDWA).

(2) The SDWA makes certain federal funds available to states, section 1452(k)(2)(C) to provide assistance to any public water system as part of a capacity development strategy developed and implemented in accordance with section 1420(c) to ensure all new public water systems will be able to comply with the SDWA, to enhance existing public water systems' capability to comply the SDWA, and determine which public water systems applying for financial assistance are eligible to use the State Revolving Funds.

(3) This rule sets forth the procedures that the Drinking Water Board will use to determine the amount of federally funded assistance that public water systems will receive to implement the capacity development strategy.

R309-352-2. Definitions.

(1) "Capacity Development" means technical, managerial, and financial capabilities of the water system to plan for, achieve, and maintain compliance with applicable drinking water standards.

(2) "Regional Water Management Plans" means a county wide water plan, administered locally by a coordinator, who facilitates the input of representatives of each public water system in the county with a selected consultant, to determine how each public water system will either collectively or individually comply with source protection, operator certification, monitoring including consumer confidence reports, capacity development including technical, financial and managerial aspects, environmental issues, available funding and related studies.

(3) "Small Water System" means a water system with less than 3,300 people being served.

(4) "Public Water System" 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.

R309-352-3. Funds Availability - Time Period.

(1) The Drinking Water Board has authorized five (5%) percent of the 1997 federal SRF grant to provide assistance to any public water system as part of the capacity development strategy. Upon this rules effective date, $ 625,000 will be provided to the counties through their Associations of Governments (AOG) to fund the regional water management plans. The regional water management plans shall be completed one year from the date funds are made available to each county.

(2) Any funds set aside for the purposes described in this rule and not used at the option of a given county by September 1, 1998, shall be made available to other counties, as requested and approved by the Drinking Water Board.

(3) In addition to the federal funds from the SDWA, the State Department of Community and Economic Development has made $ 350,000 available to counties through the Division of Community Development. It is anticipated that $ 50,000 would be used in each of the seven AOG's. In order to use the Community Development funds the county must meet the applicable low and moderate income levels.

R309-352-4. Funding Allocations.

(1) Counties are eligible to receive a portion of the federal funds according to their needs, such as the number and deficiencies (including source, infrastructure and management) of small water systems, amount of undeveloped portions of the county, and required funding to facilitate on-going studies. The Division of Drinking Water has designated each county as having either a very complex, complex, standard, minor, or no need relative to small water system planning. The cost to complete a standard planning need and a minor planning need would be 80% and 33% respectively of a complex need. A very complex planning need is equivalent to 200% of a complex need. The following designations have been approved by the Drinking Water Board:

TABLE 1

Very Complex	Complex	Standard	Minor	No Need
Summit	Beaver	Daggett	Piute	Salt Lake
	Box Elder	Emery	Utah	Davis
	Cache	Grand	Wayne	Weber
	Carbon	Morgan		
	Duchesne	Rich		
	Garfield	San Juan		
	Iron			
	Juab			
	Kane			
	Millard			
	Sanpete			
	Sevier			
	Tooele			
	Uintah			
	Wasatch			
	Washington			

(2) Based on the above designations the following amounts of money will be granted to each Association of Governments, who in turn will allocate the funds to each county:

TABLE 2

Region	Funding Available 1998 (fy 97 grant) Allotment	Proposed Funding Available 1999 (fy 98 grant) Allotment
Bear River	$ 123,185	$ 41,058
Mountainland	$ 130,920	$ 43,640
Southeast	$ 133,672	$ 44,560
Tri County	$ 141,246	$ 22,997
Wasatch Front	$ 45,527	$ 41,649
5 County	$ 209,675	$ 69,896
6 County	$ 190,775	$ 61,200
Funds Available	$ 975,000	$ 325,000

R309-352-5. Eligibility Criteria and Application for Funds.

(1) In order to be eligible for these funds, a small public water system must be a community water system, or a non-transient, non-community water system that is not

owned/operated by a federal or state government agency.

(2) Application for Funds - In order to apply for and receive funds, each county's governing board must (a) appoint an administrator to implement the regional plan and (b) give input and concur with the funding level allotted to each county through the Association of Governments. After each county has completed this requirement, the Director of the Association of Government, with input from Division staff shall prepare a letter of application to the Drinking Water Board.

KEY: drinking water, funding, regionalization, capacity development
June 19, 1998 19-4-104

R315. Environmental Quality, Solid and Hazardous Waste.
R315-15. Standards for the Management of Used Oil.
R315-15-1. Applicability, Prohibitions, and Definitions.

1.1 APPLICABILITY

This section identifies those materials which are subject to regulation as used oil under Section R315-15. This section also identifies some materials that are not subject to regulation as used oil under Rule R315-15, and indicates whether these materials may be subject to regulation as hazardous waste under Rules R315-1 through R315-14, and R315-50.

(a) Used oil. It is presumed that used oil is to be recycled unless a used oil handler disposes of used oil, or sends used oil for disposal. Except as provided in Section R315-15-1.2, the requirements of Rule R315-15 apply to used oil, and to materials identified in this section as being subject to regulation as used oil, whether or not the used oil or material exhibits any characteristics of hazardous waste identified in Section R315-2-9.

(b) Mixtures of used oil and hazardous waste.

(1) Listed hazardous waste.

(i) Mixtures of used oil and hazardous waste that is listed in Section R315-2-10 are subject to regulation as hazardous waste under Rules R315-1 through R315-14, and R315-50, rather than as used oil under Rule R315-15.

(ii) Rebuttable presumption for used oil. Used oil containing more than 1,000 ppm total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in Section R315-2-10. Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous waste, for example, by using an analytical method from SW-846, Edition III, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in Section R315-50-10, which incorporates by reference 40 CFR 261, Appendix VIII. SW-846, Edition III, is available for review during normal business hours at the Utah Division of Solid and Hazardous Waste office, located at 288 North 1460 West, Salt Lake City, Utah. To schedule an appointment, call 801-538-6170.

(A) The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed, through a tolling arrangement as described in Subsection R315-15-2.5(c), to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner, or disposed.

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

(2) Characteristic hazardous waste. Mixtures of used oil and hazardous waste that solely exhibits one or more of the hazardous waste characteristics identified in Section R315-2-9 and mixtures of used oil and hazardous waste that is listed in Section R315-2-10 solely because it exhibits one or more of the characteristics of hazardous waste identified in Section R315-2-9 are subject to:

(i) Except as provided in Subsection R315-15-1(b)(2)(iii), regulation as hazardous waste under Rules R315-1 through R315-14, and R315-50 rather than as used oil under Rule R315-15, if the resultant mixture exhibits any characteristics of hazardous waste identified in Section R315-2-9; or

(ii) Except as specified in Subsection R315-15-1.1(b)(2)(iii), regulation as used oil under Rule R315-15, if the resultant mixture does not exhibit any characteristics of hazardous waste identified under Section R315-2-9.

(iii) Regulation as used oil under Rule R315-15, if the mixture is of used oil and a waste which is hazardous solely because it exhibits the characteristic of ignitability, e.g., mineral spirits, provided that the mixture does not exhibit the characteristic of ignitability under Subsection R315-2-9(d).

(3) Conditionally exempt small quantity generator hazardous waste. Mixtures of used oil and conditionally exempt small quantity generator hazardous waste regulated under Section R315-2-5, which incorporates by reference 40 CFR 261.5, are subject to regulation as used oil under Rule R315-15.

(c) Materials containing or otherwise contaminated with used oil.

(1) Except as provided in paragraph (c)(2) of this section, materials containing or otherwise contaminated with used oil from which the used oil has been properly drained or removed to the extent possible such that no visible signs of free-flowing oil remain in or on the material:

(i) Are not used oil and thus not subject to Rule R315-15, and

(ii) If applicable are subject to the hazardous waste regulations of Rules R315-1 through R315-14, and R315-50.

(2) Materials containing or otherwise contaminated with used oil that are burned for energy recovery are subject to regulation as used oil under Rule R315-15.

(3) Used oil drained or removed from materials containing or otherwise contaminated with used oil is subject to regulation as used oil under Rule R315-15.

(d) Mixtures of used oil with products.

(1) Except as provided in paragraph (d)(2) of this section, mixtures of used oil and fuels or other fuel products are subject to regulation as used oil under Rule R315-15.

(2) Mixtures of used oil and diesel fuel mixed on-site by the generator of the used oil for use in the generator's own vehicles are not subject to Rule R315-15 once the used oil and diesel fuel have been mixed. Prior to mixing, the used oil is subject to the requirements of Section R315-15-2.

(e) Materials derived from used oil.

(1) Materials that are reclaimed from used oil that are used beneficially and are not burned for energy recovery or used in a manner constituting disposal, e.g., re-refined lubricants, are:

(i) Not used oil and thus are not subject to Rule R315-15, and

(ii) Not solid wastes and are thus not subject to the hazardous waste regulations of Rules R315-1 through R315-14, and R315-50 as provided in Subsection R315-2-3(c)(2)(i).

(2) Materials produced from used oil that are burned for energy recovery, e.g., used oil fuels, are subject to regulation as used oil under Rule R315-15.

(3) Except as provided in paragraph (e)(4) of this section, materials derived from used oil that are disposed of or used in a manner constituting disposal are:

(i) Not used oil and thus are not subject to Rule R315-15,

and

(ii) Are solid wastes and thus are subject to the hazardous waste regulations of Rules R315-1 through R315-14, and R315-50 if the materials are listed or identified as hazardous wastes.

(4) Used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products are not subject to Rule R315-15.

(f) Wastewater. Wastewater, the discharge of which is subject to regulation under either section 402 or section 307(b) of the Clean Water Act, including wastewaters at facilities which have eliminated the discharge of wastewater, contaminated with de minimis quantities of used oil are not subject to the requirements of Rule R315-15. For purposes of this paragraph, "de minimis" quantities of used oils are defined as small spills, leaks, or drippings from pumps, machinery, pipes, and other similar equipment during normal operations or small amounts of oil lost to the wastewater treatment system during washing or draining operations. This exception does not apply if the used oil is discarded as a result of abnormal manufacturing operations resulting in substantial leaks, spills, or other releases, or to used oil recovered from wastewaters.

(g) Used oil introduced into crude oil pipelines or a petroleum refining facility.

(1) Used oil mixed with crude oil or natural gas liquids, e.g., in a production separator or crude oil stock tank, for insertion into a crude oil pipeline is exempt from the requirements of Rule R315-15. The used oil is subject to the requirements of Rule R315-15 prior to the mixing of used oil with crude oil or natural gas liquids.

(2) Mixtures of used oil and crude oil or natural gas liquids containing less than 1% used oil that are being stored or transported to a crude oil pipeline or petroleum refining facility for insertion into the refining process at a point prior to crude distillation or catalytic cracking are exempt from the requirements of Rule R315-15.

(3) Used oil that is inserted into the petroleum refining facility process before crude distillation or catalytic cracking without prior mixing with crude oil is exempt from the requirements of Rule R315-15 provided that the used oil constitutes less than 1% of the crude oil feed to any petroleum refining facility process unit at any given time. Prior to insertion into the petroleum refining facility process, the used oil is subject to the requirements of Rule R315-15.

(4) Except as provided in paragraph (g)(5) of this section, used oil that is introduced into a petroleum refining facility process after crude distillation or catalytic cracking is exempt from the requirements of Rule R315-15 only if the used oil meets the specification of Section R315-15-1.2. Prior to insertion into the petroleum refining facility process, the used oil is subject to the requirements of Rule R315-15.

(5) Used oil that is incidentally captured by a hydrocarbon recovery system or wastewater treatment system as part of routine process operations at a petroleum refining facility and inserted into the petroleum refining facility process is exempt from the requirements of Rule R315-15. This exemption does not extend to used oil which is intentionally introduced into a hydrocarbon recovery system, e.g., by pouring collected used oil into the waste water treatment system.

(6) Tank bottoms from stock tanks containing exempt mixtures of used oil and crude oil or natural gas liquids are exempt from the requirements of Rule R315-15.

(h) Used oil on vessels. Used oil produced on vessels from normal shipboard operations is not subject to Rule R315-15 until it is transported ashore.

(i) Used oil containing PCBs. In addition to the requirements of Rule R315-15, marketers and burners of used oil who market used oil containing any quantifiable level of PCBs are subject to the requirements found in 40 CFR 761.20(e).

(j) Inspections. Any duly authorized officer, employee or representative of the Department or the Board may, at any reasonable time and upon presentation of appropriate credentials and upon providing the opportunity to have a representative of the owner, operator, or agent in charge to be present, enter upon and inspect any property, premise, or place on or at which used oil is generated, transported, stored, treated or disposed of, and may have access to and the right to copy any records relating to used oil for purpose of ascertaining the compliance with Rule R315-15. Those persons referred to in this section may also inspect any waste and obtain samples thereof, including samples from any vehicle in which wastes are being transported or samples of any containers or labels. Any person obtaining samples shall give to the owner, operator or agent a receipt describing the sample obtained and, if requested, a portion of each sample of waste equal in volume or weight to the portion retained. If any analysis is made of those samples, a copy of the results of that analysis shall be furnished promptly to the owner, operator, or agent in charge.

(k) Violations, Orders, and Hearings. If the Executive Secretary has reason to believe a person is in violation of any provision of Rule R315-15, procedural requirements for compliance or cessation shall follow Section 19-6-721.

1.2 USED OIL SPECIFICATIONS

Used oil burned for energy recovery, and any fuel produced from used oil by processing, blending, or other treatment, is subject to regulation under Rule R315-15 unless it is shown not to exceed any of the allowable levels of the constituents and properties in the specification shown in Table 1. Once used oil that is to be burned for energy recovery has been shown not to exceed any specification and the person making that claim complies with Sections R315-15-7.3, R315-15-7.4, and Subsection R315-15-7.5(b), the used oil is no longer subject to Section R315-15-6.

TABLE 1
USED OIL NOT EXCEEDING ANY SPECIFICATION LEVEL IS NOT SUBJECT TO R315-15-6 WHEN BURNED FOR ENERGY RECOVERY(1)

Constituent/property	Allowable level
Arsenic	5 ppm maximum
Cadmium	2 ppm maximum
Chromium	10 ppm maximum
Lead	100 ppm maximum
Flash point	100 degrees F minimum
Total halogens	4,000 ppm maximum(2)

(1) The specification does not apply to mixtures of used oil and hazardous waste that continue to be regulated as hazardous waste, see Subsection R315-15-1.1(b).

(2) Used oil containing more than 1,000 ppm total halogens is presumed to be a hazardous waste under the rebuttable presumption provided under Subsection R315-15-1.1(b)(1). Such used oil is subject

to Section R315-14-7, which incorporates by reference 40 CFR 266 Subpart H, rather than Rule R315-15 when burned for energy recovery unless the presumption of mixing can be successfully rebutted.

Note: Applicable standards for the burning of used oil containing PCBs are imposed by 40 CFR 761.20(e).

1.3 PROHIBITIONS

Except as authorized by the Board, a person may not place, discard, or otherwise dispose of used oil in the following manner:

(a) Surface impoundment prohibition. Used oil shall not be managed in surface impoundments or waste piles unless the units are subject to regulation under Rule R315-7 or R315-8.

(b) Use as a dust suppressant, weed suppressant, or for road oiling. The use of used oil as a dust suppressant, weed suppressant, or for road oiling or other similar use is prohibited. Any disposal of used oil on the ground is prohibited under Subsection 19-6-706(1)(a)(iii).

(c) A person may not mix or commingle used oil with the following substances, except as incidental to the normal course of processing, mechanical, or industrial operations:

(1) Solid waste that is to be disposed of in any solid waste treatment, storage, or disposal facility, except as authorized by the Board; or

(2) Any hazardous waste so the resulting mixture may not be recycled or used for other beneficial purpose as authorized under Rule R315-15.

(d) Used oil shall not be disposed in a solid waste treatment, storage, or disposal facility, except for the disposal of hazardous used oil as authorized under R315-2.

(e) Used oil shall not be disposed in sewers, drainage systems, septic tanks, surface or ground waters, watercourses, or any body of water;

1.4 BURNING IN PARTICULAR UNITS

Burning in particular units. Off-specification used oil fuel may be burned for energy recovery only in the devices described in Subsection R315-15-6.2(a).

1.5 DISPOSAL OF DE MINIMIS USED OIL

(a) Section R315-15-1.3 does not apply to release of de minimis quantities of used oil identified under Subsection 19-6-706(4)(a).

(b) A person may dispose of an item or substance that contains de minimis amounts of oil in disposal facilities if:

(1) To the extent reasonably possible all oil has been removed from the item or substance; and

(2) No free flowing oil remains in the item or substance.

1.6 DISPOSAL OF USED OIL FILTERS

A person may dispose of a nonterne plated used oil filter that meets the exclusion of Subsection R315-2-4(b)(14) and is not mixed with hazardous waste defined by Rule R315-2.

1.7 DEFINITIONS

(a) Definitions of terms used in Rule R315-15 are incorporated by reference in Section R315-1-1.

(b) The definition of the term "de minimis" as used in Rule R315-15 has the same meaning as in Subsection 19-6-706(4)(b).

R315-15-2. Standards for Used Oil Generators.

2.1 APPLICABILITY

(a) General. Except as provided in paragraphs (a)(1) through (a)(4) of this section, Section R315-15-2 applies to all used oil generators. A used oil generator is any person, by site, whose act or process produces used oil or whose act first causes used oil to become subject to regulation.

(1) Household "do-it-yourselfer" used oil generators. Household "do-it-yourselfer" used oil generators are not subject to regulation under Rule R315-15, except for the prohibitions of Section R315-15-1.3.

(2) Vessels. Vessels at sea or at port are not subject to Section R315-15-2. For purposes of Section R315-15-2, used oil produced on vessels from normal shipboard operations is considered to be generated at the time it is transported ashore. The owner or operator of the vessel and the person(s) removing or accepting used oil from the vessel are co-generators of the used oil and are both responsible for managing the waste in compliance with Section R315-15-2 once the used oil is transported ashore. The co-generators may decide among them which party will fulfill the requirements of Section R315-15-2.

(3) Diesel fuel. Mixtures of used oil and diesel fuel mixed by the generator of the used oil for use in the generator's own vehicles are not subject to Rule R315-15 once the used oil and diesel fuel have been mixed. Prior to mixing, the used oil fuel is subject to the requirements of Section R315-15-2.

(4) Farmers. Farmers who generate an average of 25 gallons per month or less of used oil from vehicles or machinery used on the farm in a calendar year are not subject to the requirements of Rule R315-15, except for the prohibitions of Section R315-15-1.3.

(b) Other applicable provisions. Used oil generators who conduct the following activities are subject to the requirements of other applicable provisions of Rule R315-15 as indicated in paragraphs (b)(1) through (5) of this section:

(1) Generators who transport used oil, except under the self-transport provisions of Subsections R315-15-2.5(a) and (b), shall also comply with Section R315-15-4.

(2)(i) Except as provided in paragraph (b)(2)(ii) of this section, generators who process or re-refine used oil must also comply with Section R315-15-5.

(ii) Generators who perform the following activities are not processors provided that the used oil is generated on-site and is not being sent off-site to a burner of on- or off-specification used oil fuel.

(A) Filtering, cleaning, or otherwise reconditioning used oil before returning it for reuse by the generator;

(B) Separating used oil from wastewater generated on-site to make the wastewater acceptable for discharge or reuse pursuant to section 402 or section 307(b) of the Clean Water Act or other applicable Federal or state regulations governing the management or discharge of wastewater;

(C) Using oil mist collectors to remove small droplets of used oil from in-plant air to make plant air suitable for continued recirculation;

(D) Draining or otherwise removing used oil from materials containing or otherwise contaminated with used oil in order to remove excessive oil to the extent possible pursuant to Subsection R315-15-1.1(c); or

(E) Filtering, separating or otherwise reconditioning used oil before burning it in a space heater pursuant to Section R315-15-2.4.

(3) Generators who burn off-specification used oil for

energy recovery, except under the on-site space heater provisions of Section R315-15-2.4, shall also comply with Section R315-15-6.

(4) Generators who direct shipments of off-specification used oil from their facility to a used oil burner or first claim that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in Section R315-15-1.2 shall also comply with Section R315-15-7.

(5) Generators who dispose of used oil shall also comply with Section R315-15-8.

2.2 HAZARDOUS WASTE MIXING

(a) Mixtures of used oil and hazardous waste shall be managed in accordance with Subsection R315-15-1.1(b).

(b) The rebuttable presumption for used oil of Subsection R315-15-1.1(b)(1)(ii) applies to used oil managed by generators. Under the rebuttable presumption for used oil of Subsection R315-15-1.1(b)(1)(ii), used oil containing greater than 1,000 ppm total halogens is presumed to be a hazardous waste and thus shall be managed as hazardous waste and not as used oil unless the presumption is rebutted. However, the rebuttable presumption does not apply to certain metalworking oil/fluids and certain used oils removed from refrigeration units.

2.3 USED OIL STORAGE

Used oil generators are subject to all applicable Spill Prevention, Control and Countermeasures, 40 CFR part 112, in addition to the requirements of Section R315-15-2. Used oil generators are also subject to the standards and requirements of Rules R311-200 through R311-209, Underground Storage Tanks, for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of Section R315-15-2.

(a) Storage units. Used oil generators shall not store used oil in units other than tanks, containers, or units subject to regulation under Rule R315-7 or R315-8.

(b) Condition of units. Containers and aboveground tanks used to store used oil at generator facilities shall be:

(1) In good condition, with no severe rusting, apparent structural defects or deterioration; and

(2) Not leaking (no visible leaks).

(c) Labels.

(1) Containers and aboveground tanks used to store used oil at generator facilities shall be labeled or marked clearly with the words "Used Oil".

(2) Fill pipes used to transfer used oil into underground storage tanks at generator facilities shall be labeled or marked clearly with the words "Used Oil."

(d) Response to releases. Upon detection of a release of used oil to the environment not subject to the requirements of Section R311-202-1, which incorporates by reference 40 CFR 280, Subpart F, a generator shall comply with Section R315-15-9.

2.4 ON-SITE BURNING

Generators may burn used oil in used oil-fired space heaters without a permit provided that:

(a) The heater burns only used oil that the owner or operator generates;

(b) The heater is designed to have a maximum capacity of not more than 0.5 million Btu per hour;

(c) The combustion gases from the heater are vented to the ambient air;

(d) If registered as a Used Oil Collection Center as authorized in Section R315-15-3, the generator may burn used oil received from household do-it-yourselfer generators or farmers described in Subsection R315-15-2.1(a)(4); and

(e) The used oil is being legitimately recycled to utilize its energy content.

2.5 OFF-SITE SHIPMENTS

Except as provided in paragraphs (a) through (c) of this section, generators shall ensure that their used oil is transported only by transporters who have obtained EPA identification numbers.

(a) Self-transportation of small amounts to approved collection centers. Generators may transport, without an EPA identification number, used oil that is generated at the generator's site and used oil collected from household do-it-yourselfers to a used oil collection center provided that:

(1) The generator transports the used oil in a vehicle owned by the generator or owned by an employee of the generator;

(2) The generator transports no more than 55 gallons of used oil at any time; and

(3) The generator transports the used oil to a used oil collection center that is registered or permitted to manage used oil.

(b) Self-transportation of small amounts to aggregation points owned by the generator. Generators may transport, without an EPA identification number, used oil that is generated at the generator's site to an aggregation point provided that:

(1) The generator transports the used oil in a vehicle owned by the generator or owned by an employee of the generator;

(2) The generator transports no more than 55 gallons of used oil at any time; and

(3) The generator transports the used oil to an aggregation point that is owned and/or operated by the same generator.

(c) Tolling arrangements. Used oil generators may arrange for used oil to be transported by a transporter without an EPA identification number if the used oil is reclaimed under a contractual agreement pursuant to which reclaimed oil is returned by the processor/re-refiner to the generator for use as a lubricant, cutting oil, or coolant. The contract, known as a "tolling arrangement," shall indicate:

(1) The type of used oil and the frequency of shipments;

(2) That the vehicle used to transport the used oil to the processing/re-refining facility and to deliver recycled used oil back to the generator is owned and operated by the used oil processor/re-refiner; and

(3) That reclaimed oil will be returned to the generator.

R315-15-3. Standards for Used Oil Collection Centers and Aggregation Points.

3.1 DO-IT-YOURSELFER USED OIL COLLECTION CENTERS

(a) Applicability. This section applies to owners or operators of all do-it-yourselfer (DIYer) used oil collection centers. A DIYer used oil collection center is any site or facility that accepts/aggregates and stores used oil collected only from household do-it-yourselfers.

(b) DIYer used oil collection center requirements. Owners or operators of all DIYer used oil collection centers shall comply with the generator standards in Section R315-15-2 and the record keeping requirements of Subsections R315-15-3.2(b)(3)(i) through (iv).

3.2 GENERATOR USED OIL COLLECTION CENTERS

(a) Applicability. This section applies to owners or operators of generator used oil collection centers. A generator used oil collection center is any site or facility that accepts/aggregates and stores used oil collected from used oil generators regulated under Section R315-15-2 who bring used oil to the collection center in shipments of no more than 55 gallons under the provisions of Subsection R315-15-2.5(a). Used generator oil collection centers may also accept used oil from household do-it-yourselfers and farmers described in Subsection R315-15-2.1(a)(4), if registered to do so.

(b) Generator used oil collection center requirements. Owners or operators of all generator used oil collection centers shall:

(1) Comply with the generator standards in Section R315-15-2;

(2) Be registered with the Division of Solid and Hazardous Waste to manage used oil; and

(3) Keep records of used oil received from off-site sources and picked up/transported from the collection center. This does not include used oil generated on-site from maintenance and servicing operations. These records shall be kept for a minimum of three years and shall contain the following information:

(i) Name and address of generator; or if unavailable, a written description of how the used oil was received.

(ii) Quantity of used oil received;

(iii) Date the used oil is received; and

(iv) Volumes of used oil picked up by a permitted transporter and the transporter's name and federal EPA identification number.

3.3 USED OIL AGGREGATION POINTS OWNED BY THE GENERATOR

(a) Applicability. This section applies to owners or operators of all used oil aggregation points. A used oil aggregation point is any site or facility that accepts, aggregates, and/or stores used oil collected only from other used oil generation sites owned or operated by the owner or operator of the aggregation point, from which used oil is transported to the aggregation point in shipments of no more than 55 gallons under the provisions of Subsection R315-15-2.5(b). Used oil aggregation points may also accept used oil from household do-it-yourselfers as long as they register as do-it-yourselfer collection centers, as described in Section R315-15-13.1, and comply with do-it-yourselfer collection center standards in Section R315-15-3.1. Used oil aggregation points that accept used oil from other generators must register as collection centers, as described in Section R315-15-13.2, and comply with collection center standards in Section R315-15-3.2.

(b) Used oil aggregation point requirements. Owners or operators of all used oil aggregation points shall comply with the generator standards in Section R315-15-2.

R315-15-4. Standards for Used Oil Transporter and Transfer Facilities.

4.1 APPLICABILITY

(a) General. Except as provided in paragraphs (a)(1) through (a)(4) of this section, Section R315-15-4 applies to all used oil transporters. Used oil transporters are persons who transport used oil, persons who collect used oil from more than one generator and transport the collected oil, and owners and operators of used oil transfer facilities. Except as provided by Subsection R315-15-13.4(f), used oil transporters or operators of used oil transfer facilities shall obtain a permit from the Executive Secretary prior to accepting any used oil for transportation or transfer. The application for a permit shall include the information required by Section R315-15-13.4.

(1) Section R315-15-4 does not apply to on-site transportation.

(2) Section R315-15-4 does not apply to generators who transport shipments of used oil totalling 55 gallons or less from the generator to a used oil collection center as specified in Subsection R315-15-2.5(a).

(3) Section R315-15-4 does not apply to generators who transport shipments of used oil totalling 55 gallons or less from the generator to a used oil aggregation point owned or operated by the same generator as specified in Subsection R315-15-2.5(b).

(4) Section R315-15-4 does not apply to transportation of used oil from household do-it-yourselfers to a regulated used oil generator, collection center, aggregation point, processor/re-refiner, or burner subject to the requirements of Rule R315-15. Except as provided in paragraphs (a)(1) through (a)(3) of this section, Section R315-15-4 does, however, apply to transportation of collected household do-it-yourselfer used oil from regulated used oil generators, collection centers, aggregation points, or other facilities where household do-it-yourselfer used oil is collected.

(b) Imports and exports. Transporters who import used oil from abroad or export used oil outside of the United States are subject to the requirements of Section R315-15-4 from the time the used oil enters and until the time it exits Utah.

(c) Trucks used to transport hazardous waste. Unless trucks previously used to transport hazardous waste are emptied as described in Section R315-2-7 prior to transporting used oil, the used oil is considered to have been mixed with the hazardous waste and shall be managed as hazardous waste unless, under the provisions of Subsection R315-15-1.1(b), the hazardous waste/used oil mixture is determined not to be hazardous waste.

(d) Other applicable provisions. Used oil transporters who conduct the following activities are also subject to other applicable provisions of Rule R315-15 as indicated in paragraphs (d)(1) through (5) of this section:

(1) Transporters who generate used oil shall also comply with Section R315-15-2;

(2) Transporters who process or re-refine used oil, except as provided in Section R315-15-4.2, shall also comply with Section R315-15-5;

(3) Transporters who burn off-specification used oil for energy recovery shall also comply with Section R315-15-6;

(4) Transporters who direct shipments of off-specification used oil from their facility to a used oil burner or first claim that used oil that is to be burned for energy recovery meets the used

oil fuel specifications set forth in Section R315-15-1.2 shall also comply with Section R315-15-7; and

(5) Transporters who dispose of used oil shall also comply with Section R315-15-8.

4.2 RESTRICTIONS ON TRANSPORTERS WHO ARE NOT ALSO PROCESSORS OR RE-REFINERS

(a) Used oil transporters may consolidate or aggregate loads of used oil for purposes of transportation. However, except as provided in paragraph (b) of this section, used oil transporters may not process used oil unless they also comply with the requirements for processors/re-refiners in Section R315-15-5.

(b) Transporters may conduct incidental processing operations that occur in the normal course of used oil transportation, e.g., settling and water separation, but that are not designed to produce, or make more amenable for production of, used oil derived products unless they also comply with the processor/re-refiner requirements in Section R315-15-5.

(c) Transporters of used oil that is removed from oil bearing electrical transformers and turbines and filtered by the transporter or at a transfer facility prior to being returned to its original use are not subject to the processor/re-refiner requirements in Section R315-15-5.

4.3 NOTIFICATION

(a) Identification numbers. Used oil transporters who have not previously complied with the notification requirements of RCRA section 3010 shall comply with these requirements and obtain an EPA identification number.

(b) Mechanics of notification. A used oil transporter who has not received an EPA identification number may obtain one by notifying the Executive Secretary of his used oil activity by submitting either:

(1) A completed EPA Form 8700-12. To obtain EPA Form 8700-12 call Utah Division of Solid and Hazardous Waste at 801-538-6170; or

(2) A letter to the Division requesting an EPA identification number. The letter shall include the following information:

(i) Transporter company name;

(ii) Owner of the transporter company;

(iii) Mailing address for the transporter;

(iv) Name and telephone number for the transporter point of contact;

(v) Type of transport activity, i.e., transport only, transport and transfer facility, transfer facility only;

(vi) Location of all transfer facilities at which used oil is stored; and

(vii) Name and telephone number for a contact at each transfer facility.

4.4 USED OIL TRANSPORTATION

(a) Deliveries. A used oil transporter shall deliver all used oil received to:

(1) Another used oil transporter, provided that the transporter has obtained an EPA identification number;

(2) A used oil processing/re-refining facility which has obtained an EPA identification number;

(3) An off-specification used oil burner facility which has obtained an EPA identification number; or

(4) An on-specification used oil burner facility.

(b) DOT Requirements. Used oil transporters shall comply with all applicable requirements under the U.S. Department of Transportation regulations in 49 CFR 171 through 180. Persons transporting used oil that meets the definition of a hazardous material in 49 CFR 171.8 shall comply with all applicable regulations in 49 CFR 171 through 180.

(c) Used oil discharges. In the event of a used oil discharge, a transporter shall comply with Section R315-15-9.

4.5 REBUTTABLE PRESUMPTION FOR USED OIL

(a) To ensure that used oil is not a hazardous waste under the rebuttable presumption of Subsection R315-15-1.1(b)(1)(ii), the used oil transporter shall determine whether the total halogen content of used oil being transported or stored at a transfer facility is above or below 1,000 ppm.

(b) The transporter shall make this determination by:

(1) Testing the used oil; or

(2) Applying knowledge of the halogen content of the used oil in light of the materials or processes used.

(c) If the used oil contains greater than or equal to 1,000 ppm total halogens, it is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in Section R315-2-10. The owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste, for example, by using an analytical method from SW-846, Edition III, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in R315-50-10, which incorporates by reference 40 CFR 261 Appendix VIII. SW-846, Edition III, is available for review during normal business hours at the Utah Division of Solid and Hazardous Waste office, located at 288 North 1460 West, Salt Lake City, Utah. To schedule an appointment, call 801-538-6170.

(1) The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed, through a tolling arrangement as described in Subsection R315-15-2.5(c), to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner, or disposed.

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

(d) Record retention. Records of analyses conducted or information used to comply with paragraphs (a), (b), and (c) of this section shall be maintained by the transporter for at least three years.

4.6 USED OIL STORAGE AT TRANSFER FACILITIES

Used oil transporters are subject to all applicable Spill Prevention, Control and Countermeasures, 40 CFR 112, in addition to the requirements of Section R315-15-4. Used oil transporters are also subject to the standards of Title R311, which incorporates by reference 40 CFR 280, for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of Section R315-15-4.

(a) Applicability. This section applies to used oil transfer facilities. Used oil transfer facilities are transportation related

facilities including loading docks, parking areas, storage areas, and other areas where shipments of used oil are held for more than 24 hours during the normal course of transportation and not longer than 35 days. Transfer facilities that store used oil for more than 35 days are subject to the processor/re-refiner requirements as found in Section R315-15-5.

(b) Storage units. Owners or operators of used oil transfer facilities may not store used oil in units other than tanks, containers, or units subject to regulation under Rule R315-7 or R315-8.

(c) Condition of units. Containers and aboveground tanks used to store used oil at transfer facilities shall be:

(1) In good condition, with no severe rusting, apparent structural defects, or deterioration; and

(2) Not leaking (no visible leaks).

(d) Secondary containment. Containers, existing aboveground tanks, and new aboveground tanks used to store used oil at transfer facilities shall be equipped with a secondary containment system.

(1) The secondary containment system shall consist of, at a minimum:

(i) Dikes, berms, or retaining walls; and

(ii) A floor. The floor shall cover the entire area within the dikes, berms, or retaining walls except areas where existing portions of existing aboveground tanks meet the ground.

(2) The entire containment system, including walls and floors, shall be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

(e) Labels.

(1) Containers and aboveground tanks used to store used oil at transfer facilities shall be labeled or marked clearly with the words "Used Oil."

(2) Fill pipes used to transfer used oil into underground storage tanks at transfer facilities shall be labeled or marked clearly with the words "Used Oil."

(f) Response to releases. Upon detection of a release of used oil to the environment not subject to the requirements of Section R311-202-1, which incorporates by reference 40 CFR 280, Subpart F, the owner/operator of a transfer facility shall comply with Section R315-15-9.

4.7 TRACKING

(a) Acceptance. Used oil transporters shall keep a record of each used oil shipment accepted for transport. Records for each shipment shall include:

(1) The name and address of the generator, transporter, or processor/re-refiner who provided the used oil for transport;

(2) The EPA identification number, if applicable, of the generator, transporter, or processor/re-refiner who provided the used oil for transport;

(3) The quantity of used oil accepted;

(4) The date of acceptance; and

(5)(i) Except as provided in paragraph (a)(5)(ii) of this section, the signature, dated upon receipt of the used oil, of a representative of the generator, transporter, or processor/re-refiner who provided the used oil for transport.

(ii) Intermediate rail transporters are not required to sign the record of acceptance.

(b) Deliveries. Used oil transporters shall keep a record of each shipment of used oil that is delivered to another used oil transporter, or to a used oil burner, processor/re-refiner, or disposal facility. Records of each delivery shall include:

(1) The name and address of the receiving facility or transporter;

(2) The EPA identification number of the receiving facility or transporter;

(3) The quantity of used oil delivered;

(4) The date of delivery; and

(5) (i) Except as provided in paragraph (a)(5)(ii) of this section, the signature, dated upon receipt of the used oil, of a representative of the receiving facility or transporter.

(ii) Intermediate rail transporters are not required to sign the record of delivery.

(c) Exports of used oil. Used oil transporters shall maintain the records described in paragraphs (b)(1) through (b)(4) of this section for each shipment of used oil exported to any foreign country.

(d) Record retention. The records described in paragraphs (a), (b), and (c) of this section shall be maintained for at least three years.

(e) Reporting. A used oil transporter/transfer facility shall report annually to the Executive Secretary by March 1 of each year. The report shall be consistent with the requirements of Subsection R315-15-13.4(d).

4.8 MANAGEMENT OF RESIDUES

Transporters who generate residues from the storage or transport of used oil shall manage the residues as specified in Subsection R315-15-1.1(e).

R315-15-5. Standards for Used Oil Processors and Re-Refiners.

5.1 APPLICABILITY

(a) The requirements of Section R315-15-5 apply to owners and operators of facilities that process used oil. Processing means chemical or physical operations designed to produce from used oil, or to make used oil more amenable for production of, fuel oils, lubricants, or other used oil-derived products. Processing includes: blending used oil with virgin petroleum products, blending used oils to meet the fuel specification, filtration, simple distillation, chemical or physical separation and re-refining. The requirements of Section R315-15-5 do not apply to:

(1) Transporters that conduct incidental processing operations that occur during the normal course of transportation as provided in Section R315-15-4.2; or

(2) Burners that conduct incidental processing operations that occur during the normal course of used oil management prior to burning as provided in Subsection R315-15-6.2(b).

(b) Other applicable provisions. Used oil processors/re-refiners who conduct the following activities are also subject to the requirements of other applicable provisions of Rule R315-15 as indicated in paragraphs (b)(1) through (b)(5) of this section.

(1) Processors/re-refiners who generate used oil shall also comply with Section R315-15-2.

(2) Processors/re-refiners who transport used oil shall also comply with Section R315-15-4.

(3) Except as provided in paragraphs (b)(3)(i) and (b)(3)(ii) of this section, processors/re-refiners who burn off-

specification used oil for energy recovery shall also comply with Section R315-15-6. Processor/re-refiners burning used oil for energy recovery under the following conditions are not subject to Section R315-15-6:

(i) The used oil is burned in an on-site space heater that meets the requirements of Section R315-15-2.4; or

(ii) The used oil is burned for purposes of processing used oil, which is considered burning incidentally to used oil processing.

(4) Processors/re-refiners who direct shipments of off-specification used oil from their facility to a used oil burner or first claim that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in Section R315-15-1.2 shall also comply with Section R315-15-7.

(5) Processors/re-refiners who dispose of used oil shall also comply with Section R315-15-8.

(c) Processors/re-refiners shall obtain a permit from the Executive Secretary prior to processing or re-refining used oil. An application for a permit shall contain the information required by Section R315-15-13.5.

5.2 NOTIFICATION

(a) Identification numbers. Used oil processors/re-refiners who have not previously complied with the notification requirements of RCRA section 3010 shall comply with these requirements and obtain an EPA identification number.

(b) Mechanics of notification. A used oil processor or re-refiner who has not received an EPA identification number may obtain one by notifying the Executive Secretary of their used oil activity by submitting either:

(1) A completed EPA Form 8700-12. To obtain EPA Form 8700-12 call Utah Division of Solid and Hazardous Waste at 801-538-6170; or

(2) A letter to the Division requesting an EPA identification number. The letter shall include the following information:

(i) Processor or re-refiner company name;

(ii) Owner of the processor or re-refiner company;

(iii) Mailing address for the processor or re-refiner;

(iv) Name and telephone number for the processor or re-refiner point of contact;

(v) Type of used oil activity, i.e., process only, process and re-refine;

(vi) Location of the processor or re-refiner facility.

5.3 GENERAL FACILITY STANDARDS

(a) Preparedness and prevention. Owners and operators of used oil processor/re-refiner facilities shall comply with the following requirements:

(1) Maintenance and operation of facility. Facilities shall be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of used oil to air, soil, or surface water which could threaten human health or the environment.

(2) Required equipment. Unless none of the hazards posed by used oil handled at the facility could require a particular kind of equipment specified in paragraphs (a)(2)(i) through (iv) of this section, all facilities shall be equipped with the following:

(i) An internal communications or alarm system capable of providing immediate emergency instruction, voice or signal, to facility personnel;

(ii) A device, such as a telephone, immediately available at the scene of operations, or a hand-held two-way radio, capable of summoning emergency assistance from local police departments, fire departments, or State or local emergency response teams;

(iii) Portable fire extinguishers, fire control equipment, including special extinguishing equipment, such as that using foam, inert gas, or dry chemicals, spill control equipment, and decontamination equipment; and

(iv) Water at adequate volume and pressure to supply water hose streams, or foam producing equipment, or automatic sprinklers, or water spray systems.

(3) Testing and maintenance of equipment. All facility communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment, where required, shall be tested and maintained as necessary to assure its proper operation in time of emergency.

(4) Access to communications or alarm system.

(i) Whenever used oil is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation shall have immediate access to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, unless such a device is not required in paragraph (a)(2) of this section.

(ii) If there is ever just one employee on the premises while the facility is operating, the employee shall have immediate access to a device, such as a telephone, immediately available at the scene of operation, or a hand-held two-way radio, capable of summoning external emergency assistance, unless such a device is not required in paragraph (a)(2) of this section.

(5) Required aisle space. The owner or operator shall maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes.

(6) Arrangements with local authorities.

(i) The owner or operator shall attempt to make the following arrangements, as appropriate for the type of used oil handled at the facility and the potential need for the services of these organizations:

(A) Arrangements to familiarize police, fire departments, and emergency response teams with the layout of the facility, properties of used oil handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to roads inside the facility, and possible evacuation routes;

(B) Where more than one police and fire department might respond to an emergency, agreements designating primary emergency authority to a specific police and a specific fire department, and agreements with any others to provide support to the primary emergency authority;

(C) Agreements with State emergency response teams, emergency response contractors, and equipment suppliers; and

(D) Arrangements to familiarize local hospitals with the properties of used oil handled at the facility and the types of injuries or illnesses which could result from fires, explosions, or releases at the facility.

(ii) Where State or local authorities decline to enter into such arrangements, the owner or operator shall document the refusal in the operating record.

(b) Contingency plan and emergency procedures. Owners and operators of used oil processors and re-refiners facilities shall comply with the following requirements:

(1) Purpose and implementation of contingency plan.

(i) Each owner or operator shall have a contingency plan for the facility. The contingency plan shall be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of used oil to air, soil, or surface water.

(ii) The provisions of the plan shall be carried out immediately whenever there is a fire, explosion, or release of used oil which could threaten human health or the environment.

(2) Content of contingency plan.

(i) The contingency plan shall describe the actions facility personnel shall take to comply with paragraphs (b)(1) and (6) of this section in response to fires, explosions, or any unplanned sudden or non-sudden release of used oil to air, soil, or surface water at the facility.

(ii) If the owner or operator has already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan in accordance with 40 CFR 112 or some other emergency or contingency plan, the owner or operator need only amend that plan to incorporate used oil management provisions necessary to comply with the requirements of R315-15.

(iii) The plan shall describe arrangements agreed to by local police departments, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services, pursuant to paragraph (a)(6) of this section.

(iv) The plan shall list names, addresses, and phone numbers, office and home, of all persons qualified to act as emergency coordinator. This list shall be kept up to date. Where more than one person is listed, one shall be named as primary emergency coordinator and others shall be listed in the order in which they will assume responsibility as alternates. See also paragraph (b)(5) of this section.

(v) The plan shall include a list of all emergency equipment at the facility, such as fire extinguishing systems, spill control equipment, communications and alarm systems, internal and external, and decontamination equipment, where this equipment is required. This list shall be kept up to date. In addition, the plan shall include the location and a physical description of each item on the list, and a brief outline of its capabilities.

(vi) The plan shall include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. This plan shall describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes, in cases where the primary routes could be blocked by releases of used oil or fires.

(3) Copies of contingency plan. A copy of the contingency plan and all revisions to the plan shall be:

(i) Maintained at the facility; and

(ii) Submitted to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services.

(4) Amendment of contingency plan. The contingency plan shall be reviewed, and immediately amended, if necessary, whenever:

(i) Applicable regulations are revised;

(ii) The plan fails in an emergency;

(iii) The facility changes its design, construction, operation, maintenance, or other circumstances in a way that materially increases the potential for fires, explosions, or releases of used oil, or changes the response necessary in an emergency;

(iv) The list of emergency coordinators changes; or

(v) The list of emergency equipment changes.

(5) Emergency coordinator. At all times, there shall be at least one employee either on the facility premises or on call, i.e., available to respond to an emergency by reaching the facility within a short period of time, with the responsibility for coordinating all emergency response measures. This emergency coordinator shall be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location and characteristic of used oil handled, the location of all records within the facility, and facility layout. In addition, this person shall have the authority to commit the resources needed to carry out the contingency plan.

(6) Emergency procedures.

(i) Whenever there is an imminent or actual emergency situation, the emergency coordinator, or the designee when the emergency coordinator is on call, shall immediately:

(A) Activate internal facility alarms or communication systems, where applicable, to notify all facility personnel; and

(B) Notify appropriate State or local agencies with designated response roles if their help is needed.

(ii) Whenever there is a release, fire, or explosion, the emergency coordinator shall immediately identify the character, exact source, amount, and areal extent of any released materials. He may do this by observation or review of facility records of manifests and, if necessary, by chemical analysis.

(iii) Concurrently, the emergency coordinator shall assess possible hazards to human health or the environment that may result from the release, fire, or explosion. This assessment shall consider both direct and indirect effects of the release, fire, or explosion, e.g., the effects of any toxic, irritating, or asphyxiating gases that are generated, or the effects of any hazardous surface water run-offs from water or chemical agents used to control fire and heat-induced explosions.

(iv) If the emergency coordinator determines that the facility has had a release, fire, or explosion which could threaten human health, or the environment, outside the facility, he shall report his findings as follows:

(A) If his assessment indicated that evacuation of local areas may be advisable, he shall immediately notify appropriate local authorities. He shall be available to help appropriate officials decide whether local areas should be evacuated; and

(B) He shall implement the actions as required in Section R315-15-9.

(v) During an emergency, the emergency coordinator shall take all reasonable measures necessary to ensure that fires, explosions, and releases do not occur, recur, or spread to other used oil or hazardous waste at the facility. These measures shall include, where applicable, stopping processes and operation,

collecting and containing released used oil, and removing or isolating containers.

(vi) If the facility stops operation in response to a fire, explosion, or release, the emergency coordinator shall monitor for leaks, pressure buildup, gas generation, or ruptures in valves, pipes, or other equipment, wherever this is appropriate.

(vii) Immediately after an emergency, the emergency coordinator shall provide for recycling, storing, or disposing of recovered used oil, contaminated soil or surface water, or any other material that results from a release, fire, or explosion at the facility.

(viii) The emergency coordinator shall ensure that, in the affected area(s) of the facility:

(A) No waste or used oil that may be incompatible with the released material is recycled, treated, stored, or disposed of until cleanup procedures are completed; and

(B) All emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.

(C) The owner or operator shall notify the Executive Secretary, and appropriate local authorities that the facility is in compliance with paragraphs (b)(6)(viii)(A) and (B) of this section before operations are resumed in the affected area(s) of the facility.

(ix) The owner or operator shall note in the operating record the time, date, and details of any incident that requires implementing the contingency plan. Within 15 days after the incident, he shall submit a written report on the incident to the Executive Secretary. The report shall include:

(A) Name, address, and telephone number of the owner or operator;

(B) Name, address, and telephone number of the facility;

(C) Date, time, and type of incident, e.g., fire, explosion;

(D) Name and quantity of material(s) involved;

(E) The extent of injuries, if any;

(F) An assessment of actual or potential hazards to human health or the environment, where this is applicable; and

(G) Estimated quantity and disposition of recovered material that resulted from the incident.

5.4 REBUTTABLE PRESUMPTION FOR USED OIL

(a) To ensure that used oil managed at a processing/re-refining facility is not hazardous waste under the rebuttable presumption of Subsection R315-15-1.1(b)(1)(ii), the owner or operator of a used oil processing/re-refining facility shall determine whether the total halogen content of used oil managed at the facility is above or below 1,000 ppm.

(b) The owner or operator shall make this determination by:

(1) Testing the used oil; or

(2) Applying knowledge of the halogen content of the used oil in light of the materials or processes used.

(c) If the used oil contains greater than or equal to 1,000 ppm total halogens, it is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in Section R315-2-10. The owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste, for example, by using an analytical method from SW-846, Edition III, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in Section R315-50-10, which incorporates by reference 40 CFR 261 Appendix VIII. SW-846, Edition III, is available for review during normal business hours at the Utah Division of Solid and Hazardous Waste office, located at 288 North 1460 West, Salt Lake City, Utah. To schedule an appointment, call 801-538-6170.

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

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

5.5 USED OIL MANAGEMENT

Used oil processor/re-refiners are subject to all applicable Spill Prevention, Control and Countermeasures, 40 CFR 112, in addition to the requirements of Section R315-15-5. Used oil processors/re-refiners are also subject to the standards and requirements of Rules R311-200 through R311-209, Underground Storage Tanks, for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of Section R315-15-5.

(a) Management units. Used oil processors/re-refiners may not store used oil in units other than tanks, containers, or units subject to regulation under Rule R315-7 or R315-8.

(b) Condition of units. Containers and aboveground tanks used to store or process used oil at processing and re-refining facilities shall be:

(1) In good condition, with no severe rusting, apparent structural defects, or deterioration; and

(2) Not leaking (no visible leaks).

(c) Secondary containment. Containers, existing aboveground tanks, and new aboveground tanks used to store or process used oil at processing and re-refining facilities shall be equipped with a secondary containment system.

(1) The secondary containment system shall consist of, at a minimum:

(i) Dikes, berms, or retaining walls; and

(ii) A floor. The floor shall cover the entire area within the dike, berm, or retaining wall, except areas where existing portions of existing aboveground tanks meet the ground.

(2) The entire containment system, including walls and floors, shall be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

(d) Labels.

(1) Containers and aboveground tanks used to store or process used oil at processing and re-refining facilities shall be labeled or marked clearly with the words "Used Oil."

(2) Fill pipes used to transfer used oil into underground storage tanks at processing and re-refining facilities shall be labeled or marked clearly with the words "Used Oil."

(e) Response to releases. Upon detection of a release of

used oil to the environment not subject to the requirements of Section R311-202-1, which incorporates by reference 40 CFR 280, Subpart F, an owner/operator shall comply with Section R315-15-9.

(f) Closure.

(1) Aboveground tanks. Owners and operators who store or process used oil in aboveground tanks shall comply with the following requirements:

(i) At closure of a tank system, the owner or operator shall remove or decontaminate used oil residues in tanks, contaminated containment system components, contaminated soils, and structures and equipment contaminated with used oil, and manage them as hazardous waste, unless the materials are not hazardous waste under this chapter. Nonhazardous solid waste, must be managed in accordance with Section R315-301-4.

(ii) If the owner or operator demonstrates that not all contaminated soils can be practicably removed or decontaminated as required in paragraph (f)(1)(i) of this section, then the owner or operator shall close the tank system and perform post-closure care in accordance with the closure and post-closure care requirements that apply to hazardous waste landfills, Section R315-7-21.4.

(2) Containers. Owners and operators who store used oil in containers shall comply with the following requirements:

(i) At closure, containers holding used oils or residues of used oil shall be removed from the site;

(ii) The owner or operator shall remove or decontaminate used oil residues, contaminated containment system components, contaminated soils, and structures and equipment contaminated with used oil, and manage them as hazardous waste, unless the materials are not hazardous waste under Rule R315-2.

5.6 ANALYSIS PLAN

Owners or operators of used oil processing and re-refining facilities shall develop and follow a written analysis plan describing the procedures that will be used to comply with the analysis requirements of Section R315-15-5.4 and, if applicable, the marketer requirements in Section R315-15-7.3. The owner or operator shall keep the plan at the facility.

(a) Rebuttable presumption for used oil in Section R315-15-5.4. At a minimum, the plan shall specify the following:

(1) Whether sample analyses or knowledge of the halogen content of the used oil will be used to make this determination.

(2) If sample analyses are used to make this determination:

(i) The sampling method used to obtain representative samples to be analyzed. A representative sample may be obtained using either:

(A) One of the sampling methods in Section R315-50-6, which incorporates by reference 40 CFR 261, Appendix I; or

(B) A method shown to be equivalent under Section R315-2-15;

(ii) The frequency of sampling to be performed, and whether the analysis will be performed on-site or off-site; and

(iii) The methods used to analyze used oil for the parameters specified in Section R315-15-5.4; and

(3) The type of information that will be used to determine the halogen content of the used oil.

(b) On-specification used oil fuel in Section R315-15-7.3. At a minimum, the plan shall specify the following if Section R315-15-7.3 is applicable:

(1) Whether sample analyses or other information will be used to make this determination;

(2) If sample analyses are used to make this determination:

(i) The sampling method used to obtain representative samples to be analyzed. A representative sample may be obtained using either:

(A) One of the sampling methods in Section R315-50-6, which incorporates by reference 40 CFR 261, Appendix I; or

(B) A method shown to be equivalent under Section R315-2-15;

(ii) Whether used oil will be sampled and analyzed prior to or after any processing/re-refining;

(iii) The frequency of sampling to be performed, and whether the analysis will be performed on-site or off-site; and

(iv) The methods used to analyze used oil for the parameters specified in Section R315-15-7.3.

(3) The type of information that will be used to make the on-specification used oil fuel determination.

5.7 TRACKING

(a) Acceptance. Used oil processors/re-refiners shall keep a record of each used oil shipment accepted for processing/re-refining. These records may take the form of a log, invoice, manifest, bill of lading, or other shipping documents. Records for each shipment shall include the following information:

(1) The name and address of the transporter who delivered the used oil to the processor/re-refiner;

(2) The name and address of the generator or processor/re-refiner from whom the used oil was sent for processing/re-refining;

(3) The EPA identification number of the transporter who delivered the used oil to the processor/re-refiner;

(4) The EPA identification number, if applicable, of the generator or processor/re-refiner from whom the used oil was sent for processing/re-refining;

(5) The quantity of used oil accepted; and

(6) The date of acceptance.

(b) Delivery. Used oil processor/re-refiners shall keep a record of each shipment of used oil that is shipped to a used oil burner, processor/re-refiner, or disposal facility. These records may take the form of a log, invoice, manifest, bill of lading, or other shipping documents. Records for each shipment shall include the following information:

(1) The name and address of the transporter who delivers the used oil to the burner, processor/re-refiner, or disposal facility;

(2) The name and address of the burner, processor/re-refiner, or disposal facility which will receive the used oil;

(3) The EPA identification number of the transporter who delivers the used oil to the burner, processor/re-refiner, or disposal facility;

(4) The EPA identification number of the burner, processor/re-refiner, or disposal facility which will receive the used oil;

(5) The quantity of used oil shipped; and

(6) The date of shipment.

(c) Record retention. The records described in paragraphs (a) and (b) of this section shall be maintained for at least three

years.

5.8 OPERATING RECORD AND REPORTING

(a) Operating record.

(1) The owner or operator shall keep a written operating record at the facility.

(2) The following information shall be recorded, as it becomes available, and maintained in the operating record until closure of the facility:

(i) Records and results of used oil analyses performed as described in the analysis plan required under R315-15-5.6;

(ii) Summary reports and details of all incidents that require implementation of the contingency plan as specified in Subsection R315-15-5.3(b); and

(iii) Records detailing the mass balance of wastewater entering and leaving the facility. This includes wastewater discharge records. This does not include water used in non-contact cooling processes.

(b) Reporting. A used oil processor/re-refiner shall report annually to the Executive Secretary by March 1 of each year. The report shall be consistent with the requirements of Subsection R315-15-13.5(d).

5.9 OFF-SITE SHIPMENTS OF USED OIL

Used oil processors/re-refiners who initiate shipments of used oil off-site shall ship the used oil using a used oil transporter who has obtained an EPA identification number.

5.10 MANAGEMENT OF RESIDUES

Owners and operators who generate residues from the storage, processing, or re-refining of used oil shall manage the residues as specified in Subsection R315-15-1.1(e).

R315-15-6. Standards for Used Oil Burners Who Burn Used Oil for Energy Recovery.

6.1 APPLICABILITY

(a) General. The requirements of Section R315-15-6 apply to used oil burners except as specified in paragraphs (a)(1) through (a)(3) of this section. An off-specification used oil burner is a facility where used oil not meeting the specification requirements in Section R315-15-1.2 is burned for energy recovery in devices identified in Subsection R315-15-6.2(a). Facilities burning used oil for energy recovery under the following conditions are not subject to Section R315-15-6:

(1) The used oil is burned by the generator in an on-site space heater under the provisions of Section R315-15-2.4;

(2) The used oil is burned by a processor/re-refiner for purposes of processing used oil, which is considered burning incidentally to used oil processing; or

(3) The used oil burned by the facility is obtained from a registered marketer who claims the oil meets the used oil fuel specifications set forth in Section R315-15-1.2 and who delivers the oil in the manner set forth in Subsection R315-15-7.5(b).

(b) Other applicable provisions. Used oil burners who conduct the following activities are also subject to the requirements of other applicable provisions of Rule R315-15 as indicated below.

(1) Burners who generate used oil shall also comply with Section R315-15-2;

(2) Burners who transport used oil shall also comply with Section R315-15-4;

(3) Except as provided in Subsection R315-15-6.2(b)(2), burners who process or re-refine used oil shall also comply with Section R315-15-5;

(4) Burners who direct shipments of off-specification used oil from their facility to an off-specification used oil burner or first claim that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in Section R315-15-1.2 shall also comply with Sections R315-15-7 and R315-15-13.7;

(5) Burners who dispose of used oil shall comply with Section R315-15-8; and

(6) Burners who collect used oil must also comply with the collection center requirements in Section R315-15-3. Burners who burn used oil collected from other generators must become marketers and comply with the provisions of Section R315-15-7. Burners who collect and burn used oil that does not fall into the categories of "do-it-yourselfer" or farmer-generated used oil as described in Subsections R315-15-2.1(a)(1) and (4), must also become marketers and comply with the provisions of Section R315-15-7.

(c) Specification fuel. Persons burning used oil that meets the used oil fuel specifications of Section R315-15-1.2 under the conditions described in Subsections R315-15-6.1(a)(1) through (3) are not subject to Section R315-15-6, provided that the burner complies with the requirements of Section R315-15-7 and Subsection R315-15-13.6(a).

6.2 RESTRICTIONS ON BURNING

(a) Off-specification used oil fuel may be burned for energy recovery in only the following devices:

(1) Industrial furnaces identified in Section R315-1-1, which incorporates by reference 40 CFR 260.10;

(2) Boilers, as defined in Section R315-1-1, which incorporates by reference 40 CFR 260.10, that are identified as follows:

(i) Industrial boilers located on the site of a facility engaged in a manufacturing process where substances are transformed into new products, including the component parts of products, by mechanical or chemical processes;

(ii) Utility boilers used to produce electric power, steam, heated or cooled air, or other gases or fluids for sale;

(iii) Used oil-fired space heaters provided that the burner meets the provisions of Section R315-15-2.4; or

(3) Hazardous waste incinerators subject to regulation under Section R315-7-22 or R315-8-15.

(b)(1) With the following exception, off-specification used oil burners may not process used oil unless they also comply with the requirements of Section R315-15-5.

(2) Off-specification used oil burners may aggregate off-specification used oil with virgin oil or on-specification used oil for purposes of burning, but may not aggregate for purposes of producing on-specification used oil without also complying with the processor/re-refiner requirements in Section R315-15-5.

6.3 NOTIFICATION

(a) Identification numbers. Off-specification used oil burners which have not previously complied with the notification requirements of RCRA section 3010 shall comply with these requirements and obtain an EPA identification number.

(b) Mechanics of notification. An off-specification used oil burner who has not received an EPA identification number

may obtain one by notifying the Executive Secretary of their used oil activity by submitting either:

(1) A completed EPA Form 8700-12. To obtain EPA Form 8700-12 call Utah Division of Solid and Hazardous Waste at 801-538-6170; or

(2) A letter to the Division requesting an EPA identification number. The letter shall include the following information:

(i) Burner company name;

(ii) Owner of the burner company;

(iii) Mailing address for the burner;

(iv) Name and telephone number for the burner point of contact;

(v) Type of used oil activity; and

(vi) Location of the burner facility.

6.4 REBUTTABLE PRESUMPTION FOR USED OIL

(a) To ensure that used oil managed at a used oil burner facility is not hazardous waste under the rebuttable presumption of Subsection R315-15-1.1(b)(1)(ii), a used oil burner shall determine whether the total halogen content of used oil managed at the facility is above or below 1,000 ppm.

(b) The used oil burner shall determine if the used oil contains above or below 1,000 ppm total halogens by:

(1) Testing the used oil;

(2) Applying knowledge of the halogen content of the used oil in light of the materials or processes used; or

(3) Using information provided by the processor/re-refiner, if the used oil has been received from a processor/re-refiner subject to regulation under Section R315-15-5.

(c) If the used oil contains greater than or equal to 1,000 ppm total halogens, it is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in Section R315-2-10. The owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste, for example, by using an analytical method from SW-846, Edition III, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in R315-50-10, which incorporates by reference 40 CFR 261 Appendix VIII. SW-846, Edition III, is available for review during normal business hours at the Utah Division of Solid and Hazardous Waste office, located at 288 North 1460 West, Salt Lake City, Utah. To schedule an appointment, call 801-538-6170.

(1) The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed, through a tolling arrangement as described in Subsection R315-15-2.5(c), to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner, or disposed.

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

(d) Record retention. Records of analyses conducted or information used to comply with paragraphs (a), (b), and (c) of this section shall be maintained by the burner for at least 3 years.

6.5 USED OIL STORAGE

Used oil burners are subject to all applicable Spill Prevention, Control and Countermeasures, 40 CFR part 112, in addition to the requirements of Section R315-15-6. Used oil burners are also subject to the standards and requirements of Rules R311-200 through R315-209, Underground Storage Tanks, for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of Section R315-15-6.

(a) Storage units. Used oil burners may not store used oil in units other than tanks, containers, or units subject to regulation under Rule R315-7 or R315-8.

(b) Condition of units. Containers and aboveground tanks used to store oil at used oil burner facilities shall be:

(1) In good condition, with no severe rusting, apparent structural defects, or deterioration; and

(2) Not leaking (no visible leaks).

(c) Secondary containment. Containers, existing aboveground tanks, and new aboveground tanks used to store off-specification used oil at burner facilities shall be equipped with a secondary containment system.

(1) The secondary containment system shall consist of, at a minimum:

(i) Dikes, berms, or retaining walls; and

(ii) A floor. The floor shall cover the entire area within the dike, berm, or retaining wall, except areas where existing portions of existing aboveground tanks meet the ground.

(2) The entire containment system, including walls and floor, shall be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

(d) Labels.

(1) Containers and aboveground tanks used to store off-specification used oil at burner facilities shall be labeled or marked clearly with the words "Used Oil."

(2) Fill pipes used to transfer off-specification used oil into underground storage tanks at burner facilities shall be labeled or marked clearly with the words "Used Oil."

(e) Response to releases. Upon detection of a release of used oil to the environment not subject to the requirements of Section R311-202-1, which incorporates by reference 40 CFR 280, Subpart F, a burner shall comply with Section R315-15-9.

6.6 TRACKING

(a) Acceptance. Off-specification used oil burners shall keep a record of each off-specification used oil shipment accepted for burning. These records may take the form of a log, invoice, manifest, bill of lading, or other shipping documents. Records for each shipment shall include the following information:

(1) The name and address of the transporter who delivered the used oil to the burner;

(2) The name and address of the generator or processor/re-refiner from whom the used oil was sent to the burner;

(3) The EPA identification number of the transporter who delivered the used oil to the burner;

(4) The EPA identification number, if applicable, of the generator or processor/re-refiner from whom the used oil was sent to the burner;

(5) The quantity of used oil accepted; and

(6) The date of acceptance.

(b) Record retention. The records described in paragraph (a) of this section shall be maintained for at least three years.

6.7 NOTICES

(a) Certification. Before a burner accepts the first shipment of off-specification used oil fuel from a generator, transporter, or processor/re-refiner, the burner shall provide to the generator, transporter, or processor/re-refiner a one-time written and signed notice certifying that:

(1) The burner has notified the Executive Secretary stating the location and general description of his used oil management activities; and

(2) The burner will burn the used oil only in an industrial furnace or boiler identified in Subsection R315-15-6.2(a).

(b) Certification retention. The certification described in paragraph (a) of this section shall be maintained for three years from the date the burner last receives shipment of off-specification used oil from that generator, transporter, or processor/re-refiner.

6.8 MANAGEMENT OF RESIDUES

Burners who generate residues from the storage or burning of used oil shall manage the residues as specified in Subsection R315-15-1.1(e).

R315-15-7. Standards for Used Oil Fuel Marketers.

7.1 APPLICABILITY

(a) Any person who conducts either of the following activities is subject to the requirements of Sections R315-15-7 and R315-15-13.7:

(1) Directs a shipment of off-specification used oil from their facility to a used oil burner; or

(2) First claims that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in Section R315-15-1.2.

(b) The following persons are not marketers subject to Section R315-15-7:

(1) Used oil generators, and transporters who transport used oil received only from generators, unless the generator or transporter directs a shipment of off-specification used oil from their facility to a used oil burner. However, processors/re-refiners who burn some used oil fuel for purposes of processing are considered to be burning incidentally to processing. Thus, generators and transporters who direct shipments of off-specification used oil to processors/re-refiners who incidentally burn used oil are not marketers subject to Section R315-15-7;

(2) Persons who direct shipments of on-specification used oil and who are not the first person to claim the oil meets the used oil fuel specifications of Section R315-15-1.2.

(c) Any person subject to the requirements of Section R315-15-7 shall also comply with one of the following:

(1) Section R315-15-2 - Standards for Used Oil Generators;

(2) Section R315-15-4 - Standards for Used Oil Transporters and Transfer Facilities;

(3) Section R315-15-5 - Standards for Used Oil Processors and Re-refiners; or

(4) Section R315-15-6 - Standards for Used Oil Burners who Burn Off-Specification Used Oil for Energy Recovery.

(d) A person may not act as a used oil fuel marketer without receiving a registration number issued by the Executive Secretary pursuant to Section R315-15-13.7.

7.2 PROHIBITIONS

A used oil fuel marketer may initiate a shipment of off-specification used oil only to a used oil burner who:

(a) Has an EPA identification number; and

(b) Burns the used oil in an industrial furnace or boiler identified in Subsection R315-15-6.2(a).

7.3 ON-SPECIFICATION USED OIL FUEL

(a) Analysis of used oil fuel. A generator, transporter, processor/re-refiner, or burner may determine that used oil that is to be burned for energy recovery meets the fuel specifications of Section R315-15-1.2 by performing analyses or obtaining copies of analyses or other information documenting that the used oil fuel meets the specifications.

(b) Record retention. A generator, transporter, processor/re-refiner, or burner who first claims that used oil that is to be burned for energy recovery meets the specifications for used oil fuel under Section R315-15-1.2, shall keep copies of analyses of the used oil, or other information used to make the determination, for three years.

7.4 NOTIFICATION

(a) Identification numbers. A used oil fuel marketer subject to the requirements of Section R315-15-7 who has not previously complied with the notification requirements of RCRA section 3010 shall comply with these requirements and obtain an EPA identification number.

(b) A marketer who has not received an EPA identification number may obtain one by notifying the Executive Secretary of their used oil activity by submitting either:

(1) A completed EPA Form 8700-12, which can be obtained by calling the Utah Division of Solid and Hazardous Waste at 801-538-6170; or

(2) A letter to the Division requesting an EPA identification number. The letter shall include the following information:

(i) Marketer company name;

(ii) Owner of the marketer;

(iii) Mailing address for the marketer;

(iv) Name and telephone number for the marketer point of contact; and

(v) Type of used oil activity, e.g., generator directing shipments of off-specification used oil to a burner.

7.5 TRACKING

(a) Off-specification used oil delivery. Any used oil marketer who directs a shipment of off-specification used oil to a burner shall keep a record of each shipment of used oil to a used oil burner. These records may take the form of a log, invoice, manifest, bill of lading or other shipping documents. Records for each shipment shall include the following information:

(1) The name and address of the transporter who delivers the used oil to the burner;

(2) The name and address of the burner who will receive the used oil;

(3) The EPA identification number of the transporter who delivers the used oil to the burner;

(4) The EPA identification number of the burner;

(5) The quantity of used oil shipped; and

(6) The date of shipment.

(b) On-specification used oil delivery. A generator, transporter, processor/re-refiner, or burner who first claims that used oil that is to be burned for energy recovery meets the fuel specifications under Section R315-15-1.2 shall keep a record of each shipment of used oil to an on-specification used oil burner. Records for each shipment shall include the following information:

(1) The name and address of the facility receiving the shipment;

(2) The quantity of used oil fuel delivered;

(3) The date of shipment or delivery; and

(4) A cross-reference to the record of used oil analysis or other information used to make the determination that the oil meets the specification as required under Subsection R315-15-7.3(a).

(c) Record retention. The records described in paragraphs (a) and (b) of this section shall be maintained for at least three years.

7.6 NOTICES

(a) Certification. Before a used oil generator, transporter, or processor/re-refiner directs the first shipment of off-specification used oil fuel to a burner, he shall obtain a one-time written and signed notice from the burner certifying that:

(1) The burner has notified the Executive Secretary stating the location and general description of used oil management activities; and

(2) The burner will burn the off-specification used oil only in an industrial furnace or boiler identified in Subsection R315-15-6.2(a).

(b) Certification retention. The certification described in paragraph (a) of this section shall be maintained for three years from the date the last shipment of off-specification used oil is shipped to the burner.

R315-15-8. Standards for the Disposal of Used Oil.

8.1 APPLICABILITY

The requirements of Section R315-15-8 apply to all used oils that cannot be recycled and are therefore being disposed.

8.2 DISPOSAL

(a) Disposal of hazardous used oils. Used oils that are identified as a hazardous waste and cannot be recycled in accordance with Rule R315-15 shall be managed in accordance with the hazardous waste management requirements of Rules R315-1 through R315-14, and R315-50.

(b) Disposal of nonhazardous used oils. Used oils that are not hazardous wastes and cannot be recycled under Rule R315-15 shall be disposed in a solid waste disposal facility meeting the applicable requirements of Rules R315-301 through R315-318 and authorized by the Board.

8.3 USE AS A DUST SUPPRESSANT, WEED SUPPRESSANT, OR FOR ROAD OILING

The use of used oil as a dust suppressant, weed suppressant, or for road oiling or other similar use is prohibited.

R315-15-9. Emergency Controls.

9.1 IMMEDIATE ACTION

In the event of a release of used oil, the person responsible for the material at the time of the release shall immediately:

(a) Take appropriate action to minimize the threat to human health and the environment.

(b) Notify the Utah State Department of Environmental Quality, 24-hour Answering Service, 801-536-4123 for used oil releases exceeding 25 gallons, or smaller releases that pose a potential threat to human health or the environment. Small leaks and drips from vehicles are considered de minimis and are not subject to the release clean-up provisions of R315-15-9.

(c) Provide the following information when reporting the release:

(1) Name, phone number, and address of person responsible for the release.

(2) Name, title, and phone number of individual reporting.

(3) Time and date of release.

(4) Location of release--as specific as possible including nearest town, city, highway, or waterway.

(5) Description contained on the manifest and the amount of material released.

(6) Cause of release.

(7) Possible hazards to human health or the environment and emergency action taken to minimize that threat.

(8) The extent of injuries, if any.

(d) An air, rail, highway, or water transporter who has discharged used oil shall:

(1) Give notice, if required by 49 CFR 171.15 to the National Response Center, 800-424-8802 or 202-426-2675; and

(2) Report in writing as required by 49 CFR 171.16 to the Director, Office of Hazardous Materials Regulations, Materials Transportation Bureau, Department of Transportation, Washington, D.C. 20590.

(e) A water, bulk shipment, transporter who has discharged used oil shall give the same notice as required by 33 CFR 153.203 for oil and hazardous substances.

9.2 EMERGENCY CONTROL VARIANCE

If a release of used oil requires immediate removal to protect human health or the environment, as determined by the Executive Secretary, a variance may be granted by the Executive Secretary to the EPA Identification Number requirement for used oil transporters until the released material and any residue or contaminated soil, water, or other material resulting from the release no longer presents an immediate hazard to human health or the environment, as determined by the Executive Secretary.

9.3 RELEASE CLEAN-UP

The person responsible for the material at the time of the release shall clean up all the released material and any residue or contaminated soil, water or other material resulting from the release or take action as may be required by the Executive Secretary so that the released material, residue, or contaminated soil, water, or other material no longer presents a hazard to human health or the environment. The cleanup or other required actions shall be at the expense of the person responsible for the release.

9.4 REPORTING

Within 15 days after any release of used oil that is reported under R315-15-9.1(b), the person responsible for the material at the time of the release shall submit to the Board or the Executive Secretary a written report which contains the following information:

(a) The person's name, address, and telephone number;

(b) Date, time, location, and nature of the incident;

(c) Name and quantity of material(s) involved;

(d) The extent of injuries, if any;

(e) An assessment of actual or potential hazards to human health or the environment, where this is applicable; and

(f) The estimated quantity and disposition of recovered material that resulted from the incident.

R315-15-10. Liability/Financial Requirements.

An owner or operator of a used oil collection, off-specification burner, transportation, processing, re-refining, or transfer facility, or a group of such facilities, shall demonstrate financial responsibility for any liability resulting from accidental spill or mishandling of used oil, e.g., bodily injury, property damage, and damage to third parties arising from operations of the facility or group of facilities. In approving the financial mechanisms, the Executive Secretary will take into account existing financial mechanisms already in place by the facility if required by Sections R315-7-15, R315-8-8, and R311-201-6. Additionally the Executive Secretary will consider other relevant factors in approving the financial mechanism, such as the volumes of used oil handled, existing secondary containment, etc. Evidence of financial responsibility shall be provided to the Executive Secretary as part of the permit/registration application.

R315-15-11. Closure.

11.1 The owner or operator of a used oil collection, aggregation, transfer, processing/re-refining, or off-specification used oil burning facility shall reclaim the site of the operation to a post operational land use in a manner that:

(a) Minimizes the need for further maintenance;

(b) Controls, minimizes, or eliminates, to the extent necessary to protect human health and the environment, post-closure escape of used oil, used oil constituents, leachate, contaminated run-off, or used oil decomposition products to the ground or surface waters, or to the atmosphere; and

(c) Complies with the closure requirements of this section or supplies evidence to the Executive Secretary demonstrating a closure mechanism meeting the requirements of R315-7-15 or R315-8-8.

11.2 CLOSURE PLAN

(a) Written plan. The owner or operator of a used oil transfer, off-specification burner, or processing/re-refining facility shall have a written closure plan. The plan shall be submitted to the Executive Secretary as part of the permit application.

(b) Content of plan. The plan shall identify steps necessary to perform partial and/or final closure of the facility at any point during its active life. The closure plan shall include, at least:

(1) A description of how each used oil management unit at the facility will be closed.

(2) A description of how final closure of the facility will be conducted. The description shall identify the maximum extent of the operations which will be closed during the active life of the facility.

(3) An estimate of the maximum inventory of used oil to be stored on-site at any one time during the life of the facility and a detailed description of the methods to be used during partial closures and final closure, including, but not limited to, methods for removing, transporting, or disposing of all used oil, and identification of the off-site used oil facilities to be used, if applicable.

(4) A detailed description of the steps needed to remove or decontaminate all used oil residues and contaminated containment system components, equipment, structures, and soils during partial and final closure, including procedures for cleaning equipment and removing contaminated soils, methods for sampling and testing surrounding soils, and criteria for determining the extent of decontamination required to satisfy closure.

(5) A detailed description of other activities necessary during the closure period to ensure that all partial closures and final closure satisfy the closure standards.

(6) A closure cost estimate and a mechanism for reclamation surety to cover the cost of closure.

11.3 TIME ALLOWED FOR CLOSURE

Within 90 days after receiving the final volume of used oil, the owner or operator of a used oil transfer, off-specification burning, or processing/re-refining facility shall begin implementing the facility's approved closure plan.

11.4 CERTIFICATION OF CLOSURE

Within 60 days of completion of closure the owner or operator of a used oil transfer, off-specification burning, or processing/re-refining facility shall submit to the Executive Secretary, by registered mail, a certification that the used oil facility has been closed in accordance with the specifications in the approved closure plan. The certification shall be signed by the owner or operator and by an independent registered professional engineer.

R315-15-12. Reclamation Surety.

12.1 DEFINITIONS

For the purposes of Section R315-15-12, the following definitions apply:

(a) "Existing used oil facility" means any used oil transfer facility, off-specification burner, or used oil processing/re-refining facility in operation on July 1, 1993 under a used oil operating permit issued by the Division of Oil, Gas and Mining and in effect on or before June 30, 1993. An existing used oil facility is also required to obtain a permit from the Executive Secretary in accordance with Section R315-15-13.

(b) "New used oil facility" means any used oil transfer, off-specification burner, or used oil processing/re-refining facility that was not in operation as a used oil facility on July 1, 1993, and received an operating permit in accordance with Section R315-15-13 from the Executive Secretary after July 1, 1993.

12.2 APPLICABILITY

(a) The owner or operator of an existing or new used oil facility requiring a permit under Section R315-15-13 shall establish a reclamation surety sufficient to assure reclamation of the facility in conformity with Sections R315-15-12.4 and R315-15-11.1 with one or more of the reclamation surety mechanisms of Section R315-15-12.3 prior to receiving a permit from the Executive Secretary.

(b) Any increase in capacity to store or process used oil at a used oil facility permitted by the Executive Secretary, above

the storage or processing capacity identified in the permit application approved by the Executive Secretary, shall require the owner or operator of the used oil facility to increase the amount of the reclamation surety to meet the additional capacity. The additional amount of reclamation surety shall be in place and effective before operation of the increased storage or processing capacity and shall meet the requirements of Sections R315-15-12.3 and R315-15-12.4.

(c) DIYer used oil collection centers, generator used oil collection centers, and used oil aggregation points are not required to post a reclamation surety under this rule, but are subject to the reclamation requirements of Section R315-15-11.1.

12.3 RECLAMATION SURETY MECHANISMS

(a) Any reclamation surety mechanism in place for an existing or new used oil facility shall:

(1) be legally valid, binding, and enforceable under state and federal law;

(2) be approved by the Executive Secretary; and

(3) ensure that funds will be available in a timely fashion when needed for completing all reclamation activities approved by the Board, in coordination with the Department.

(b) The owner or operator of an existing or new used oil facility shall establish a reclamation surety by one of the following mechanisms and shall submit a copy of the surety mechanism to the Executive Secretary for approval as part of the permit application.

(1) Trust Fund for Reclamation.

(i) The trustee shall be an entity which has the authority to act as a trustee and whose operations are regulated and examined by a federal or state agency.

(ii) A copy of the trust agreement shall be submitted to the Executive Secretary.

(iii) For trust funds not fully funded at the time of permit approval by the Executive Secretary, payments into the trust fund shall be made annually by the owner or operator to be fully funded within five years of permit approval by the Executive Secretary.

(iv) For a new used oil facility, the initial payment into the trust fund shall be made before the initial receipt of used oil.

(v) For an existing used oil facility, the initial payment into the trust fund shall be made on or before April 1, 1994.

(vi) The owner or operator, or other person authorized to conduct reclamation activities may request reimbursement from the trustee for reclamation activities completed.

(vii) The request for reimbursement may be granted by the trustee as follows:

(A) only if sufficient funds exist to cover the reimbursement request; and

(B) if justification and documentation of the reclamation expenditures are submitted to and approved by the Board, in coordination with the Department, prior to the trustee granting reimbursement.

(2) Surety Bond Guaranteeing Payment or Performance.

(i) The bond shall be effective as follows:

(A) For a new used oil facility, before the initial receipt of used oil; or

(B) For an existing used oil facility, on or before April 1, 1994.

(ii) The surety company issuing the bond shall, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury and the owner or operator shall notify the Executive Secretary that a copy of the bond has been placed in the operating record.

(iii) The penal sum of the bond shall be in an amount at least equal to the reclamation cost estimate developed under Subsection R315-15-12.4(c).

(iv) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

(v) The owner or operator shall establish a standby trust fund.

(A) The standby trust fund shall meet the requirements of Subsection R315-15-12.3(b)(1).

(B) Payment made under the terms of the bond shall be deposited by the surety directly into the standby trust fund and payments from the trust fund shall be approved by the trustee with the concurrence of the Board, in coordination with the Department.

(3) Insurance.

(i) The insurance shall be effective as follows:

(A) For a new used oil facility before the initial receipt of used oil; or

(B) For an existing used oil facility on or before April 1, 1994.

(ii) At a minimum, the insurer shall be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states.

(iii) The insurance policy shall guarantee that funds will be available to perform the reclamation activities approved by the Board, in coordination with the Department.

(iv) The policy shall guarantee that the insurer will be responsible for the paying out of funds to the owner or operator or other person authorized to conduct the reclamation activities, as approved by the Board, in coordination with the Department, up to an amount equal to the face amount of the policy. Payment of any funds by the insurer shall be made with the concurrence of the Board, in coordination with the Department.

(v) The insurance policy shall be issued for a face amount at least equal to the reclamation cost estimate developed under Subsection R315-15-12.4(c).

(vi) An owner or operator, or other authorized person may receive reimbursements for reclamation activities completed if:

(A) the value of the policy is sufficient to cover the reimbursement request; and

(B) justification and documentation of the reclamation expenditures are submitted to and approved by the Board, in coordination with the Department, prior to receiving reimbursement.

(vii) Each policy shall contain a provision allowing assignment of the policy to a successor owner or operator.

(viii) The insurance policy shall provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. If there is a failure to pay the premium, the insurer may cancel the policy by sending notice of cancellation by certified mail to the owner or operator and the Executive Secretary 120 days in advance of cancellation. If the

insurer cancels the policy, the owner or operator shall obtain an alternate reclamation surety meeting the requirements of this subsection within 60 days of cancellation of the policy.

(4) Letter of Credit for Reclamation.

(i) The letter of credit shall be effective as follows:

(A) For a new used oil facility, before the initial receipt of used oil; or

(B) For an existing used oil facility, on or before April 1, 1994.

(ii) An owner or operator of a used oil facility subject to the reclamation surety requirements of Section R315-15-12 may obtain an irrevocable standby letter of credit for reclamation of the used oil facility and shall submit a copy to the Executive Secretary.

(iii) The financial institution issuing the letter of credit shall be an entity that has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a state or federal agency.

(iv) The letter of credit shall be issued in an amount at least equal to the reclamation cost estimate developed under Subsection R315-15-12.4(c).

(5) The owner or operator of an existing or new used oil facility may establish reclamation surety by other mechanisms as approved by the Executive Secretary.

(6) The owner or operator of an existing or new used oil facility may establish reclamation surety by a combination of the above mechanisms as approved by the Executive Secretary.

(c) In approving the reclamation surety, the Executive Secretary will take into account existing financial mechanisms the used oil facility may already have in place under Sections R315-7-15 or R315-8-8.

(d) The owner or operator of a used oil transfer, processing or rerefining facility may terminate or cancel an active reclamation surety mechanism under the following conditions:

(1) if the owner or operator establishes alternate reclamation surety as approved by the Executive Secretary; or

(2) if the owner or operator is released from the reclamation surety requirements by the Executive Secretary.

12.4 RECLAMATION SURETY ANNUAL UPDATE AND COST ESTIMATE

(a) The reclamation surety information required by Subsection R315-15-12.4(c) shall be submitted to the Executive Secretary with the initial permit application for a new used oil facility or by April 1, 1994 for an existing used oil facility.

(b) The reclamation surety shall be updated each year to adjust for inflation or facility modification that would affect the amount of the reclamation surety required. The updated reclamation surety information shall be submitted to the Executive Secretary by March 1 of each year beginning March 1, 1995.

(c) The reclamation cost estimate shall be based on a third party performing reclamation of the facility to a post-operational land use in accordance with Section R315-15-11.1 and at a minimum shall contain the following elements:

(1) the estimated cost of removing from the facility the permitted maximum used oil storage capacity of the facility;

(2) the estimated cost of removing from the facility and decontaminating all used oil residues in containers, tanks, containment systems, soils, structures, and equipment; and

(3) a written description and an itemized estimated cost of the proposed methods for removing used oil and used oil residues from the facility and decontaminating used oil residues at the facility.

R315-15-13. Registration and Permitting of Used Oil Handlers.

13.1 DO-IT-YOURSELFER USED OIL COLLECTION CENTERS

(a) Applicability. A person may not operate a do-it-yourselfer (DIYer) used oil collection center without holding a registration number issued by the Executive Secretary.

(b) General. The application for a registration number shall include the following information regarding the DIYer used oil collection center:

(1) the name and address of the operator;

(2) the location of the center;

(3) the type of storage and secondary containment to be used;

(4) the status of the business, zoning, or other licenses and permits if required by federal, state and local governmental entities;

(5) a spill containment plan in the event of a release of used oil; and

(6) proof of insurance or other means of financial responsibility for liabilities that may be incurred in collecting or storing used oil.

(c) Waiver of proof of insurance or other means of financial responsibility for liabilities that may be incurred in collecting or storing used oil. Pursuant to Section 19-6-710, the Executive Secretary may waive the requirement of proof of liability insurance or other means of financial responsibility if the following criteria are satisfied:

(1) The used oil storage tank or container is in good condition with no severe rusting, apparent structural defects or deterioration, and no visible leaks;

(2) There is adequate secondary containment for the tank or container that is impervious to used oil to prevent any used oil released into the secondary containment system from migrating out of the system to the soil, groundwater or surface water;

(3) The storage tank or container is clearly labeled with the words "Used Oil;"

(4) DIYer log entries are complete including the name and address of the generator, date and quantity of used oil received;

(5) EPA approved test kits for total halogens are readily available and operators are trained to perform halogen tests on any used oil received that may have been mixed with hazardous waste; and

(6) Oil sorbent material is readily available on site for immediate clean up of spills.

(d) Changes in information. The owner or operator of the facility shall notify the Executive Secretary in writing of any changes in the information submitted to apply for a registration number within 20 days of the change.

13.2 GENERATOR USED OIL COLLECTION CENTERS

(a) Applicability. A person may not operate a generator used oil collection center without holding a registration number

issued by the Executive Secretary.

(b) General. The application for registration shall include the following information regarding the generator used oil collection center:

(1) the name and address of the operator;

(2) the location of the center;

(3) whether the center will accept DIYer used oil;

(4) the type of storage and secondary containment to be used;

(5) the status of the business, zoning, or other licenses and permits if required by federal, state and local governmental entities;

(6) a spill containment plan in the event of a release of used oil; and

(7) proof of insurance or other means of financial responsibility for liabilities that may be incurred in collecting or storing used oil.

(c) permit. Waiver of proof of insurance or other means of financial responsibility for liabilities that may be incurred in collecting or storing used oil. Pursuant to Section 19-6-710, the Executive Secretary may waive the requirement of proof of liability insurance or other means of financial responsibility if the following criteria are satisfied:

(1) The used oil storage tank or container is in good condition with no severe rusting, apparent structural defects or deterioration, and no visible leaks;

(2) There is adequate secondary containment for the tank or container that is impervious to used oil to prevent any used oil released into the secondary containment system from migrating out of the system to the soil, groundwater or surface water;

(3) The storage tank or container is clearly labeled with the words "Used Oil;"

(4) DIYer log entries are complete including the name and address of the generator, date and quantity of used oil received;

(5) EPA approved test kits for total halogens are readily available and operators are trained to perform halogen tests on any used oil received that may have been mixed with hazardous waste; and

(6) Oil sorbent material is readily available on site for immediate clean up of spills.

(d) Changes in information. The owner or operator of the facility shall notify the Executive Secretary in writing of any changes in the information submitted to apply for a registration number within 20 days of the change.

13.3 USED OIL AGGREGATION POINTS

(a) Applicability. A person may operate a used oil aggregation point without holding a registration number issued by the Executive Secretary unless that aggregation point also accepts used oil from household do-it-yourselfers (DIYers) or other generators.

(b) If an aggregation point accepts used oil from household DIYers, it must register with the Division as a DIYer collection center and comply with the DIYer standards in Section R315-15-3.1.

(c) If an aggregation point accepts used oil from other generators it must register with the Division as a generator collection center and comply with the standards in Section R315-15-3.2.

13.4 USED OIL TRANSPORTERS AND USED OIL TRANSFER FACILITIES

(a) Applicability. Except as provided by Section R315-15-13.4(f), a person may not operate as a used oil transporter or operate a transfer facility without holding a permit issued by the Executive Secretary.

(b) General. The application for a permit shall include the following information:

(1) The name and address of the operator;

(2) The location of the transporter's base of operations and the location of any transfer facilities, if applicable;

(3) Maps of all transfer facilities, if applicable;

(4) The methods to be used for collecting, storing, and delivering used oil;

(5) The methods to be used to determine if used oil received by the transporter or facility is on-specification or off-specification;

(6) The type of containment and the volume, including type and number of storage vessels to be used and the number and type of transportation vehicles, if applicable;

(7) The methods of disposing of any waste by-products;

(8) The status of business, zoning, and other applicable licenses and permits if required by federal, state, and local government entities;

(9) An emergency spill containment plan;

(10) Proof of liability insurance or other means of financial responsibility for liabilities that may be incurred in collecting, transporting, or storing used oil;

(11) Proof of form and amount of reclamation surety for any facility used in conjunction with transportation or storage of used oil; and

(12) A closure plan meeting the requirements of Section R315-15-11.

(c) Permit fees. Registration and permitting fees are established under the terms and conditions of Section 63-38-3. A copy of the Division's Fee Schedule is available upon request. Payment of appropriate fees is required prior to issuance of registration numbers and permit approvals.

(d) Annual Reporting. Each transporter/transfer facility shall submit an annual report to the Division of their activities during the calendar year. The annual report shall be submitted to the Division no later than March 1, of the year following the reported activities. The Annual report shall either be submitted on a form provided by the Division or shall contain the following information:

(1) the EPA identification number, name, and address of the transporter/transfer facility;

(2) the calendar year covered by the report;

(3) the total amount of used oil transported;

(4) the itemized amounts and types of used oil transferred to permitted transporters/transfer facilities, used oil processors/re-refiners, off-specification used oil burners, and used oil fuel marketers; and

(5) the itemized amounts and types of used oil transferred inside and outside the state, indicating the state of transfer, and the specific name, address and telephone number of the operations or facility to which used oil was transferred.

(e) Changes in information. The owner or operator of the facility shall notify the Executive Secretary in writing of any

changes in the information submitted to apply for a permit within 20 days of the change.

(f) Permits by rule. Notwithstanding any other provisions of Section R315-15-13.4, a used oil generator who transports used oil generated at a non-contiguous operation to a central collection facility for the purpose of storing it shall be deemed to have an approved used oil transporter permit if the generator meets all of the following conditions:

(1) Transports only used oil generated by the generator;

(2) Transports the used oil in a service vehicle owned by the generator;

(3) Transports the used oil to a facility that the generator owns, operates, or both;

(4) Subsequently burns the stored used oil for energy recovery at that facility, or arranges for a permitted used oil transporter to pick up the used oil;

(5) Complies with Sections R315-15-4.3, R315-15-4.4, and R315-15-4.8, and Subsections R315-15-4.6(b) through (f) and R315-15-4.7(b) and (d);

(6) Notifies the Executive Secretary with the information required by Subsection R315-15-13.4(b)(6);

(7) Registers as a used oil fuel marketer and complies with Section R315-15-7; and

(8) Is defined by one of the following Standard Industrial Classification (SIC) codes found in the Standard Industrial Classification Manual, 1987, published by the US Office of Management and Budget:

(i) 10 (metal mining);

(ii) 12 (coal mining);

(iii) 13 (oil and gas extraction);

(iv) 14 (mining and quarrying of nonmetallic minerals, except fuels;

(v) 15 (building construction--general contractors and operative builders);

(vi) 16 (heavy construction other than building construction);

(vii) 1791 (miscellaneous special trade contractors);

(viii) 1794 (excavation work); and

(ix) 1795 (wrecking and demolition work).

13.5 USED OIL PROCESSORS/RE-REFINERS

(a) Applicability. A person may not operate as a used oil processing/re-refining facility without holding a permit issued by the Executive Secretary.

(b) General. The application for a permit shall include the following information:

(1) The name and address of the operator;

(2) The location of the facility;

(3) A map of the facility;

(4) The grades of oil to be produced;

(5) The methods to be used to determine if used oil received by the transporter or facility is on-specification or off-specification;

(6) The type of containment and the volume, including type and number of storage vessels to be used and the number and type of transportation vehicles, if applicable;

(7) The methods of disposing of any waste by-products;

(8) The status of business, zoning, and other applicable licenses and permits if required by federal, state, and local government entities;

(9) An emergency spill containment plan;

(10) Proof of liability insurance or other means of financial responsibility for liabilities that may be incurred in processing or rerefining used oil;

(11) Proof of form and amount of reclamation surety for any facility used in conjunction with transportation or storage of used oil; and

(12) A closure plan meeting the requirements of Section R315-15-11.

(c) Permit fees. Registration and permitting fees are established under the terms and conditions of Section 63-38-3. A copy of the Division's Fee Schedule is available upon request. Payment of appropriate fees is required prior to issuance of registration numbers and permit approvals.

(d) Annual Reporting. Each used oil processing or rerefining facility shall submit an annual report to the Division of their activities during the calendar year. The annual report shall be submitted to the Division no later than March 1, of the year following the reported activities. The annual report shall either be submitted on a form provided by the Division or shall contain the following information:

(1) the EPA identification number, name, and address of the processor/re-refiner facility;

(2) the calendar year covered by the report;

(3) the quantities of used oil accepted for processing/rerefining and the manner in which the used oil is processed/rerefined, including the specific processes employed;

(4) the average daily quantities of used oil processed at the beginning and end of the reporting period;

(5) an itemization of the total amounts of used oil processed or rerefined during the reporting period year specifying the type and amounts of products produced, i.e., lubricating oil, fuel oil, etc.; and

(6) the amounts of used oil prepared for reuse as a lubricating oil, as a fuel, and for other uses, specifying each type of use, the amounts of used oil consumed or used in the process of preparing used oil for reuse, specifying the amounts and types of waste by-products generated including waste, water, and the methods and specific locations utilized for disposal.

(e) Changes in information. The owner or operator of the facility shall notify the Executive Secretary in writing of any changes in the information submitted to apply for a permit within 20 days of the change.

13.6 USED OIL BURNERS

(a) Specification used oil fuel burners. Facilities burning only on-specification used oil fuel are not required to register as used oil burners with the Executive Secretary.

(1) Applicability. These requirements apply to persons burning only used oil that meets the used oil fuel specification of Section R315-15-1.2, provided that the burner also complies with the requirements of Section R315-15-7.3. Persons burning specification used oil fuel shall be considered to have an authorization from the Department, for the purpose of this section, if they hold a valid air quality operating order, or are exempt under Section R315-15-2.4.

(2) Notification. Specification used oil fuel burners are required to notify the Executive Secretary by submitting a letter that includes the following information:

(i) Company name and location;

(ii) Owner of the company; and

(iii) Name and telephone number for the company point of contact.

(b) Off-specification used oil fuel burners

(1) Applicability. The permitting requirements of this section apply to used oil burners who burn off-specification used oil for energy recovery except as specified in Subsections R315-15-6.1(a)(1) through (3). A person may not burn off-specification used oil fuel for energy recovery without holding a permit issued by the Executive Secretary.

(2) Permit application. The application for a permit shall include the following information regarding the facility:

(i) the name and address of the operator;

(ii) the location of the facility;

(iii) the type of containment and type and capacity of storage;

(iv) the type of burner to be used;

(v) the methods of disposing of any waste by-products;

(vi) the status of business, zoning, and other applicable licenses and permits required by federal, state, and local governmental entities;

(vii) an emergency spill containment plan;

(viii) proof of insurance or other means of financial responsibility for liabilities that may be incurred in storing and burning off-specification used oil fuels.

(ix) proof of form and amount of reclamation surety for any facility receiving and burning off-specification used oil.

(x) A closure plan meeting the requirements of Section R315-15-11.

(3) Permit fees. Registration and permitting fees are established under the terms and conditions of Section 63-38-3. A copy of the Division's Fee Schedule is available upon request. Payment of appropriate fees is required prior to issuance of registration numbers or permit approvals.

(4) Changes in information. The owner or operator of the facility shall notify the Executive Secretary in writing of any changes in the information submitted during permit application within 20 days of the change.

(5) Annual Reporting. Each off-specification used oil burner shall submit an annual report to the Division of their activities during the calendar year. The annual report shall be submitted to the Division no later than March 1, of the year following the reported activities. The annual report shall either be submitted on a form provided by the Division or shall contain the following information:

(i) the EPA identification number, name, and address of the burner facility;

(ii) the calendar year covered by the report; and

(iii) the total amount of used oil burned.

13.7 USED OIL FUEL MARKETERS

(a) Applicability. A person may not act as a used oil fuel marketer, as defined in Section R315-15-7, without holding a registration number issued by the Executive Secretary.

(b) General. The application for a registration number shall include the following information regarding the facility acting as a used oil fuel marketer:

(1) The name and address of the marketer.

(2) The location of any facilities used by the marketer to collect, transport, process, or store used oil subject to separate permits, or registrations under this section.

(3) the status of business, zoning, and other applicable licenses and permits required by federal, state, and local governmental entities, including registrations or permits required under this part to collect, process/re-refine, transport, or store used oil.

(4) Registration fees. Registration and permitting fees are established under the terms and conditions of Section 63-38-3. A copy of the Division's Fee Schedule is available upon request. Payment of appropriate fees is required prior to issuance of registration numbers.

(5) Changes in information. The owner or operator of the facility shall notify the Executive Secretary in writing of any changes in the information submitted to apply for a registration within 20 days of the change.

R315-15-14. DIYer Reimbursement.

14.1 DIYER USED OIL COLLECTION CENTER INCENTIVE PAYMENT APPLICABILITY

(a) The Division shall pay a quarterly recycling fee incentive to registered DIYer used oil collection centers and curbside programs approved by the Executive Secretary for each gallon of used oil collected from DIYer used oil generators on and after July 1, 1994, and transported by a permitted used oil transporter to a permitted used oil processor/re-refiner, burner, or registered marketer.

(b) All registered DIYer used oil collection centers can qualify for a recycling incentive payment of up to $0.16 per gallon, subject to availability of funds and the priorities of Section 19-6-720.

14.2 REIMBURSEMENT PROCEDURES

In order for DIYer collection centers to qualify for the recycling incentive payment they are required to comply with the following procedures.

(a) Submit a copy of all records and receipts from permitted transporters of DIYer used oil collected during the quarter for which the reimbursement is requested, quarterly, beginning July 1, 1994 and ending September 30, 1994, and each quarter thereafter. These records shall be submitted within 30 days following the end of the calendar quarter in which the DIYer oil was collected and for which reimbursement is requested.

(b) Reimbursements will be issued by the Executive Secretary within 30 days following the report filling period.

(c) Reports received later than 30 days after the end of the calendar quarter for which reimbursement is requested will be paid during the next quarterly reimbursement period.

R315-15-15. Issuance and Revocation of Permits and Registrations.

15.1 PUBLIC COMMENTS AND HEARING.

In considering permit applications under these Rules, the Executive Secretary shall adhere to the requirements of Section 19-6-712.

15.2 REVOCATION OF PERMITS AND REGISTRATIONS.

Violation of any permit/registration conditions or failure to comply with any provisions of the applicable statutes and rules, shall be grounds for imposing statutory sanctions, including

revocation of the permit or registration and denial of an application for permit or registration. The Executive Secretary shall notify, in writing, the owner or operator of any facility of intent to revoke a permit or registration.

R315-15-16. Grants.

16.1 STATUTORY AUTHORITY.

Section 19-6-720 authorizes the Division of Solid and Hazardous Waste to award grants, as funds are available, for the following:

(a) Used oil collection centers; and

(b) Curbside used oil collection programs, including costs of retrofitting trucks, curbside containers, and other costs of collection programs.

16.2 ELIGIBILITY AND APPLICATION.

(a) The establishment of new or the enhancement of existing used oil collection centers or curbside collection programs that address the proper management of used lubricating oil may be eligible for grant assistance.

(b) A Used Oil Recycling Block Grant Package, published by the Division, shall be completed and submitted to the Executive Secretary for consideration.

16.3 LIMITATIONS.

(a) The grantee must commit to perform the permitted used oil handling activity for a minimum of two years.

(b) If the two-year commitment is not fulfilled, the grantee may be required to repay all or a portion of the grant amount.

KEY: hazardous waste, used oil*
June 17, 1998 **19-6-704**

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-1. Utah Medicaid Program.

R414-1-1. Introduction and Authority.

(1) This rule generally characterizes the scope of the Medicaid Program in Utah, and defines all of the provisions necessary to administer the program.

(2) The rule is authorized by Title XIX of the Social Security Act, and Sections 26-1-5, 26-18-2.1, 26-18-2.3, UCA.

R414-1-2. Definitions.

The following definitions are used throughout the rules of the Division:

(1) "Act" means the federal Social Security Act.

(2) "Applicant" means any person who requests assistance under the medical programs available through the Division.

(3) "Categorically needy" means aged, blind or disabled individuals or families and children:

(a) who are otherwise eligible for Medicaid and who meet the financial eligibility requirements for AFDC, SSI, or an optional State supplement or are considered under section 1619(b) of the federal Social Security Act to be SSI recipients; or

(b) whose categorical eligibility is protected by statute.

(4) "Code of Federal Regulations" (CFR) means the publication by the Office of the Federal Register, specifically Title 42, used to govern the administration of the Medicaid Program.

(5) "Client" means a person the Division or its duly constituted agent has determined to be eligible for assistance under the Medicaid program.

(6) "Department" means the Department of Health.

(7) "Director" means the director of the Division.

(8) "Division" means the Division of Health Care Financing within the Department.

(9) "Emergency medical condition" means a medical condition showing acute symptoms of sufficient severity that the absence of immediate medical attention could reasonably be expected to result in:

(a) placing the patient's health in serious jeopardy;

(b) serious impairment to bodily functions;

(c) serious dysfunction of any bodily organ or part; or

(d) death.

(10) "Emergency service" means immediate medical attention and service performed to treat an emergency medical condition. Immediate medical attention is treatment rendered within 24 hours of the onset of symptoms or within 24 hours of diagnosis.

(11) "Emergency Services Only Program" means a health program designed to cover a specific range of emergency services.

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

(13) "InterQual" means the InterQual Medical Review Criteria and System, a comprehensive, clinically based, patient focused medical review criteria and system developed by InterQual Inc.

(14) "Medicaid agency" means the Department of Health.

(15) "Medical assistance program" or "Medicaid program" means the state program for medical assistance for persons who are eligible under the state plan adopted pursuant to Title XIX of the federal Social Security Act; as implemented by Title 26, Chapter 18, UCA.

(16) "Medical or hospital assistance" means services furnished or payments made to or on behalf of recipients under medical programs available through the Division.

(17) "Medically necessary service" means that:

(a) it is reasonably calculated to prevent, diagnose, or cure conditions in the recipient that endanger life, cause suffering or pain, cause physical deformity or malfunction, or threaten to cause a handicap; and

(b) there is no other equally effective course of treatment available or suitable for the recipient requesting the service that is more conservative or substantially less costly.

(18) "Medically needy" means aged, blind, or disabled individuals or families and children who are otherwise eligible for Medicaid, who are not categorically needy, and whose income and resources are within limits set under the Medicaid State Plan.

(19) "Provider" means any person, individual or corporation, institution or organization, qualified to perform services available under the Medicaid program and who has entered into a written contract with the Medicaid program.

(20) "Recipient" means a person who has received medical or hospital assistance under the Medicaid program.

(21) "Undocumented alien" means an alien who is not recognized by Immigration and Naturalization Services as being lawfully present in the United States.

R414-1-3. Single State Agency.

The Utah Department of Health is the Single State Agency designated to administer or supervise the administration of the Medicaid program under Title XIX of the federal Social Security Act.

R414-1-4. Medical Assistance Unit.

Within the Utah Department of Health, the Division of Health Care Financing has been designated as the medical assistance unit.

R414-1-5. State Plan.

As a condition for receipt of federal funds under title XIX of the Act, the Utah Department of Health must submit a State Plan contract to the federal government for the medical assistance program, and agree to administer the program in accordance with the provisions of the State Plan, the requirements of Titles XI and XIX of the Act, and all applicable federal regulations and other official issuances of the United States Department of Health and Human Services. A copy of the State Plan is available for public inspection at the Division's offices during regular business hours.

R414-1-6. Services Available.

(1) Medical or hospital services available under the Medical Assistance Program are generally limited by federal guidelines as set forth under Title XIX of the federal Social Security Act and Title 42 of the Code of Federal Regulations (CFR).

(2) The following services provided in the State Plan are available to both the categorically needy and medically needy:

(a) inpatient hospital services, with the exception of those services provided in an institution for mental diseases;

(b) outpatient hospital services and rural health clinic services;

(c) other laboratory and x-ray services;

(d) skilled nursing facility services, other than services in an institution for mental diseases, for individuals 21 years of age or older;

(e) early and periodic screening and diagnoses of individuals under 21 years of age, and treatment of conditions found, are provided in accordance with federal requirements;

(f) family planning services and supplies for individuals of child-bearing age;

(g) physician's services, whether furnished in the office, the patient's home, a hospital, a skilled nursing facility, or elsewhere;

(h) podiatrist's services;

(i) optometrist's services;

(j) psychologist's services;

(k) interpreter's services;

(l) home health services:

(i) intermittent or part-time nursing services provided by a home health agency;

(ii) home health aide services by a home health agency; and

(iii) medical supplies, equipment, and appliances suitable for use in the home;

(m) private duty nursing services for children under age 21;

(n) clinic services;

(o) dental services;

(p) physical therapy and related services;

(q) services for individuals with speech, hearing, and language disorders furnished by or under the supervision of a speech pathologist or audiologist;

(r) prescribed drugs, dentures, and prosthetic devices and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist;

(s) other diagnostic, screening, preventive, and rehabilitative services other than those provided elsewhere in the State Plan;

(t) services for individuals age 65 or older in institutions for mental diseases:

(i) inpatient hospital services for individuals age 65 or older in institutions for mental diseases;

(ii) skilled nursing services for individuals age 65 or older in institutions for mental diseases; and

(iii) intermediate care facility services for individuals age 65 or older in institutions for mental diseases;

(u) intermediate care facility services, other than services in an institution for mental diseases. These services are for individuals determined, in accordance with section 1902(a)(31)(A) of the Social Security Act, to be in need of this care, including those services furnished in a public institution for the mentally retarded or for individuals with related conditions;

(v) inpatient psychiatric facility services for individuals under 22 years of age;

(w) nurse-midwife services;

(x) family or pediatric nurse practitioner services;

(y) hospice care in accordance with section 1905(o) of the Social Security Act;

(z) case management services in accordance with section 1905(a)(19) or section 1915(g) of the Social Security Act;

(aa) extended services to pregnant women, pregnancy-related services, postpartum services for 60 days, and additional services for any other medical conditions that may complicate pregnancy;

(bb) ambulatory prenatal care for pregnant women furnished during a presumptive eligibility period by a qualified provider in accordance with section 1920 of the Social Security Act; and

(cc) other medical care and other types of remedial care recognized under state law, specified by the Secretary of the United States Department of Health and Human Services, pursuant to 42 CFR 440.60 and 440.170, including:

(i) medical or remedial services provided by licensed practitioners, other than physician's services, within the scope of practice as defined by state law;

(ii) transportation services;

(iii) skilled nursing facility services for patients under 21 years of age;

(iv) emergency hospital services; and

(v) personal care services in the recipient's home, prescribed in a plan of treatment and provided by a qualified person, under the supervision of a registered nurse.

(dd) other medical care, medical supplies, and medical equipment not otherwise a Medicaid service if the Division determines that it meets both of the following criteria:

(i) it is medically necessary and more appropriate than any Medicaid covered service; and

(ii) it is more cost effective than any Medicaid covered service.

R414-1-7. Aliens.

(1) Certain qualified aliens described in Title IV of Public Law 104-193 may be eligible for the Medicaid program. All other aliens are prohibited from receiving non-emergency services, as described in Section 1903(v) of the Social Security Act, which is adopted and incorporated by reference.

(2) Aliens who are prohibited from receiving non-emergency services will have "Emergency Services Only Program" printed on their Medical Identification Cards, as noted in R414-3A.

R414-1-8. Statewide Basis.

The medical assistance program is state-administered and operates on a statewide basis in accordance with 42 CFR 431.50.

R414-1-9. Medical Care Advisory Committee.

There is a Medical Care Advisory Committee that advises the Medicaid agency director on health and medical care services. The committee is established in accordance with 42 CFR 431.12.

R414-1-10. Discrimination Prohibited.

In accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 70b), and the regulations at 45 CFR Parts 80 and 84, the Medicaid agency assures that no individual shall be subjected to discrimination under the plan on the grounds of race, color, gender, national origin, or handicap.

R414-1-11. Administrative Hearings.

The Medicaid agency has a system of administrative hearings for medical providers and dissatisfied applicants, clients, and recipients that meets all the requirements of 42 CFR Part 431, Subpart E.

R414-1-12. Utilization Review.

(1) In order to approve or deny payment of claims, the Medicaid agency shall use InterQual to determine medical necessity and appropriateness of services. The InterQual Medical Review Criteria and System, published by InterQual, Inc., January, 1997, edition, 293 Boston Post Road West, Suite 180, Marlborough, MA, 07152, which is adopted and incorporated by reference in this rule.

(2) The standards in the InterQual document shall not apply to services that are:

(a) excluded as a Medicaid benefit by rule;

(b) provided in an intensive physical rehabilitation center as described in R414-2B; or

(c) organ transplant services as described in R414-10A. In these three exceptions, or where InterQual is silent, the Medicaid agency shall approve or deny claims based upon appropriate administrative rules or its own criteria as incorporated in provider contracts that incorporate the Medicaid Provider Manuals.

R414-1-13. Provider and Client Agreements.

(1) To meet the requirements of 42 CFR 431.107, the Department contracts with each provider who furnishes services under the Utah Medicaid Program.

(2) By signing a provider agreement with the Department, the provider agrees to follow the terms incorporated into the provider agreements, including policies and procedures, provider manuals, Medicaid Information Bulletins, and provider letters.

(3) By signing an application for Medicaid coverage, the client agrees that the Department's obligation to reimburse for services is governed by contract between the Department and the provider.

R414-1-14. Utilization Control.

(1) The Medicaid agency has implemented a statewide program of surveillance and utilization control that safeguards against unnecessary or inappropriate use of Medicaid services available under the plan. The plan also safeguards against excess payments, and assesses the quality of services. The program meets the requirements of 42 CFR Part 456.

(2) In order to control utilization, and in accordance with 42 CFR 440.230(d), services, equipment, or supplies not specifically identified by the Department as covered services under the Medicaid program, are not a covered benefit.

R414-1-15. Medicaid Fraud.

The Medicaid agency has established and will maintain methods, criteria, and procedures that meet all requirements of 42 CFR 455.13 through 455.21 for prevention and control of program fraud and abuse.

R414-1-16. Confidentiality.

State statute, Title 63, Chapter 2, and Section 26-1-17.5, impose legal sanctions and provide safeguards that restrict the use or disclosure of information concerning applicants, clients, and recipients to purposes directly connected with the administration of the plan.

All other requirements of 42 CFR Part 431, Subpart F are met.

R414-1-17. Eligibility Determinations.

Determinations of eligibility for Medicaid under the plan are made by the Division of Health Care Financing and the Utah Department of Workforce Services. There is a written agreement between the Utah Department of Health and the Utah Department of Workforce Services. The agreement defines the relationships and respective responsibilities of the agencies.

R414-1-18. Professional Standards Review Organization.

All other provisions of the State Plan shall be administered by the Medicaid agency or its agents according to written contract, except for those functions for which final authority has been granted to a Professional Standards Review Organization under Title XI of the Act.

R414-1-19. Timeliness in Eligibility Determinations.

The Medicaid agency shall adhere to all timeliness requirements of 42 CFR 435.911, for processing applications, determining eligibility, and approving Medicaid requests. If these requirements are not completed within the defined time limits, clients may notify the Division of Health Care Financing at 288 North, 1460 West, Salt Lake City, UT 84114-2906.

R414-1-20. Residency.

Medicaid is furnished to eligible individuals who are residents of the State under 42 CFR 435.403.

R414-1-21. Out-of-state Services.

Medicaid services shall be made available to eligible residents of the state who are temporarily in another state. Reimbursement for out-of-state services shall be provided in accordance with 42 CFR 431.52.

R414-1-22. Retroactive Coverage.

Individuals are entitled to Medicaid services under the plan during the three months preceding the month of application if they were, or would have been, eligible at that time.

R414-1-23. Freedom of Choice of Provider.

Unless an exception under 42 CFR 431.55 applies, any individual eligible under the plan may obtain Medicaid services from any institution, pharmacy, person, or organization that is qualified to perform the services and has entered into a Medicaid provider contract, including an organization that

provides these services or arranges for their availability on a prepayment basis.

R414-1-24. Availability of Program Manuals and Policy Issuances.

In accordance with 42 CFR 431.18, the state office, local offices, and all district offices of the Department maintain program manuals and other policy issuances that affect recipients, providers, and the public. These offices also maintain the Medicaid agency's rules governing eligibility, need, amount of assistance, recipient rights and responsibilities, and services. These manuals, policy issuances, and rules are available for examination and, upon request, are available to individuals for review, study, or reproduction.

R414-1-25. General Rule Format.

The following format is used generally throughout the rules of the Division. Section headings as indicated and the following general definitions are for guidance only. The section headings are not part of the rule content itself. In certain instances, this format may not be appropriate and will not be implemented due to the nature of the subject matter of a specific rule.

(1) Introduction and Authority. A concise statement as to what Medicaid service is covered by the rule, and a listing of specific federal statutes and regulations and state statutes that authorize or require the rule.

(2) Definitions. Definitions that have special meaning to the particular rule.

(3) Client Eligibility. Categories of Medicaid clients eligible for the service covered by the rule: Categorically Needy or Medically Needy or both. Conditions precedent to the client's obtaining coverage such as age limitations or otherwise.

(4) Program Access Requirements. Conditions precedent external to the client's obtaining service, such as type of certification needed from attending physician, whether available only in an inpatient setting or otherwise.

(5) Service Coverage. Detail of specific services available under the rule, including limitations, such as number of procedures in a given period of time or otherwise.

(6) Prior Authorization. As necessary, a description of the procedures for obtaining prior authorization for services available under the particular rule. However, prior authorization must not be used as a substitute for regulatory practice that should be in rule.

(7) Other Sections. As necessary under the particular rule, additional sections may be indicated. Other sections include regulatory language that does not fit into sections (1) through (5).

KEY: medicaid
June 16, 1998 26-1-5
Notice of Continuation May 1, 1997 26-18-1

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-52. Optometry Services.
R414-52-1. Authority and Purpose.

Optometry services are authorized by 42 CFR, section 440.60, October 1992 edition, which addresses medical services provided by licensed practitioners. The Optometry Program provides optometry services to meet the optometry needs of Medicaid clients.

R414-52-2. Definitions.

(1) The definitions in the Utah Optometry Practice Act, Title 58, Chapter 16(a), apply to this rule.

(2) For the purposes of this rule, "Client" has the same meaning defined in R414-1-1.

R414-52-3. Client Eligibility Requirements.

Optometry services are available to Categorically and Medically Needy individuals. Definitions of Categorically and Medically Needy individuals are found in R414-1-1.

R414-52-4. Service Coverage.

(1) Optometry services include the examination, evaluation, diagnosis, and treatment of visual deficiency; removal of a foreign body; and prescription of corrective lenses.

(2) The optometrist must document in the patient record that the eye examination is medically necessary.

KEY: medicaid
1993 26-1-5
Notice of Continuation June 22, 1998 26-18-3

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-53. Eyeglasses Services.
R414-53-1. Authority and Purpose.

Eyeglasses are authorized by 42 CFR, 440.120(d), October 1992 edition. The Eyeglasses Program provides eyeglasses services to meet the basic vision care needs of Medicaid recipients.

R414-53-2. Definitions.

"Eyeglasses" means lenses, including frames, contact lenses, and other aids to vision that are prescribed by a physician skilled in diseases of the eye or by an optometrist.

R414-53-3. Client Eligibility Requirements.

Eyeglasses are available to Categorically and Medically Needy individuals. Definitions of Categorically and Medically Needy individuals are found in R414-1-1.

R414-53-4. Service Coverage.

(1) Corrective lenses and frames may be provided based on medical need. Medical need includes a change in prescription or replacement as a result of normal lens or frame wear. Frames must be those in which lenses can be replaced readily without having to provide a new frame. Corrective lenses must be suitable for indoor and outdoor use, and for day and night use.

(2) Single vision, bifocal, or trifocal lenses, with or without slab-off prism, in clear glass or plastic, may be provided.

(3) Only the least expensive frame practicable for use, either plastic or metal, may be provided.

(4) Replacements for existing lenses or frames may be provided if the prescribing physician or optometrist declares them to be medically necessary. Eyeglasses may not be replaced more often than every two years unless the prescribing physician or optometrist declares an earlier replacement to be medically necessary. Circumstances which would warrant providing new eyeglasses or contact lenses, are a diopter change of .75 or more, or disease or damage to the eye. Eyeglasses or contact lenses may not be replaced if they were damaged through client negligence or abuse.

(5) Frames which have hearing aids placed in the earpieces may be provided by the audiologist or hearing aid provider. Lenses for these frames must be dispensed by the prescribing physician or optometrist.

(6) The following may be provided if the prescribing physician or optometrist declares them to be medically necessary:

(a) Contact lenses;

(b) Soft contact lenses;

(c) Gas permeable contact lenses;

(d) Tints for eyeglasses or contact lenses where diseases or conditions are present which render the client unusually light-sensitive;

(e) Low vision aids.

(7) The following are not provided:

(a) Additional eyeglasses such as reading glasses, distance glasses, or a "spare";

(b) Extended wear contact lenses or disposable contact lenses.

KEY: medicaid
1993 26-1-5
Notice of Continuation June 22, 1998 26-18-3

R425. Health, Health Systems Improvement, Community Health Nursing.

R425-1. Nurse Education Financial Assistance.

R425-1-1. Purpose and Authority.

This rule implements the nurse education financial assistance program. It covers scholarships for nurses willing to work in needed nursing specialty areas and loan repayment grants for nurses willing to work in nursing shortage areas of the state, as provided in Title 26, Chapter 9d.

R425-1-2. Definitions.

(1) Definitions for this rule are found in Section 26-9d-1.

(2) "Eligible employment site" means a public or private health care institution or agency or a nursing education institution approved by the committee at which a recipient may perform obligated service.

(3) "Grant" means a loan repayment under Section 26-9d-5.

(4) "Scholarship" means a scholarship under Section 26-9d-6.

(5) "Committee" means the Nurse Financial Assistance Committee created by Section 26-1-7.

(6) "Obligated service" means the full-time work required under Section 26-9d-7(2)

R425-1-3. Designation of Nursing Shortage and Needed Nursing Specialty Areas.

The committee shall designate nursing shortage areas and needed nursing specialty areas based on nursing needs assessments and other relevant data.

R425-1-4. Scholarship Administration.

(1) A scholarship may be provided only for those courses required by the educational institution for completion of nursing education.

(2) Before receiving a scholarship, the applicant must enter into a contract with the Department that binds him to the terms of the program.

(3) As requested by the committee, a scholarship recipient shall provide information reasonably necessary for administration of the program.

(4) The committee shall determine the total amount of each scholarship.

(5) For each academic year, the committee may award a scholarship recipient the lesser of $15,000 or the total sum of educational expenses as determined by the committee.

(6) The committee may approve payment to a scholarship recipient for increased federal, state and local taxes due to receipt of the portion of the scholarship that is not tax-exempt.

(7) The reasonable living expenses portion of the scholarship may not exceed 50% of the scholarship for each academic year.

(8) The Department shall pay tuition and fees directly to the school of nursing.

(9) The committee shall determine the amount of educational expenses other than tuition and fees, that are paid directly to the student.

(10) The committee shall evaluate whether the scholarship recipient's proposed employment site for his obligated service is an eligible employment site.

(11) If there is no available eligible employment site upon a scholarship recipient's graduation, the recipient shall repay the scholarship amount as negotiated in the scholarship contract.

R425-1-5. Scholarship Contract-Contents.

(1) Before receiving a scholarship, each applicant selected shall enter into a scholarship contract with the state agreeing to the terms and conditions upon which the scholarship is given.

(2) The scholarship contract shall include the terms and conditions to carry out the purposes and intent of Title 26, Chapter 9d and these rules.

(3) The scholarship contract shall contain:

(a) a statement of the damages to which the state is entitled for the recipient's breach of the scholarship contract; and

(b) such other statements of the rights and liabilities of the Department, the committee, and the scholarship applicant, not inconsistent with Title 26, Chapter 9d.

R425-1-6. Scholarship Application.

(1) The committee may consider for scholarship candidacy only those applicants who have matriculated into a graduate program at a school of nursing.

(2) A scholarship applicant shall provide evidence of eligibility, demographic data, residential history, documented educational history, employment history, personal and employment references, economic status, a Utah nursing license in good standing, and an essay describing plans for working in a needed nursing specialty area, as required and in the format requested by the committee.

(3) A scholarship applicant shall disclose to the committee any other funds applied for, or received in connection with his nursing education.

(4) The Department shall promptly provide written notice to a scholarship applicant on the committee's approving the applicant's participation in the scholarship program, or the committee's disapproving the applicant's participation in the scholarship program.

(a) Within 30 days following provision of the written notice, the applicant shall notify the Department of his intent to accept or reject the scholarship award. If the Department has not received the applicant's notification within 30 days, the Department may cancel the award.

R425-1-7. Scholarship Recipient Eligibility and Selection.

(1) To be eligible for a scholarship, an applicant must:

(a) submit a completed scholarship application to the Department;

(b) be matriculated in a school of nursing;

(c) have been selected by the committee to receive a scholarship;

(d) declare an intent to work in a needed nursing specialty area of the state after completion of graduate training; and

(e) be a nurse who has a license in good standing to practice in the state under Title 58, Chapter 31, Nurse Practice Act.

(2) In selecting an applicant to receive a scholarship, the committee shall evaluate the applicant based on the following criteria:

(a) residential history;
(b) documented educational history;
(c) employment history;
(d) educational, personal and employer references;
(e) economic status;
(f) an essay describing plans for working in a needed nursing specialty area;
(g) commitment to serve in a needed nursing specialty area;
(h) applicant's proposed time for completion of education;
(i) length of the applicant's proposed service obligation, with greater consideration being given to applicants who agree to serve for longer periods of time;
(j) the applicant's area of graduate education, with preference given to applicants who choose to specialize in critical areas of need as determined by the committee;
(k) projected nursing education expenses.

(3) The committee may request that the applicant supplement the information requested under R425-1-7(2) to make an informed decision on an application.

(4) To remain eligible to receive a scholarship, an applicant must maintain a passing grade and be a matriculated student.

R425-1-8. Scholarship Recipient Obligations.

(1) Within three months before, and not exceeding one month following completion of nursing education and prior to beginning fulfillment of service obligation, a scholarship recipient shall provide the Department documented evidence from the eligible employment site of its intent to hire the scholarship recipient.

(2) A scholarship recipient must maintain minimum continuous registration to maintain graduate student status until he completes all requirements for his degree. The maximum years leading to a degree may not exceed five years, and must be specified in the recipient's contract, as negotiated with the committee.

(3) A scholarship recipient must begin employment at the eligible employment site determined by the committee within five months of completing the nursing education covered by the scholarship.

(4) A scholarship recipient shall perform full-time work as defined by the recipient's employer, and as specified in the recipient's contract with the Department.

(5) The minimum length of obligated service is two years, or such longer period to which the applicant and the committee may agree.

(6) A scholarship recipient shall obtain approval from the committee prior to any change in the eligible employment site where the service obligation is fulfilled.

R425-1-9. Release of Scholarship Recipient From Obligation.

(1) The committee may release, in full or in part, a recipient from any obligation under the scholarship contract without penalty:

(a) if the service obligation has been fulfilled;

(b) if the recipient is unable to complete nursing education or fulfill his service obligation due to permanent disability that prevents the recipient from performing any work for remuneration or profit;

(c) if the recipient dies;

(d) because of extreme hardship; or

(e) for other good cause shown, as determined by the committee.

R425-1-10. Extension of Contract with Scholarship Recipient.

The committee may extend the time within which the recipient must complete his nursing education as agreed upon in the contract for good cause shown.

R425-1-11. Schedule of Repayment-Scholarship.

(1) A scholarship recipient who breaches his contract with the Department shall begin to repay within 30 days of the breach. The Department may submit for immediate collection all amounts due from a breaching scholarship recipient who does not begin to repay within 30 days.

(2) The breaching scholarship recipient shall pay the total amount due within one year of breaching the contract. The scheduled payback may not be less than four equal quarterly payments.

(3) The amount to be paid back shall be calculated from the end of the month in which the scholarship recipient breached the contract as if the recipient had breached at the end of the month.

(4) The calculation of the amount to be paid back by a scholarship recipient who breaches his contract with the Department prior to finishing school is twice the amount of all funds received from the Department.

(5) The calculation of the amount to be paid back by a scholarship recipient who finishes school but fails to complete the obligated service is as follows:

(a) determine the percentage of retired obligated service by dividing the number of months of retired obligated service by the total number of months of obligated service,

(b) subtract the amount in (a) from 1.00,

(c) multiply the amount obtained in (b) by 2,

(d) multiply the amount obtained in (c) by the total amount of the recipient's scholarship.

(6) The breaching scholarship recipient shall pay simple interest at the rate of 12% per annum on all funds received under the scholarship contract, from the date he received each installment under the contract.

(7) Any unretired amount following the scheduled payback period is subject to collection.

R425-1-12. Reporting Requirements for Scholarship Recipients.

(1) Each recipient shall assure that the nursing school completes and returns the student status form provided by the Department.

(2) After beginning service and for the duration of the service obligation, the scholarship recipient shall assure that the eligible employment site submits a quarterly statement of verification of employment indicating the recipient's continued employment to the Department within ten business days following the end of each quarter.

R425-1-13. Grant Administration.

(1) A grant may be provided to repay loans taken only for those courses that were required by the educational institution for completion of nursing education.

(2) Before receiving a grant, the applicant must enter into a contract with the Department that binds him to the terms of the program.

(3) As requested by the committee, a grant recipient shall provide information reasonably necessary for administration of the program.

(4) The committee shall determine the total amount of each loan repayment grant.

(5) For each year of a grant recipient's full-time service at an eligible employment site, the committee may award the recipient the lesser of $15,000 or the outstanding loan principal for educational expenses, as determined by the committee.

(6) The committee may approve payment to a grant recipient for increased federal, state, and local taxes caused by receipt of the grant.

(7) The Department shall make grant payments to a recipient at the end of the first six months of service. The Department shall make subsequent payments at least every six months thereafter for the duration of the contract, except that the committee may approve a different schedule of subsequent payments as requested by the recipient.

(8) The Department shall not pay for a nursing education loan of a grant applicant who is in default at the time of an application.

(9) The committee shall evaluate whether the grant recipient's proposed employment site for his obligated service is an eligible employment site.

R425-1-14. Grant Contract-Contents.

(1) Before receiving a grant, each applicant selected shall enter into a grant contract with the state agreeing to the terms and conditions upon which the grant is given.

(2) The grant contract shall include the terms and conditions to carry out the purposes and intent of Title 26, Chapter 9d and these rules.

(3) The grant contract shall contain:

(a) a statement of the damages to which the state is entitled for the applicant's breach of the grant contract; and

(b) such other statements of the rights and liabilities of the Department, the committee and the grant applicant, not inconsistent with Title 26, Chapter 9d.

R425-1-15. Grant Application.

(1) A grant applicant shall provide evidence of eligibility, demographic data, residential history, documented educational history, employment history, personal and employment references, economic status, a Utah nursing license in good standing, other service obligations, loan certification, and an essay describing plans for working in a nursing shortage area, as required and in the format requested by the committee.

(2) A grant applicant shall disclose to the committee any other funds applied for or received in connection with his nursing education.

(3) A grant applicant shall provide the Department documentation from the eligible employment site that:

(a) the applicant is currently employed at the site; or

(b) the site intends to hire the applicant.

(4) The Department shall promptly provide written notice to a grant applicant on the committee's approving the applicant's participation in the grant program, or the committee's disapproving the applicant's participation in the grant program.

(a) Within 30 days following provision of the written notice, the applicant shall notify the Department of his intent to accept or reject the grant award. If the Department has not received the applicant's notification within 30 days, the Department may cancel the award.

R425-1-16. Grant Recipient Eligibility and Selection.

(1) To be eligible for a grant, an applicant must:

(a) submit a completed grant application to the Department;

(b) provide proof of graduation from a school of nursing;

(c) be a nurse who has a license in good standing to practice in the state under Title 58, Chapter 31, Nurse Practice Act;

(d) have been selected by the committee to receive a grant;

(e) be available to begin service at an eligible employment site within one month of entering into a contract with the Department; and

(f) provide documented evidence from the eligible employment site of the intent to hire the grant recipient.

(2) In selecting an applicant to receive a grant, the committee shall evaluate the applicant based on the following selection criteria:

(a) residential history;

(b) documented educational history;

(c) employment history;

(d) employer, educational and personal references;

(e) economic status;

(f) an essay describing plans for working in a nursing shortage area;

(g) commitment to serve in a nursing shortage area;

(h) amount of the nursing education loan;

(i) length of the applicant's proposed service obligation, with greater consideration being given to applicants who agree to serve for longer periods of time;

(j) the applicant's level of nursing education, with preference given to applicants who can meet shortage area nursing needs, as determined by the committee.

(3) The committee may request that the grant applicant supplement the information requested under R425-1-16(2) to make an informed decision on an application.

R425-1-17. Grant Recipient Obligations.

(1) A grant recipient shall begin service at a specified eligible employment site determined by the committee within one month of entering into a contract with the Department.

(2) A grant recipient shall perform full-time work, defined at the beginning of the service obligation as full-time by the recipient's employer, and as specified in the recipient's contract with the Department.

(3) No period of clinical training required for nursing education may be counted toward satisfying a period of obligated service.

(4) The minimum length of obligated service is two years, or such longer period to which the applicant and the committee may agree.

(5) A grant recipient shall assure that the eligible employment site provides the Department a statement of the recipient's continued employment.

(6) A grant recipient shall obtain approval from the committee prior to any change in the eligible employment site where the service obligation is fulfilled.

R425-1-18. Release of Grant Recipient from Obligation.

(1) The committee may release, in full or in part a recipient from any obligation under the grant contract without penalty:

(a) if the service obligation has been fulfilled;

(b) if the recipient is unable to fulfill his service obligation due to permanent disability that prevents the recipient from performing any work for remuneration or profit;

(c) if the recipient dies;

(d) because of extreme hardship; or

(e) for other good cause shown, as determined by the committee.

R425-1-19. Schedule of Repayment-Grant.

(1) A grant recipient who breaches his contract with the Department shall begin to repay within 30 days of the breach. The Department may submit for immediate collection all amounts due from a breaching grant recipient who does not begin to repay within 30 days.

(2) The breaching grant recipient shall pay the total amount due within one year of breaching the contract. The scheduled payback may not be less than four equal quarterly payments.

(3) The amount to be paid back shall be determined from the end of the month in which the grant recipient breached the contract as if the recipient had breached at the end of the month.

(4) The calculation of the amount to be paid back by a grant recipient who fails to complete the obligated service is as follows:

(a) determine the percentage of retired obligated service by dividing the number of months of retired obligated service by the total number of months of obligated service,

(b) subtract the amount in (a) from 1.00,

(c) multiply the amount obtained in (b) by 2,

(d) multiply the amount obtained in (c) by the total amount of the recipient's grant.

(5) The breaching grant recipient shall pay simple interest at the rate of 12% per annum on all funds received under the grant contract, from the date he received each installment under the contract.

(6) Any unretired amount following the scheduled payback period is subject to collection.

R425-1-20. Reporting Requirements for Grant Recipients.

After beginning service and for the duration of the service obligation, the grant recipient shall assure that the eligible employment site submits a quarterly statement of verification of employment indicating the grant recipient's continued employment to the Department within ten business days following the end of each quarter.

KEY: grants, scholarships, nurses
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Notice of Continuation February 10, 1998

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, manual cardiac defibrillation, 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 by EMTs. The module currently approved is IV Infusion, with modular certification identified as IV, which includes pediatric vascular access.

(14) EMT-Advanced means an EMT-I or an EMT with IV 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) Ground ambulances, while providing ambulance services, shall have the following minimum complement of personnel who shall meet all requirements as outlined in this Ambulance Rule.

(a) 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) An applicant for basic EMT or ambulance driver shall provide the information required on the application, including his social security number.

(3) The Department has a duty to exclude from EMT certification an individual who may pose an unacceptable risk to public health and safety, by virtue of his criminal history. The Department will conduct a background check on each individual who certifies or recertifies as an EMT.

(a) An individual convicted of certain crimes presents an unreasonable risk and the Department shall deny all applications for certification or recertification by individuals convicted of the following crimes:

(i) Sexual misconduct if the victim's failure to affirmatively consent is an element of the crime, such as forcible rape.

(ii) Sexual or physical abuse of children, the elderly or infirm, such as sexual misconduct with a child, making or distributing child pornography or using a child in a sexual display, incest involving a child, assault on an elderly or infirm person.

(iii) Abuse, neglect, theft from, or financial exploitation of a person entrusted to the care or protection of the applicant, if the victim is an out-of-hospital patient or a patient or resident of a health care facility.

(iv) Crimes of violence against persons, such as aggravated assault, murder or attempted murder, manslaughter except involuntary manslaughter, kidnaping, robbery of any degree; or arson; or attempts to commit such crimes.

(b) Except in extraordinary circumstances, established by clear and convincing evidence that certification or recertification will not jeopardize public health and safety, the Department shall deny applicants for certification or recertification in the following categories:

(i) Conviction of any crime not listed in (a) and who are currently incarcerated, on work release, on probation or on parole.

(ii) Conviction of crimes in the following categories, unless at least three years have passed since the conviction or at least three years have passed since release from custodial confinement, whichever occurs later:

(A) Crimes of violence against persons, such as assault

(B) Crimes defined as domestic violence under Section 77-36-1; and.

(C) Crimes involving controlled substances or synthetics, or counterfeit drugs, including unlawful possession or distribution, or intent to distribute unlawfully, Schedule I through V drugs as defined by the Uniform Controlled Dangerous Substances Act;

(D) Crimes against property, such as grand larceny, burglary, embezzlement or insurance fraud.

(c) The Department shall deny certification or recertification to individuals convicted of crimes, including DUIs, but not including minor traffic violations chargeable as infractions after consideration of the following factors:

(i) The seriousness of the crime.

(ii) Whether the crime relates directly to the skills of prehospital care service and the delivery of patient care.

(iii) Amount of time that has elapsed since the crime was committed.

(iv) Whether the crime involved violence to or abuse of another person.

(v) Whether the crime involved a minor or a person of diminished capacity.

(vi) Whether the applicant's actions and conduct since the crime occurred are consistent with the holding of a position of public trust.

(vii) Total number of arrests and convictions.

(viii) Whether the applicant was truthful regarding the crime on his/her application.

(d) Certified EMS personnel must notify the Department of any arrest or conviction. The Department may suspend, decertify, or place on probation anyone who does not notify the Department within 30 days of the arrest or conviction.

(e) The Department may decertify or suspend certification, or place a person on probation for any of the above violations.

(f) The Department may require an EMT to submit to a background check upon Department request. The Department may decertify or suspend certification, or place on probation an EMT who refuses to submit to a background check.

(4) 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. Refusal to take a drug test requested by an EMS employer or the department is grounds for action by the Department of Health.

(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 this rule.

(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, misdemeanor, or a crime involving moral turpitude, excluding minor traffic violations chargeable as infractions.

(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) An individual who wishes to be certified as a Basic Emergency Medical Technician (EMT), shall:

(a) submit a completed application form, including social security number, to the Department;

(b) be 18 years of age or older;

(c) submit to a background investigation;

(d) complete a Department-approved EMT course;

(e) display technical competence during field and clinical training;

(f) successfully complete the Department written and practical examinations; and

(g) complete all requirements for certification within 90 days from course completion date. The Department may extend the time limit to individuals who demonstrate good cause based on extenuating circumstances.

(5) An individual who wishes to be certified as an Emergency Medical Technician - Intermediate (EMT-I),shall:

(a) 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 showing the need for advanced level EMTs;.

(b) be currently certified as an EMT in Utah;

(c) complete a Department-approved EMT-I course;

(d) display technical competence during field and clinical training;

(e) successfully complete the Department written examination and clinical practical evaluation[.; and

(f) complete all requirements for certification within 90 days from course completion date; however, the Department may extend the time limit to individuals who demonstrate good cause based on extenuating circumstances.

(6) An individual who wishes to be certified in EMT-IV Infusion (IV) shall:

(a) 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 showing the need for advanced level EMTs;

(b) be currently certified as an EMT in Utah;

(c) complete the Department-approved IV training module which includes pediatric vascular access;

(d) successfully complete the Department written examination and clinical practical evaluation; and

(e) Complete all requirements for certification within 90 days from course completion date; however, the Department may extend the time limit to individuals who demonstrate good cause based on extenuating circumstances.

(7) Recertification is required every three years. This period may be modified by the Department to standardize EMT recertification cycles.

(a) An EMT-Basic who wishes to recertify shall:

(i) submit a completed application form, including social security number, to the Department;

(ii) submit to a background investigation;

(iii) submit to the Department a current cardiopulmonary resuscitation card or certificate meeting standards approved by the Department;

(iv) submit to the Department evidence of having completed 60 hours of Department-approved CME during the previous three year period, in accordance with the Recertification Protocol for Emergency Medical Technicians;

(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) An EMT-Intermediate who wishes to recertify shall:

(i) complete all EMT-Basic recertification requirements.

(ii) successfully complete the Department written and practical Intermediate examination;

(iii) 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:

(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; and

(D) administration of medications via intramuscular, subcutaneous, and intravenous routes.

(c) An EMT-IV who wishes to recertify shall:

(i) successfully complete EMT-Basic recertification requirements;

(ii) 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; and

(iii) successfully complete the Department IV written examination.

(8) Emergency Medical Technicians 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, including social security number, to the Department;

(ii) submit to a background check;

(iii) submit to the Department evidence of having completed 60 hours of Department-approved CME within three years prior to application, in accordance with the Recertification Protocol for Emergency Medical Technicians;

(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) Those individuals who permit their EMT-I 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, which shall be accompanied by the following items:

(A) completed recertification application including social security number;

(B) letter of recommendation from the ambulance or rescue service with which they are affiliated;

(C) letter of recommendation including results of a structured oral examination, from the resource hospital medical director verifying proficiency in EMT-I skills; and

(D) evidence of completion of 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) Those individuals who permit their IV certification to lapse and wish to regain it shall:

(A) submit a completed recertification application to the Department, including social security number;

(B) be currently certified as a Utah EMT;

(C) submit a letter of recommendation including results of a structured oral examination from the resource hospital medical director verifying proficiency in EMT-IV skills; and

(E) successfully complete the Department's written examination.

(9) The Department may grant reciprocity for EMT-Basic applicants certified outside of the State of Utah based on the following considerations:

(i) Applicants shall submit to the Department a completed application, including social security number.

(ii) Applicants shall provide the Department with a current copy of their Emergency Medical Technician Certification.

(iii) Applicants shall submit to a background check.

(iv) Applicants shall provide verification to the Department that the certifying course meets the standards established by the Department.

(v) Applicants shall successfully complete the Department's written and practical examinations.

(10) Reciprocity for advanced level applicants certified outside of the state of Utah is, 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

(11) Persons who fail any part of the written or practical certifying examination may retest based upon the following:

(a) The applicant must request a re-examination.

(b) The applicant must take the re-examination after notification of failure of the initial examination.

(c) Only one re-examination is permitted.

(d) Applicants who fail the EMT-Basic re-examination must take a complete EMT training course to be eligible for further examination.

(e) Applicants failing the IV Infusion re-examination must take that complete module to be eligible for further examination.

(11) Recertification Examination Standards

(a) An EMT-Basic who fails any part of the written or practical recertification examination may retest based on the following:

(i) The applicant must request a re-examination.

(ii) The applicant must re-take the examination after notification of failure of recertification examination.

(iii) Only one re-examination is permitted.

(iv) Applicants who fail the recertification re-examination must take a complete EMT training course.

(b) An EMT-I, IV who fails any part of the written or practical recertification examination may retest based on the following:

(i) The applicant must request a re-examination.

(ii) The applicant must re-take the examination after notification of failure of recertification examination.

(iii) Only one re-examination is permitted.

(iv) Applicants who fail the recertification re-examination must retake the complete EMT-I training course to be eligible for further examination.

(12) An individual who teaches EMT training programs shall:

(i) Be certified as an Emergency Medical Technician

Instructor, or instructor specialist by the Department, or be a licensed physician under Title 58;

(ii) Successfully complete an instructor certification course.

(b) An individual who teaches EMT-Advanced training programs shall be licensed under Title 58 as a physician or registered nurse, or be approved by the Department.

(c) An individual who teaches pediatric vascular courses must be a licensed physician or registered nurse who has completed a Department-approved pediatric advanced life support course or who has completed the Department Emergency Medical Services for Children instructor course.

(13) When responding to a medical emergency, EMTs shall display their Department-approved certification identification on outer clothing to identify competency level at the scene. EMTs representing volunteer ambulance services shall comply with this requirement to the extent practicable. Any person displaying a Utah EMT certification identification, who is not so certified, is guilty of a Class B misdemeanor, as provided in 26-8-7(1) and 26-8-15.

(14) An EMT shall be under medical control of a physician representing a designated resource hospital. When EMTs arrive at the scene of an injury or illness, they must 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 EMT must so indicate on the EMS report form and must follow local written protocol. If there is a physician at the scene who wishes to assist or provide medical direction to the EMT, the 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 EMT shall take orders from him. If the physician at the scene wishes to continue directing EMT activities, the EMT shall place the at-scene physician in radio contact with the resource hospital physician. The resource hospital physician may (1) allow the physician at the scene to assume or continue medical control, (2) retain EMT medical control, but allow the physician at the scene to assist, or (3) retain medical control with no participation by the on-scene physician. If option (1) is followed, all orders given to EMTs 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 EMTs.

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

R426-1-14. Penalty for Violation of Rule.

Any person who violates any provision of this rule may be assessed a penalty not to exceed the sum of $5,000 or be punished for violation of a class B misdemeanor for the first violation and for any subsequent similar violation within two years for violation of a class A misdemeanor as provided in Section 26-23-6.

KEY: emergency medical services
June 23, 1998 **26-8**
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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) 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.

(2) 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; and

(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) 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. 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) 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. 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:

(A) Evaluation of EMT-Paramedic performance.

(B) Identification of training needs.

(C) Improving communications between manpower resources.

(D) Clarification of role assignments as related to hospital emergency departments, communications, transportation and other components of the paramedic system.

(E) Training new paramedic personnel.

(F) Other purposes deemed necessary by the provider, District EMS Director or the Department.

(vi) 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 pass on the Department certification examination. At the discretion of the Department a trainee may be provisionally certified as an EMT-Paramedic for a period not to exceed 90 days. The employing 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. To be certified as a paramedic, an individual shall:

(a) 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.

(b) Be currently certified as an EMT in Utah.

(c) Submit a completed application form to the department.

(d) Submit to a background investigation.

(2) Hospitals and paramedic training programs authorized by the Department to provide initial EMT-Paramedic training or continuing medical 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 this rule. 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 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; or

(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, misdemeanor or act or moral turpitude, excluding minor traffic violations chargeable as infractions.

(3) Paramedic training programs must meet the requirements of the paramedic training program accreditation standards as established by the Department.

(4) The Department shall establish EMT-Paramedic testing standards in conjunction with the paramedic training institutions.

(5) The Department shall establish other criteria relevant to the training of EMT-Paramedics.

(6) Training Program Monitoring - The Department shall be responsible for monitoring local in-service educational programs for EMT-Paramedics.

(7) 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) 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.

(2) Thereafter, recertification shall be for a period of four years.

(3) An EMT-Paramedic who wishes to recertify shall:

(a) submit a completed recertification application form, including social security number.

(b) submit to a background investigation.

(c) submit verification of current certification in Advanced Cardiac Life Support (ACLS) by the American Heart Association.

(d) submit verification of annual completion of 25 hours per year of Department approved continuing education.

(e) submit the results of a sponsoring agency peer evaluation confirming satisfactory field performance.

(f) 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.

(g) submit an evaluation and recommendation from the sponsoring agency's physician advisor.

(h) successfully complete the Department written examination.

(4) 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.

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; and

(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 Paramedics shall be responsible for the direction and provision of emergency medical care, as described in this section.

(3) The Department has a duty to exclude from EMT certification an individual who may pose an unacceptable risk to public health and safety, by virtue of his criminal history. The Department will conduct a background check on each individual who certifies or recertifies as an EMT.

(a) An individual convicted of certain crimes presents an unreasonable risk and the Department shall deny all applications for certification or recertification by individuals convicted of the following crimes:

(i) Sexual misconduct if the victim's failure to affirmatively consent is an element of the crime, such as forcible rape.

(ii) Sexual or physical abuse of children, the elderly or infirm, such as sexual misconduct with a child, making or distributing child pornography or using a child in a sexual display, incest involving a child, assault on an elderly or infirm person.

(iii) Abuse, neglect, theft from, or financial exploitation of a person entrusted to the care or protection of the applicant, if the victim is an out-of-hospital patient or a patient or resident of a health care facility.

(iv) Crimes of violence against persons, such as aggravated assault, murder or attempted murder, manslaughter except involuntary manslaughter, kidnaping, robbery of any degree; or arson; or attempts to commit such crimes.

(b) Except in extraordinary circumstances, established by clear and convincing evidence that certification or recertification will not jeopardize public health and safety, the Department shall deny applicants for certification or recertification in the following categories:

(i) Conviction of any crime not listed in (a) and who are currently incarcerated, on work release, on probation or on parole.

(ii) Conviction of crimes in the following categories, unless at least three years have passed since the conviction or at least three years have passed since release from custodial confinement, whichever occurs later:

(A) Crimes of violence against persons, such as assault

(B) Crimes defined as domestic violence under Section 77-36-1; and.

(C) Crimes involving controlled substances or synthetics, or counterfeit drugs, including unlawful possession or distribution, or intent to distribute unlawfully, Schedule I through V drugs as defined by the Uniform Controlled Dangerous Substances Act;

(D) Crimes against property, such as grand larceny, burglary, embezzlement or insurance fraud.

(c) The Department shall deny certification or recertification to individuals convicted of crimes, including DUIs, but not including minor traffic violations chargeable as infractions after consideration of the following factors:

(i) The seriousness of the crime.

(ii) Whether the crime relates directly to the skills of prehospital care service and the delivery of patient care.

(iii) Amount of time that has elapsed since the crime was committed.

(iv) Whether the crime involved violence to or abuse of another person.

(v) Whether the crime involved a minor or a person of diminished capacity.

(vi) Whether the applicant's actions and conduct since the crime occurred are consistent with the holding of a position of public trust.

(vii) Total number of arrests and convictions.

(viii) Whether the applicant was truthful regarding the crime on his/her application.

(d) Certified EMS personnel must notify the Department of any arrest or conviction. The Department may suspend, decertify, or place on probation anyone who does not notify the Department within 30 days of the arrest or conviction.

(e) The Department may decertify or suspend certification, or place a person on probation for any of the above violations.

(f) The Department may decertify or suspend certification, or place on probation an EMT-Paramedic who refuses to submit to a background check

(4) 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 Refusal to take a drug test by an EMS employer or the Department, is grounds for action by the Department of Health.

(i) 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.

(ii) Failure to comply with the EMT-Paramedic training certification or recertification requirements of this rule.

(iii) 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.

(iv) Involvement in the unauthorized use or removal of narcotics, drugs, supplies or equipment from any emergency vehicle or health care facility.

(v) Performing procedures or skills beyond the level of certification or violation of laws pertaining to medical practice and drugs.

(vi) Mental incompetence as determined by a court of competent jurisdiction.

(vii) Demonstrated inabilities and failure to perform adequate patient care.

(vii) For good cause, including conduct which is unethical, immoral, or dishonorable.

(5) An EMT-Paramedic shall be under medical control of a physician representing a designated base station hospital. When EMT-Paramedics arrive at the scene of an injury or illness, they must 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 must 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 must 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 may (1) allow the physician at the scene to assume or continue medical control, (2) retain paramedic medical control, but allow the physician at the scene to assist, or (3) retain medical control with no participation by the on-scene physician. If 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.

R426-3-10. Penalty for Violation of Rule.

Any person who violates any provision of this rule may be

assessed a penalty not to exceed the sum of $5,000 or be punished for violation of a class B misdemeanor for the first violation and for any subsequent similar violation within two years for violation of a class A misdemeanor as provided in Section 26-23-6.

KEY: emergency medical services
June 23, 1998 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.

As used in R426-4:

(1) Department means the Utah Department of Health.

(2) Emergency Medical Dispatcher (EMD) means a person certified by the Department who has successfully completed a Department approved Emergency Medical Dispatch Course.

(3) 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.

(4) Person means any individual, firm, partnership, association, corporation, company, group of individuals acting together for a common purpose, agency, or organization of any kind.

(5) Selective Medical Dispatch System means a Department approved reference system used by a local dispatch agency to dispatch aid to medical emergencies which includes:

(a) systemized caller interrogation questions;

(b) systemized pre-arrival instructions; and

(c) protocols matching the dispatcher's evaluation of injury or illness severity with vehicle response mode and configuration.

(6) Vehicle Response Mode means the use of emergency driving techniques, such as red-light-and-siren vs. routine driving response.

(7) 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) The Department shall develop an Emergency Medical Dispatch training and certification program. Curriculum standards shall be established by the Department. To be initially certified as an EMD, an individual must:

(a) successfully complete a state approved EMD Course.

(b) submit to the department a completed application form, including social security number.

(c) submit to a background check.

(d) be currently certified in cardiopulmonary resuscitation (CPR) through a Department approved course.

(e) successfully pass the Department's written examination.

(f) complete all requirements for certification within 90 days from course completion date. The Department may extend the time limit to individuals who demonstrate good cause based on extenuating circumstances.

(3) Recertification is required every three years to maintain state certification. This period may be modified by the Department. An EMD who wishes to recertify shall:

(a) submit to the Department a completed application form including social security number;

(b) submit to a background check;

(c) 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;

(d) successfully complete the Department's EMD written examination; and

(e) complete 36 hours of Department approved continuing medical dispatch education or in-service during the three year recertification period.

(4) The Department may grant reciprocity for applicants certified outside of Utah 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.

(5) This Rule 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) Those individuals who permit their certification to lapse may be recertified by completion of the recertification requirements.

(7) Instructors who teach emergency medical dispatchers shall meet certification standards established by the Department.

(8) The Department has a duty to exclude from EMT certification an individual who may pose an unacceptable risk to public health and safety, by virtue of his criminal history. The Department will conduct a background check on each individual who certifies or recertifies as an EMT.

(a) An individual convicted of certain crimes presents an

unreasonable risk and the Department shall deny all applications for certification or recertification by individuals convicted of the following crimes:

(i) Sexual misconduct if the victim's failure to affirmatively consent is an element of the crime, such as forcible rape.

(ii) Sexual or physical abuse of children, the elderly or infirm, such as sexual misconduct with a child, making or distributing child pornography or using a child in a sexual display, incest involving a child, assault on an elderly or infirm person.

(iii) Abuse, neglect, theft from, or financial exploitation of a person entrusted to the care or protection of the applicant, if the victim is an out-of-hospital patient or a patient or resident of a health care facility.

(iv) Crimes of violence against persons, such as aggravated assault, murder or attempted murder, manslaughter except involuntary manslaughter, kidnaping, robbery of any degree; or arson; or attempts to commit such crimes.

(b) Except in extraordinary circumstances, established by clear and convincing evidence that certification or recertification will not jeopardize public health and safety, the Department shall deny applicants for certification or recertification in the following categories:

(i) Conviction of any crime not listed in (a) and who are currently incarcerated, on work release, on probation or on parole.

(ii) Conviction of crimes in the following categories, unless at least three years have passed since the conviction or at least three years have passed since release from custodial confinement, whichever occurs later:

(A) Crimes of violence against persons, such as assault

(B) Crimes defined as domestic violence under Section 77-36-1; and.

(C) Crimes involving controlled substances or synthetics, or counterfeit drugs, including unlawful possession or distribution, or intent to distribute unlawfully, Schedule I through V drugs as defined by the Uniform Controlled Dangerous Substances Act;

(D) Crimes against property, such as grand larceny, burglary, embezzlement or insurance fraud.

(c) The Department shall deny certification or recertification to individuals convicted of crimes, including DUIs, but not including minor traffic violations chargeable as infractions after consideration of the following factors:

(i) The seriousness of the crime.

(ii) Whether the crime relates directly to the skills of prehospital care service and the delivery of patient care.

(iii) Amount of time that has elapsed since the crime was committed.

(iv) Whether the crime involved violence to or abuse of another person.

(v) Whether the crime involved a minor or a person of diminished capacity.

(vi) Whether the applicant's actions and conduct since the crime occurred are consistent with the holding of a position of public trust.

(vii) Total number of arrests and convictions.

(viii) Whether the applicant was truthful regarding the crime on his/her application.

(d) Certified EMS personnel must notify the Department of any arrest or conviction. The Department may suspend, decertify, or place on probation anyone who does not notify the Department within 30 days of the arrest or conviction.

(e) The Department may decertify or suspend certification, or place a person on probation for any of the above violations.

(f) The Department may require an EMT to submit to a background check upon Department request. The Department may decertify or suspend certification, or place on probation an EMT who refuses to submit to a background check

(9) 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. Refusal to take a drug test as requested by an EMS employer or the Department is grounds for action by the Department of Health.

(b) 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.

(c) Failure to comply with the emergency medical dispatcher training certification or recertification requirements of this rule.

(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 dispatcher.

(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, misdemeanor or a crime involving moral turpitude, but not including minor traffic violations chargeable as infractions.

(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.

R426-4-5. Penalty for Violation of Rule.

Any person who violates any provision of this rule may be assessed a penalty not to exceed the sum of $5,000 or be punished for violation of a class B misdemeanor for the first violation and for any subsequent similar violation within two years for violation of a class A misdemeanor as provided in Section 26-23-6.

KEY: emergency medical services
June 23, 1998 26-8
Notice of Continuation December 2, 1997

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/substance abuse. If a specialty hospital chooses to have a dual major service, e.g., chemical dependency/substance abuse and psychiatric care, then both of the appropriate specialty hospital rules apply.

R432-102-3. Time for Compliance.

All specialty hospitals, - chemical dependency/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.

Specialty Hospital - Chemical Dependency/Substance Abuse Hospital Construction Rules, R432-8, apply to construction and remodel of the facility.

R432-102-7. Organization.

Refer to R432-100-4, Governing Body.

R432-102-8. Administrator.

Refer to R432-100-5, Administrator.

R432-102-9. Medical and Professional Staff.

(1) Refer to R432-100-6, Medical and Professional Staff.

(2) Medical and Professional staff members may be retained either on a full-time basis, a part-time basis or by contract to fulfill the requirements and needs of the treatment programs offered.

(3) Medical and Professional staff shall 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.

R432-102-10. Nursing.

Refer to R432-100-8, Nursing.

R432-102-11. Personnel Management Service.

(1) The hospital shall provide sufficient medical and professional staff and support personnel who are able and competent to perform their respective duties, services, and functions to meet hospital service and patient care needs.

(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 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.

(a) 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/substance abuse diagnoses;

(ii) roles and functions of nurses in treatment programs for patients with chemical dependency/substance abuse diagnoses;

(iii) medications used in the treatment of chemical dependency/substance abuse diagnoses.

(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. Copies of the license, registration, or certificate shall be maintained for Department review in the personnel files.

(5) 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.

R432-102-12. Clinical Services.

(1) The hospital shall organize and establish an inpatient clinical services program that includes the following elements: detoxification; counseling; and, a referral process to outpatient programs.

(a) Detoxification services i.e., the systematic reduction or elimination of a toxic agent in the body by use of rest, fluids, medication, counseling and nursing care shall be provided according to medical orders and facility protocols.

(b) Counseling services i.e, individual, group, or family therapy shall be provided as indicated in the individual treatment plan. There shall be provision for educational, employment, or other counseling as needed.

(c) There shall be a referral process to outpatient 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 in the individual

treatment plan.

(2) The hospital may provide therapy programs and services on an outpatient basis. These programs and services shall be organized, staffed and managed according to the requirements and needs of the services offered. The therapy programs and services shall be subject to the same medical, administrative and quality assurance oversight as inpatient clinical services programs.

R432-102-13. Crisis Intervention Services.

(1) If offered, the crisis intervention service shall be organized under the direction of the medical director or designee.

(a) Services shall be available at any hour to persons presenting themselves for assistance.

(b) The following public areas shall be available in the crisis intervention service area:

(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 crisis intervention services, the hospital shall have a written referral plan for persons making inquiry regarding such services or presenting themselves for assistance.

(3) The crisis intervention service shall have physician coverage 24 hours a day.

(a) Nursing and other allied health professional staff shall be available in the hospital.

(b) 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) The crisis intervention service shall implement policies and procedures which include admission, treatment, medical procedures and applicable reference materials. Involuntary detention of a person must be done according to hospital policy and Utah Law.

R432-102-14. Patient Record.

(1) Refer to R432-100-35, Medical Records.

(2) The content of the patient record shall contain in addition:

(a) progress notes, including description and date of service, with a summary of client progress, signed by the therapist or service provider;

(b) a discharge summary, including final evaluation of treatment and goals attained and signed by the therapist.

(3) A written individual treatment plan shall be initiated for each patient upon admission and completed no later than seven working days after admission.

(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 medical, psycho-social, substance abuse, and treatment history 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 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.

(4) 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."

R432-102-15. Required Hospital Services.

The following sections of the General Hospital Standards, R432-100, and the Specialty Hospital - Psychiatric Standards, R432-101, are adopted by reference. These services shall be provided as part the of the hospital's patient care service milieu:

(1) R432-100-33, Dietary Services;
(2) R432-100-34, Laundry Services;
(3) R432-100-37, Maintenance Services;
(5) R432-100-38, Housekeeping Services;
(6) R432-101-11, Quality Assurance;
(7) R432-101-15, Patient Rights;
(8) R432-101-16, Emergency and Disaster;
(9) R432-101-17, Admission and Discharge Policy;
(10) R432-101-18, Transfer Agreement;
(11) R432-101-19, Pets in Hospitals;
(12) R432-101-23, Restraints and Seclusion;
(13) R432-101-27, Laboratory;
(14) R432-101-28, Pharmacy;
(15) R432-101-29, Social Services; and,
(16) R432-101-30, Activity Therapy.

R432-102-16. Optional Hospital Services.

The following sections of the General Hospital Standards, R432-100, and the Specialty Hospital - Psychiatric Standards, R432-101, are adopted by reference. These sections shall apply when these services are adopted into, or are required by, the hospital's patient care service milieu.

(1) R432-100-14, Special Care Unit;
(2) R432-100-19, Pediatric Services;
(3) R432-100-23, Inpatient Hospice;
(4) R432-100-28, Physical Therapy;
(5) R432-100-29, Radiology Services;
(6) R432-100-30, Respiratory Services;
(7) R432-100-32, Central Supply Services; and,
(8) R432-101-10(1), Inpatient (Psychiatric) Services.

KEY: health facilities

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Notice of Continuation December 15, 1997	**26-21-2.1**
	26-21-20

R477. Human Resource Management, Administration.
R477-1. Definitions.
R477-1-1. Definitions.

The following definitions apply throughout these rules unless otherwise indicated within the text of each rule.

(1) Abandonment of Position: A discretionary act of termination resulting from an employee's unexcused absence from work or failure to come to work for three consecutive days when the employee is capable, but does not properly notify his supervisor.

(2) Active Duty: Full-time active military and reserve duty; a term used for veteran's preference adjustments. It does not include active or inactive duty for training or initial active duty for training.

(3) Actual Hours Worked: Time spent performing duties and responsibilities associated with the employee's job assignments. This time is calculated in increments of 15 minutes or more for purposes of overtime accrual, and shall not include "on-call," holiday leave, or any other leave time taken off during the work period.

(4) Administrative Leave: Leave with pay granted to an employee at management discretion that is not charged against the employee's leave accounts.

(5) Administrative Adjustment: A DHRM approved change of a position from one job to another job or salary range change for administrative purposes that is not based on a change of duties and responsibilities.

(6) Administrative Salary Decrease: A salary decrease of one or more pay steps based on non-disciplinary administrative reasons determined by an agency executive director or commissioner.

(7) Administrative Salary Increase: A salary increase of one or more pay steps based on special circumstances determined by an agency executive director or commissioner.

(8) Agency: Any department, division, institution, office, commission, board, committee, or other entity of state government.

(9) Agency Head: The chief executive officer of each agency or their designated appointee.

(10) Agency Management: The agency head and all other officers or employees who have responsibility and authority to establish, implement, and manage agency policies and programs.

(11) Appeal: A formal request to a higher level review for consideration of an unacceptable grievance decision.

(12) Appointing Authority: The officer, board, commission, person or group of persons authorized to make appointments in their agencies.

(13) Assignment: Appointment of an employee to a position.

(14) "At will" Employee: An individual appointed to work for no specified period of time or one who has not acquired career service status and may be terminated at any time without just cause.

(15) Bumping: A procedure that may be applied in a reduction-in-force action (RIF). It allows employees with higher retention points to bump other employees with lower retention points who are in the same categories of work identified in the work force adjustment plan, as long as employees meet the eligibility criteria outlined in interchangeability of skills.

(16) Career Exempt Employee: An employee appointed to a position exempt from career service in state employment and who serves at the pleasure of the appointing authority.

(17) Career Exempt Position: A position in state service exempted by law from provisions of competitive career service, as prescribed in 67-19-15 and in R477-2-1(1).

(18) Career Mobility: A time-limited of an employee to another position of equal or higher salary for purposes of professional growth or fulfillment of specific organizational needs.

(19) Career Service Employee: An employee who has successfully completed a probationary period in a career service position.

(20) Career Service Status: Status granted to employees who successfully completes a probationary period for competitive career service positions.

(21) Category of Work: Jobs, work units, or other definable categories of work within departments, divisions, institutions, offices, commissions, boards or committees that are designated by the agency head as the Category of Work to be eliminated through a reduction-in-force. These are subject to review by the Executive Director, DHRM.

(22) Certifying: The act of verifying the qualifications and availability of individuals on the hiring list. The number of individuals certified shall be based on standards and procedures established by the Department of Human Resource Management.

(23) Change of Workload: A change in the work requirements or a need to eliminate or create particular positions in an agency caused by legislative action, financial circumstances, or administrative reorganization.

(24) Classification Grievance: The approved procedure by which a career service employee may grieve a formal DHRM decision regarding the classification of the employee's position.

(25) Classified Service: Positions that are subject to the classification and compensation provisions stipulated in Section 67-19-12 of the Utah Code Annotated.

(26) Constant Review: A period of formal frequent review of an employee, not to exceed six months, resulting from substandard performance or unacceptable behavior, as defined by Utah law and contained in these rules. Removal from constant review requires a formal evaluation.

(27) Contractor: An individual who is contracted for service, is not supervised by a state supervisor, but is responsible for providing a specified service for a designated fee within a specified time. The contractor shall be responsible for paying all taxes and FICA payments, and shall not accrue benefits.

(28) Demeaning Behavior: Sex-based behavior which lowers the status, dignity or standing of any other individual.

(29) Demotion: A disciplinary action resulting in a salary reduction on the current salary range or the movement of an incumbent from one position to another position having a lower salary range, including a reduction in salary. If this action is taken for a limited time period it shall only be within the current salary range.

(30) Department: The Department of Human Resource Management.

(31) Derisive Behavior: Any behavior which insults, taunts, or otherwise belittles or shows contempt for another individual.

(32) Designated Hiring Rule: A rule promulgated by DHRM that defines which individuals on a certification are eligible for appointment to a career service position.

(33) DHRM: The Department of Human Resource Management.

(34) Disability: Disability shall have the same definition found in the Americans With Disabilities Act (ADA) of 1990, 42 USC 12101, 1994 edition; Equal Employment Opportunity Commission regulation, 29 CFR 1630 1993 edition; including exclusions and modifications.

(35) Disciplinary Action: Action taken by management under the rules outlined in R477-11.

(36) Discrimination: Unlawful action against an employee or applicant based on age, disability, national origin, political or religious affiliation, race, sex, military status or affiliation, or any other non-merit factor, as specified by law.

(37) Dismissal: A separation from state employment for cause.

(38) Drug-Free Workplace Act: A 1988 congressional act, 34 CFR 85, 1993 edition, requiring a drug-free workplace certification by state agencies that receive federal grants or contracts.

(39) Employment Eligibility Certification: A requirement of the Immigration Reform and Control Act of 1986, 8 USC 1324, 1988 edition, as amended, that employers verify the identity and eligibility of individuals for employment in the United States.

(40) "Escalator" Principle: Under USERRA, returning veterans are entitled to return back onto their seniority escalator at the point they would have occupied had they not left state employment.

(41) Equal Employment Opportunity (EEO): Non-discrimination in all facets of employment by eliminating patterns and practices of illegal discrimination.

(42) Excess Hours: A category of compensable hours separate and apart from compensatory or overtime hours that accrue at straight time only when an employee's hours actually worked, plus additional hours paid but not worked, exceed an employee's normal work period.

(43) Executive Director: The executive director of the Department of Human Resource Management.

(44) Fair Employment Opportunity and Practice: Assures fair treatment of applicants and employees in all aspects of human resource administration without regard to age, disability, national origin, political or religious affiliation, race, sex, or any non-merit factor.

(45) Fitness For Duty Evaluation: Evaluation, assessment or study by a licensed professional to determine if an individual is able to meet the performance or conduct standards required by the position held, or is a direct threat to the safety of self or others.

(46) FLSA: Fair Labor Standards Act. The federal statute that governs overtime. See 29 USC 201, 1993 edition et seq.

(47) FLSA Exempt: Employees who are exempt from the Fair Labor Standards Act.

(48) FLSA Non-Exempt: Employees who are not exempt from the Fair Labor Standards Act.

(49) Furlough: A temporary leave of absence from duty without pay for budgetary reasons or lack of work.

(50) Grievance: A career service employee's claim or charge of the existence of injustice or oppression, including dismissal from employment resulting from an act, occurrence, omission, condition, discriminatory practice or unfair employment practice not including position classification or schedule assignment.

(51) Grievance Procedures: The statutory process of grievances and appeals as set forth in Sections 67-19a-101 through 67-19a-408 and the rules promulgated by the Career Service Review Board.

(52) Gross Compensation: Employee's total earnings, taxable and untaxable, as shown on the employee's paycheck stub.

(53) Hiring List: A list of names of qualified applicants who have successfully met the examination requirements for appointment to the position.

(54) Hostile Work Environment: A work environment or work related situation where an individual suffers physical or emotional stress due to the unwelcome behavior of another individual which is motivated by sex.

(55) HRE: Human Resource Enterprise; the state human resource management information system.

(56) Immediate Supervisor: The employee or officer who exercises direct authority over an employee and who appraises the employee's performance.

(57) Incompetence: Inadequacy or unsuitability in performance of assigned duties and responsibilities.

(58) Inefficiency: Wastefulness of government resources including time, energy, money, or staff resources or failure to maintain the required level of performance.

(59) Interchangeability of Skills: Employees are considered to have interchangeable skills only for those classes of positions they have previously held successfully in Utah state government employment or for those classes of positions which they have successfully supervised and for which they satisfy job requirements.

(60) Intern: An individual in a college degree program assigned to work in an activity where on-the-job training is accepted.

(61) Involuntary Reassignment: Management initiated movement of an employee from his current position to a position of an equal or lower salary range, or to a different work location or organization unit for administrative, corrective action or other reasons not included in the definition of demotion or reclassification.

(62) Job: A group of positions similar in duties performed, in degree of supervision exercised or required, in requirements of training, experience, or skill and other characteristics. The same, salary range and test standards are applied to each position in the group.

(63) Job Series: Two or more jobs in the same functional area having the same job class title, but distinguished and defined by increasingly difficult levels of duties and responsibilities and requirements.

(64) Job Proficiency Rating: An average of the last three annual performance evaluation ratings used in reduction in force

proceedings.

(65) Job Requirements: Skill requirements defined a the job level.

(66) Job Description: A document containing the duties, distinguishing characteristics, knowledge, skills, and other requirements for a job.

(67) Job Identification Number: A unique number assigned to a job by DHRM.

(68) Legislative Salary Adjustment: A legislatively approved salary increase for a specific category of employees based on criteria determined by the Legislature.

(69) Malfeasance: Intentional wrongdoing, deliberate violation of law or standard, or mismanagement of responsibilities.

(70) Market Comparability Adjustment: Legislatively approved reallocation of a salary range for a job based on a compensation survey conducted by DHRM.

(71) Merit Increase: A legislatively approved and funded salary increase for employees to recognize and reward performance.

(72) Misfeasance: Performance of a lawful action in an illegal or improper manner.

(73) Nonfeasance: Omission or failure to do what ought to be done.

(74) Performance Evaluation: A formal, periodic evaluation of an employee's work performance.

(75) Performance Evaluation Date: The date when an employee's performance evaluation shall be conducted. An evaluation shall be conducted at least once during the probationary period and no less than once annually thereafter consistent with the common review date.

(76) Performance Management: The ongoing process of communication between the supervisor and the employee which defines work standards and expectations, and assesses performance leading to a formal annual performance evaluation.

(77) Performance Plan: A written summary of the standards and expectations required for the successful performance of each job duty or task. These standards normally include completion dates and qualitative and quantitative levels of performance expectations.

(78) Performance Standard: Specific, measurable, observable and attainable objectives that represent the level of performance to which an employee and supervisor are committed during an evaluation period.

(79) Personnel Adjudicatory Proceedings: The informal appeals procedure contained in Title 63, Chapter 46b, for all human resource policies and practices not covered by the state employees grievance procedure promulgated by the Career Service Review Board, or the classification appeals procedure.

(80) Position: An employees unique set of duties and responsibilities identified by DHRM authorized job and position management numbers.

(81) Position management Report: A document that lists an agency's authorized positions including job identification numbers, salaries, and schedules. The list includes occupied or vacant positions and full or part-time positions.

(82) Position Sharing: A situation where two employees share the duties and responsibilities of one full-time career service position. Salary, retirement service credits and leave benefits for position sharing employees are pro-rated according to the number of hours worked. To be eligible for benefits, position sharing employees must work at least 50% of a full-time equivalent.

(83) Probationary Period: A period of time considered part of the selection process, identified at the job level, the purpose of which is to allow management to evaluate an employee's ability to perform assigned duties and responsibilities and to determine if career service status should be granted.

(84) Productivity Step Adjustment: A management authorized salary increase of one to four steps. Management and employees agree to the adjustment for employees who accept an increased workload resulting from FTE reductions and agency base budget reduction.

(85) Promotion: A management initiated action moving an employee from a position in one job to a position in another class having a higher maximum salary range of at least two salary steps.

(86) Reappointment: Return to work of an employee from the reappointment register. Accrued annual leave, converted sick leave, compensatory time and excess hours in their former position were cashed out at termination.

(87) Reappointment Register: A register of career service employees who have been separated in a reduction in force because of inadequate funds, change of workload or lack of work. It also includes career service employees who accepted exempt positions without a break in service and who were not retained, unless discharged for cause, and those employees who by the Career Service Review Board's decision are placed on the reappointment register.

(88) Reasonable Suspicion: Knowledge sufficient to induce an ordinary, reasonable and prudent person to arrive at a conclusion of thought or belief based on factual, non-subjective and substantiated observations or reported circumstances. Factual situations verified through personal visual observation of behavior or actions, or substantiated by a reliable witness.

(89) Reclassification: A DHRM approved reallocation of a position from one job to another job to reflect management initiated changes in duties and responsibilities as determined through a DHRM classification review.

(90) Reduction in Force: (RIF) Abolishment of positions resulting in the termination of staff. RIFs can occur due to inadequate funds, a change of workload, or a lack of work.

(91) Reemployment: Return to work of an employee who terminated state employment to join the uniformed services covered under USERRA. Accrued annual leave, converted sick leave, compensatory time and excess hours may have been cashed out at termination.

(92) Rehire: Return to work of a former career service employee who terminated state employment. Accrued annual leave, converted sick leave, compensatory time and excess hours in their former position were cashed out at termination.

(93) Reprisal: An act of management retaliation taken against an employee.

(94) Requisition: An electronic document used for Utah Skill Match search and tracking purposes that includes specific information for a particular position.

(95) Return from LWOP: A return to work from any leave without pay status. Accrued annual leave, converted sick leave, compensatory time and excess hours may have been cashed out before the leave without pay period began.

(96) Ridiculing Behavior: Any behavior specifically performed to cause humiliation or to mock, taunt or tease another individual.

(97) RIF'd Employee: An employee who is placed on the reappointment register as a result of a reduction in force.

(98) Safety Sensitive Position: A position approved by DHRM that includes the performance of functions:

(a) directly related to law enforcement; or

(b) involving direct access or having control over direct access to controlled substance; or

(c) directly impacting the safety or welfare of the general public.

(99) Salary Range: The segment of an approved pay plan assigned to a job.

(100) Schedule: The determination of whether a position meets criteria stipulated in the Utah Code Annotated to be career service (Schedule B) or career service exempt (Schedule A).

(101) Serious Health Condition: An illness, injury, impairment, physical or mental condition that involves:

(a) In-patient care in a hospital, hospice, or residential medical care facility;

(b) Continuing treatment by a health care provider.

(102) Sexual Harassment: Any behavior or conduct of a sexual nature which is severe and pervasive, unwelcome, demeaning, ridiculing, derisive or coercive and results in a hostile, abusive or intimidating work environment.

(a) Level One: sex role stereotyping

(b) Level Two: targeted gender harassment/discrimination

(c) Level Three: targeted or individual harassment

(d) Level Four: criminal touching of another's body parts or taking indecent liberties with another.

(103) Temporary Transitional Assignment: An assignment on a temporary basis to a position or duties of lesser responsibility and salary range to accommodate an injury or illness or to provide a temporary reasonable accommodation.

(104) Transfer: Voluntary assignment of an employee within an agency or between agencies from one position to another position with the same maximum salary step and for which the employee qualifies, including a change of work location or organizational unit.

(105) Underfill: DHRM authorization for an agency to fill a position at a lower salary range within the same job series.

(106) Uniformed Services: The United States Army, Navy, Marine Corps, Air Force, Coast Guard; Reserve units of the Army, Navy, Marine Corps, Air Force, or Coast Guard; Army National Guard or Air National Guard; Commissioned Corps of Public Health Service, or any other category of persons designated by the President in time of war or emergency. Service in Uniformed Services includes: voluntary or involuntary duty, including active duty; active duty for training; initial active duty for training; inactive duty training; full-time National Guard duty; absence from work for an examination to determine fitness for any of the above types of duty.

(107) USERRA: Uniformed Services Employment and Reemployment Rights Act of 1994 (P.L. 103-353), requires state governments to re-employ eligible veterans who left state employment to enter the uniformed services and who return to work within a specified time period after military discharge. Employees covered under USERRA are in a leave without pay status from their state position.

(108) Utah Skill Match: Utah Skill Match is the state's recruitment and selection system, which includes:

(a) continuous recruitment of all positions;

(b) a centralized and automated computer database of resumes and related information administered by the Department of Human Resource Management;

(c) decentralized access to the database based on delegation agreements.

(109) Veteran: An individual who has served on active duty in the armed forces for more than 180 consecutive days, or was a member of a reserve component who served in a campaign or expedition for which a campaign medal has been authorized. Individuals must have been separated or retired under honorable conditions.

(110) Voluntary Reassignment: Employee initiated movement from a position in one job to a position in another job having a lower maximum salary range of at least two salary steps.

(111) Volunteer: Any person who donates services to the state or its subdivisions without pay or other compensation except actual and reasonable expenses incurred, as approved by the supervising agency.

(112) Volunteer Experience Credit: Credit given in meeting job requirements to participants who gain experience through unpaid or uncompensated volunteer work with the state, its subdivisions or other public and private organizations.

KEY: personnel management, rules and procedures, definitions*
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R477. Human Resource Management, Administration.
R477-2. Administration.
R477-2-1. Rules Applicability.

These rules apply to all career and non-career state employees except those specifically exempted in Section 67-19-12.

(1) Certificated employees of the State Board of Education are covered by these rules except for rules governing classification and compensation, found in R477-4 and R477-7.

(2) Non-state agencies with employees protected by the career service provisions of these rules in R477-5, R477-6, R477-9 and R477-11 are exempted by contract from any provisions deemed inappropriate in their jurisdictions by the Executive Director, DHRM.

(3) Unless employees in exempt positions have written contracts of employment for a definite period of time, they are "at will" employees. The following employees are exempt from mandatory compliance with these rules:

(a) Members of the Legislature and legislative employees

(b) Members of the judiciary and judicial employees

(c) Elected members of the executive branch and their direct staff who are career service-exempt employees

(d) Officers, faculty, and other employees of state institutions of higher education

(e) Any positions for which the salary is set by law

(f) Attorneys in the attorney general's office

(g) Agency heads and other persons appointed by the governor when authorized by statute

(h) Employees of the Department of Community and Economic Development whose positions have been designated executive/professional by the executive director of the Department of Community and Economic Development with the concurrence of the Executive Director, DHRM.

(4) All other exempt positions are covered by provisions of these rules except rules governing career service status in R477-5, R477-6, R477-9 and R477-11.

(5) The above positions may or may not be exempt from federal and other state regulations.

R477-2-2. Mission of Department of Human Resource Management.

(1) We value our employees and the public trust. We are committed to leadership that achieves an effective workforce by:

(a) Providing competitive benefits and compensation;

(b) Recruiting and selecting the best qualified applicants;

(c) Creating an environment for continuous quality improvement, training, and technical assistance in all aspects of human resource management.

(2) We are committed to:

(a) Honoring, sustaining, and upholding the laws governing human resource management, found in Section 67-19-1

(b) Establishing consistent statewide human resource policies, rules, standards and procedures

(c) Monitoring agency compliance with human resource policies, rules, standards and procedures

(d) Providing technical assistance and human resource management support to agencies

(e) Training, educating, and recognizing employees

(f) Final approval of all agency personnel actions.

R477-2-3. Compliance Responsibility.

Agencies shall manage their own human resources in compliance with these rules. Agencies are authorized to correct any administrative errors.

(1) The Executive Director, DHRM, may authorize exceptions to provisions of these rules when one or more of the following criteria are satisfied:

(a) Applying the rule prevents the achievement of legitimate government objectives;

(b) Applying the rule impinges on the legal rights of an employee;

(2) Agency personnel records, practices, policies and procedures, employment and actions, shall comply with these rules and are subject to compliance audits by the DHRM.

(3) In cases of noncompliance with the State Personnel Management Act, Title 67, Chapter 19, and these rules, the Executive Director, DHRM, may find the responsible agency official to be subject to the penalties prescribed by Section 67-19-18(1) pertaining to misfeasance, malfeasance or nonfeasance in office.

R477-2-4. Fair Employment Practice.

All state personnel actions must provide equal employment opportunity for all individuals.

(1) Employment actions including appointment, tenure or term, condition or privilege of employment shall be based on the ability to perform the essential duties, functions, and responsibilities assigned to a particular position.

(2) Employment actions shall not be based on age, race, creed or religion, color, disability, sex, national origin, ancestry, political affiliation, military status or affiliation or any other non-job related factor, nor shall any person be subjected to sexual harassment by a state employee.

(3) Any employee who alleges that they have been discriminated against, may submit a claim to the agency head.

(a) If the employee does not agree with the decision of the agency head, the employee may file a complaint with the Utah Anti-Discrimination Division.

(b) No state official shall impede any employee from the timely filing of a discrimination complaint in accordance with state and federal requirements.

(4) Employees are protected from employment discrimination under the following laws:

(a) The Age Discrimination in Employment Act of 1967, 29 USC 621, as implemented by 29 CFR 1625, July 1, 1994 edition as amended. This act prohibits discrimination on the basis of age for individuals forty years and over.

(b) The Vocational Rehabilitation Act of 1973, 29 USC 701, as implemented by 34 CFR 361, 1994 edition as amended. This act prohibits discrimination on the basis of disability status.

(c) The Equal Pay Act of 1963, 29 USC 206(d), as implemented by 29 CFR 1620, July 1, 1994 edition. This act prohibits discrimination on the basis of sex.

(d) Title VII of the Civil Rights Act of 1964 as amended, 42 USC 2000e. This act prohibits discrimination on the basis of sex, race, color, national origin, religion, or disability.

(e) The Americans with Disabilities Act of 1990, 42 USC

12201. This act prohibits discrimination against qualified individuals with disabilities in all aspects of employment. It is the policy of the state that:

(i) A qualified individual with a disability who seeks employment and satisfies the requisite skill, experience, education, and other job-related requirements of the employment position, and who, with or without reasonable accommodation, can perform the essential functions of such position, will not be discriminated against.

(ii) Employees with disabilities who are unable to perform essential job duties because of impairments will be provided reasonable accommodations to perform essential job duties.

(f) Uniformed Services Employment and Reemployment Act of 1994, 38 USC 4301. This act requires a state to reemploy eligible veterans who left state employment for military service and return to work within specified time periods defined by USERRA.

R477-2-5. Grievance Procedure for Discrimination.

The following rules outline the grievance procedure and the specific requirements of the major laws:

(1) Age Discrimination in Employment Act of 1967.

(a) Employees shall report the alleged discriminatory act within one of the following time periods:

(i) 180 days after the occurrence,

(ii) 300 days after the occurrence if the matter has been presented to an appropriate state agency for proceedings under an applicable state law, or

(iii) 30 days after the individual receives notice of termination of any state proceedings.

(b) As a prerequisite to bringing any action, the individual may notify the Equal Employment Opportunity Commission of the intent to sue at least 60 days before filing the action. The Equal Employment Opportunity Commission will represent the individual in the processing of actions.

(c) The Utah Anti-Discrimination Division of the Industrial Commission is authorized by the Equal Employment Opportunity Commission to act on charges of employment discrimination. Employees must file charges within thirty days following an act of discrimination.

(2) Section 503 of The Rehabilitation Act of 1973, as implemented by 34 CFR 361, 1993 edition, as amended.

(a) Employers with federal contracts or subcontracts greater than $10,000.00 must implement affirmative action programs to accommodate individuals with disabilities.

(b) All of an employer's operations and facilities must comply with Section 503 as long as any of the operations or facilities are included in federal contract work. Agencies that meet the conditions outlined shall implement affirmative action programs to accommodate individuals with disabilities, and for employing and advancing qualified individuals with disabilities.

(3) Section 504 of the Rehabilitation Act of 1973 as amended, prohibits discrimination under any program or activity that receives federal financial assistance.

(a) Section 504 incorporates the employment provisions of Title I of the Americans With Disabilities Act of 1990. However, Section 504 does not require affirmative action.

(b) Under the 1978 amendments to the Rehabilitation Act, the procedures for enforcing Section 504 are the same as for Title VII of the Civil Rights Act of 1964.

(c) An aggrieved individual may bypass the state's grievance mechanism and file an administrative complaint with the granting federal agency. If unsatisfied with the outcome of the state's grievance mechanism, an individual may also file an administrative complaint. A charge of discrimination should be filed within 180 days of the discriminatory event.

(d) Remedies for violations of this law include the cutoff of federal funding to the grant recipient.

(4) The Equal Pay Act of 1963- The enforcement provisions of the Fair Labor Standards Act apply for an equal pay claim. The following rules apply:

(a) Sex discrimination in the payment of unequal wage rates is a continuous violation, and employees have a right to sue each payday that the discrimination persists.

(b) Employees are not required to exhaust any administrative procedures prior to filing an action.

(c) Employees alleging an equal pay claim may file directly with the Equal Employment Opportunity Commission.

(d) Employees do not have the right to file a court action when the Equal Employment Opportunity Commission initiates a court proceeding on the employee's behalf to either enjoin an employer or to obtain recovery of an employee's unpaid wages.

(e) Employees must file suit within two years from the last date of harm, unless the employer committed a willful violation of the law, in which case, they have three years.

(5) Title VII of the Civil Rights Act of 1964, as amended.

(a) Prior to bringing a suit under Title VII, the Equal Employment Opportunity Commission must:

(i) Inform the agency of the alleged discrimination in employment;

(ii) Investigate the charge;

(iii) Determine that there is reasonable cause to believe the discrimination occurred;

(iv) Attempt to conciliate;

(v) Give notice to the alleged discriminator of termination of conciliation efforts.

(b) The Equal Employment Opportunity Commission is required by statute to allow an authorized state or local agency sixty days to act on a specific charge.

(c) The state agency must have the authority to grant or prohibit the discriminatory practices or to substitute civil proceedings.

(d) Within 180 days of filing a charge with the Equal Employment Opportunity Commission, employees may file a court action privately.

(6) Americans with Disabilities Act (ADA) of 1990 - Title II of the ADA and Department of Justice regulations provide that "No qualified individual with a disability shall, by reason of disability, be excluded from participation in or be denied the benefits of the services, programs or activities of a public entity, or be subjected to discrimination by any entity."

(a) Title I of the ADA and EEOC regulations apply to recruitment, selection, and all aspects of the employment process, including the management of injured worker issues.

(b) Under this law, employees with disabilities who are otherwise qualified shall receive the following:

(i) Equal opportunities, not merely equal treatment, for qualified individuals with disabilities;

(ii) Ensured access to equal employment opportunities based on merit;

(iii) Environmental accommodations and the reasonable accommodation for essential functions of the job, unless it imposes an undue hardship.

(c) The ADA does not establish quotas, nor favor individuals with disabilities over those without disabilities.

(d) Title I of the ADA is enforced by the Equal Employment Opportunity Commission (EEOC) and Title II is enforced by the Department of Justice (DOJ), under the same procedures used to enforce Title VI and VII of the Civil Rights Act of 1964. The EEOC and DOJ receive and investigate charges of discrimination and through conciliation seek to resolve any discrimination found and obtain full relief for the affected individuals.

(e) If conciliation is unsuccessful, the EEOC may file a suit or issue a "right to sue" letter to the person who filed the charge.

(f) An aggrieved individual may bypass the state's grievance procedure and file directly with the appropriate federal agency, or with the Utah Anti-Discrimination Division.

(g) The discrimination charge must be filed within 180 days of the discriminatory event.

(7) Uniformed Service Employment and Re-employment Act of 1994 (USERRA).

(a) State statutes of limitations shall not apply to any proceedings under USERRA.

(b) An action may be initiated only by a person claiming rights or benefits, not by an employer.

(c) The United States Department of Labor, Veterans Employment and Training Service is authorized to act on charges of employment discrimination under USERRA.

(i) Prior to filing an action with the Veterans Employment and Training Service, an individual shall exhaust state administrative procedures.

(ii) If unsatisfied with the outcome of the State's grievance mechanism, an individual may file an administrative complaint.

(d) A person who receives notice from the Veterans Employment and Training Service of an unsuccessful attempt to resolve a complaint may request that the complaint be referred to the Attorney General of the United. States. The U.S. Attorney General is entitled to appear on behalf of, act as attorney for, and commence action for relief in an appropriate U.S. District Court.

(e) An individual may commence an action for relief if that person:

(i) has chosen not to file a complaint through the Veterans Employment and Training Service;

(ii) has chosen not to request that the complaint be referred to the U.S. Attorney General;

(iii) has been refused representation by the U.S. Attorney General.

R477-2-6. Records.

(1) DHRM shall maintain a computerized record for each employee that contains the following, as appropriate:

(a) Performance ratings;

(b) Records of actions affecting employee salary, current classification, title and salary range, salary history, and other personal data, status or standing.

(2) Agencies shall maintain the following personnel records for each employee:

(a) Applications for employment, Employment Eligibility Certification record, Form I-9, and other documents required by Immigration and Naturalization Service (INS) Regulations, under the Immigration Reform and Control Act of 1986, employee signed overtime agreement, personnel action records, notices of corrective or disciplinary actions, new employee orientation form, benefits notification forms, performance evaluation records, termination records.

(b) References to or copies of transcripts of academic, professional, or training certification or preparation.

(c) Copies of items recorded in the DHRM computerized record and other materials as required by agency management. The agency personnel record shall be considered a supplement to the DHRM computerized record and shall be subject to the rules governing personnel records.

(d) Leave and time records.

(e) Copies of any documents affecting the employee's conduct, status or salary. The agency shall inform employees of any changes in their records based on conduct, status or salary no later than when changes are entered into the file.

(3) Employees have the right to review their personnel records, upon request, in DHRM or the agency, as governed by law and as provided through agency policy.

(a) Employees may correct, amend, or challenge any information in the DHRM computerized or agency personnel record, through the following process:

(i) The employee shall request in writing that changes occur.

(ii) The employing agency shall be given an opportunity to respond.

(iii) Disputes over information that are not resolved between the employing agency and the employee, shall be decided in writing by the Executive Director, DHRM. DHRM shall maintain a record of the employee's letter; the agency's response; and the DHRM Executive Director's decision.

(4) When a disciplinary action is rescinded or disapproved upon appeal, forms, documents and records pertaining to the case shall be removed from the personnel record.

(a) When the record in question is on microfilm, a seal will be placed on the record and a suitable notice placed on the carton or envelope. This notice shall indicate the limits of the sealed section and the authority for the action.

(5) Upon employee termination, DHRM computerized records shall be retained for thirty years. Agency records shall be retained by the agency for a minimum of two years, then transferred for permanent storage to the State Archives Division to be retained for 28 years.

(6) Information classified as private in both DHRM and agency personnel and payroll records shall be available only to the following people:

(a) the employee;

(b) users authorized by law determined in writing by the DHRM Executive Director to have a legitimate "need-to-know";

(c) individuals who have the employee's written consent. A record of persons reviewing personnel records shall be maintained together with the reasons for access to the records.

(7) Utah is an open records state, according to Chapter 2, Title 63, the Government Records Access and Management Act. The following information concerning current or former state employees, volunteers, independent contractors, and members of advisory boards or commissions shall be given to the public upon written request where appropriate:

(a) the employee's name, except for undercover law enforcement personnel;

(b) gross compensation;

(c) salary range;

(d) contract fees;

(e) the nature of employer-paid benefits;

(f) the basis for and the amount of any compensation in addition to salary, including expense reimbursement;

(g) job title;

(h) performance plan;

(i) education and training background as it relates to qualifying the individual for the position;

(j) previous work experience as it relates to qualifying the individual for the position;

(k) date of first and last employment in state government;

(l) the final disposition of any appeal action by the Career Service Review Board;

(m) work location;

(n) a work telephone number;

(o) city and county of residence, excluding street address;

(p) honors and awards as they relate to state government employment;

(q) number of hours worked per pay period;

(r) gender;

(s) other records as approved by the State Records Committee.

(8) When an employee transfers from one state agency to another, the former agency shall transfer the employee's original file to the new agency. The file shall contain a record of all actions that have affected the employee's status and standing.

(9) The record the Department and agency hold including other private, protected or controlled records referenced in the agency personnel file shall be considered the official record during any disciplinary proceedings. An employee may request a copy of any documentary evidence used for disciplinary purposes or in any formal hearing regardless of the documents source, prior to such use. This shall not apply to documentary evidence used for rebuttal.

(10) Employee medical information obtained orally or documented in separate confidential files is considered private or controlled information. Communication must adhere to the Government Records Access and Management Act, Section 63-2-101. Employees who violate confidentiality are subject to state disciplinary procedures and may be personally liable for slander or libel.

(11) In compliance with the Government Records Access and Management Act, only information classified as "public" or "private" which can be determined to be related to and necessary for the disposition of a long term disability or unemployment insurance determination shall be approved for release on a need to know basis. The agency human resource manager or authorized manager in DHRM shall make the determination.

(12) Employees may verbally request the release of information for personal use; or authorize in writing the release of their performance records for use by an outside agent based on a need to know authorization. "Private" data shall only be released, except to the employee, after a written request has been evaluated and approved.

R477-2-7. Release of Information in a Reference Inquiry.

Reference checks or inquiries made regarding current or former public employees, volunteers, independent contractors, and members of advisory boards or commissions can be released if the information falls under a category outlined in R477-2-6(7), or if the subject of the record has signed and provided a reference release form for information authorized under Title 63, Chapter 2.

(1) The employment record is the property of Utah State Government with all rights reserved to utilize, disseminate or dispose of in accordance with the Government Records Access and Management Act.

(2) Additional information may be provided if authorized by law.

R477-2-8. Employment Eligibility Certification (Immigration Reform and Control Act - 1986).

(1) All career and non-career employees appointed on and after November 7, 1986, as a new hire, rehire, interdepartmental transfer or through reciprocity with or assimilation from another career service jurisdiction must provide verifiable documentation of their identity and eligibility for employment in the United States as required under the Immigration Reform and Control Act of 1986.

(2) Agency hiring officials will be responsible for verifying the identity and employment eligibility of these employees, by completing all sections of the Employment Eligibility Certification Form I-9 in conformance with Immigration and Naturalization Service (INS) Regulations. The I-9 form shall be maintained in the agency personnel file.

R477-2-9. Disclosure by Public Officers Supervising a Relative.

It is unlawful for a public officer to appoint, supervise, or to make salary or performance recommendations for relatives except as prescribed in the Nepotism Act, Section 52-3-1.

(1) A public officer supervising a relative shall make a complete written disclosure of the relationship to the chief administrative officer of the agency or institution, in accordance with Section 52-3-1.

R477-2-10. Employee Liability.

An employee who becomes aware of any occurrence which may give rise to a law suit, who receives notice of claim, or is sued because of an incident related to his employment, shall give immediate notice to his supervisor and to the Department of Administrative Services, Office of Risk Management.

(1) In most cases, under provisions of the Governmental Immunity Act (GIA), Sections 63-30-36, 63-30-37, employees shall receive defense and indemnification unless the case involves fraud, malice or the use of alcohol or drugs by the employee.

(2) If a law suit results against an employee, the GIA

stipulates that the employee must request a defense from his agency head in writing within ten calendar days.

KEY: administrative responsibility, confidentiality of information, fair employment practices, public information
June 27, 1998 67-19-6
Notice of Continuation July 1, 1997

R477. Human Resource Management, Administration.
R477-3. Control of Personal Service Expenditures.
R477-3-1. Control Responsibility.

Statewide control of personal service expenditures shall be the shared responsibility of the employing agency, the Governor's Office of Planning and Budget, the Department of Human Resource Management and the Division of Finance.

R477-3-2. Changes to the Position.

Agency management may request changes to Position Management Report which are justified as cost reduction or improved service measures.

(1) Changes in the numbers, job identification, or salary ranges of positions listed in the Position Management Report shall be approved by the Executive Director, DHRM or designee.

R477-3-3. Payroll Consistent With the Position Management Report.

No person shall be placed or retained on an agency payroll unless that person occupies a position listed in an agency's approved Position Management Report.

R477-3-4. Policy Exceptions.

The Executive Director, DHRM, may authorize exceptions to the provisions of this rule, consistent with R477-2-3(1).

KEY: administrative responsibility, personnel management, state expenditures
July 3, 1995 67-19-6
Notice of Continuation July 1, 1997

R477. Human Resource Management, Administration.
R477-4. Classification.
R477-4-1. Job Classification Methods.

The Executive Director, DHRM, shall prescribe the procedures and methods for classifying all positions not exempted by law from the classification plan. The Executive Director, DHRM, may authorize exceptions to provisions of the following rule, consistent with R477-2-3(1).

R477-4-2. Job Description.

DHRM shall maintain job descriptions, as appropriate, for all jobs in the classified plan.

(1) Job descriptions shall contain:

(a) Job title

(b) Distinguishing characteristics

(c) Statements of required knowledge, skills, and other requirements

R477-4-3. Position Classification Review.

(1) A classification review of a position may be conducted under the following circumstances:

(a) As part of a scheduled study.

(b) At the request of the agency, with the approval of the Executive Director, DHRM.

(i) DHRM shall determine if there are significant changes in the duties of a position to warrant a review.

(c) As part of a classification grievance review.

(2) When an agency is reorganized or a position redesigned, no classification reviews shall be conducted during a three months settling period unless otherwise determined necessary by DHRM.

(3) The Executive Director, DHRM, or designee shall make final classification decisions unless overturned by a hearing officer or court.

R477-4-4. Position Classification Grievances.

(1) A career service employee may grieve classification decisions involving the duties and responsibilities of their own position.

(a) This rule refers to grievances concerning the assignment of individual positions to appropriate jobs. The assignment of salary ranges is not included in this rule.

(b) Career service employees who grieve a classification decision must complete the job classification grievance form. The form must be received by DHRM within 10 working days of receiving notice of the decision from DHRM; otherwise the grievance will not be processed.

(2) The position classification grievance process is as follows:

(a) Grievances must be submitted to DHRM on a currently approved grievance form.

(b) The Executive Director, DHRM, shall assign the grievance to a classification panel of three or more impartial persons who are trained in the state's classification procedures.

(c) The classification panel may--

(i) Access previous fact finding reviews, classification decisions, and reports;

(ii) Request new or additional fact finding interviews;

(iii) Consider new or additional information.

(d) The classification panel shall determine whether the assigned classification was appropriate. The panel shall follow the appropriate statutes, rules, and procedures which were current at the time the decision was made. The panel shall report its findings and recommendations to the Executive Director, DHRM. The Executive Director, DHRM, shall make a decision and notify the grievant and the agency representative of the decision.

(e) The grievant may grieve the Executive Director's decision to an impartial classification hearing officer contracted by the state. The grievance must be received by DHRM within 10 working days of the employee receiving notice of the panel decision.

(g) The hearing officer shall review the classification and make the final decision.

KEY: administrative procedure, grievances, job descriptions, position classifications
July 2, 1996 67-19-6
Notice of Continuation July 1, 1997

R477. Human Resource Management, Administration.
R477-5. Filling Positions.
R477-5-1. Authorization to Fill a Position.

Agencies shall have sufficient funds to fill positions that are listed in the Position Management Report. The Executive Director, DHRM, may authorize exceptions to provisions of this rule, consistent with R477-2-3(1).

Utah Skill Match is the state's recruitment and selection system for career service positions. Agencies shall use Utah Skill Match unless an alternate system has been pre-approved by the Department of Human Resource Management.

R477-5-2. Selecting Non-Career Service Positions.

(1) Agencies and managers may use any process to select employees for exempt positions which complies with state and federal law and regulations.

R477-5-3. Career Service (Schedule B) Positions.

(1) Selection of career service employees shall be governed by the following:

(a) DHRM standards and procedures;

(b) Career service principles;

(c) Equal employment opportunity principles;

(d) Utah Code governing nepotism found in Section 52-3-1.

(e) Reasonable accommodation for qualified applicants covered under the Americans With Disabilities Act.

(2) DHRM shall take affirmative action to ensure that members of legally protected classes have the opportunity to apply and be considered for available positions in state government.

R477-5-4. Order of Selection for Career Service Positions.

(1) Prior to implementing the steps for order of selection, agencies may administer the following personnel actions:

(a) Reemployment of a veteran eligible under USERRA;

(b) Voluntary reassignment or transfer for the purposes of reasonable accommodation under the Americans with Disabilities Act;

(c) Fill positions as a result of return to work from long term disability or workers compensation at the same or lesser salary range;

(d) Voluntary or involuntary reassignments made in order to avoid a reduction in force, or for reorganization or bumping purposes;

(e) Voluntary reassignments, involuntary reassignments, career exchange assignments or other movement of qualified career service employees at the same or lesser salary range to better utilize skills or assist management in meeting the organization's mission;

(f) Reclassification.

(2) Agencies may carry out all the following steps for recruitment and selection of vacant career service positions concurrently. Appointing authorities may make appointments according to the following order of selection:

(a) First, agencies shall make appointments from the statewide reappointment register with the names of employees who meet the job qualifications and who apply for the position. See R477-12-3(7) for additional reinstatement criteria.

(b) Second, agencies may make appointments within an agency through promotion of a qualified career service employee, or across agency lines through transfer or promotion of qualified career service employees, career exchange assignments to a higher salary range, conversions from schedule A to schedule B as authorized by R477-6-1.(3), or rehire of qualified former career service employees at agency discretion.

(c) Third, agencies may make appointments from a list of qualified applicants certified as eligible for appointment to the position, or from another competitive process approved by the Executive Director, DHRM.

R477-5-5. Recruitment Within Agencies.

(1) Agencies shall provide information about internal job opportunities to their employees. Agencies shall develop a consistent, internal recruitment strategy for job families and shall communicate this strategy to their employees.

(a) For agency recruitments when Utah Skill Match is not used, notices shall be announced for a minimum of 5 days within an agency, an organizational unit or work group. Each notice shall include an opening and closing date.

(b) When Utah Skill Match is used, agencies are required to provide their employees information about the Utah Skill Match system.

(c) Recruitment is not required for personnel actions outlined in R477-5-4.(1).

(d) Appointment of employees from the statewide reappointment register must comply with the order of selection specified in R477-5-4.

R477-5-6. Transfer and Voluntary Reassignment.

(1) The agency that receives a transfer or voluntary reassignment of an employee shall verify his career status and that the employee meets the job qualifications for the position.

(a) An employee with a disability who is otherwise qualified may be eligible for transfer or voluntary reassignment to a vacant position within the agency as a reasonable accommodation measure, unless it creates an undue hardship on the agency.

(2) Payroll actions involving transfer or voluntary reassignment shall only be allowed at the beginning of a payroll period.

(3) Agencies receiving a transfer or voluntary transfer of an employee shall accept all of that employee's previously accrued sick, annual, and converted sick leave on the official leave records.

(4) A career service employee assimilated from another career service jurisdiction shall accrue leave at the same rate as a career service employee with the same seniority.

R477-5-7. Involuntary Reassignment.

(1) Positions may be filled by involuntarily reassigning staff without a reduction in pay within the agency or across agencies with approval of the respective agency heads for administrative reasons such as budget constraints, corrective action pursuant to R477-10-2, or the need to move persons to positions that better utilize their skills. However, involuntary transfers shall not be permitted if the involuntary reassignment requires the employee to commute or relocate beyond a 50 mile

radius, unless:

(a) The policy is communicated to the employee at employment;

(b) The agency will either pay to move the employee consistent with R25-6-8 and Department of Administrative Services, Division of Finance Policy 05-04.03, or reimburse commuting expenses up to the cost of a move.

R477-5-8. Rehire.

(1) Former career service employees may be eligible for rehire to any classification for which they are qualified.

(a) Rehired employees must serve a new probationary period, as designated in the official job description. Rehired employees may also be required to undergo further examination.

(b) Rehired former career service employees may be offered a salary equivalent to their previous career service pay rate. However, their salary may not be less than step one of the new pay range nor more than the maximum of the new pay range.

(2) Career Service exempt employees cannot be rehired to career service positions, except as prescribed by Section 67-19-17.

R477-5-9. Public Recruitment and Recruitment Across Agencies.

(1) Recruitment shall comply with federal and state laws and DHRM rules and procedures.

(a) Recruitment shall include the following:

(i) job information about available positions;

(ii) information about the Utah Skill Match system;

(iii) documented communication regarding examination methods and opening and closing dates, if applicable;

(iv) a strategy for affirmative action, if applicable.

(2) Job information for career service positions shall be announced publicly for a minimum of 5 days if a Utah Skill Match search does not produce a sufficient pool of qualified applicants.

R477-5-10. Examinations.

(1) Examinations shall be designed to measure and predict success of individuals on the job. Appointment to career service positions shall be made through open, competitive selection.

(2) The Executive Director, DHRM, shall establish the standards for the development, approval and implementation of examinations. Examinations shall include the following:

(a) A documented job analysis;

(b) An initial, unbiased screening of the individual's qualifications;

(c) Security of examinations and ratings;

(d) Timely notification of individuals seeking positions;

(e) Elimination from further consideration of individuals who abuse the process;

(f) Unbiased evaluation and results;

(g) Reasonable accommodation for qualified individuals with disabilities.

(3) When examinations utilizing ratings of training and experience are administered, agencies may establish maximum years of credit for training and experience for the purpose of rating qualified applicants. Separate maximums may be set for years of training and years of experience. These maximums shall be included in the agency's recruitment notice.

(4) The Executive Director, DHRM, may enter into delegation agreements with agencies to develop and administer examination instruments, subject to periodic administrative audits by DHRM.

R477-5-11. Hiring Lists.

(1) The hiring list shall include the names of qualified and available applicants who have successfully completed all applicable examination(s) and are eligible for appointment or conditional appointment.

(a) Hiring lists shall be constructed using Utah Skill Match or another competitive process approved by DHRM. All competitive processes shall be based on job-related criteria.

(b) All applicants included on a hiring list shall be examined with the same examination or examinations.

(c) An individual shall be considered an applicant when he is determined to be both qualified and available for a particular position identified through a specific requisition.

(2) An applicant may be removed from further consideration when he, without valid reason, does not pursue appointment to a position.

(3) An individual who falsifies any information in the job application, examination or evaluation process may be disqualified from further consideration prior to hire, or disciplined if already hired.

(4) Five percent of the total possible score shall be added to the rating or an appropriate adjustment shall be made on the hiring list for any applicant claiming veterans preference who:

(a) has served more than 180 consecutive days of active duty in and honorably discharged or released from the armed forces of the United States; or

(b) is the unremarried surviving spouse of any veteran.

(5) Ten percent of the total possible score shall be added to the rating or an appropriate adjustment shall be made on the hiring list for any applicant claiming veterans preference who:

(a) Was honorably discharged or released from active duty with a disability incurred in the line of duty or is a recipient of a Purple Heart, whether or not that person completed 180 days of active duty.

(b) Is the unremarried surviving spouse of any disabled veteran.

(6) The Executive Director, DHRM may enter into delegation agreements with agencies to develop and maintain hiring lists, and certify eligible applicants to their appointing authorities, subject to periodic administrative audits by DHRM.

(7) Selection of intra-departmental RIF employees shall be made in order of their retention points.

(a) The employee with the highest retention points shall be reappointed first, provided that the employee:

(i) Meets job qualifications; and

(ii) Previously attained the position level comparable to the vacancy.

(8) When more than one RIF employee is certified by DHRM, the appointment shall be made from the most qualified.

(9) The appointing authority shall demonstrate and document that equal consideration was given to all applicants whose final score or rating is equal to or greater than that of the

applicant hired.

(10) The appointing authority shall ensure that any employee hired meets the job requirements as outlined in the official job description.

R477-5-12. Time-Limited Exempt Positions.

The Executive Director, DHRM, may approve the creation and filling of non-career service positions for temporary, emergency, seasonal, intermittent or other special and justified agency needs. These appointments shall be "at will," as described below. See Section 67-19-15 for description of positions exempt from career service employment.

(1) Time-limited, temporary or seasonal non-career appointments, such as schedules AJ, AL and TE, may be made without competitive examination, provided job requirements are met.

(a) The following appointments are temporary, and may not receive benefits:

(i) AJ appointments for positions which are half-time or more shall last no longer than nine months in any 12 consecutive month period.

(ii) TE appointments shall last no longer than 90 working days in the same position.

(b) Appointments under schedules AE, AI and AL shall be non-career positions. AE employees shall receive benefits. AI and AL employees may receive benefits on a negotiable basis.

(i) Schedule AL appointments shall work on time-limited projects for a maximum of two years or on projects with time limited funding.

(ii) Only schedule A appointments made from a hiring list as prescribed by R477-5-11.(1) may be considered for conversion to career service.

(2) Appointments to fill an employee's position who is on approved leave-without-pay shall only be made temporarily. A notice of appointment shall be signed by the parties.

R477-5-13. Job Sharing.

Agency management may establish a job sharing program as a means of increasing opportunities for career part-time employment. In the absence of an agency program, individual employees may request approval for job sharing status through agency management.

R477-5-14. Internships and Cooperative Education.

Interns or students in a practicum program may be appointed with or without competitive selection. Intern appointments shall be to temporary, career service exempt positions.

R477-5-15. Reorganization.

(1) When a department or agency is reorganized, but an employee's position does not change substantially, he shall not be required to compete for his current position. However, a reduction in the number of positions in a certain class shall be treated as a reduction-in-force.

R477-5-16. Career Mobility Programs.

Employees and agencies are encouraged to promote career mobility programs.

(1) Agencies may provide career mobility assignments inside or outside state government to qualified employees. Career mobility programs are designed to develop agencies' resources and to enhance the employee's career growth.

(a) Agencies shall establish policies subject to review and approval by the Executive Director, DHRM, governing career mobility programs.

(b) An eligible employee, the agency or supervisor may initiate a career mobility.

(c) Interested participants shall meet the job requirements of the career mobility position.

(2) Agencies shall develop and use written career mobility contract agreements between employees and supervisors to outline all program provisions and requirements. The career mobility shall be both voluntary and mutually acceptable.

(a) Programs shall conform to equal employment opportunities and practices.

(b) Participating employees shall retain all rights, privileges, entitlements, tenure and benefits from their previous position while on career mobility.

(c) If a reduction in force affects a position vacated by a participating employee, the participating employee shall be treated the same as other RIF employees.

(3) Career mobility programs require written contracts between both employees and agency management.

(4) If a career mobility assignment does not become permanent at its conclusion, employees shall return to their previous position or a similar position. They shall receive the same salary rate they would have received without the career mobility assignment.

(a) Employees who have not attained career service status prior to the career mobility program cannot permanently fill a career service position until they have obtained career service status through a competitive process.

R477-5-17. Assimilation.

(1) Employees assimilated by the state from another career service system shall receive career service status after completing a probationary period if they were originally selected through a competitive examination process judged by the Executive Director, DHRM, to be equivalent to the process used in the state career service.

(a) Assimilation agreements shall specify whether there are employees eligible for reemployment under USERRA in positions affected by the agreement.

R477-5-18. Underfill.

(1) Underfill shall only be used in circumstances that meet the following conditions:

(a) The position is in the same classification series, as reflected on the position management report. No position shall be underfilled for more than one year per range level in the series, unless the employee is on corrective action, does not meet the job requirements for the higher level due to an absence for military service covered under USERRA, or as otherwise stipulated in the job description.

(b) There must be discernible and documented differences in job tasks, duties, responsibilities, qualifications, knowledge, skills and abilities between levels in career ladders.

(c) Agencies utilizing underfill must write guidelines and rules informing supervisors of their responsibility to include:

(i) the purpose of underfill;

(ii) the expectations of the supervisor on how the employee can advance within the series;

(iii) the controls that ensure employees advance to their next level within the series on the position management report are in place;

(iv) employees who are not advanced are informed why and what they must do in the future to advance to the next level.

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R477. Human Resource Management, Administration.
R477-6. Employee Status and Probation.
R477-6-1. Career Service Status.

(1) Only employees who are appointed through an approved competitive process shall be eligible for appointment to a career service position.

(2) Employees shall complete a probationary period in a competitive career service position prior to receiving career service status.

(3) Exempt employees may only convert to career service status under the following conditions:

(a) They previously held career service status; or

(b) They were hired from a hiring list as prescribed by R477-5-11.(1), and complete a probationary period.

R477-6-2. Probationary Period.

The probationary period allows agency management to evaluate an employee's ability to perform the duties, and responsibilities, skills and other related requirements of the assigned career service position. The probationary period shall be considered part of the selection process.

(1) Employees shall receive full and fair opportunity to demonstrate competence in the job in a career position. As a minimum, a performance plan shall be established and the employee shall receive feedback on performance in relation to that plan.

(a) At the end of the probationary period, employees shall receive performance evaluations. Evaluations shall be entered into HRE as the performance evaluation which reflects successful or unsuccessful completion of probation.

(2) Each career position shall be assigned a probationary period consistent with its job.

(a) The probationary period may not be extended except for periods of leave without pay or workers compensation leave.

(b) The probationary period may not be reduced after appointment.

(3) Employees in career service positions who work at least 50 percent of the time or more shall acquire career service status after working the same amount of elapsed time in hours as a full-time employee would work with the same probationary period.

(4) Probationary periods may be interrupted by military service covered under USERRA.

(5) An employee serving probation in a competitive career service position is eligible for transfer or voluntary reassignment and may be promoted to another competitive career service position. Each new appointment shall include a new probationary period unless the agency determines that the required knowledge, skills, and abilities of the old and new position are similar enough not to warrant a new probationary period.

(6) A reemployed veteran shall be required to complete the remainder of the probationary period if it was not completed in his pre-service employment.

R477-6-3. Temporary Transitional Position.

(1) Employees on probation who are temporarily disabled may be placed in another position with lighter duty or reduced responsibility and pay.

(a) This accommodation shall occur for no longer than one year from the date of disability.

(b) Time spent in a transitional position does not reduce the required probationary period in the primary position.

R477-6-4. Policy Exceptions.

The Executive Director, DHRM, may authorize exceptions to the provisions of this rule, consistent with R477-2-3(1).

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R477. Human Resource Management, Administration.
R477-7. Compensation.
R477-7-1. Pay Plans.

(1) DHRM shall develop or modify pay plans for compensating employees.

(2) Market comparability salary range increases shall be legislatively approved.

R477-7-2. Allocation to the Pay Plans.

(1) Each job shall be assigned to a salary range on the applicable pay plan, except where compensation is established by statute.

(2) Salary range determination for benchmark jobs shall be based on salary survey data. The salary ranges for other jobs are determined by relative ranking with the appropriate benchmark job.

R477-7-3. Appointments.

(1) All appointments shall be placed on a salary step in the DHRM approved salary range for the job. Hiring officials shall receive approval from their agency head or agency human resource designee before making appointment offers to individuals.

(2) Re-employed veterans under USERRA shall be placed in their previous position or a similar position at their previous salary range. Reemployment shall include the same seniority status, and any cost of living allowances, reclassification of the veteran's pre-service position, or market comparability adjustments that would have affected the veteran's pre-service position during the time spent by the affected veteran in the uniformed services. Performance related salary increases are not included.

R477-7-4. Salary.

(1) Merit increases - The following are applicable if merits are authorized and funded by the legislature:

(a) Employees who receive a successful or higher rating on their performance evaluations and who have been in a paid status by the state for at least six months shall receive a maximum merit increase of one salary step on the first pay period in July.

(b) Employees designated as schedule AJ are not eligible for a salary step increase. Merit increases for employees in schedule AL, AM, or AS are not mandatory unless they are receiving benefits, and the increase is approved in agency policy.

(2) Highest Level Performer

(a) Employees designated by the agency as a highest level performer consistent with subsection R477-10(2) shall receive, as determined by the agency head, either:

(i) a salary step increase, or;

(ii) a bonus; or

(iii) administrative leave; or

(iv) other appropriate recognition as determined by the agency.

(b) Employees on a longevity step are not eligible for a salary step increase but may receive a bonus, administrative leave or other appropriate recognition as determined by the agency.

(3) Promotions and Reclassifications

(a) Employees promoted or reclassified to a position with a salary range exceeding the employee's current salary range maximum by two or three salary steps shall receive a salary increase of a minimum of one salary step and a maximum of four salary steps. Employees who are promoted or reclassified to a position with a salary range exceeding the employee's current salary range maximum by four salary steps or more shall receive a salary increase of a minimum of two salary steps and a maximum of four salary steps. Employees may not be placed higher than the highest salary step or lower than the beginning salary step in the new salary range.

(b) To be eligible for a promotion, an employee shall:

(i) meet the job requirements/skills specified in the job description and position specific criteria as determined by the agency for the position unless the promotion is to a career service exempt position;

(ii) have received a successful or higher performance rating within the 12 month period preceding the promotion;

(iii) not be currently in a period of constant review;

(iv) have successfully completed a period of constant review during the past twelve months, if applicable.

(c) Employees who have their positions reclassified to a job with a lower salary range shall retain their current salary unless this salary exceeds the maximum of the new salary range. In this case, longevity rule R477-7-4(d) is in effect.

(4) Longevity

(a) An employee shall receive a longevity increase of 2.75 percent when:

(i) They have been in state service for eight years or more. They may accrue years of service in more than one agency, and such service is not required to be continuous.

(ii) They have been at the maximum salary step in the current salary range for at least one year and received a performance appraisal rating of successful or higher within the 12 month period preceding the longevity increase.

(b) Employees on a longevity step shall be eligible for the same across-the-board pay plan adjustments authorized for all other employee pay plans.

(c) Employees on a longevity step shall only be eligible for additional step increases every three years. To be eligible, employees must receive a performance appraisal rating of successful or higher within the 12 month period preceding the longevity increase.

(d) Employees on a longevity step who are involuntarily reassigned or reclassified to a lower salary range, shall retain their salary.

(e) Employees on a longevity step who are promoted or reclassified to a higher salary range shall only receive an increase if their current salary step is less than the highest salary step of their new range.

(f) Agency heads or time-limited exempt employees identified in R477-5-12 are not eligible for the longevity program.

(5) Administrative Adjustment

(a) Employees who have had their position allocated by DHRM from one job to another job or salary range for administrative purposes, shall not receive an adjustment in salary.

(6) Voluntary Reassignment

(a) Employees who voluntarily accept a position with a salary range maximum two or three salary steps lower than their current position shall be placed at the salary step within the new salary range corresponding to a salary decrease of at least one salary step.

(b) Employees who voluntarily accept a position with a salary range maximum four salary steps or more lower than their current salary range, shall be placed at the salary step within the new salary range corresponding to a salary decrease of at least two salary steps.

(c) Employees who voluntarily accept a position in a lower salary range, shall not receive a new salary lower than the lowest salary step, or higher than the highest salary step of the new salary range.

(7) Transfer

Employees who transfer from one position to another position with the same salary range may not be offered salary increases effective the same date as the transfer.

(8) Demotions

Employees demoted consistent with R477-11-2 shall receive a salary reduction of one or more salary steps as determined by the agency head or designee. The agency head or designee may move an employee to a position with a lower salary range concurrent with the salary reduction.

(9) Payroll actions

Payroll actions shall be effective on the first day of a payroll period closest to the salary action, with the exception of new hires, rehires, and terminations.

(10) Productivity step adjustment

Agency management may establish policies to reward employees who assume additional workloads that eliminate a position for at least one year with a salary increase of up to four salary steps. Employees at the top salary step of their salary range or in longevity shall be given a one time lump sum bonus award of 2.75% of their annual salary.

(a) To implement this program, agencies shall apply the following criteria:

(i) Either the employees or management can make the suggestion;

(ii) Employees and management agree;

(iii) The agency head approves;

(iv) A written program policy achieves increased productivity through labor/management collaboration;

(v) The agency human resource representative approves;

(vi) The position will be abolished from the position authorization plan for a minimum of one year;

(vii) Staff receives additional duties which are substantially above a normal full workload;

(viii) The same or higher level of service or productivity is achieved without accruing additional overtime hours;

(ix) The total dollar increase, including benefits, awarded to the workgroup as a result of the additional salary steps does not exceed 50 percent of the savings generated by eliminating the position;

(11) Administrative Salary Increase

The executive director or commissioner authorizes and approves Administrative Salary increases under the following parameters:

(a) Employees shall receive one or more steps up to the maximum of their salary range.

(b) Administrative Salary increases shall only be granted when the agency has sufficient funding within their annualized base budgets for the fiscal year in which the adjustment is given.

(c) Justifications for Administrative Salary Increases shall be --

(i) In writing;

(ii) Approved by the executive director or commissioner;

(iii) Supported by issues such as: special agency conditions or problems, equity issues, or other unique situations or considerations in the agency.

(d) The executive director or commissioner is the final authority for salary actions authorized within these guidelines. The executive director or commissioner or designee shall answer any challenge or grievance resulting from an Administrative Salary Increase.

(e) Administrative salary increases may be given during the probationary period. These increases alone do not constitute successful completion of probation or the granting of career service status.

(12) Administrative Salary Decrease

The executive director or commissioner authorizes and approves administrative salary decreases for non-disciplinary reasons according to the following:

(a) Employees shall receive a one or more step decrease not to exceed the minimum of their salary range.

(b) Justification for administrative salary decreases shall be:

(i) in writing;

(ii) approved by the executive director or commissioner;

(iii) supported by issues such as; previous written agreements between the agency and employees to include career mobility; reasonable accommodation, special agency conditions or problems, equity issues, or other unique situations or considerations in the agency.

(c) The executive director or commissioner is the final authority for salary actions within these guidelines. The executive director or commissioner or designee shall answer any challenge or grievance resulting from an administrative salary decrease.

R477-7-5. Incentive Awards.

Only agencies with a written and published incentive award policy approved by DHRM may reward employees with cash incentive awards, non-cash incentive awards and bonuses. Policies shall be consistent with standards established in these rules and with DAS Division of Finance rules and procedures.

(1) Agencies may reward employees or groups of employees who propose workable cost saving measures and other worthy acts with a cash incentive award.

(a) Individual awards shall not exceed $2,000 per occurrence and $4,000 in a fiscal year.

(b) Awards of $100 or more must be documented, evaluated, and approved by the agency. A copy shall also be maintained in the agency's individual employee file. These incentive awards are subject to post audit by DHRM.

(2) Non-Cash Incentive Awards

Agency heads may recognize employees or groups of

employees with non-cash incentive awards.

(a) Individual non-cash incentive awards shall not exceed a value of $50 per occurrence and $200 for each fiscal year.

(b) Non-cash incentive awards may not include cash equivelants such as gift certificates or tickets for admission.

(3) Bonus Awards

Agency heads may authorize bonus awards for individual or group productivity accomplishments. Each award shall not exceed $2,000. Awards are subject to post audit by DHRM.

R477-7-6. Employee Benefits.

(1) Agencies shall explain all benefits provided by the state to new hires or rehires within five working days of the hire date.

(2) Agency payroll or human resource staff shall submit personnel action forms to the appropriate agency levels within ten days of hire date.

(3) Employees must elect to enroll in the life, health and dental plans within 60 days of the hire date to avoid having to provide proof of insurability. Agencies shall submit the enrollment forms to Group insurance within three days of the date entered on the enrollment card.

(4) Flex Benefits

(a) The annual open enrollment period will be held each November for the following FLEX plan year. Exceptions to this rule are as follows:

(i) New employees wishing to participate in the FLEX benefits program shall enroll within the first 60 days of their employment. Coverage becomes effective on their employment date.

(ii) Employees who have a change in family status, such as marriage, divorce, or birth of a child, may enroll within 60 days of such event. Proper documentation, such as marriage license, divorce decree, or birth certificate, plus a completed FLEX family status change form must be received by the PEHP FLEX Plan Department within 60 days of the change in family status.

(b) Employees must re-enroll each year to participate in the FLEX benefits program.

(c) An employee's designated FLEX payroll deduction shall not be changed during the course of a year unless there is a change in family status.

(d) To be eligible for reimbursement, employees must submit eligible FLEX claims accompanied by documentation to the DHRM Benefits Office no later than the first Thursday of each pay period.

(e) The claim submission deadline for any plan year shall be 90 days following the end of the calendar year. To be eligible for reimbursement, the FLEX claim must be received at the PEHP FLEX Plan Department by close of business on the established plan year deadline.

(5) Employees working less than 40 hours per pay period are ineligible for benefits. Employees working 40 hours, except those identified in R477-5-12, or more per pay period shall be eligible for leave benefits on a pro-rated basis.

(6) Re-employed veterans under USERRA shall be entitled to the same employee benefits given to other continuously employed eligible employees to include seniority based increased pension and leave accrual.

R477-7-7. Employees Converting from Career Service to Schedule AD, AR, or AS.

(1) Career service employees in positions meeting the criteria for career service exempt Schedule AD, AR, or AS shall have 60 days to elect to convert from career service to career service exempt. As an incentive to convert, employees shall be provided the following:

(a) a base salary increase of one (1) to three (3) salary steps, as determined by the agency head. Employees at the maximum of their current salary range or on longevity shall receive, in lieu of the salary step adjustment, a one time bonus of 2.75 percent, 5.5 percent or 8.25 percent to be determined by the agency head;

(b) State paid term life insurance coverage if determined eligible by the Group Insurance Office to participate in the Term Life Program, Public Employees Health Plan:

(i) Salaries less than $50,000 shall receive $125,000 of term life insurance;

(ii) Salaries between $50,000 and $60,000 shall receive $150,000 of term life insurance;

(iii) Salaries more than $60,000 shall receive $200,000 of term life insurance.

(2) Employees electing to convert to career service exempt after their 60 days election period shall not be eligible for the salary increase, but shall be entitled to apply for the insurance coverage through the Group Insurance Office.

(3) Employees electing not to convert to career service exemption shall retain career service even though their position shall be designated as Schedule AD, AR or AS. When these career service employees vacate these positions, subsequent appointments shall be career service exempt.

(4) An agency head may reorganize so that a current career service exempt position no longer meets the criteria for exemption. In this case, the employee shall be designated as career service if he had previously earned career service. However, he shall not be eligible for the severance package or the life insurance. In this situation, the agency and employee shall make arrangements through the Group Insurance Office to discontinue the coverage.

(5) Career service exempt employees without prior career service status shall remain exempt. When the employee leaves the position, subsequent appointments shall be done consistent with R477-5.

(6) Agencies shall communicate to all impacted and future eligible employees the conditions and limitations of this incentive program.

R477-7-8. Employees on Schedule AB.

(1) Employees on schedule AB shall be provided the following benefits:

(a) Severance pay as defined in R477-7-9;

(b) State paid term life insurance coverage if determined eligible by the Group Insurance Office to participate in the Term Life Program Public Employees Health Plan:

(i) Salaries less than $50,000 shall receive $125,000 of term life insurance;

(ii) Salaries between $50,000 and $60,000 shall receive $150,000 of term life insurance;

(iii) Salaries more than $60,000 shall receive $200,000 of

term life insurance.

R477-7-9. Severance Benefit for Employees on Schedules AB, AD, and AR.

(1) Exempt employees on schedule AB, AD, and AR who are involuntarily terminated from state service shall receive a severance benefit equal to one week of pay for each year of consecutive exempt service accrued after January 1, 1993.

(2) Exempt employees on schedule AB, AD, and AR who voluntarily accept reassignment to a position with a lower salary range, without a break in service, shall receive a severance benefit equal to the difference between their current hourly rate of pay and their new hourly rate multiplied by the number of accrued annual leave, converted sick leave and excess hours.

(3) A severance benefit shall not be paid to employees:

(a) whose statutory term has expired without reappointment;

(b) who are retiring from state service or are voluntarily separating

from the executive branch;

(c) who are eligible for retirement; or

(d) who are discharged for cause.

R477-7-10. Human Resource Transactions.

The Executive Director, DHRM, shall publicize procedures for processing payroll/human resource transactions actions and documents.

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R477. Human Resource Management, Administration.
R477-8. Working Conditions.
R477-8-1. Agency Policies and Exemptions.

(1) Each agency shall write its own policies for work schedules, overtime, leave, and other working conditions consistent with these rules.

(2) The Executive Director, DHRM, may authorize exceptions to this rule, consistent with R477-2-3(1).

R477-8-2. Work Period.

(1) Tasks shall be assigned and wages paid in return for work completed. During the state's standard work week, each employee is responsible for fulfilling the essential functions of his job.

(a) The state's standard work week begins Saturday and ends the following Friday.

(b) State offices are typically open Monday through Friday from 8 a.m. to 5 p.m. Agencies may adopt extended business hours to enhance service to the public, consistent with overtime provisions of the rules R477-8-6.

(c) Employees may negotiate for flexible starting and quitting times with their immediate supervisor as long as scheduling is consistent with overtime provisions of the rules R477-8-6.

(d) Agencies may implement alternative work schedules approved by the Director.

(e) Employees are required to be at work on time. Employees who are late regardless of the reason, including inclement weather, shall make up the lost time by using accrued leave, leave without pay or, with management approval, adjust their work schedule.

R477-8-3. Bus Passes.

Agencies may participate in the purchase of bus passes for employees.

R477-8-4. Telecommuting.

(1) Telecommuting is an agency option, not a universal employee benefit. Agencies utilizing a telecommuting program shall:

(a) Establish a written policy governing telecommuting.

(b) Enter into a written contract with each telecommuting employee to specify conditions, such as use of state or personal equipment, and results such as identifiable benefits to the state and how customer needs are being met.

(c) Not allow telecommuting employees to violate overtime rules.

R477-8-5. Lunch and Break Periods.

(1) Each full-time work day shall include a minimum of 30 minutes non-compensated lunch period. This lunch period is normally scheduled between 11:00 a.m. and 1:00 p.m. for a regular day shift.

(2) Employees may take a 15 minute compensated break period for every four hours worked.

(3) Lunch and break periods shall not be adjusted or accumulated to accommodate a shorter work day. Any exceptions must be approved in writing by the Executive Director, DHRM.

R477-8-6. Overtime.

The state's policy for overtime is adopted and incorporated from the Fair Labor Standards Act, 29 CFR Parts 500 to 899, 1991 edition.

(1) Management may direct an employee to work overtime. Each agency shall develop internal rules and procedures to ensure overtime usage is efficient and economical. These policies and procedures shall include:

(a) Prior supervisory approval for all overtime worked;

(b) Recordkeeping guidelines for all overtime worked;

(c) Verification that there are sufficient funds in the budget to compensate for overtime worked.

(2) Overtime compensation standards are identified for each job title in as either FLSA non-exempt, or FLSA exempt.

(a) Employees may appeal their FLSA designation to their agency human resource office and DHRM concurrently. Further appeals must be filed directly with the United States Department of Labor, Wage and Hour Division. The provisions of Sections 67-19-31 and 67-19a-301 and Title 63, Chapter 46b shall not apply for FLSA appeals purposes.

(3) FLSA non-exempt employees shall be eligible for overtime when they actually work more than 40 hours a week. Leave and holiday time taken within the work period shall not count as hours worked when calculating overtime accruing. Hours worked over two or more weeks shall not be averaged out with the exception of certain types of law enforcement, fire protection, and correctional employees.

(a) Non-exempt employees shall sign a prior agreement authorizing management to compensate them for overtime worked by actual payment or time off at time and one-half.

(b) Non-exempt employees may receive compensatory time for overtime, up to a maximum of 80 hours. Only with prior approval of the Executive Director, may compensatory time accrue up to 240 hours for regular employees or up to 480 hours for peace/correctional officers, emergency or seasonal employees. Once employees reach the maximum, they shall be paid for additional overtime on the pay day for the period in which it was earned.

(4) FLSA exempt employees shall be eligible for overtime when they actually work more than 80 hours in a work period. Leave and holiday time taken within the work period shall not count as hours worked when calculating overtime. Each agency shall compensate FLSA exempt employees who work overtime by giving them time off. For each hour of overtime worked, an employee shall receive an hour off. Compensatory hours earned in excess of a base of 80 shall be paid down to 80.

(a) Agencies shall establish in written policy a uniform overtime year and communicate it to employees. If an agency fails to establish a uniform overtime year, the Executive Director and the Director of Finance, Department of Administrative Services, will determine the date for the agency at the end of one of the following pay periods: Five, Ten, Fifteen, Twenty, or the last pay period of the calendar year.

(b) Any overtime earned by FLSA exempt employees is not an entitlement, a benefit, nor a vested right.

(c) Any overtime earned by FLSA exempt employees shall lapse at the end of an agency's annual overtime year.

(d) Any compensatory overtime earned by FLSA exempt employees shall lapse when they transfer to another agency,

terminate, retire or otherwise do not return to work before the end of the overtime year.

(e) The agency director may approve overtime for division and deputy directors, but overtime shall not be compensated with actual payment.

(5) Law enforcement/correctional officers

(a) To be considered for overtime compensation under this rule, a law enforcement or correctional officer must meet the following criteria:

(i) be a uniformed or plainclothes sworn officer;

(ii) be empowered by statute or local ordinance to enforce laws designed to maintain public peace and order, to protect life and property from accident or willful injury, and to prevent and detect crimes; and

(iii) have the power to arrest.

(b) Law enforcement or correctional officers designated FLSA non-exempt and covered under this rule shall accrue overtime when they work more than 171 hours in 28 consecutive days. An agency may select a work period of 86 hours within a 14-day period for law enforcement employees, but all changes shall conform to the following:

(i) The Fair Labor Standards Act, Section 207(k);

(ii) The State's payroll period;

(iii) The approval of the Executive Director.

(c) Fire protection employees shall accrue overtime when they work more than 212 hours in 28 consecutive days.

(d) The work period selection becomes permanent when scheduled and may not be changed to evade overtime compensation rules.

(6) Compensatory Time

(a) Employees and agency management shall arrange for use of compensatory time as soon as possible without unduly disrupting agency operations or endanger public health, safety or property.

(b) Compensatory time balances are paid down to zero when employees transfer from one agency to a different agency.

(7) Time Reporting

(a) FLSA non-exempt employees must complete and sign a State approved biweekly time sheet. Time sheets developed by the agency shall have the same elements of the State approved time sheet and be approved by the Department of Administrative Services, Division of Finance.

(b) FLSA exempt employees who work more than 80 hours in a work period must record their total hours worked, and/or the compensatory time used on their biweekly time sheet. All hours must be recorded in order to claim overtime. Completion of the time sheet is at agency discretion when no overtime is worked during the work period.

(8) Hours Worked: FLSA non-exempt employees shall be compensated for all hours they are permitted to work. Hours worked shall be accounted for as long as the state permits employees to work on its behalf, regardless of the reason for the work. Employees who work unauthorized overtime may be subject to disciplinary actions.

(a) All time that FLSA non-exempt employees are required to wait for an assignment while on duty, before reporting to duty, or before performing their activities is counted towards hours worked.

(b) Time spent waiting after being relieved from duty is not counted as hours worked if one or more of the following conditions apply:

(i) The employee arrives voluntarily before their scheduled shift and waits before starting duties;

(ii) The employee is completely relieved from duty and allowed to leave the job;

(iii) The employee is relieved until a definite specified time;

(iv) The relief period is long enough for the employee to use as the employee sees fit.

(c) On-call time: Employees required by agency management to be available for on-call work shall be compensated for on-call time at a rate of 1 hour for every 12 hours the employee is on-call.

(i) Time is considered "on-call time" when the employee has freedom of movement in personal matters as long as he/she is available for call to duty.

(ii) An employee must be directed by his supervisor, either verbally or in writing, that he is on call for a specified time period. Carrying a beeper or cell phone shall not constitute on call time without a specific directive from a supervisor.

(iii) The employee shall record the hours spent in on call status on his time sheet in order to be paid.

(d) Stand-by time: Employees restricted to "stand-by" at a specified location ready for work must be paid full time or overtime, as appropriate. Workers must be paid for stand-by time if they are required to stand by their posts ready for duty, even during lunch periods, equipment breakdowns, or other temporary work shut-downs.

(e) The meal periods of guards, police, and other public safety or correctional officers and firefighters who are on duty more than 24 consecutive hours must be counted as working time, unless an express agreement excludes the time.

(f) Commuting and Travel Time:

(i) Normal commuting time from home to work and back shall not count towards hours worked.

(ii) Time employees spend traveling from one job site to another during the normal work schedule shall count towards hours worked.

(iii) Time employees spend traveling on a special one day assignment shall count towards hours worked except meal time and ordinary home to work travel.

(iv) Travel that keeps an employee away from home overnight does not count towards hours worked if it is time spent outside of regular working hours as a passenger on an airplane, train, boat, bus, or automobile.

(g) Excess Hours: Employees may use excess hours the same way as annual leave.

(i) Employees on schedule AB may not accumulate more than 80 excess hours.

(ii) Agency management may pay out excess hours under one of the following:

(A) Paid off automatically in the same pay period accrued;

(B) All hours accrued after 40 hours are paid off;

(C) All hours accrued after 80 hours are paid off.

(D) Employees on schedule AB shall only be paid for excess hours at retirement or termination.

R477-8-7. Leave.

All employees who regularly work 40 hours or more per pay period, except Schedule AJ or other temporary workers, are eligible for leave benefits. Employees receive leave benefits in proportion to the number of hours they are scheduled to work. Employees shall use leave in no less than quarter hour increments.

(1) Holiday Leave

(a) The following dates are designated legal holidays:

(i) New Years Day -- January 1

(ii) Human Rights Day -- third Monday of January

(iii) Presidents' Day -- third Monday of February

(iv) Memorial Day -- last Monday of May

(v) Independence Day -- July 4

(vi) Pioneer Day -- July 24

(vii) Labor Day -- first Monday of September

(viii) Columbus Day -- second Monday of October

(ix) Veterans' Day -- November 11

(x) Thanksgiving Day -- fourth Thursday of November

(xi) Christmas Day -- December 25

(xii) The Governor may also designate any other day a legal holiday.

(b) If a holiday falls on a Sunday, the following Monday shall be observed as a holiday. If a holiday falls on a Saturday, the preceding Friday shall be observed as a holiday.

(c) If an employee is required to work on an observed holiday, the employee shall receive appropriate holiday leave, or shall receive compensation for the excess hours worked.

(d) The following employees are eligible to receive holiday leave:

(i) Full-time employees shall accrue eight hours of paid holiday leave on holidays;

(ii) Part-time career service employees and partners in a job-shared position who work 40 hours or more per pay period shall receive holiday leave in proportion to the hours they normally work in a pay period;

(iii) Employees working flex-time, as defined in R477-8-2, shall receive a maximum of 88 hours of holiday leave in each calendar year. If the holiday falls on a regularly scheduled day off, flex-time employees shall receive an equivalent work day off, not to exceed eight hours or shall receive compensation for the excess hours at a later date.

(e) In order to receive paid holiday leave, an employee must be in a paid status for a full scheduled work day before and after a holiday.

(2) Conditions of leave

(a) Eligible employees who work 40 or more hours per pay period shall accrue annual and sick leave in proportion to the time worked. They shall also receive funeral, holiday, and paid military leave in proportion to the time worked. Employees excluded from these are "at will" employees identified in R477-5-12.

(b) Seasonal, temporary, or part-time employees working less than 40 hours per pay period are not eligible for paid leave.

(c) Accrual rates for sick and annual leave are determined in proportion to the time worked, as outlined on the Annual and Sick Leave Accrual table available through DHRM.

(d) No employee may receive annual, sick or holiday leave before he has accrued it.

(e) Employees transferring from one agency of State service to another are entitled to transfer all accrued annual, sick, and converted sick leave to the new agency.

(f) Employees on paid leave shall continue to accrue annual and sick leave.

(g) Employees terminating or retiring from State service shall be cashed out in a lump sum for all annual leave and converted sick leave effective through the last day actually worked. Leave cannot be accrued after the last day worked. No leave-on-leave may accrue or be paid on the cashed out annual leave.

(h) No contributions to benefits may be paid on cashed out leave, other than FICA tax, except as it applies to the Early Retirement Incentive Program outlined in R477-8-(7)-(5)(b).

(3) Annual Leave

(a) Employees eligible for annual leave shall accrue leave based on the following years of State service:

(i) Zero through five years -- four hours per pay period.

(ii) Beginning of sixth year through ten years -- five hours per pay period.

(iii) Beginning of eleventh year or more -- six hours per pay period.

(b) To determine the accrual rate, all State employment shall be counted in which an employee was eligible to accrue leave regardless of whether the employment was continuous or not.

(c) Eligible employees may begin to use annual leave time after completing the equivalent of two full pay periods of employment.

(d) Agency management shall allow every employee the option to use annual leave each year for at least the amount accrued in the year. However, annual leave granted shall be approved in advance by management.

(e) Any unused accrued annual leave time in excess of 320 hours shall be forfeited at the beginning of the first full pay period of each calendar year.

(f) Department deputy directors and division directors appointed to career service exempt status positions shall be eligible for the maximum annual leave accrual rate upon their date of hire but shall not be eligible for any transfer of leave from other jurisdictions. Annual leave shall accrue at six hours per pay period for the tenure of employment in exempt positions. Other provisions of leave shall apply as defined in R477-8-7(3).

(4) Sick Leave

(a) Employees shall accrue sick leave with pay at the rate of four hours each pay period. Sick leave shall accrue without limit.

(b) Employees may begin to use accrued sick leave after completing the equivalent of at least two full pay periods of employment.

(c) Sick leave shall be granted for preventive health and dental care, maternity/paternity and adoption care, or for absence from duty because of illness, injury or temporary disability of a spouse or dependents living in the employee's home. Exceptions may be granted for other unique medical situations.

(d) Employees shall arrange for a telephone report to supervisors at the beginning of the scheduled work day they are absent because of illness or injury. Management may require

reports for serious illnesses or injuries.

(e) Any application for a grant of sick leave to cover an absence which exceeds four successive working days shall be supported by administratively acceptable evidence such as a medical certificate. If there is reason to believe that an employee is abusing sick leave, a supervisor may require an employee to produce a doctor's certificate of illness regardless of the number of days on sick leave.

(f) Any absence for illness beyond the accrued sick leave credit may continue under the following provisions: an approved leave-without-pay status, not to exceed 12 months, an approved Family Medical Leave Status, or in an annual or other accrued leave status.

(g) After filing a termination notice, employees must support sick leave requests with a doctor's certificate.

(h) Employees separating from State service may not receive compensation for accrued unused sick leave unless they are retiring. However, employees who are rehired within 12 months of separation to a position which receives sick leave benefits shall have their previously accrued unused sick leave credit reinstated.

(i) Employees who are rehired within 12 months of separation to a position which receives sick leave benefits shall have their previously accrued unused sick leave credit reinstated.

(ii) Employees who retire from state service and are then rehired may not reinstate their unused sick leave credit.

(5) Converted Sick Leave

As an incentive to reduce sick leave abuse, employees may convert a portion of unused sick leave to converted sick leave.

(a) To be eligible for converted sick leave, an employee must have an accumulated balance of 144 hours of unused sick leave at the end of the last pay period of the calendar year.

(i) Forty hours are eligible for conversion in a calendar year and will be converted to converted sick leave unless the employee designates otherwise.

(ii) The number of hours used in a calendar year shall be deducted from the 40 hours eligible for conversion.

(iii) The maximum hours of converted sick leave an employee may accrue is 320.

(b) Converted sick leave may be used as annual leave, regular sick leave, or as paid-up health and life insurance at the time of retirement for employees under age 65. If an employee is 65 years of age or older at the time of retirement, converted sick leave may be used to purchase a medicare supplement.

(i) Payment for health and life insurance is the responsibility of the employing agency.

(ii) Eight hours of converted sick leave equals the amount of the premium for one month's coverage for health and life insurance.

(6) Early Retirement incentive

Employees may be offered an early retirement incentive program, according to Section 67-19-14(2).

(a) This program is optional for each department. However, any decision whether or not to participate shall be agency-wide and shall be consistent through an entire fiscal year.

(b) If an agency decides to withdraw for the next fiscal year after initially deciding to participate in early retirement, the agency must notify all employees at least 60 days before the new fiscal year begins.

(c) Employee participation in any part of this incentive program shall be voluntary, but the decision to participate shall be made at retirement.

(d) The early retirement incentive for employees who retire prior to age 60, shall consist of any or all of the following:

(i) An option to receive a cash payment of 25 percent for their accrued unused sick leave at their current rate of pay, or transfer these monies to an approved 401(k) account sponsored by the Utah State Retirement Board.

(ii) The employing department shall provide health and life insurance coverage for five years.

(A) Health coverage shall be the same as carried by the employee at the time of retirement, i.e., family, two-party, or single. If the employee has no health coverage in place upon retirement, none shall be offered or provided.

(B) Life insurance provided shall be the basic $18,000 coverage provided for all State employees.

(C) Health and life insurance coverage will end after five years, unless the employee has sick leave in excess of 480 hours after any cash out. Eight hours of sick leave in excess of 480 after any cash out shall provide one additional month of paid health and life insurance coverage up to the age eligible for medicare.

(iv) When the employee becomes eligible for medicare, the purchase of health and life insurance coverage for a spouse until the spouse is eligible for medicare at the rate of one month of coverage for 8 hours of unused sick leave after any cash out and the 480 hour deduction.

(v) The purchase of low option medicare supplement for the employee and a spouse at the rate of one month of coverage for 8 hours of unused sick leave for the employee and one month of coverage for 8 hours of unused sick leave for the spouse.

(e) The early retirement incentive for employees who retire after age 60 but prior to becoming eligible for medicare shall consist of:

(i) An option to receive a cash payment of 25 percent for their accrued unused sick leave at their current rate of pay, or transfer these monies to an approved 401(k) account sponsored by the Utah State Retirement Board.

(ii) The employing department shall provide health and life insurance coverage for five years or until the age when the employee is eligible for medicare, whichever comes first.

(A) Health coverage shall be the same as currently carried by the employee, i.e., family, two-party, or single. If the employee has no health coverage in place upon retirement, none shall be offered or provided.

(B) Life insurance provided shall be the basic $18,000 coverage provided for all state employees.

(f) Employees who retire and are eligible for medicare may receive a cash payment for their accrued unused sick leave at their current rate of pay, or transfer these monies to an approved 401(k) account sponsored by the Utah State Retirement Board.

(7) Workers Compensation Leave

(a) An employee may use accrued leave benefits to supplement the workers compensation benefit.

(i) The combination of leave benefit and workers

compensation benefit shall not exceed the employees gross salary.

(ii) The use of accrued leave to supplement the worker compensation benefit shall be terminated if:

(A) the employee is declared medically stable by licensed medical authority; or

(B) the workers compensation fund terminates the benefit; or

(C) the employee has been absent from work for one year; or

(D) the employee refuses to accept appropriate employment offered by the state; or

(E) the employee receives Long Term Disability or Social Security Disability benefits.

(iii) The employee shall refund to the state any accrued leave paid which exceeds the employees gross salary for the period for which the benefit was received.

(b) Employees will continue to accrue state paid benefits while receiving a workers compensation time loss benefit for up to one year.

(c) Employees who file fraudulent workers compensation claims shall be disciplined according to the provisions of R477-11.

(8) Funeral Leave

Employees may receive a maximum of three days funeral leave per occurrence with pay at management's discretion to attend the funeral of a member of the immediate family. Funeral leave may not be charged against accrued sick or annual leave. One day of funeral is the equivalent of 8 hours.

(a) The "immediate family" means-- wife, husband, children, daughter-in-law, son-in-law, parents, grandchildren, mother-in-law, father-in-law, brother-in-law, sister-in-law, grandparents, spouse's grandparents, step-children, and step-parents, brothers and sisters of the employee.

(9) Military Leave

One day of military leave is the equivalent of 8 hours.

(a) Employees who are members of the National Guard or Military Reserves are entitled to military leave not to exceed fifteen days per year without loss of pay, annual leave or sick leave. Employees shall be on official military orders and may not claim salary for non-working days spent in military training or for traditional weekend training.

(b) Officers and employees of the state shall be granted military leave without pay for the period of active service or duty, including travel time, Section 39-3-1.

(c) Employees are required to give notice of active military service as soon as they are notified.

(d) Upon termination from active military service, under honorable conditions, employees shall be placed in their original position or one of like seniority, status and pay. The cumulative length of time allowed for re-employment may not exceed five years. Employees are entitled to re-employment rights and benefits including increased pension and leave accrual. Persons entering military leave may elect to have payment for annual leave deferred. In order to be reemployed, employees shall present evidence of military service and leave without pay status, and:

(i) For service less than thirty-one days, return at the beginning of the next regularly scheduled work period on the first full day after release from service taking into account safe travel home plus an eight-hour rest period, or:

(ii) For service of more than thirty-one days but less than 181 days, submit an application for reemployment within fourteen days of release from service, or

(iii) For service of more than 180 days, submit an application for reemployment within ninety days of release from service.

(10) Leave of Absence Without Pay

Employees may be granted continuous leave of absence without pay for up to 12 months. Employees shall apply in writing to agency management for approval. If absence is due to FMLA, workers compensation or long-term disability, R477-8-9 or R477-8-7(7) applies.

(a) Medical leave without pay may be granted for no more than twelve months. Medical leave may be approved if a registered health practitioner certifies that an employee is temporarily disabled.

(b) Agency management may approve leave without pay for employees even though annual or sick leave balances exist. Employees may take up to ten consecutive working days of leave without pay without affecting the leave accrual rate.

(i) Employees who receive no compensation for a complete pay period shall be responsible for payment of state provided benefit premiums, unless they are covered by the provisions under the federal Family and Medical Leave Act, in R477-8-9.

(c) Employees who return to work on or before the expiration of leave without pay, shall be placed in a position with comparable pay and seniority to their previously held position, provided the same or comparable level of duties can be performed with or without reasonable accommodation. The employee shall also be entitled to previously accrued annual and sick leave.

(d) Leave without pay for non-disability reasons may be granted only when there is an expectation that the employee will return to work.

(e) Health insurance benefits shall continue for employees on leave without pay because of work-related injuries or illnesses. Except as provided under the family and medical leave provisions, employees on leave without pay must personally continue the premiums to receive health insurance benefits.

(f) Employees who are determined eligible for the Long Term Disability Program (LTD) shall be granted up to one year of medical leave, if warranted by a medical condition.

(i) The one year medical leave begins on the last day the employee worked due to the disability. During this period and until LTD benefits begin, employees shall use sick and converted sick leave. Annual leave may be used after the employee uses all available sick and converted sick leave.

(ii) If the employee is unable to return to work and has not used all available annual leave, he shall be paid for the annual leave when the termination action is processed.

(iii) Employees determined eligible for Long Term Disability benefits, after a three month waiting period, will be eligible for health insurance benefits beginning two months after the last day worked. The health insurance benefit will continue for up to twenty-two months or until they are eligible for

medicare/ medicaid, whichever occurs first.

(iv) Conditions for return from leave without pay shall include:

(A) If an employee is able to return to normal duties within one year of the last day worked, the agency shall place the employee in his previously held position or similar position in a comparable salary range.

(B) If an employee is unable to perform the essential functions of the job because of a permanent disability, the obligation to place the employee in the same position shall be set aside. The employing unit shall place the employee in the best available, vacant position for which he is qualified, if able to perform the job with or without reasonable accommodation. If the employing unit does not have an available position, the agency shall then attempt to place the individual. The new position shall be consistent with the employee's qualifications and capabilities.

(I) For the first year, every effort shall be made to find a position as close to the salary range and function as the original position.

(II) The agency Executive Director may extend the timeline for return to work beyond one year if the employee's injury resulted in disability prohibiting the employee from performing the essential functions of the job, as defined by ADA.

(11) Jury Leave

(a) Employees are entitled to a leave of absence with full pay when, in obedience to a subpoena or direction by proper authority, they are required to:

(i) Appear as a witness as part of their position for the federal government, the State of Utah, or a political subdivision of the state, or

(ii) Serve as a witness in a grievance hearing.

(iii) Serve on a jury

(b) Employees choosing to use annual leave while on jury duty shall be entitled to keep jurors fees; otherwise, jurors fees received shall be returned to agency payroll clerks for deposit with the State Treasurer. The fees shall be deposited as a refund of expenditure in the low org. where the salary is recorded.

(c) Employees who are absent in order to litigate in matters unrelated to their position shall take leave as annual or as leave without pay.

(12) Administrative Leave

(a) Administrative leave may be granted consistent with agency policy for the following reasons:

(i) corrective action;

(ii) personal decision-making prior to discipline;

(iii) suspension with pay-- during removal from job site-- pending hearing on charges;

(iv) during management decision situations that benefit the organization;

(v) incentive awards in lieu of cash;

(vi) when no work is available due to unavoidable conditions or influences;

(vii) removal from adverse or hostile work environment situations pending management corrective action;

(viii) educational assistance;

(ix) employee assistance and fitness for duty evaluations.

(b) Agency head or designee may grant paid administrative leave for no more than ten consecutive working days per occurrence. Other conditions of administrative leave are:

(i) Administrative leave in excess of 10 consecutive working days per occurrence may be granted by written approval of the agency head.

(ii) Administrative leave taken must be documented in the employee's leave record.

(13) Disaster Relief Volunteer Leave

(a) An employee may be granted an aggregate of 15 working days or 120 work hours in any 12 month period to participate in disaster relief services for the American Red Cross. To request this leave an employee must be a certified disaster relief volunteer; and file a written request with the employing agency. The request shall include:

(i) a copy of a written request for the employee's services from an official of the American Red Cross;

(ii) the anticipated duration of the absence;

(iii) the type of service the employee is to provide for the American Red Cross; and

(iv) the nature and location of the disaster where the employee's services will be provided.

(14) Furlough

(a) Agency management may furlough employees as a means of saving salary costs in lieu of reduction in force. See R477-12-3(3). Furlough plans are subject to the approval of the Executive Director, DHRM and the following conditions:

(i) Employees accrue annual and sick leave.

(ii) Full payment of all fringe benefits continue at agency's expense.

(iii) Employees shall return to their positions.

(iv) Furlough is applied equitably, e.g., to all persons in a given class, all program staff, or all staff in an organization.

R477-8-8. Leave Bank.

With the approval of the agency director, agencies may establish a leave bank program as follows:

(1) Only annual leave and converted sick leave hours may be donated to a leave bank. This does not include annual leave that would normally be lost at the end of the calendar year unless it is possible for the donating employee to take the annual leave before the calendar year end.

(a) Employees shall not receive donated leave until they use all of their individually accrued leave.

(b) Only employees of agencies with approved leave bank programs may donate annual leave to another agency with a leave bank program, if mutually agreed on by both agencies.

(c) Leave shall be accrued if an employee is on sick leave donated from an approved leave bank program.

R477-8-9. Family and Medical Leave.

(1) This rule conforms with the federal Family and Medical Leave Act, 29 USC 2601. Employees eligible under this rule shall continue to receive medical insurance benefits provided the employee was entitled to medical insurance benefits prior to the commencement of FMLA leave.

(a) Agency management shall authorize up to twelve weeks of leave each calendar year to employees for any of the following reasons:

(i) birth of a child,

(ii) adoption of a child,

(iii) placement of a foster child,

(iv) a serious health condition of the employee, or

(v) care of a spouse, dependent child or parent with a serious medical condition.

(2) To be eligible for the twelve weeks of family medical leave, the employee must be--

(a) Employed by the state for at least 12 months, and

(b) Employed by the state for a minimum of 1250 compensable work hours as determined under FLSA during the 12-month period immediately preceding the commencement of leave. Compensable work hours does not include any paid leave or time not spent actually performing work.

(3) Employees (or an appropriate spokesperson) shall submit a leave request

(a) Thirty days in advance for foreseeable needs; or

(b) As soon as possible in emergencies.

(4) Agency Responsibility

(a) Agency management shall be responsible for:

(i) documenting employee leave requests which qualify as FMLA leave; and

(ii) designating any qualifying leave taken by employees as FMLA leave. All leave requests which qualify as FMLA leave shall be designated as such and shall be subject to all provisions of this rule. No other leave shall be granted until the employee has exhausted his 12-week entitlement under FMLA.; and

(iii) notifying employees in writing of the designation within two business days, or as soon as a determination can be made that the leave request qualifies as FMLA leave if the agency does not initially have sufficient information to make a determination.

(b) Written notification to employees shall include the following information:

(i) that the leave will be counted against the employee's annual FMLA entitlement;

(ii) any requirements for the employee to furnish medical certification of a serious health condition and the consequences of failing to do so;

(iii) a statement explaining that the employee will be required to exhaust unused annual, converted, and/or sick leave, before going into a LWOP status;

(iv) any requirement for the employee to make any premium payments to maintain health benefits and the arrangements for making such payments, and the possible consequences of failure to make such payments on a timely basis;

(v) any requirement for the employee to present a fitness-for-duty certificate to be restored to employment;

(vi) the employee's rights to restoration to the same or an equivalent job upon return from leave; and

(vii) the employee's potential liability for payment of health insurance premiums paid by the employer during the employee's unpaid FMLA leave if the employee fails to return to work after taking FMLA leave.

(c) Agencies may designate FMLA leave after the fact only:

(i) if the reason for leave was previously unknown, provided the reason for leave is made within two business days after the employee's return to work; or

(ii) the agency has preliminarily designated the leave as FMLA leave and is awaiting medical certification.

(d) Agencies shall allow employees at least 15 calendar days to provide medical certification if FMLA leave is not foreseeable. If the employee fails completely to provide medical certification requested by the agency, the leave shall not be considered FMLA leave.

(e) Agencies shall inform Group Insurance that an employee is approved for FMLA leave.

(5) An employee shall be required to use accrued annual and converted sick leave and excess hours prior to the use of leave without pay for the family and medical leave period. Employees shall be required to use accrued sick leave only in situations considered eligible under R477-8-7(4)(c). Employees who take family and medical leave in a leave without pay status must comply with R477-8-7(10).

(a) Employees may choose to use compensatory time for an FMLA reason. Any period of leave paid from the employee's accrued compensatory time account may not be counted against the employee's FMLA leave entitlement.

(6) Employees shall be eligible to return to work under R477-8-7(10).

(a) If an employee fails to return to work after unpaid FMLA leave has ended, an agency may recover, with certain exceptions, the health insurance premiums paid by the agency on the employee's behalf. An employee is considered to have returned to work if he or she returns for at least 30 calendar days.

(b) Exceptions to this provision include:

(i) FLSA exempt and Schedule AB, AD and AR employees who have been denied restoration upon expiration of their leave time;

(ii) Employees whose circumstances change unexpectedly beyond their control during the leave period and he or she cannot return to work at the end of twelve weeks.

(7) For maternity and child placement leave, time must be taken in no less than 8 hour increments.

(8) Leave taken for purposes of childbirth, adoption, placement for adoption or foster care shall not be taken intermittently unless the employee and employer mutually agree.

(9) Leave required for certified medical reasons may be taken intermittently.

(10) Leave taken for a serious health condition covered under workers' compensation may be counted towards an employee's FMLA entitlement. Accrued paid leave shall not be substituted for FMLA leave at the same time the employee is collecting a workers' compensation benefit.

(11) Medical records created for purposes of FMLA and the Americans with Disabilities Act must be maintained in accordance with confidentiality requirements.

R477-8-10. Employment in More Than One State Job.

Employees may, at agency discretion, have more than one state job as long as the total hours worked do not exceed 40 hours per week.

R477-8-11. Reasonable Accommodation.

Reasonable accommodation for qualified individuals with disabilities may be a factor in any employment action. Before

notifying an employee of denial of reasonable accommodation, the agency shall consult with the Division of Risk Management.

R477-8-12. Fitness For Duty Evaluations.

Fitness for duty medical evaluations may be performed under any of the following circumstances:

(1) Return to work from injury or illness;

(2) When management determines that there is a direct threat to the health or safety of self or others;

(3) In conjunction with corrective action, performance or conduct issues, or discipline;

(4) When a fitness for duty evaluation is a bona fide occupational qualification for selection, retention, or promotion.

R477-8-13. Temporary Transitional Assignment.

Temporary transitional assignments may be part of any of the following:

(1) Return to work from injury or illness;

(2) When management determines that there is a direct threat to the health or safety of self or others;

(3) In conjunction with corrective action, performance or conduct issues, or discipline;

(4) Where there is a bona fide occupational qualification for retention in a position;

(5) As a temporary measure while an employee is being evaluated to determine if reasonable accommodation is appropriate.

KEY: compensatory time, disability insurance, leave, vacations
June 27, 1998 67-19-6
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R477. Human Resource Management, Administration.
R477-10. Employee Development.
R477-10-1. Performance Evaluation.

Agency management shall develop an employee performance management system consistent with these rules and subject to approval by the Executive Director, DHRM. The Executive Director, DHRM, may authorize exceptions to provisions of this rule consistent with R477-2-3. For this rule, the word employee refers to career service employees, unless otherwise indicated.

(1) An acceptable performance management system shall satisfy the following criteria:

(a) Performance standards and expectations for each employee shall be specifically written in a performance plan by August 30 of each fiscal year.

(b) Managers or supervisors provide employees with regular verbal and written feedback based on the standards of performance and conduct outlined in the performance plan.

(c) Each employee shall be informed concerning the actions to be taken, time frames, and the supervisor's role in providing assistance to improve performance and increase the value of service.

(d) Each employee shall have the right to include written comment with his performance evaluation.

(e) Agency management shall select a performance management rating system or a combination of systems by August 30 to be effective for the entire fiscal year. The rating system shall be one or more of the following:

TABLE

SYSTEM #	RATING	POINTS
1	Pass	2
	Fail	0
2	Exceptional	3
	Successful	2
	Unsuccessful	0
3	Exceptional	3
	Highly Successful	2.5
	Successful	2
	Unsuccessful	0
4	Exceptional	3
	Highly Successful	2.5
	Successful	2
	Marginal	1
	Unsuccessful	0

(2) In addition to the above ratings, agency management may establish a rating category for highest level performers under the following conditions:

(a) Each employee who receives this rating shall receive a performance rating of 4.

(b) Agencies shall devise and publish the criteria they will use to select the highest level performers by August 30 of each year. Selection criteria for non-supervisory employees shall be comparable to the Utah Code 67-19c-101(3)(c). Selection criteria for supervisory/management employees shall be comparable to "The Manager of the Year Award."

(3) Each state employee shall receive a performance evaluation effective July 1 of each fiscal year.

(a) Probationary employees shall receive a performance evaluation at the end of their probationary period and again at July 1 of the fiscal year.

(4) The employee shall sign the evaluation. Signing the evaluation only means that the employee has reviewed the evaluation. Refusal to sign the evaluation shall constitute insubordination, subject to discipline.

(a) The evaluation form shall include a space for employees' comments. The employee shall check a space indicating either agreement or disagreement with the evaluation. The employee may comment in writing, either in the space provided or on a separate attachment.

R477-10-2. Corrective Actions.

When an employee's performance does not meet established standards due to failure to maintain skills, incompetency, or inefficiency, agency management shall take appropriate, documented, and clearly labeled corrective action in accordance with the following rules:

(1) The supervisor shall discuss the substandard performance with the employee to discover the reasons for poor performance and to develop an appropriate written corrective action plan. The employee shall sign the written corrective action plan to certify that he has reviewed it. Refusal to sign the corrective action shall constitute insubordination subject to discipline.

(a) Corrective actions shall include one or more of the following:

(i) Closer supervision

(ii) Training

(iii) Referral for personal counseling by an agency designee

(iv) Voluntary or involuntary reassignment

(v) Use of appropriate leave

(vi) Career counseling and out-placement

(vii) Period of constant review

(viii) Opportunity for remediation

(ix) Written warnings

(2) During implementation of a formal corrective action plan, agency management shall, upon employee's request, evaluate and make reasonable accommodations for employees with disabilities, as defined by ADA, as necessary in order for the employee to perform the essential functions of the job, as long as it does not create an undue hardship on the operations of the agency.

(3) The supervisor shall designate an appropriate corrective action period and shall provide frequent evaluation of the employee's progress.

(4) If, after reasonable effort, the corrective actions taken do not result in improved performance that is satisfactory,the employee shall be disciplined according to R477-11-1. The written record of the corrective action shall satisfy the requirement of Section 67-19-18(1).

(5) DHRM shall provide assistance to agency management upon request.

R477-10-3. Employee Development and Training.

Agency management may establish a program for training and staff development consistent with these rules.

(1) All agency sponsored training shall be agency specific or designed for highly specialized or technical jobs and tasks.

(2) Agency management shall consult with the Executive Director, DHRM, when proposed training and development

activities may have statewide impact or may be offered more cost effectively on a statewide basis. The Executive Director, DHRM, shall determine whether DHRM will be responsible for the training standards.

(3) The Executive Director, DHRM, shall work with agency management to establish standards to guide the development of statewide activities and to facilitate sharing of resources statewide.

(4) When an agency directs an employee to participate in an educational program, the agency shall pay full costs before the course begins.

(5) Agencies are required to provide refresher training and make reasonable efforts to re-qualify veterans reemployed under USERRA, as long as it does not cause an undue hardship to the employing agency.

R477-10-4. Liability Prevention Training.

Agencies shall provide liability prevention training to their employees. The curriculum shall be approved by DHRM and Risk Management. Topics shall include but not be limited to: prevention of sexual harassment; prevention of workplace violence and new employee orientation.

R477-10-5. Education Assistance.

State agencies may assist employees in their educational goals by granting employees administrative leave to attend classes and/or a subsidy of educational expenses.

(1) Prior to granting education assistance, agencies shall establish policies which shall include the following conditions:

(a) The educational program will provide a benefit to the state.

(b) The employee shall successfully complete the required course work with a passing grade.

(c) The employee shall agree to repay any assistance received if the employee voluntarily terminates within 12 months of completing educational work.

(d) Education assistance shall not exceed $2,500 per employee in any one fiscal year unless approved in advance by the agency head.

(2) Agency management shall be responsible for determining the taxable/non-taxable status of educational assistance reimbursements.

KEY: educational tuition, employee performance evaluation, employee productivity, training programs
June 27, 1998 67-19-6
Notice of Continuation July 1, 1997

R477. Human Resource Management, Administration.
R477-11. Discipline.
R477-11-1. Disciplinary Action.

(1) Agency management may discipline any employee for any of the following reasons:

(a) noncompliance with these rules, agency or other applicable policies, including but not limited to safety policies, agency professional standards and workplace policies;

(b) work performance that is inefficient or incompetent;

(c) failure to maintain skills and adequate performance levels;

(d) insubordination or disloyalty to the orders of a superior;

(e) misfeasance, malfeasance, nonfeasance or failure to advance the good of the public service;

(f) any incident involving intimidation, physical harm or threats of physical harm against co-workers, management, or the public;

(g) no longer meets the requirements of the position.

(2) All disciplinary actions of career service employees shall be governed by principles of due process. In all such cases, except as provided under Subsection 67-19-18(4), the disciplinary process shall include all of the following:

(a) The agency representative notifies the employee in writing of the proposed discipline and the reasons.

(b) The employee must reply within five working days in order to have the agency representative consider the reply before discipline is imposed.

(c) If an employee waives the right to respond or does not reply within the time frame established by the agency representative or within five days, whichever is longer, discipline may be imposed in accordance with these rules.

(3) After a career service employee has been informed of the reasons for the proposed discipline and has been given an opportunity to respond and be responded to, the agency representative may discipline that employee, or any non-career service employee not subject to the same procedural rights, by imposing one or more of the following:

(a) Written reprimand

(b) Suspension without pay up to 30 calendar days per incident requiring discipline

(c) Demotion of any employee through one of the following methods:

(i) An employee may be moved from a position in one class to a position in another class having a lower entrance salary if the duties of the position have been reduced for disciplinary reasons.

(ii) A demotion within the employee's current pay range may be accomplished by lowering the employee's salary rate back on the range, as determined by the agency head or designee.

(d) Dismissal

(i) An agency head shall dismiss or demote a career service employee only in accordance with the provision of Subsection 67-19-18(5). See R477-11-2 of these rules.

(e) When deciding the specific type and severity of the discipline to administer to any employee, the agency representative may consider the following factors:

(i) Consistent application of rules and standards

(ii) Prior knowledge of rules and standards

(iii) The severity of the infraction

(iv) The repeated nature of violations

(v) Prior disciplinary/corrective actions

(vi) Previous oral warnings, written warnings and discussions

(vii) The employee's past work record

(viii) The effect on agency operations

(ix) The potential of the violations for causing damage to persons or property.

(4) If an agency determines that a career service employee endangers or threatens the peace and safety of others or poses a grave threat to the public service or is charged with aggravated or repeated misconduct, the agency may impose the following actions, as provided by 67-19-18-(4), pending an investigation and determination of facts:

(a) Paid administrative leave

(b) Temporary reassignment to another position or work location at the same rate of pay

(5) At the time disciplinary action is imposed, the employee shall be notified in writing of the discipline, the reasons for the discipline, the effective date and length of the discipline.

(6) Disciplinary actions are subject to the grievance and appeals procedure as provided by law for career service employees only. The employee and the agency representative may agree in writing to waive or extend any grievance step, or the time limits specified for any grievance step.

R477-11-2. Dismissal or Demotion.

An employee may be dismissed or demoted for cause as explained under R477-10-2 and R477-11-1 of these rules, and through the process outlined in this rule.

(1) An agency head or appointing officer may dismiss or demote a non-career service status employee without right of appeal by providing written notification to the employee specifying the reasons for the dismissal or demotion and the effective date.

(2) No employee shall be dismissed or demoted from a career service position unless the agency head or designee has observed the Grievance Procedure Rules and law cited in R137-1-13 and Title 67, Chapter 19a and the following procedures:

(a) The agency head or designee shall notify the employee in writing of the specific reasons for the dismissal or demotion.

(b) The employee shall have up to five working days to reply. The employee must reply within five working days for the agency representative to consider the reply before discipline is imposed.

(c) The employee shall have an opportunity to be heard by the agency head or designee.

(d) Following a hearing, if the agency head finds adequate cause or reason, an employee may be dismissed or demoted.

(3) Agency management may suspend an employee with pay pending the administrative appeal to the agency head.

KEY: discipline of employees, dismissal of employees, grievances, government hearings
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Notice of Continuation July 1, 1997

R477. Human Resource Management, Administration.
R477-12. Separations.
R477-12-1. Resignation.

Employees may resign by giving written or verbal notice to the appointing authority. In this rule, the word employee refers to career service employees, unless otherwise indicated.

(1) Agency management may accept an employee's resignation without prejudice when the resignation is received at least ten working days before its effective date.

(2) After submitting a resignation, employees may withdraw their resignation on the next working day. After the close of the next working day following its submission, withdrawal of a resignation may occur only with the consent of the appointing authority.

R477-12-2. Abandonment of Position.

Employees who are absent from work for three consecutive days and are capable of providing proper notification to their supervisor, but do not, shall be considered to have abandoned their position.

(1) Management may terminate an employee who has abandoned his position. Management shall inform the employee of the action in writing.

(a) The employee shall have the right to appeal within five working days of receipt or delivery of the notice of abandonment to the last known address.

(b) If the termination action is appealed, management may not be required to prove intent to abandon the position.

R477-12-3. Reduction in Force.

Reductions in force shall be required by inadequate funds, a change of workload, or lack of work. Reductions in force shall be governed by the following rules:

(1) When staff will be reduced in one or more classes, agency management shall develop a work force adjustment plan (WFAP). Career service employees shall only be notified of being reduced in force after a WFAP has been reviewed and approved by the Executive Director, DHRM. The following items shall be considered in developing the work force adjustment plan:

(a) The categories of work to be eliminated, including positions impacted through bumping, as determined by management.

(b) A decision by agency management allowing or disallowing bumping.

(c) Specifications of measures taken to facilitate the placement of affected employees through normal attrition, retirement, voluntary or involuntary reassignment, voluntary relocation, and movement to vacant positions based on interchangeability of skills.

(d) A list of all affected employees showing the retention points for each employee.

(e) Furlough

(i) After all other cost saving methods have been exhausted, furlough may be implemented before a reduction in force.

(ii) The provisions of 8-7-(13) may be implemented prior to a reduction in force if the furlough results in the necessary cost savings and is consistent with reasons of business necessity.

(iii) A reduction in force shall be the last, unavoidable action taken for cost savings.

(2) Eligibility for RIF

(a) Only career service employees who have been identified in an approved WFAP and given an opportunity for a hearing with the agency head may be RIF'd.

(b) Employees covered by USERRA and in a leave without pay status must be identified, assigned retention points and notified of the RIF of their previous position in the same manner as career service employees.

(3) Retention points shall be calculated for all affected employees within a category of work as follows:

(a) Seniority shall be determined by the length of total state career service, which commenced in a competitive career service position for which the probationary period was successfully completed.

(i) For part-time work, length of service shall be determined in proportion to hours actually worked.

(ii) Exempt service time subsequent to attaining career service tenure with no break in service shall also be counted for purposes of seniority.

(iii) In the event of ties in retention points, the amount of time employed in the affected agency/department serves as the tie breaker.

(b) Length of state service shall be measured in years and additional days shown as a fraction of a year.

(c) Time spent in a leave without pay status for service in the uniformed services covered under USERRA shall be counted for purposes of seniority.

(d) Any time spent in leave without pay status, to include worker's compensation leave, may not be counted for purposes of seniority.

(e) All affected employees including employees covered under USERRA in a leave without pay status within a category of work shall be assigned a job proficiency rating. The job proficiency rating shall be an average of the last three annual performance evaluation ratings as described in R477-10-1.(1)(e). If employees have had fewer than three annual performance evaluations, the proficiency ratings shall be an average of the all ratings received as of that time.

(f) The numeric values of each employee's job proficiency rating and that employee's actual length of service shall be added together to produce the retention points.

(g) Retention points shall be calculated for employees covered under USERRA and in a leave without pay status in the same manner as for current employees in the affected class. If there are no performance evaluation ratings for an employee covered under USERRA, no proficiency rating shall be included in the retention points.

(4) The order of separation shall be:

(a) Non-career service employees

(b) Probationary employees

(c) Career service employees in the order of their retention points when the lowest points are released first. In the event of ties in retention points, the amount of seniority in the affected agency serves as the tie breaker.

(5) Employees, including those covered under USERRA in a leave without pay status, who are separated due to a reduction in force shall be given written notification of

separation, allowing for a minimum of 20 working days prior to the effective date of the RIF.

(6) Appeals

(a) An employee separated due to a reduction in force may appeal to the agency head for an administrative review. Employees must submit notice of appeal within 20 working days after the receipt of written notification of separation.

(b) The employee may appeal the decision of the agency head according to the appeals procedure of the Career Service Review Board.

(7) Reappointment of RIF'd employee

(a) A RIF'd employee is eligible for reappointment into a career service position for which he qualifies in a salary range comparable to or less than the last career service position held, for a period of one year following the date of separation. See R477-5-4 for selection of employees from the reappointment register. RIF'd employees shall remain on the state reappointment register for twelve months, unless reappointed sooner.

(b) During a statewide mandated freeze on hiring wherein the Governor disallows increases in each department's FTEs, eligibility for the reappointment register shall be extended for the entire length of time covered by a freeze.

(c) When determining comparable salary ranges in cases of RIF eligibility or bumping eligibility, a comparison of the previous to the new salary range maximum step is required. The previous salary range shall be considered comparable if the maximum step is equal to or greater than the maximum step of the new salary range.

(d) A RIF'd employee who is reappointed to a state position shall not be required to serve a probationary period. The employee shall enjoy all the rights and privileges of a regular career service employee.

(e) At agency discretion, employees reappointed from a reappointment register may buy back part or all accumulated annual and converted sick leave that was cashed out when RIF'd.

(8) Appeal rights of RIF'd employee – An individual whose name is on the reappointment register as a result of a reduction in force may use the grievance procedure regarding their reappointment rights.

(9) Career service employees in exempt positions – Any career service employee accepting an exempt position without a break in service, who is later not retained by the appointing officer, unless discharged for cause as provided for by these regulations, shall:

(a) Be placed on a reappointment register for one year from the date of separation and shall be reappointed to any career service position for which the employee qualifies in a pay range comparable to the employee's last position in the career service, provided an opening exists; or

(b) Be reappointed to any lesser career service position for which the employee qualifies pending the opening of a position at the last career service salary range held. The Executive Director, DHRM, shall maintain a reappointment register for this purpose, and shall make the final determination on whether an eligible RIF meets the job requirements for position vacancies.

(c) If the employee has not been reappointed as outlined, his placement on the reappointment register shall be renewed on a yearly basis upon his written request.

R477-12-4. Exceptions.

The Executive Director, DHRM, may authorize exceptions to provisions of this rule consistent with R477-2-3(1).

KEY: administrative procedure, employees' rights, grievances, retirement
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R477. Human Resource Management, Administration.
R477-13. Volunteer Programs.
R477-13-1. Volunteer Programs.

Agency management shall approve all work programs for volunteers before volunteers serve the state or any agency or subdivisions of the state. A volunteer is considered a government employee for purposes of workers compensation, operation of motor vehicles or equipment, and liability protection and indemnification.

(1) Agency management may establish a program for people to volunteer their services to the agency consistent with the following rules. The Executive Director, DHRM, may authorize exceptions to provisions of this rule consistent with R477-2-3(1).

(2) When implementing a volunteer program, agency management shall:

(a) Orient the volunteer to the conditions of state service and their specific job assignments;

(b) Provide adequate supervision of the volunteer staff

(c) Designate the type of work for which volunteer services may be allowed to supplement paid staff;

(d) Document the approval of, numbers of, and hours worked by its volunteers, based on standards established DHRM;

(e) Collect data on the number of volunteers and the number of volunteer hours;

(f) Evaluate and assign volunteers in accordance with standards set by DHRM.

R477-13-2. Volunteer Experience Credit.

(1) Agency management shall apply approved and documented related volunteer experience to satisfy the job requirements for career service positions.

(a) Volunteer experience shall not substitute for required licensure, POST certification, or other criteria for which there is no substitution in the job requirements in the job description.

(b) Court ordered community service experience will not be considered volunteer work for purposes of meeting minimum qualifications.

(2) Participants in state or other volunteer programs shall receive credit for volunteer experience for the purposes of career service employment if:

(a) The volunteer experience is related to the identified duties and responsibilities of the designated career service position as determined by agency management.

(b) The volunteer experience is documented in accordance with standards established by DHRM.

(3) Credit for documented and job related volunteer experience shall be given in the same manner as similar paid employment.

KEY: personnel management, administrative rules, rules and procedures, definitions
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R501. Human Services, Administration, Administrative Services, Licensing.
R501-14. Criminal Background Screening.
R501-14-1. Criminal Background Screening.

A. Authority

1. Pursuant to UCA 62A-2-120 and UCA 62A-4a-413, a Bureau of Criminal Identification, screening shall be conducted on licensees and persons associated with a licensee of a public or private agency or individual licensed by the Department of Human Services, referred to as DHS, to provide services for children.

2. Pursuant to UCA 78-30-3.5(2)(a), a criminal background screening shall be conducted as part of the Preplacement Adoptive Study.

3. The National Child Protection Act, Public Law 103-209, authorizes a state to request a nationwide background check for the purpose of determining whether a provider has been convicted of a crime that bears upon an individual's fitness to have responsibility for the safety and well-being of children.

B. Purpose

The purpose of the criminal background screening, referred to as CBS, as a part of the licensing process for DHS, is to protect children in licensed programs from individuals who have been convicted of serious crimes, or individuals whose conduct or pattern of conduct is contrary to the safety and well-being of children.

R501-14-2. Definitions.

A. "Administrative Law Judge" means an employee of the DHS who acts as an independent decision maker who considers the evidence introduced at the hearing and renders a decision based solely on that evidence and all relevant law and policy, herein referred to as ALJ.

B. "Adult" means a person 18 years of age, or older.

C. "Authorized Worker" means the director or designee of a facility or an employee of DHS regional offices.

D. "Authorized DHS Worker" means an employee of the Department of Human Services authorized to have access to OL and CBS information as determined by the Director, Office of Licensing, DHS.

E. "Bureau of Criminal Identification" means the designated state agency including "terminal agency users" of the Division of Criminal Investigation and Technical Services Division, within the Department of Public Safety, referred to as DPS, responsible to maintain criminal records in the State of Utah, herein referred to as BCI.

F. "Consumer" means an individual, i.e., client, resident, customer, etc., who receives services from a licensee.

licensee or.

H. "Director"means the person responsible, as delegated by the governing body, for the technical and programmatic aspects of the program. This person should provide direct supervision of the day-to-day aspects of the program operation.

I. "Department of Human Services" means the State Department authorized to provide human services, including licensing, herein referred to as DHS.

J. "Department of Human Services/Criminal Background Screening Committee" means the committee designated by the Director of DHS to review criminal background information, herein referred to as DHS/CBS Committee.

K. "The Division of Child and Family Services" means the DHS Division which operates regional human service offices, herein referred to as DCFS.

L. "The Utah Department of Public Safety" means the Department with the policy making functions and regulatory and enforcement powers pertaining to public safety, herein referred to as DPS.

M. "The Division of Services for People With Disabilities" means the DHS Division responsible for providing services for people with disabilities, herein referred to as DSPD.

N. "Employee" means a person who performs services for a licensee in a paid or otherwise compensated capacity.

O. "Frequent visitor" means an adult who visits on a recurring basis in a home where home based care is provided.

P. "GRAMA" means the Government Records Access and Management Act that covers information access and privacy of provider files. Refer to 63-2-101(2), Section 45, CFR 5, 1990, Part 2, Section 7 of the Social Security Act; and in the Federal Privacy Act of 1974.

Q. "Human services licensee or licensee" means a youth program, resource family home, or a facility or program that provides services, care, secure treatment, inpatient treatment, residential treatment, residential support, adult day care, day treatment, outpatient treatment, domestic violence treatment, child placing services, or social detoxification licensed by the Office of Licensing.

R. "Identifying information" means individual data including, but not limited to; name, all aliases, date of birth, social security number, and driver license, or state identification card.

S. "Members of Governing Body" means the individuals who comprise the Board of Trustees, Directors or other body who has the ultimate authority and responsibility for the conduct of the licensee.

T. "Office of Administrative Hearings" means the office in DHS which conducts hearings according to the Utah Administrative Procedures Act, herein referred to as OAH.

U. "Office of Licensing" means the office in DHS, authorized by law, to license facilities and programs, herein referred to as OL.

V. "Owner" means anyone listed in the Articles of Incorporation, Limited Partnership, etc. who has a legal interest in or legal right to the possession and to direct the affairs of the program.

or older

Y. "Provider" means a public or private agency, owner, director, member of governing body, employee, volunteer, or other individual having a license to provide services to children.

Z. "Utah Computerized Criminal History Data Base" means the internal, computerized data bases maintained by BCI/DPS, herein referred to as UCCH Database.

AA. "UAPA" means the Utah Administrative Procedures Act as found in UCA 63-46b-1 through UCA 63-46b-21, herein referred to as UAPA.

BB. "Volunteer" means a person other than a parent or guardian of a child or an adult receiving care in the facility, who performs services for a licensee in a non-paid capacity.

R501-14-3. Procedure for Criminal Background Screening.

A. All proposed licensees and persons associated with the licensee who are licensed to provide services for children, shall submit a Consent and Release of Liability and Request for Background Screening form to the DHS OL for criminal background screening. Each licensee and person associated with the licensee will attach a copy of one photo identification issued by a governmental agency, either a driver license, or a state issued identification card, and their Social Security number. The Utah State governmental identification must show an address identical to the Consent and Release of Liability and Request for Background Screening form, to establish residency.

B. Persons 18 years of age or older residing in the home or frequent visitors of home based care must also comply with this requirement.

1. A licensee shall submit the identifying information to DHS for criminal background screening prior to hiring a new employee. The licensee assumes all liability if an individual is hired prior to receiving the criminal background screening approval. The licensee is also responsible for directly supervising individuals hired before receiving the required background screening approval. For renewal licenses in the case of emergency hiring, a licensee shall immediately submit the identifying information to DHS for criminal background screening.

2. An application for a new license will not be approved until the criminal background screenings have been completed. For renewal licenses in case of emergency or need for immediate placement of a child, a conditional license may be issued for a maximum of thirty days to allow for the criminal background screening to be completed.

3. A licensee applying for license renewal will have thirty days prior to license expiration to submit the identifying information of all licensees and persons associated with the licensee to DHS for criminal background screening.

4. A home-based licensee applying for license renewal will have thirty days prior to license expiration to submit to DHS for criminal background screening the identifying information on all persons associated with the licensee.

C. When the OL receives the identifying information from the applicant licensee, the OL will access the UCCH Database to conduct the criminal background screening for a determination of whether or not the applicant has been convicted of any crime under the laws of the State of Utah.

D. When a licensee or person associated with a licensee has not lived in Utah for the last five consecutive years, or has unexplained gaps in work or residence record, the request for a FBI national criminal history record check will be made by OL. The licensee or person associated with the licensee shall be responsible to provide the OL with completed fingerprint cards and a cashier's check or money order for the cost of the nationwide check within 10 days after receiving the request. Licensees or persons associated with the licensee may also be required to provide the OL with a criminal history from the states they have lived in, upon request by the OL. The person associated with the licensee is responsible for all costs associated with obtaining the criminal history. The criminal history shall be provided within 90 days of the date of the OL request. For persons associated with the licensee who are citizens of foreign countries and have not lived in Utah for the last five consecutive years, the OL may accept a photo copy of both the front and back of U.S. Department of Justice Immigration and Naturalization Service resident alien card to verify the screening was accomplished prior to entry into the United States. The OL may also accept a copy of a criminal history from the country of citizenship to determine if the individual has been convicted of any crime. Either a copy of a resident alien card or criminal history from the foreign country must be submitted to the OL within 90 days after requested by the OL.

E. If a licensee or person associated with the licensee does not provide the requested information and fees within the time frames specified, their application will be denied and they will not be eligible to provide services for the program or children.

F. An applicant requesting initial licensure for a program serving children, who has lived or operated programs in Utah for less than five years, may be screened through the nationwide FBI process.

G. Licensees or persons associated with the licensee who have complied with the above requirements, may continue to work under direct supervision pending the outcome of the criminal background screening.

H. If a licensee or person associated with the licensee has an arrest record without a final disposition, including, but not limited to the following: warrant issued, plea held in abeyance, court date pending, diversion agreement, adjudication withheld, the background screening consent and release of liability will be returned to the licensee or authorized worker. The OL will not process criminal background screenings until there is a final disposition.

R501-14-4. Results of Screening.

When the criminal background screening is completed, OL will take the following action:

A. Approval:

If a licensee or person associated with the licensee is found to have no criminal history record, or if the only offenses are misdemeanors or infractions not involving domestic violence, lewdness, battery, offenses identified in the Utah Criminal Code as offenses against the family, offenses against the person, pornography, prostitution, or any type of sexual offense, and the conviction date is older than five years, a notice will be sent to the authorized DHS worker stating that the person is approved to provide services for the licensed program serving children.

B. Denial:

1. A licensee or person associated with a licensee convicted of a felony shall not be given a background screening clearance required to provide services for the licensed program serving children.

2. A licensee or person associated with a licensee convicted of a misdemeanor or infraction involving an offense identified as domestic violence, lewdness, battery, or an offense identified in the Utah Criminal Code as offenses against the family, offenses against the person, pornography, prostitution, or any type of sexual offense, shall not be given a background screening clearance to provide, or volunteer, services for the licensed program serving children.

3. If a licensee or person associated with a licensee has

been convicted within the last five years of a misdemeanor or infraction not listed in paragraph 2 above, a further study of the criminal and court records will be required. A comprehensive review of the individual circumstances shall be conducted by the DHS/CBS Committee.

4. If a licensee or person associated with a licensee has a criminal history record that indicates there are misdemeanor or infraction offenses, a misdemeanor or infraction conviction, conduct, or pattern of conduct, or failure to disclose a criminal conviction on the Consent and Release of Liability and Request for Background Screening form, it may result in a denial of a criminal background clearance. Further study of the criminal and court records by the DHS/CBS Committee will be conducted.

5. If a licensee or person associated with a licensee may have a criminal record, the OL may send a notice to the licensee or authorized worker requesting a fingerprint card and fee to be submitted to the OL within 72 hours after receiving the notice.

a. The required fingerprint card must be obtained from OL because these cards are stamped with DHS OL. Use of other cards may result in difficulties in completing the BCI screening, which may cause a loss of license or employment.

b. The person shall be fingerprinted either by the local law enforcement agency or an agency approved by law enforcement.

c. The fingerprinted card and the fee, in the form of a money order or cashier's check made payable to Utah DPS BCI, shall be sent to DHS OL for processing. This shall be completed by the person associated with a licensee. Failure to submit the fingerprint card and fee will result in the background screening application being denied and the person associated with the licensee will not be eligible to provide services for children.

d. The fingerprint card and fee will be submitted to the DPS BCI by the OL.

e. DPS BCI will submit the results and cards to OL.

f. The DHS/CBS committee will concurrently review the misdemeanor and infraction offenses within the last five years to determine whether or not the licensee or person associated with a licensee shall be approved or denied.

R501-14-5. DHS/CBS Committee Review.

A. A DHS/CBS Committee composed of members designated by the Director of DHS representing the various Divisions of DHS shall conduct a comprehensive review of the criminal background screening results at least twice a month.

B. The Committee shall, at a minimum, review the date and the type of offense or conviction, written documentation, the legal status of the individual, conduct or pattern of conduct, and if the criminal conviction was disclosed on the Consent and Release of Liability and Request for Background Screening form.

C. The committee shall maintain a record of the review to include the findings of fact, conclusions of each case, and a copy of the UCCH record and fingerprint card, when appropriate.

R501-14-6. Results of the DHS/CBS Committee Review.

A. Approval: If based upon DHS/CBS committee review, a decision is reached to approve a licensee or person associated with a licensee, a criminal background screening clearance shall be issued.

B. Denial:

1. If, based upon DHS/CBS Committee review of the circumstances, there exists credible evidence that the licensee or person associated with a licensee, poses a threat to the safety and health of the consumers being served by the human service program, a criminal background screening clearance shall not be issued.

2. If a decision is reached to deny, or revoke, proper legal notice of agency action will be sent to the licensee or applicant by the DHS or the OL.

3. The licensee or person associated with the licensee may request a hearing in accordance with the UAPA, UCA 63-46b.

R501-14-7. Conviction After Licensure.

If a licensee or person associated with the licensee is convicted of a felony, misdemeanor, or infraction after a license is issued, the licensee has five working days to notify OL. Failure to notify will result in automatic, immediate suspension of the license. When notice of a conviction is received, OL will respond as stated in UCA 501-14-3, et seq.

R501-14-8. Confidentiality.

A. The results of the criminal background screening shall only be released to individuals approved by the Department of Human Services who have signed a Non-Disclosure statement, which includes acknowledging the existence or non-existence of a criminal history by an Authorized DHS Worker. The information will be disclosed according to UCA 53-5-214.

B. The results of the criminal background screening will not be given over the telephone. The information must be requested in writing with the proper releases.

C. All documents relating to a criminal background screening must be maintained and stored as confidential material. When determined the document is no longer needed it must be destroyed, in a manner that secures its privacy, i.e., shredded, burned, etc.

R501-14-9. Retention of Identifying Information, Fingerprint Cards, and Criminal Background Screening.

A. Identifying Information and criminal background screening results shall be retained by the licensee for the duration of the person's association with the licensee. Screening results cannot be shared, transferred, or further disseminated to any other licensee or individual.

B. Identifying information, fingerprint cards, and criminal background screening results of persons whose background screening have been denied, and fingerprint cards for persons approved, shall be retained in the OL, pursuant to UCA 63-2-101, et seq.

R501-14-10. Expungement.

A. Licensees and persons associated with a licensee whose background screening applications have been denied due to a criminal record, may request further information or expungement of the record through the DPS BCI pursuant to UCA 77-18-2.

B. When a criminal record is expunged, the licensee or person associated with a licensee may re-apply for a background

screening clearance.

C. Information regarding procedures for criminal record expungement may be obtained from BCI. The costs of expungement are the responsibility of the licensee or person associated with the licensee.

hearing, or any other adjudicative proceeding as provided under the

R501-14-11. Administrative Hearing.

A. A licensee or person associated with the licensee, who has been convicted of a felony, has no right to a UAPA hearing.

B. A licensee or person associated with the licensee who has been denied a license or employment based upon a misdemeanor or infraction conviction may request a hearing in accordance with the UAPA. A licensee or person associated with the licensee requesting a hearing may continue to work under direct supervision until the hearing decision is issued. The person associated with the licensee or a licensee has no right to a UAPA hearing, unless there is a disputed issue of fact with the DHS policy.

C. When action to deny, revoke, or suspend a license is based upon a review by the DHS/CBS Committee and new evidence not considered by the committee is introduced at the hearing, the committee's representative may request that the case be remanded to the committee to consider the new evidence.

1. If the committee determines denial, revocation, or suspension is still warranted after further review, the committee chairperson will notify both the person associated with the licensee or the licensee and the OAH. The ALJ may then reconvene the hearing if necessary to complete the record. A final decision will be issued based on all of the evidence in the record.

2. If, after reviewing the new evidence, the committee recommends licensure, the OL will then send an appropriate notice to the licensee with a copy to OAH. After receiving notice that the license in dispute has been granted, OAH will close it's files without issuing a decision.

KEY: licensing, human services
June 16, 1998 **62A-2-120**
62A-4a-413

R501. Human Services, Administration, Administrative Services, Licensing.
R501-18. Abuse Background Screening.
R501-18-1. Management Information System.

A. Authority

1. Pursuant to UCA 62A-2-121 and UCA 62A-4a-116, a review of the Management Information System shall be conducted of all licensees and persons associated with the licensee as part of the initial and annual licensing process.

2. Pursuant to UCA 62A-3-311.1 a screening of licensees and persons associated with the licensee shall be conducted through the Adult Protective Services Data Base.

B. Purpose

The purpose of screening, as a part of the licensing process for the Department of Human Services, is to protect children and vulnerable adults from individuals who may have committed acts of abuse, neglect, or exploitation of a child or vulnerable adult.

R501-18-2. Definitions.

A. "Administrative Law Judge" means an employee of the DHS who acts as an independent decision maker who considers the evidence introduced at the hearing and renders a decision based solely on that evidence and all relevant law and policy, herein referred to as ALJ.

B. "Adult" means a person 18 years of age, or older.

C. "Adult Protective Services Worker" means an employee of the Department of Human Services who is designated to conduct abuse or neglect investigations of adults.

D. "Authorized Worker" means the director or designee of a facility or an employee of Department of Human Services.

E. "Authorized DHS Worker" means an employee of the Department of Human Services authorized to have access to the management information system as determined appropriate by the Director, Office of Licensing, Department of Human Services.

F. "Child Protective Service Worker" means an employee of the Department of Human Services who is designated to conduct abuse or neglect investigations of children.

G. "Consumer" means an individual, i.e., client, resident, customer, etc. who receives services from a licensee.

H. "Direct supervision" means that the licensee or person associated with the licensee is never with a client without their supervisor present.

I. "Director" means the person responsible, as delegated by the governing body, for the technical and programmatic aspects of the program. This person should provide direct supervision of the day-to-day aspects of the program operation.

J. "The Division of Aging and Adult Services" means the DHS Division responsible for administering and delivering services for aging and disabled adult residents of Utah, herein referred to as DAAS.

K. "Department of Human Services" means the State Department authorized to provide human services, including licensing, herein referred to as DHS.

L. "The Division of Child and Family Services" means the office of DHS, which operates regional human service offices, herein referred to as DCFS.

M. "The Division of Services for People With Disabilities" means the DHS Division responsible for providing services for people with disabilities, herein referred to as DSPD.

N. "Employee" means a person who performs services for a licensee in a paid or otherwise compensated capacity.

O. "Frequent Visitor" means an adult who visits on a recurring basis in a home where home based care is provided.

P. "GRAMA" means the provisions of the Government Records Access and Management Act that provides for and covers information access and privacy of provider files, as found in UCA 63-2-101, et.seq.

Q. "Human services licensee" or "licensee" means a youth program, resource family home, or a facility or program that provides services, care, secure treatment, inpatient treatment, residential treatment, residential support, adult day care, day treatment, outpatient treatment, domestic violence treatment, child placing services, or social detoxification licensed by the Office of Licensing.

R. "Identifying information" means individual data including, name, date of birth, social security number, and a copy of a driver license, or state identification card, and all aliases.

S. "Management Information system" means the part of the DCFS management information system developed for licensing purposes in accordance with UCA 62A-4a-116 and the Adult Protective Services Database identified in UCA -3-311.1 herein referred to as "management information system"

T. "Member of a Governing Body" means the individuals who comprise the Board of Trustees, Directors or other body who has the ultimate authority and responsibility for the conduct of the licensee.

U. "Owner" means anyone listed in the Articles of Incorporation, Limited Partnership, etc. who has a legal interest in or the legal right to the possession and to direct the affairs of the program.

V. "Office of Administrative Hearings" means the office in DHS which conducts hearings according to the Utah Administrative Procedures Act, herein referred to as OAH.

W. "Office of Licensing" means the office in DHS, authorized by law, to license facilities and programs, herein referred to as OL.

X. "Person Associated with the Licensee" means any owner, director, member of the governing body, employee, provider of care, or volunteer of a human service licensee. Also, any person 18 years or older who resides in a home or frequent visitor to a home where home based care is provided.

Y. "The Provider of Care" means a person who provides direct services for licensee consumers.

Z. Provider" means a public or private agency, owner, director, member of governing body, employee, volunteer, or other individual having a license to provide services to children.

AA. "UAPA" means the Utah Administrative Procedures Act as found in UCA 63-46b-1 through UCA 63-46b-21, herein referred to as UAPA.

BB. "Volunteer" means a person other than a parent or guardian of a child or vulnerable adult receiving care in the facility, who performs services for a licensed facility in a non-paid capacity.

CC. "Vulnerable Adult" means a disabled adult as defined in UCA 62A-3-301 (5); any person 18 years of age or older who

is impaired because of mental illness, mental deficiency, physical illness or disability, or other cause, to the extent that the person lacks sufficient understanding or capacity to make or communicate informed decisions concerning his person, or is unable to care for his own personal safety or provide necessities such as food, shelter, clothing or medical care, without which physical injury or illness may occur.

R501-18-3. Procedure for Abuse Background Screening.

A. Prior to hiring an individual, human service programs required to be licensed by DHS shall submit identifying information, including the names, date of birth, social security number, and driver's license or state identification card of all licensees and all persons associated with the licensee. Requests for clearance shall also be resubmitted annually thereafter. The screening will search for a history of abuse, neglect or exploitation of children or vulnerable adults.

B. Human service programs which are home based shall also submit identifying information including, the names, date of birth, social security number and a copy of the driver license or state identification card of all licensees and persons associated with the licensee for an initial and annual screening of the Management Information System to search for a history of abuse, neglect or exploitation of children or vulnerable adults.

C. If a licensee hires an individual without having the abuse background screening approval, the licensee assumes all liability and is responsible for directly supervising all individuals who have not received the required abuse background screening approval.

R501-18-4. Results of Screening.

A. Approval:

If the name of the licensee or person associated with the licensee does not appear on the management information system, the abuse background screening shall be cleared to provide services in the licensed DHS facility, program, or home serving children or vulnerable adults. Approval is only applicable to this specific facility, program, or home.

B. Comprehensive Review:

If the licensee or person associated with the licensee is identified in the Management Information System as a perpetrator of abuse, neglect or exploitation of children or vulnerable adults, their abuse background screening shall require further review by the DHS in accordance with R501-18-5.

R501-18-5. DHS Comprehensive Review.

A. A comprehensive review shall be conducted by the DHS.

B. The review shall seek to obtain the following information, including input regarding mitigating circumstances:

1. What is the nature of the abuse or neglect?
2. How long ago did the incident occur?
3. What was the severity of the abuse or neglect?
4. Was legal action taken?
5. What steps have been taken to remedy the situation?
6. Based upon the information available, does this person pose a threat to the safety and well-being of consumers of the licensee?
7. The review may also seek additional information from the applicant and other individuals, including all enforcement personnel who completed the investigation and the investigative worker.

C. The DHS shall maintain a record of the review to include the findings of fact and the conclusions of each case.

R501-18-6. Results of the DHS Review.

A. Approval:

1. If the DHS review determines that the licensee or person associated with the licensee does not pose a threat to consumers, the abuse background screening shall be approved.

B. Denial:

1. If, based upon DHS review of the circumstances, there exists credible evidence that the licensee, person associated with the licensee, or person living in the home or frequent visitor to the home poses a threat to the safety and health of the consumers being served by the human service licensee, an abuse background screening shall not be approved.
2. A Notice of Agency Action, herein referred to as NAA, will be sent to the licensee and the person associated with the licensee stating that the application for a abuse background screening approval has been denied.

a. In the case of out of home care, if the provider or applicant is terminated or dismissed within 24 hours, a license may continue.

b. If the licensee or person associated with the licensee is an adult residing in a home or a frequent visitor to a home where home based care is offered, the Office of Licensing shall not issue a license.

R501-18-7. Administrative Hearing.

A licensee or person associated with the licensee who is denied approval may request a hearing within 10 days in accordance with UAPA. The licensee or person associated with the licensee have no right to a UAPA hearing unless there is a disputed issue of fact with the DHS policy.

A. Status Pending the Hearing Results:

1. A licensee or person associated with the licensee requesting a hearing may continue to work under direct supervision until the hearing decision is issued.
2. If the licensee or person associated with the licensee is unable to work under direct supervision, a NAA shall be sent to the licensee stating that their current license has been placed on conditional status pending the results of the hearing.
3. If a person 18 or older residing in a home or a frequent visitor to a home where home based care is provided requests a hearing, a NAA shall be sent to the licensee stating that their current license has been placed on conditional status pending the outcome of the hearing and the person 18 or older living in the home or frequent visitor must never be present when consumers being served by the licensee are in the home pending the hearing decision.
4. The NAA must be posted in a conspicuous place where parents, consumers, or the public will obviously see and be able to read the notice. Programs with multiple service locations will post applicable notices at each of those locations. The Office of Licensing may also notify parents or the public directly, or require the facility or program to do so.

B. Participants of the DHS review shall be available to testify at the hearing.

1. When action to deny, revoke, or suspend a license or deny an abuse background screening is based upon the DHS review, and new evidence not considered by the DHS review is introduced at the hearing, the DHS review representative may request that the case be remanded to the DHS to consider the new evidence. If the DHS determines denial, revocation, or suspension is still warranted after further review, the DHS will notify both the licensee, person associated with the licensee, and the OAH. The OAH may then reconvene the hearing if necessary to complete the record. A final decision will be issued based on all of the evidence in the record.

2. If, after reviewing the new evidence, the DHS recommends that the abuse background screening be approved, the DHS shall advise the licensee and person associated with the licensee. The DHS will then send an appropriate notice to the licensee and person associated with the licensee and a copy to OAH.

R501-18-8. Referral After Licensure.

If a licensee or person associated with a licensee providing services to the program serving children or vulnerable adults who must obtain the abuse background screening approval is substantiated for adult or child abuse, neglect, or exploitation after receiving the abuse background approval, the licensee has five working days to notify the OL. Failure to notify may result in automatic, immediate suspension of the license. When notice of a substantiated abuse record is received, the OL will respond as stated in R501-18-5 above.

R501-18-9. Confidentiality.

The information contained on the Management Information System is confidential and shall only be released as authorized by UCA 62A-4a-412 for children or UCA 62A-3-311.1 for adults.

A. The information in the Management Information System may only be released to individuals approved by the DHS in accordance with UCA 62A-4a-412 or UCA 62A-3-311.1.

B. The information in the Management Information System will not be given over the telephone. The information must be requested in writing with the proper releases.

C. All documents relating to an abuse background screening must be maintained and stored in accordance with GRAMA.

KEY: licensing, human services
June 16, 1998 62A-2-101 et seq.

R527. Human Services, Recovery Services.
R527-100. Uniform Interstate Family Support Act.
R527-100-1. Purpose.

The purpose of this rule is to provide for severability of provisions in the Uniform Interstate Family Support Act (UIFSA), Section 78-45f-100 through 78-45f-901in accordance with 42 U.S.C. Subsection 666(f).

R527-100-2. Severability Clause.

If any provision of Chapter 45f or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given without the invalid provision or application, and to this end the provisions of this chapter are severable.

KEY: child support, interstate
June 16, 1998 78-45f-100 through 78-45f-901

R527. Human Services, Recovery Services.
R527-300. Income Withholding.
R527-300-1. Income Withholding.

1. Income withholding is defined as withholding child support from an obligor's income. The payor of income forwards the amount withheld to the Office of Recovery Services/Child Support Services (ORS/CSS).

2. Income withholding may be initiated in a IV-D case, with concurrent notice to the obligor:

a. in a case which has an order issued prior to October 13, 1990, which has not been modified since October 13, 1990, even though the obligor is not delinquent as defined in Section 62A-11-401(5) or R527-300-2, if the obligor and the obligee have signed a subsequent agreement which the obligor has failed to meet; for example, while the order does not require payment by a specific date, there is a written agreement that payment will be made on the first day of each month, or

b. in a case which has an order issued or modified after October 13, 1990, which found a demonstration of good cause or entered a written agreement that immediate income withholding is not required, if the obligor and the obligee have signed a subsequent agreement which the obligor has failed to meet; for example, while the order does not require payment by a specific date, there is a written agreement that payment will be made on the first day of each month.

R527-300-2. Determining Delinquency.

1. If current support has been ordered but is not presently in effect; for example, the children are 18 years old, the children have been adopted, custody has changed, or the obligor is paying current support to the obligee; delinquency has occurred when the obligor has accrued a debt in an amount equal to or greater than the previously ordered current support for one month.

2. If there was not a previous current support order but there is a judgment for arrears, delinquency has occurred when the obligor fails to pay as agreed, provided the judgment was for at least one month's current support amount used to compute the judgment for arrears. If the judgment was by default and the judgment amount was for at least one month's current support amount used to compute the judgment, income withholding may begin immediately upon entry of the judgment.

3. A delinquency could be the result of an underpayment for several months that totals at least one month's current support.

4. A delinquency can occur prior to the end of the month if the obligor was ordered to pay on specific days of the month and failed to do so.

R527-300-3. Affidavit of Delinquency.

The Non-IV-A applicant prepares a month-by-month computation of the support debt, which is referred to as a statement of arrears. The statement of arrears is part of the application packet. As part of the statement of arrears, the applicant attests that the statement is true and accurate to the best knowledge and belief of the applicant. This signed statement shall satisfy the verified statement requirement of Section 62A-11-405.

R527-300-4. Administrative Review.

1. Section 62A-11-405(2)(b)(ii)(B) requires the obligor to file a written request for review with the office within 15 days to contest withholding. This written request for review shall state the obligor's basis for contesting the withholding.

2. If an administrative review is conducted pursuant to Section 62A-11-405(3), the notice of decision required may be mailed or delivered to the obligor in the ordinary course of business.

R527-300-5. Income Subject To Withholding.

Section 62A-11-406 limits the total amount of the income withheld for child support to the maximum permitted under Section 303(b) of the Consumer Credit Protection Act 15 U.S.C. Section 1673(b). In general, income withholding will be limited to withholding 50% of the obligor's disposable income. However, if 50% does not result in withholding enough to cover the current support obligation, the office may review an obligor's circumstances under the provisions of the Consumer Credit Protection Act to determine whether a higher percentage is permitted.

R527-300-6. Modification of Withholding Amounts.

1. Once a Notice to Withhold Income for Child Support has been sent to the obligor's employer, any changes to the withholding amount will be made by sending the payor a modified Notice to Withhold. The obligor will be provided concurrent notice of any changes.

2. If the obligor changes from one payor of income to another payor of income a new Notice to Withhold must be sent to the new payor in accordance with BCSS assessment procedures.

R527-300-7. Income Withholding Termination.

1. Income withholding should be terminated if:

a. the obligor no longer has an obligation for current child support, and no longer has a debt to Utah or another state on whose behalf Utah is acting or to a Non-IV-A obligee on whose behalf Utah is acting;

b. if the Non-IV-A obligee terminates the ORS case, income withholding was administratively implemented and the obligor no longer owes child support to Utah or other state on whose behalf Utah is acting, and the obligee does not want withholding to continue;

c. the obligor successfully contests the withholding which is currently in effect through the court or administrative review process. If income withholding was terminated based on a court or administrative order and the obligor later becomes delinquent, income withholding will be reinstated.

KEY: child support, income, wages

June 16, 1998	**62A-11-401**
Notice of Continuation October 31, 1997	**62A-11-405**
	62A-11-406
	62A-11-413
	62A-11-414

R527. Human Services, Recovery Services.
R527-305. High-Volume, Automated Administrative

Enforcement in Interstate Child Support Cases.

R527-305-1. Authority.

This rule establishes procedures for High-Volume, Automated Administrative Enforcement in Interstate child support cases pursuant to Section 62A-11-305, and Subsection 466(a)(14) of the Social Security Act.

R527-305-2. Purpose.

The purpose of this rule is to provide procedures for the IV-D Child Support Services program within the Office of Recovery Services (CSS/ORS), when a request is received from a IV-D child support agency of another state for high-volume, automated administrative enforcement of support orders.

R527-305-3. Definitions.

1. "Requesting State" means the state sending an administrative interstate enforcement request to the assisting state.

2. "Assisting State" means the state matching the requesting state's delinquent obligors against data bases and, if appropriate, seizing assets on behalf of the requesting state.

3. "High-Volume, Automated Administrative Enforcement in Interstate Cases" means the use of automated data processing to search the assisting state's data bases to determine whether information is available regarding parents who owe child support in the requesting state, and the seizure of identified assets, if appropriate, using the same techniques as used in intrastate cases.

R527-305-4. Procedures for High-Volume, Automated Administrative Enforcement of Interstate Referrals.

The procedures below apply whenever CSS/ORS receives a request for high-volume, automated administrative enforcement of interstate cases from another state's IV-D agency.

1. Another state may transmit a request for automated administrative enforcement of support orders to CSS/ORS by electronic or other means. The requesting state may transmit a single high-volume referral that includes multiple requests.

2. A request for automated administrative interstate enforcement shall not be considered a transfer of the cases referred to the CSS/ORS caseload.

3. CSS/ORS will conduct a match of the referral data against Utah state databases to which it has access to determine if information regarding the obligor is available. CSS/ORS will notify the requesting state of the results of the search.

4. CSS/ORS will give an automated administrative interstate enforcement request the same priority it gives to a regular interstate case referred by another state for collection services or establishment, modification, or registration of an order.

KEY: child support, interstate
June 16, 1998 62A-11-305

R590. Insurance, Administration.
R590-128. Unfair Discrimination Based on the Failure to Maintain Automobile Insurance. (Revised.)
R590-128-1. Authority.

This rule is promulgated pursuant to Section 31A-23-302(3), which provides guidelines for determining what is unfair discrimination, and Section 31A-23-302(8) which allows the commissioner to make rules defining unfair marketing acts or practices.

R590-128-2. Purpose.

The purpose of this rule is to identify certain practices which the commissioner finds are unfair and discriminatory.

R590-128-3. Scope and Applicability.

This rule applies to all automobile insurance contracts delivered or issued for delivery in this state on or after the effective date of this rule.

R590-128-4. Rule.

(1) The following are hereby identified as acts or practices which, when applied because of failure to maintain automobile insurance for a period of time prior to the issuance of an insurance policy, constitute unfair discrimination among members of the same class:

(a) refusing to insure or refusing to continue to insure;

(b) limiting the amount, extent or kinds of coverage available;

(c) charging applicants different rates for the same coverage by either surcharging one applicant who did not have prior insurance or crediting another applicant who did have prior insurance; or

(d) designating the applicant as a non-standard, sub-standard, or otherwise worse than average risk for the purpose of placing the applicant in a specific company or rating tier.

(2) In the application of Subsection (1) the following shall apply:

(a) an insurer may reject or surcharge an applicant if the insurer can demonstrate through driving records or other objective means including, but not limited to, a statement from the applicant, that the applicant has at any time in the immediately prior three years been operating a motor vehicle in violation of any state's compulsory auto insurance laws; or

(b) an insurer may reject or surcharge an applicant if the applicant represents that prior insurance existed, but fails to provide evidence to the insurer, or fails to assist the insurer in securing evidence that said prior insurance actually existed.

(3) Inadvertent lapses in coverage of up to 30 days due to the applicant's reasonable reliance on information from an insurance agent or company that the applicant was insured are not considered to be a failure to maintain automobile insurance for the purposes of this rule.

R590-128-5. Penalties.

Violations of this rule are punishable pursuant to Section 31A-2-308.

KEY: insurance companies
June 16, 1998 **31A-23-302**

Notice of Continuation April 15, 1995

R590. Insurance, Administration.
R590-154. Unfair Marketing Practices Rule.
R590-154-1. Authority.

This rule is adopted pursuant to Subsection 31A-23-302(8), Utah Code Annotated (U.C.), which provides that the commissioner may find certain practices to be misleading, deceptive, unfairly discriminatory, provide an unfair inducement, or unreasonably restrain competition, and to prohibit them by rule.

R590-154-2. Definitions.

A. Agency means an insurance organization required to be licensed under Utah Code Annotated, Section 31A-23-212(2).

B. Barter means the sale of an insurance or annuity contract for anything of value other than cash or other negotiable instruments.

C. Producer means an insurance agent, broker or consultant licensed or required to be licensed under Part II, Chapter 23 of Title 31A, U.C.

R590-154-3. Findings.

The commissioner finds that each of the practices prohibited in this rule constitute misleading, deceptive or unfairly discriminatory practices or provide an unfair inducement or unreasonably restrain competition, except as specifically allowed in this rule.

R590-154-4. Agency Names.

A. No insurance agency licensed in the State of Utah may use any name that is misleading or deceptive as to the true nature or purpose of the organization, or which deceptively implies association or connection with any other organization where actual bona fide association or connection does not exist.

B. All insurance agencies licensed in the State of Utah shall include the words "insurance agency" or "insurance brokerage" where applicable, or similar words establishing the status of the agency as an insurance agency or brokerage unless the agency can establish to the satisfaction of the commissioner that the solicitation or sale of insurance is only an incidental part of the function of the agency. This Section shall not be enforced against insurance agencies licensed and doing business in the State of Utah at the time of the adoption of this rule until the agency otherwise alters or changes its name, or the commissioner specifically finds the name to be deceptive and orders the name to be changed.

C. All agencies licensed in the State of Utah shall use the full and correct name of the agency, as it appears on the agency's license, in any and all advertising or promotional material used or distributed by the agency in the State of Utah.

R590-154-5. Claiming or Representing Department Approval.

No licensee may represent either directly or indirectly that the Utah Insurance Department, the Insurance Commissioner, or any employee of the department, has approved, reviewed, endorsed, or in any way favorably passed upon any marketing program, insurance product, insurance company, practice or act.

A licensee may report the fact of the filing of any form, financial report, or other document with the Insurance Department, or of licensure, examination or other action involving the department, or the commissioner but may not misrepresent their effect or import.

R590-154-6. Bartering for Insurance.

Any licensee bartering for the sale of insurance or an annuity contract shall fully document the receipt of goods, services or other thing of value, establishing the value of the thing received and how the value was established, from whom received, the date received, and the premium cost of the insurance or annuity contract bartered for, and shall retain said documentation for three years following the expiration of the policy period or bartering, whichever is longer. Any licensee bartering for the sale of an insurance or annuity contract shall disclose at the time of application to the insurer said bartering arrangement.

R590-154-7. Prohibited Insurance Sales Tie-Ins.

Multi-level marketing programs, investment programs, memberships, or other programs, designed or represented to produce or provide funds to pay all or any part of the cost of insurance constitutes an illegal inducement. This does not preclude the provision of insurance through a bona fide employee benefits program.

R590-154-8. Inducements, Gifts and Merchandise Given in Connection With Solicitation or Sale of Insurance.

A. No licensee may give or offer to give any prizes, goods, wares, merchandise or item of value as an inducement to enter into any insurance or annuity contract or as an inducement to receive a quote, submit an application or in connection with any other solicitation for the sale of an insurance or annuity contract. However, anything with an acquisition cost of $3.00 or less shall not be considered an inducement.

B. Subsection A of this section does not prohibit the giving of promotional gifts or merchandise that is generally available to the public and not given in a manner to constitute an inducement to receive a quote or other solicitation or to purchase any insurance or annuity contract, nor does it prohibit insurers from providing sales incentives to producers.

C. This section does not prohibit the usual kinds of social courtesies as long as they are not related to a particular transaction as stated in Subsection 31A-23-302(2)(a), U.C. If the receiving of the social courtesy is dependant on obtaining a quote, submitting an application or purchasing a policy or contract, it is related to a particular transaction.

D. This section does not apply to title insurers or agents. Rule R590-153 is the applicable rule for the marketing of title insurance.

R590-154-9. Commission Contributions.

No insurer, organization, broker or agent shall give or offer to give a premium reduction by means of commission contribution back to the insurer for any purpose, including competition, unless the reduction is for expense savings and is justified by a reasonable standard and with reasonable accuracy. The insurer's underwriting files must document the savings in order to enable the commissioner to verify compliance. This documentation must demonstrate legitimate expense savings

realized by the company and the agent.

R590-154-10. Prohibited Financing Arrangements.

No organization, broker, agent or other person may obtain or arrange for third party financing of premium without the knowledge and consent of the insured.

R590-154-11. Acting as Agent in Other Jurisdictions.

Any resident agent, broker or agency licensed in the State of Utah, may not operate as an agent, broker or agency in another jurisdiction, or solicit insurance in another jurisdiction unless licensed or permitted by law to do so in that jurisdiction.

R590-154-12. Use of Comparative Information.

A. Every insurer marketing insurance in the State of Utah shall establish written marketing procedures to assure that any comparison of insurance contracts, annuities or insurance companies by its agents or other producers will be fair and accurate.

B. No licensee may use any published rating information regarding an insurer in connection with the marketing of any insurance contract or annuity unless that person also provides at the same time an explanation of what the rating means as defined by the rating service.

R590-154-13. Disclosure of Insurer in Group Insurance.

Every certificate of insurance or booklet describing coverage of a group insurance policy shall prominently state on the cover of the certificate or booklet the name of the actual insurer.

R590-154-14. 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 circumstance may not be affected thereby.

KEY: insurance
1993 **31A-23-302**
Notice of Continuation June 10, 1998

R600. Labor Commission, Administration.
R600-1. Declaratory Orders.
R600-1-1. Purpose.

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.

B. In order of importance, procedures governing declaratory orders are:

(1) procedures specified in this rule pursuant to Chapter 46b of Title 63, U.C.A.;

(2) the applicable procedures of Chapter 46b of Title 63;

(3) applicable procedures of other governing state and federal law; and

(4) the Utah Rules of Civil Procedure.

R600-1-2. Definitions.

Terms used in this rule are defined in Section 63-46b-2, except and in addition:

A. "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.

B. "Declaratory Order" means an administrative interpretation or explanation of rights, status, and other legal relations under a statute, rule or order.

C. "Director" means the agency head or governing body with jurisdiction over the Agency's adjudicative proceedings.

R600-1-3. Petition Form and Filing.

A. The petition shall be addressed and delivered to the director, 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 number where the petitioner can be contacted during regular work days; and

(6) be signed by the petitioner.

R600-1-4. Reviewability.

The agency shall not issue a declaratory order if the subject matter is:

A. not within the jurisdiction and competence of the agency;

B. frivolous, trivial, irrelevant, or immaterial;

C. 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;

D. 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

E. otherwise excluded by state or federal law.

R600-1-5. Intervention.

A person may file a petition for intervention in a declaratory proceeding only if they deliver to the director 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).

R600-1-6. Petition Review and Disposition.

A. The agency will be governed by the provisions of Sections 63-46b-21(6) and (7).

B. Petitions seeking declaratory orders will be designated as informal adjudicative proceedings.

R600-1-7. Administrative Review.

A. Petitioner may seek reconsideration of a declaratory order by petitioning the director under the procedures of Section 63-46b-13.

KEY: labor commission, declaratory orders
1988 34A-1-104
Notice of Continuation June 15, 1998 63-46b-21 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 Schedue (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.
Notice of Continuation June 15, 1998 34A-3-101 et seq.
34A-1-104

R612. Labor Commission, Industrial Accidents.
R612-3. Workers' Compensation Rules - Self-Insurance.
R612-3-1. Definitions.

A. "Reserve" is defined as the amount necessary to satisfy all debts, past, present, and future, incurred by reason of industrial accidents or occupational diseases, the origins of which commenced prior to the date of reserve determination.

B. "Aggregate Excess Insurance" is defined as the amount of insurance required to cover the total accumulated workers' compensation benefits for all claims payable for a given period of time with the employer retaining an obligation for a designated amount as a deductible and the insurance company paying all amounts due thereafter up to a maximum total obligation.

C. "Specific Excess Insurance" is defined as the amount of insurance required to cover the workers' compensation benefits arising out of a specific occurrence (accident) or occupational disease under the Workers' Compensation Law with the employer retaining an obligation for a designated amount as a deductible and the insurance company assuming the obligation for all amounts due thereafter up to a maximum total obligation.

D. In addition to the foregoing definitions, all definitions in Rule R612-1 apply to this section.

R612-3-2. Authority.

This rule is enacted under the authority of Section 34A-1-104.

R612-3-3. Application.

A. An employer seeking authorization to become self-insured under the provision of Section 34A-2-201 of the Utah Workers' Compensation Act must apply to the division through the use of a form entitled "Application for Self Insurance."

B. The division will require annual renewals for continuing self-insurance. Renewal, through the use of a form entitled "Renewal Application for Self-Insurance", will require an update of the initial information. Renewal information must be submitted at least 60 days before the self-insurance anniversary date. Failure to file a renewal application on time may result in an interruption or cancellation of self-insurance privileges.

C. The initial and all renewal applications must be completed and signed by the employer's duly authorized representative.

R612-3-4. Qualifying Requirements.

A. To qualify, an employer must be in business for a period of not less than five years and shall demonstrate sufficient financial strength and liquidity of the business to assure that all obligations will be promptly met. An employer in business less than five years will be considered only if a pre-existing parent corporation (in business more than five years) guarantees the liability. In cases of merger or name identification change, the history of the pre-existing entity will be considered for the five year requirement. Upon applying for self-insurance privileges, the applicant must forward a current, certified financial statement or other proof of financial ability to pay direct compensation and other expenses as provided by Section 34A-2-201. Mergers occurring after an entity is self-insured will require a new application by the merged entity. However, entities whose financial information can be obtained from Dunn and Bradstreet will not be required to file financial statements unless clarification or supplemental statements are deemed appropriate or necessary.

B. Specific or aggregate excess insurance with policy limits and retention amounts acceptable are required as a condition of approval and continuation of self-insurance privileges.

C. Excess Insurance policies shall include a bankruptcy and insolvency endorsement (Form 303) for each self-insured entity. The endorsement adds the Uninsured Employer's Fund to the excess insurance policy and specifies the conditions of the Utah bankruptcy and insolvency endorsement for individual self-insureds.

D. A minimum $100,000 surety bond or an irrevocable letter of credit shall be required of each self-insurer.

E. No corporate surety shall be eligible to write self-insurers' surety bonds or excess insurance unless authorized to transact such business in this state.

F. Surety bonds must be issued on a prescribed form entitled "Self-Insurance Aggregate Surety Bond" and shall be exchanged or replaced with another surety bond only if a 60 day notice of termination of liability is given by the bonding company. The replacement bond must be issued on a form as prescribed by the Commission. No replacements will be authorized by the Commission unless the new surety accepts the liability of the previous surety(ies) or a guarantee is filed by both (all) sureties acknowledging their respective liabilities and periods of time covering such liabilities.

G. Irrevocable Letters of Credit (ILOC) (Form 304).

1. Information - Irrevocable Letter of Credit.

The division may accept an ILOC as an alternative security deposit to a surety bond. However, the division will retain discretion to determine if, in each particular case, an ILOC is an acceptable deposit, if the bank issuing is acceptable, and if the ILOC's format is satisfactory.

2. The ILOC must be issued by a Utah state chartered bank or a federally chartered bank with a Utah branch office from which funds will be immediately payable on demand. The bank used must be on the list of banks authorized to hold public funds by the Money Management Council of the State of Utah. The employer must furnish a memorandum of understanding with the Irrevocable Letter of Credit on a form provided by the division, which advises the following:

(a) The ILOC is being furnished to the division to provide for workers' disability compensation in lieu of a surety bond as one of the requirements for approval of a self-insurance program.

(b) The employer understands that the ILOC shall be deemed automatically extended without amendment for one year form the expiry date or any future expiry date, unless 60 days prior to any expiry date, the division is notified by registered mail that the ILOC shall not be renewed for any additional period. A policy of insurance or a surety bond of equal amount may be furnished as a substitute for an ILOC, however, the substitute must cover industrial injuries incurred during the period that the ILOC was effective. All policies of insurance and surety bonds furnished as substitutes for ILOC shall be subject to prior division approval.

(c) The employer shall affirm that the ILOC in the amount requested by the division is being offered with the understanding that if the division receives notice that the ILOC shall not be renewed, the division may, after 30 days from the receipt date of notice, call the proceeds of the ILOC and deposit those proceeds in the state treasury, and further, if in the judgment of the division, the ILOC is needed to cover any workers' disability compensation claims, that the proceeds of the ILOC shall be called immediately without waiting 30 days.

(d) In the event that the division draws upon the ILOC, the Employer must provide or make available all of its files and records associated with workers' compensation.

(e) If legal proceedings are initiated by any party with respect to payment of any ILOC, it is agreed that such proceedings shall be subject to Utah courts and law.

(f) The completed ILOC together with the memorandum of understanding must be furnished to and accepted by the division before an effective date will be granted for a self-insurance program.

3. The ILOC shall be issued with the language as required on the Industrial Accidents Division form 304.

4. Each self-insured entity shall sign a division prescribed Memorandum of Understanding (Form 305), which shall not become effective until certification is granted, when using an Irrevocable Letter of Credit as a form of security.

H. All subsidiary companies must have the parent company guarantee liability for payment of benefits (unless such requirement is waived by the division). The form and substance of such guarantees are to be approved by the division.

I. The division may utilize services such as Dunn and Bradstreet credit ratings for the purpose of evaluating a company's financial ability to pay.

J. Entities that fall within the top two composite credit appraisal ratings by Dunn and Bradstreet (or information from an equivalent service) and their top two ratings on estimated financial strength may qualify for self-insurance in Utah with the minimum requirements as set forth in Rule R612-3-4C. Companies with a 5A or 4A estimated financial strength rating and falling within the fair composite credit appraisal of Dunn and Bradstreet may qualify for self-insurance with higher security requirements as determined by the division. The provisions herein are to be construed as optional, with the division having the option.

K. Self-insured entities, or their parent company if such is a guarantor, that fall below either the 5A or 4A estimated financial strength rating or the top three composite credit appraisal ratings of Dunn and Bradstreet will not be allowed to self-insure. A company already self-insured that falls in the aforementioned disqualifying categories will not be allowed to continue self-insurance privileges. However, at the discretion of the division continuation of self-insurance will be considered if the following steps are taken:

1. An independent actuarial study satisfactory to the division and the employer is made of the reserve requirements of the self-insured entity, said study to be at the employer's expense. Selection of the actuary will be mutually agreed upon by the division and the employer. However, should the parties fail to agree, the division will make the final selection.

2. Satisfactory security is obtained for the reserves plus the aggregate excess retention amount.

3. Any company whose self-insurance privileges are revoked under the provisions of these rules will be required to obtain security for their reserve requirements under the foregoing two step process regardless of whether or not self-insurance privileges are continued.

4. Companies whose privileges are to be revoked will be allowed 60 days from notice to comply with steps 1 through 3 above.

5. Quarterly financial reviews will be taken of entities which retain their self-insurance privileges by following 1, 2, and 3 above.

L. Security requirements for all entities requiring security will be determined by a review of past incurred losses and application of exposure, loss, and contingency factors. The minimum acceptable bond amount is $100,000.

M. Public and eleemosynary entities are classified as special categories requiring separate consideration for self-insurance privileges and security requirements.

R612-3-5. Administration of the Self-Insurance Program.

A. A self-insurer must procure the services of an insurance carrier or adjusting company to administer the self-insurance program with regard to claims, setting up of reserves, and safety programs; or

B. The self-insurer must show proof of sufficient and competent staff to administer the self-insurance program and provide safety engineering. The division reserves the right to train and test adjustors and administrators of self-insurance programs.

C. Whether a self-insurer hires their own adjustor or contracts with an insurance carrier or service organization, the following conditions must be met:

1. A knowledgeable contact concerning claims will be located in the state of Utah.

2. The self-insurer will maintain a toll free number or accept during office hours a reasonable number of collect calls from injured employees if either employees of the company or the division offices are in a different city than that of the adjustor.

D. The self-insurer will comply with all rules of the Commission and with the Workers' Compensation Act.

R612-3-6. Notice of Certification for Self-Insurance or Denial and Renewal.

Upon meeting the requirements set forth in these rules, an employer shall receive a formal certificate approving self-insured status. The privilege may be renewed from year to year with renewal procedure as required by these rules. An employer whose original or renewal application for self-insurance has been denied or revoked, or who takes exception to insurance or reserve requirements, may request a review or reconsideration by the Commission. The request must be made within 20 days of the notice of Commission action issued to the employer. A request for review will not automatically extend the authorization to self-insure. However, the Commission may extend the privilege pending review. Without such an extension, the privilege is revoked on the anniversary date.

R612-3-7. Revocation of Right to Self-Insure.

The right to self-insure may be revoked by the division for failure to comply with the rules contained herein.

KEY: self insurance plans, workers' compensation, benefits
1992 34A-1-104
Notice of Continuation June 15, 1998 34A-2-201

R612. Labor Commission, Industrial Accidents.
R612-5. Employee Leasing Company Workers' Compensation Insurance Policy Endorsements.
R612-5-1. Authority.

This rule is enacted under the authority of Sections 34A-1-104 and 34A-2-103.

R612-5-2. Definition.

A. For the purposes of this rule an employee leasing company is as defined per Title 58, Chapter 59.

B. In addition to the foregoing definition, all definitions in Rule R612-1 apply to this section.

R612-5-3. Workers' Compensation Coverage for Client Companies Under an Endorsement Arrangement.

An insurance company licensed to write workers' compensation coverage in the state of Utah underwriting an employee leasing company as the named insured shall insure all of the primary insured's client companies under an umbrella policy and shall provide a separate endorsement for each client company unless the client company provides workers' compensation coverage under a separate policy.

R612-5-4. Notification of a New Policy and Endorsements.

A. Any insurance carrier underwriting a new policy naming an employee leasing company as the primary insured shall notify the division in writing or by electronic means within ten working days of the new policy including all client companies covered under the policy. The notification shall include all the information as specified in this rule.

B. The insurance carrier shall subsequently notify the division in writing or by electronic means within ten working days of any new client company endorsements covered under an leasing company's umbrella policy after the initial policy is written giving all information as specified in this rule.

R612-5-5. Cancellations.

Any insurance carrier underwriting an employee leasing company as the primary insured shall:

A. Give the division a 30 day advance notice in writing or by electronic means of a proposed cancellation of an employee leasing company or any client company written as an endorsement under an employee leasing company's policy.

B. Give the division notice in writing or through electronic means within ten working days after cancellation of a policy underwritten naming the employee leasing company as the primary insured and any cancellation of an endorsement of a client company covered under the primary insured.

C. Failure by an insurance carrier to notify the division of the cancellation of either the primary insured employee leasing company or a client company will result in the continuation of coverage by the insurance carrier until the division receives notification as specified in this rule.

R612-5-6. Required Information.

The following information is required on any notice sent to the division on a policy underwritten by the insurance carrier naming an employee leasing company as the primary insured.

A. Name and both mailing and physical address of the employee leasing company.

B. The policy number and effective dates of coverage for the employee leasing company.

C. Each client company's DBA's (doing business as) names(s) and mailing and physical location(s).

D. The Standard Industrial Classification (SIC) for each client company.

E. The effective dates of coverage on the endorsement for each client company.

R612-5-7. Reporting of Injuries.

The reporting of injuries as required in Section 34A-2-407 shall be in the name of the client company.

KEY: workers' compensation, employer, insurance
1993 34A-2-103
Notice of Continuation June 15, 1998

R628. Money Management Council, Administration.
R628-11. Maximum Amount of Public Funds Allowed to Be Held by Any Qualified Depository.
R628-11-1. Authority.

This rule is issued pursuant to Section 51-7-18.1.

R628-11-2. Scope.

This rule applies to all qualified depository institutions at which public funds may be held.

R628-11-3. Purpose.

The purpose of this rule is to protect against the loss of public funds by establishing a formula for determining the maximum amount of public funds that can be held by any qualified depository. The rule defines capital for each class of qualified depository institution, establishes a formula for calculating the maximum amount of uninsured public funds which can be held at a qualified depository institution, establishes a schedule for reduction of uninsured public deposits based on risk to public treasurers and establishes the frequency of public funds allotment adjustments.

R628-11-4. Definitions.

For the purposes of this rule:

A. "Adjusted capital" means: capital less 40% of nonperforming assets.

B. "Capital" means:

(1) For a commercial bank or federally insured thrift institution, the sum of capital stock, surplus, undivided profits, subordinated notes, allowance for loan losses, reserves for contingencies and other capital reserves;

(2) For a federally insured credit union, the sum of unappropriated retained earnings, regulatory/statutory reserves, all other reserves, and allowance for loan losses;

(3) For a savings and loan association, the sum of preferred stock, permanent, reserve or guaranty stock, paid-in surplus, reserves, undivided profits, retained earnings, net undistributed income, specific reserves and valuation allowances, less deferred loan losses included as an asset on the books of the association.

C. "Deposits" means: balances due to persons having an account at the qualified depository institution whether in the form of a transaction account, savings account, share account, or certificate of deposit and repurchase agreements other than qualifying repurchase agreements.

D. "Out of State" means: in reference to a depository institution or depository institution holding company, an institution or company whose home state is not Utah.

E. "Maximum amount" means: the amount of deposits in excess of the federal deposit insurance limit.

F. "Nonperforming assets" means:

(1) For a commercial bank or a federally insured thrift institution, the aggregate of all loans and lease financing receivables past due 90 days or more and still accruing, all loans and lease financing receivables on nonaccrual status and 50% of Other Real Estate;

(2) For a savings and loan association, all slow and classified loans as reported in Section K of the Quarterly Report to the Federal Home Loan Bank Board (Form 1313) plus 50% of repossessed assets as reported in Section A of the Quarterly Report;

(3) For a federally insured credit union, all loans delinquent two months or more.

G. "Qualified depository" means: a Utah depository institution as defined in Subsection 7-1-103(36) or a out of state depository institution as defined in Subsection 7-1-103(25) which may conduct business in this state under Section 7-1-702, whose deposits are insured by an agency of the Federal Government and which has been certified by the Commissioner of Financial Institutions as having met the requirements to receive public funds.

H. "Transaction account" means: a deposit, account, or other contractual arrangement in which a depositor, account holder, or other customer is permitted, directly or indirectly, to make withdrawals by check or other negotiable instrument, a payment order of withdrawal, a telephone transfer or other electronic means or by any other means or device to make payments or transfer to third persons. This term includes demand deposits, NOW accounts, savings deposits subject to automatic transfers, and share draft accounts.

I. "Utah depository institution" means: a depository institution which is organized under the laws of, and whose home office is located in, this state or which is organized under the laws of the United States and whose home office is located in this state.

R628-11-5. General Rule.

A. Maximum Insured Public Funds

Any qualified depository may accept, receive, and hold deposits of public funds without limitation, if the total amount of deposits from each public treasurer does not exceed $100,000.

B. Maximum Deposits in Excess of the Federal Insurance Limits For Qualified Utah Depository Institutions

(1) For all qualified Utah depository institutions which do not receive an unqualified opinion issued by an independent certified public accountant upon completion of an annual audit performed in accordance with generally accepted auditing standards, the maximum amount of public funds which may be held shall be according to the following schedule:

TABLE

Ratio of Adjusted Capital to Total Assets	Public Funds Allotment
5.0% or more	Two X Capital
3.5% to 4.99%	One X Capital
Less than 3.5%	None

(2) A qualified Utah depository institution which receives an unqualified opinion issued by an independent certified public accountant upon completion of an annual audit performed in accordance with generally accepted auditing standards, may submit the audit report within 100 days of the date of the audit to the Department of Financial Institutions for review and the Commissioner of Financial Institutions may authorize that the ratios of adjusted capital to total assets applicable to the institution submitting the audit for determining the maximum amount of public funds allowed may be according to the

following schedule:

TABLE

Ratio of Adjusted Capital to Total Assets	Public Funds Allotment
4.5% or more	Two X Capital
3.0% to 4.49%	One X Capital
Less than 3.0%	None

C. A qualified out-of-state depository institution will be treated as a qualified Utah depository subject to all the provisions of this section in determining its public funds allotment except that the public funds allotment will be reduced by multiplying by a factor of total deposits outstanding at Utah branches of the institution divided by the total deposits at the institution. Nothing in R628-11 shall prohibit a out-of-state depository institution from qualifying as a permitted out-of-state depository in accordance with R628-10.

R628-11-6. Responsibility to Monitor Balances.

Deposits in qualified depositories which are limited by R628-11-5(B) and R628-11-5(C) to the amount of federal deposit insurance must be monitored on a daily basis to assure that the total of all time deposits and transaction accounts is not allowed to exceed the federal insurance limit. The public treasurer making deposits and the qualified depository accepting deposits shall both be responsible to assure that the depositor's combined balance of all accounts stays within the federal insurance limit.

R628-11-7. Collateralization of Excess Public Funds.

Pursuant to Section 51-7-18.1(5), the Money Management Council may require a qualified depository to pledge collateral security for deposits of public funds which exceed the public funds allotment established by this rule. Any pledging of collateral security required by the Money Management Council shall be in accordance with the provisions of the Money Management Act and the rules of the Money Management Council.

R628-11-8. Frequency of Adjustment to the Public Funds Allotment.

A. The public funds allotment for each qualified depository shall be established quarterly by the Council, based on the reports of condition filed with the Commissioner as of the close of the preceding quarter. The public funds allotments shall be established in accordance with the following:

TABLE

Report of Condition As Of:		Effective Date of Allotment	
December	31	April	1
March	31	July	1
June	30	October	1
September	30	January	1

B. The Money Management Council may make interim adjustments in a qualified depository's allotment if material changes in a qualified depository's financial condition have occurred.

R628-11-9. Right to Petition the Council for Review.

A qualified depository may petition the Money Management Council in writing for review and reconsideration of its allotment within 15 days of written notice of the establishment or modification of its allotment. The Money Management Council shall rule on any petition for review and reconsideration at its next regularly scheduled meeting.

R628-11-10. Notification of Public Treasurers.

Within 15 days of the close of each calendar quarter, the Money Management Council shall cause a list of qualified depository institutions and the currently effective public funds allotment to be prepared and mailed to all public treasurers.

KEY: financial institutions, banking law
1990 51-7-18.1(2)
Notice of Continuation November 15, 1995

R647. Natural Resources; Oil, Gas and Mining; Non-Coal.
R647-1. Minerals Regulatory Program.
R647-1-101. Preamble.

These Rules and all subsequent revisions as approved and promulgated by the Board of Oil, Gas, and Mining (Board) of the State of Utah, are developed pursuant to the requirements of the Utah Mined Land Reclamation Act of 1975, Title 40, Chapter 8 of the Utah Code Annotated as amended (the Act). Section 40-8-2 of the Act states the findings of the Legislature.

In accordance with this legislative direction, these Rules recognize the necessity to balance the reclamation objectives of the Act with the physical, biological and economical constraints which may exist on successful reclamation. The Act and its revisions are hereby expressly incorporated herein by reference and made a part of these Rules.

There is intentional duplication in these rules. For example, the rule on hole plugging requirements is repeated in the section on Exploration, Small Mining Operations, and Large Mining Operations. This repetition is intended to benefit the Operator by putting all the rules relevant to a type of operation in the introductory section and in the section on that type of operation.

R647-1-102. Introduction.

1. Effective Dates, Applicability, Type of Operations Affected:

1.11. Effective November 1, 1988, the following rules apply to all previously exempted mining operations and to mining operations planning to commence, or resume operations within the state of Utah. These rules will not apply to existing mining operations approved prior to the effective date of these rules, or to notices of intention or amendments filed prior to these rules. However, these rules will apply to any revisions to an approved notice of intention filed subsequent to the effective date of these rules.

1.12. Operators should refer to the section of these rules which applies to the type of mining operation (e.g., exploration, small mining operation, or large mining operation) being conducted or proposed.

1.13. These rules apply to all lands within the state of Utah lawfully subject to its police power, regardless of surface or mineral ownership, and regardless of the type of mining operation conducted.

2. Cooperative Agreements/Memoranda of Understanding:

The Division of Oil, Gas and Mining (Division) will cooperate with other state agencies, local governmental bodies, agencies of the federal government, and private interests in the furtherance of the purposes of the Utah Mined Land Reclamation Act. The Division is authorized to enter into cooperative agreements and develop memoranda of understanding with agencies in furtherance of the purposes of the Act. The objective is to minimize the need for operators to undertake duplicative, overlapping, excessive, or conflicting procedures.

3. Operator Responsibilities, Compliance with other Local, State and Federal Laws:

The approval or acceptance of a complete notice of intention shall not relieve an operator from his responsibility to comply with the applicable statutes, rules, regulations, and ordinances of all local, state and federal agencies with jurisdiction over any aspect of the operator's mining operations, including, but not limited to: Utah State Division of Water Rights, the Utah Department of Business Regulation, the Utah State Industrial Commission, the Utah Department of Environmental Quality, the Utah Division of State History, the Utah Division of State Lands and Forestry, the Utah Division of Wildlife Resources, the U. S. Fish and Wildlife Service, the United States Bureau of Land Management, the United States Forest Service, the United States Environmental Protection Agency, and local county or municipal governments.

4. Division Guidelines, Operator Assistance in Application Preparation:

Each operator who conducts mining operations on any lands within the state of Utah is responsible for compliance with the following rules. The Division shall provide guidelines to aid the operator in complying with the rules.

R647-1-103. General Rules.

The following are general rules for statewide application.

R647-1-104. Violations and Enforcement.

If after notice and hearing, the Board finds that a violation of the Act, these rules, a notice of intention, or a Board or Division order has occurred, the Board may take any enforcement action authorized by law including requiring: compliance, abatement, mitigation, cessation of operations, a civil suit, forfeiture of surety, reclamation, or any other lawful action.

R647-1-105. Forms.

The attached forms are intended for the convenience of the operator and the Division, and may be changed from time to time. The forms are not part of these rules and use of a particular form, though encouraged, is not required, as long as all of the necessary information is provided in a reasonable manner.

R647-1-106. Definitions.

"Act" means the Utah Mined Land Reclamation Act, enacted in 1975, as amended. (Section 40-8-1, et seq., UCA).

"Adjudicative proceeding" means an agency action or proceeding that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including all agency actions to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license; and judicial review of all of such actions. Those matters not governed by Title 63, Chapter 46b, Administrative Procedures Act, of the Utah Code annotated (1953, as amended) shall not be included within this definition.

"Agency" means a board, commission, department, division, officer, council, office, committee, commission, bureau, or other administrative unit of this state, including the agency head, agency employees, or other persons acting on behalf of or under the authority of the agency head, but does not mean the Legislature, the courts, the governor, any political subdivision of the state, or any administrative unit of a political subdivision of the state.

"Agency head" means an individual or body of individuals

in whom the ultimate legal authority of the agency is vested by statute.

"Amendment" is an insignificant change in the approved notice of intention.

"Approved Notice of Intention" means a formally filed notice of intention to commence mining operations, including any amendments or revisions thereto, which has been approved by the Division. An approved notice of intention is not required for exploration having a disturbed area of five or less surface acres, or for small mining operations.

"Board" means the Utah Board of Oil, Gas and Mining. The Board shall hear all appeals of adjudicative proceedings which commenced before the Division as well as all adjudicative proceedings and other proceedings which commence before the Board. The Board may appoint a Hearing Examiner for its hearings in accordance with the Rules of Practice and Procedure before the Board of Oil, Gas and Mining.

"Deleterious Materials" means earth, waste or introduced materials exposed by mining operations to air, water, weather or microbiological processes, which would likely produce chemical or physical conditions in the soils or water that are detrimental to the biota or hydrologic systems.

"Deposit" or "mineral deposit" means an accumulation of mineral matter in the form of consolidated rock, unconsolidated materials, solutions, or otherwise occurring on the surface, beneath the surface, or in the waters of the land from which any useful product may be produced, extracted or obtained, or which is extracted by underground mining methods for underground storage. "Deposit" or "mineral deposit" excludes sand, gravel, rock aggregate, water, geothermal steam, and oil and gas, but includes oil shale and bituminous sands extracted by mining operations.

"Development" means the work performed in relation to a deposit following its discovery, but prior to and in contemplation of production mining operations. Development includes, but is not limited to, preparing the site for mining operations; further defining the ore deposit by drilling or other means; conducting pilot plant operations; and constructing roads or ancillary facilities.

"Disturbed Area" means the surface land disturbed by mining operations. The disturbed area for small mining operations shall not exceed five acres. The disturbed area for large mining operations shall not exceed the acreage described in the approved notice of intention.

"Division" means the Utah Division of Oil, Gas and Mining. The Division Director or designee is the Presiding Officer for all informal adjudicative proceedings which commence before the Division in accordance with Rule R647-5.

"Exempt Mining Operations" means those mining operations which were previously exempt from the Act because less than 500 tons of material was mined in a period of twelve consecutive months or less than two acres of land was excavated or used as a disposal site in a period of twelve consecutive months. These exemptions were eliminated by statutory amendments in 1986 and are no longer available.

"Exploration" means surface disturbing activities conducted for the purpose of discovering a deposit or mineral deposit, delineating the boundaries of a deposit or mineral deposit, and identifying regions or specific areas in which deposits or mineral deposits are most likely to exist. "Exploration" includes, but is not limited to: sinking shafts; tunneling; drilling holes; digging pits or cuts; building roads and other access ways.

"Gravel" means a naturally occurring unconsolidated to moderately consolidated accumulation of rock and mineral particles, the dominant size range being between 2mm and 10mm, which has been deposited by sedimentary processes.

"Land affected" means the surface and subsurface of an area within the state where mining operations are being or will be conducted, including, but not limited to: (a) on-site private ways, roads, and railroads; (b) land excavations; (c) exploration sites; (d) drill sites or workings; (e) refuse banks or spoil piles; (f) evaporation or settling ponds; (g) stockpiles; (h) leaching dumps; (i) placer areas; (j) tailings ponds or dumps; (k) work, parking, storage, or waste discharge areas, structures, and facilities. Land affected does not include: (x) lands which have been reclaimed in accordance with an approved plan or as otherwise approved by the Board, (y) lands on which mining operations ceased prior to July 1, 1977, or (z) lands on which previously exempt mining operations ceased prior to April 29, 1989.

"Large Mining Operations" means mining operations which have a disturbed area of more than five surface acres at any time.

"License" means a franchise, permit, certification, approval, registration, charter, or similar form of authorization required by statute.

"Mining operations" means those activities conducted on the surface of the land for the exploration for, development of, or extraction of a mineral deposit, including, but not limited to, surface mining and the surface effects of underground and in situ mining; on-site transportation, concentrating, milling, evaporation, and other primary processing. "Mining operation" does not include: the extraction of sand, gravel, and rock aggregate; the extraction of oil and gas; the extraction of geothermal steam; smelting or refining operations; off-site operations and transportation; or reconnaissance activities which will not cause significant surface resource disturbance and do not involve the use of mechanized earth-moving equipment such as bulldozers or backhoes.

"Notice of Intention" means a notice of intention to commence mining operations, including any amendments or revisions thereto.

"Off-site" means the land areas that are outside of or beyond the on-site land.

"On-site" means the surface lands on or under which surface or underground mining operations are conducted. A series of related properties under the control of a single operator but separated by small parcels of land controlled by others will be considered a single site unless excepted by the Division.

"Operator" means any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, agent, or other organization or representative of any kind, either public or private, owning, controlling, conducting, or managing a mining operation or proposed mining operation.

"Owner" means any natural person, corporation, association, partnership, receiver, trustee, executor,

administrator, guardian, fiduciary, agent, or other organization or representative of any kind, either public or private, owning, controlling, conducting, or managing a mineral deposit or the surface of lands employed in mining operations.

"Party" means the Board, Division or other person commencing an adjudicative proceeding, all respondents, all persons permitted by the Board to intervene in the proceeding, and all persons authorized by statute or agency rule to participate as parties in an adjudicative proceeding.

"Person" means an individual, group of individuals, partnership, corporation, association, political subdivision or its units, governmental subdivision or its units, public or private organization or entity of any character, or another agency.

"Presiding Officer" means an agency head, or an individual or body of individuals designated by the agency head, by the agency's rules, or by statute to conduct an adjudicative proceeding. For the purpose of these rules, the Board, or its appointed Hearing Examiner, shall be considered the Presiding Officer of all appeals of informal adjudicative proceedings which commenced before the Division as well as all adjudicative proceedings which commence before the Board. The Division Director or his/her designee shall be considered a Presiding Officer for all informal adjudicative proceedings which commence before the Division in accordance with this Rule R647-5. If fairness to the parties is not compromised, an agency may substitute one Presiding Officer for another during any proceeding.

"Reclamation" means actions performed during or after mining operations to shape, stabilize, revegetate, or otherwise treat the land affected in order to achieve a safe and ecologically stable condition and use which will be consistent with local environmental conditions and land management practices.

"Regrade or Grade" means to physically alter the topography of any land surface.

"Respondent" means any person against whom an adjudicative proceeding is initiated, whether by an agency or any other person.

"Revision" means a change to an approved Notice of Intention to Conduct Mining Operations, which will increase or decrease the amount of land affected, or alter the location and type of on-site surface facilities, such that the nature of the reclamation plan will differ substantially from that in the approved Notice of Intention.

"Rock Aggregate" means those consolidated rock materials associated with a sand deposit, a gravel deposit, or a sand and gravel deposit, that were created by alluvial sedimentary processes. The definition of rock aggregate specifically excludes any solid rock in the form of bedrock which is exposed at the surface of the earth or overlain by unconsolidated material.

"Sand" means a naturally occurring unconsolidated to moderately consolidated accumulation of rock and mineral particles, the dominant size range being between 1/16mm to 2mm, which has been deposited by sedimentary processes.

"Small Mining Operations" means mining operations which have a disturbed area of five or less surface acres at any time.

"Surface Mining" means mining conducted on the surface of the land including open pit, strip, or auger mining; dredging; quarrying; leaching; surface evaporation operations; reworking abandoned dumps and tailings and activities related thereto.

"Underground Mining" means mining carried out beneath the surface by means of shafts, tunnels or other underground mine openings.

KEY: minerals reclamation
June 15, 1998 **40-8-1 et seq.**

R649. Natural Resources; Oil, Gas and Mining; Oil and Gas.

R649-1. Oil and Gas General Rules.

R649-1-1. Definitions.

"Authorized Agent" means a representative of the director as authorized by the board.

"Aquifer" means a geological formation including a group of formations or part of a formation which is capable of yielding a significant amount of water to a well or spring.

"Artificial Liner" means a pit liner made of material other than clay or other in situ material and which meets the requirements of R649-9-3, Permitting of Disposal Pits.

"Barrel" means 42 (US) gallons at 60 degrees Fahrenheit at atmospheric pressure.

"Board" means the Board of Oil, Gas and Mining.

"Carrier, Transporter or Taker" means any person moving or transporting oil or gas away from a well or lease or from any pool.

"Casing Pressure" means the pressure within the casing or between the casing and tubing at the wellhead.

"Central Disposal Facility" means a facility which is used by one or more producers for disposal of exempt E and P wastes and for which the operator of the facility receives no monetary remuneration, other than operating cost sharing.

"Class II Injection Well" means a well which is used for:

(a) The disposal of fluids which are brought to the surface in connection with conventional oil or natural gas production and which may be commingled with wastewater produced from the operation of a gas plant that is an integral part of production operations, unless that wastewater is classified as a hazardous waste at the time of injection, or

(b) Enhanced recovery of oil or gas, or

(c) Storage of hydrocarbons which are liquids at standard temperature and pressure conditions.

"Closed System" means but is not limited to, the use of a combination of solids control equipment (i.e., shale shakers, flowline cleaners, desanders, desilters, mud cleaners, centrifuges, agitators, and necessary pumps and piping) incorporated in a series on the rig's steel mud tanks, or a self contained unit that eliminates the use of a reserve pit for the purpose of dumping and dilution of drilling fluids for the removal of entrained drill solids. A closed system for the purpose of these rules may with Division approval include the use of a small pit to receive cuttings, but does not include the use of trenches for the collection of fluids of any kind.

"Coalbed Methane" means natural gas that is produced, or may be produced, from coalbeds and rock strata associated with the coalbed.

"Commercial Disposal Facility" means a disposal well, pit or treatment facility whose owner(s) or operator(s) receives compensation from others for the temporary storage, treatment, and disposal of produced water, drilling fluids, drill cuttings, completion fluids, and any other exempt E and P wastes, and whose primary business objective is to provide these services.

"Completion of a Well" means that the well has been adequately worked to be capable of producing oil or gas or that well testing as required by the division has been concluded.

"Confining Strata" refers to a body of material that is relatively impervious to the passage of liquids or gases and that occurs either below, above, or lateral to a more permeable material in such a way that it confines or limits the movement of liquids or gases that may be present.

"Correlative Rights" means the opportunity of each owner in a pool to produce his just and equitable share of the oil and gas in the pool without waste.

"Cubic Foot" of gas means the volume of gas contained in one cubic foot of space at a standard pressure base of 14.73 psia and a standard temperature base of 60 degrees Fahrenheit.

"Day" means a period of 24 consecutive hours.

"Development Wells" means all oil and gas producing wells other than wildcat wells.

"Director" means the executive and administrative head of the division.

"Disposal Facility" means an injection well, pit, treatment facility or combination thereof which receives E and P Wastes for the purpose of disposal. This includes both commercial and noncommercial facilities.

"Disposal Pit" means a lined or unlined pit approved for the disposal and/or storage of E and P Wastes.

"Division" means the Division of Oil, Gas and Mining.

"Drilling Fluid" means a circulating fluid usually called mud, which is introduced in a drill hole to lubricate the action of the rotary bit, remove the drilling cuttings, and control formation pressures.

"E and P Waste" means those wastes resulting from the drilling of and production from oil and gas wells as determined by the Environmental Protection Agency (EPA), prior to January 1, 1992, to be exempt from Subtitle C of the Resource Conservation and Recovery Act (RCRA).

"Emergency Pit" means a pit used for containing fluids at an operating well during an actual emergency or for a temporary period of time.

"Enhanced Recovery" means the process of introducing fluid or energy into a pool for the purpose of increasing the recovery of hydrocarbons from the pool.

"Enhanced Recovery Project" means the injection of liquids or hydrocarbon or nonhydrocarbon gases directly into a reservoir for the purpose of augmenting reservoir energy, modifying the properties of the fluids or gases in the reservoir, or changing the reservoir conditions to increase the recoverable oil, gas, or oil and gas through the joint use of two or more well bores.

"Entity" means a well or a group of wells that have identical division of interest, have the same operator, produce from the same formation, have product sales from a common tank, LACT meter, gas meter, or are in the same participating area of a properly designated unit. Entity number assignments are made by the division in cooperation with the Division of State Lands and Forestry and the State Tax Commission.

"Field" means the general area underlaid by one or more pools.

"Gas" means natural gas or natural gas liquids or other gas or any mixture thereof defined as follows:

"Natural Gas" means those hydrocarbons, other than oil and other than natural gas liquids separated from natural gas, that occur naturally in the gaseous phase in the reservoir and are produced and recovered at the wellhead in gaseous form. Natural gas includes coalbed methane.

"Other Gas" means hydrogen sulfide, carbon dioxide, helium, nitrogen, and other nonhydrocarbon gases that occur naturally in the gaseous phase in the reservoir or are injected into the reservoir in connection with pressure maintenance, gas cycling, or other secondary or enhanced recovery projects.

"Natural Gas Liquids" means those hydrocarbons initially in reservoir natural gas, regardless of gravity, that are separated in gas processing plants from the natural gas as liquids at the surface through the process of condensation, absorption, adsorption, or other methods.

"Gas-Oil Ratio" means the ratio of the number of cubic feet of natural gas produced to the number of barrels of oil concurrently produced during any stated period. The term GOR is synonymous with gas-oil ratio.

"Gas Processing Plant" means a facility in which liquefiable hydrocarbons are removed from natural gas, including wet gas or casinghead gas, and the remaining residue gas is conditioned for delivery for sale, recycling or other use.

"Gas Well" means any well capable of producing gas in substantial quantities that is not an oil well.

"Ground Water" means water in a zone of saturation below the ground surface.

"Hearing" means any matter heard before the board or its designated hearing examiner.

"Horizontal Well" means a well bore drilled laterally at an angle of at least eighty (80) degrees to the vertical or with a horizontal projection exceeding one hundred (100) feet measured from the initial point of penetration into the productive formation through the terminus of the lateral in the same common source of supply.

"Illegal Oil or Illegal Gas" means oil or gas that has been produced from any well within the state in violation of Chapter 6 of Title 40, or any rule or order of the board.

"Illegal Product" means any product derived in whole or in part from illegal oil or illegal gas.

"Incremental Production" means that part of production which is achieved from an enhanced recovery project that would not have economically occurred under the reservoir conditions existing before the project and that has been approved by the division as incremental production.

"Injection or Disposal Well" means any Class II Injection Well used for the injection of air, gas, water or other substance into any underground stratum.

"Interest Owner" means a person owning an interest (working interest, royalty interest, payment out of production, or any other interest) in oil or gas, or in the proceeds thereof.

"Load Oil" means any oil or liquid hydrocarbon which is used in any remedial operation in an oil or gas well.

"Log or Well Log" means the written record progressively describing the strata, water, oil or gas encountered in drilling a well with such additional information as is usually recorded in the normal procedure of drilling including electrical, radioactivity, or other similar conventional logs, a lithologic description of samples and drill stem test information.

"Multiple Zone Completion" means a well completion in which two or more separate zones, mechanically segregated one from the other, are produced simultaneously from the same well.

"Oil" means crude oil or condensate or any mixture thereof, defined as follows:

"Crude Oil" means those hydrocarbons, regardless of gravity, that occur naturally in the liquid phase in the reservoir and are produced and recovered at the wellhead in liquid form.

"Condensate" means those hydrocarbons, regardless of gravity, that occur naturally in the gaseous phase in the reservoir that are separated from the natural gas as liquids through the process of condensation either in the reservoir, in the well bore or at the surface in field separators.

"Oil and Gas" shall not include gaseous or liquid substances derived from coal, oil shale, tar sands or other hydrocarbons classified as synthetic fuel.

"Oil and Gas Field" means a geographical area overlying an oil and gas pool.

"Oil Well" means any well capable of producing oil in substantial quantities.

"Operator or Designated Agent" means the person who has been designated by the owners or the board to operate a well or unit.

"Owner" means the person who has the right to drill into and produce from a reservoir and to appropriate the oil and gas that he produces, either for himself or for himself and others.

"Person" means and includes any natural person, bodies politic and corporate, partnerships, associations and companies.

"Pit" means an earthen surface impoundment constructed to retain fluids and oil field wastes.

"Pollution" means such contamination or other alteration of the physical, chemical or biological properties of any waters of the state, or the discharge of any liquid, gaseous or solid substance into any waters of the state in such manner as will create a nuisance or render such waters harmful, detrimental or injurious to the public health, safety or welfare; to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses; or to livestock, wild animals, birds, fish or other aquatic life.

"Pool" means an underground reservoir containing a common accumulation of oil or gas or both. Each zone of a general structure that is completely separated from any other zone in the structure is a separate pool. "Common source of supply" and "reservoir" are synonymous with "pool."

"Pressure Maintenance" means the injection of gas, water or other fluids into a reservoir, either to increase or maintain the existing pressure in such reservoir or to retard the natural decline in the reservoir pressure.

"Produced Water" means water produced in conjunction with the conventional production of oil and/or gas.

"Producer" means the owner or operator of a well capable of producing oil or gas.

"Producing Well" means a well capable of producing oil or gas.

"Product" means any commodity made from oil and gas.

"Production Facilities" means all storage, separation, treating, dehydration, artificial lift, power supply, compression, pumping, metering, monitoring, flowline, and other equipment directly associated with oil wells, gas wells or injection wells, prior to any processing plant or refinery.

"Purchaser or Transporter" means any person who, acting alone or jointly with any other person, by means of his own, an affiliated, or designated carrier, transporter or taker, shall directly or indirectly purchase, take or transport by any means

whatsoever, or who shall otherwise remove from any well or lease, oil or gas produced from any pool, excepting royalty portions of oil or gas taken in kind by an interest owner who is not the operator.

"Recompletion" means any completion in a new perforated interval or pool within an established wellbore and approved as a recompletion by the division.

"Refinery" means a facility, other than a gas processing plant, where controlled operations are performed by which the physical and chemical characteristics of petroleum or petroleum products are changed.

"Reserve Pit" means a pit used to retain fluid during the drilling, completion, and testing of a well.

"Seismic Operator" means a person who conducts seismic exploration for oil or gas, whether for himself or as a contractor for others.

"Shut-in Well" means a well that is completed, is shown to be capable of production in paying quantities, and is not presently being operated.

"Spud In" means the first boring of a hole in the drilling of a well by any type of rig.

"State" means the State of Utah.

"Stratigraphic Test or Core Hole" means any hole drilled for the sole purpose of obtaining geological information. The general rules applicable to the drilling of a well will apply to the drilling of a stratigraphic test or core hole.

"Temporarily Abandoned Well" means a well that is completed, is not shown capable of production in paying quantities, and is not presently being operated.

"Temporary Spacing Unit" means a specified area of land designated by the board for purposes of determining well density and location. A temporary spacing unit shall not be a drilling unit as provided for in U.C.A. 40-6-6, Drilling Units, and does not provide a basis for pooling the interest therein as does a drilling unit.

"Underground Source of Drinking Water" means a fresh water aquifer or a portion thereof that supplies drinking water for human consumption or that contains less than 10,000 mg/1 total dissolved solids and that is not an exempted aquifer under R649-5-4.

"Waste" means:

The inefficient, excessive or improper use or the unnecessary dissipation of oil or gas or reservoir energy.

The inefficient storing of oil or gas.

The locating, drilling, equipping, operating, or producing of any oil or gas well in a manner that causes reduction in the quantity of oil or gas ultimately recoverable from a reservoir under prudent and economical operations, or that causes unnecessary wells to be drilled, or that causes the loss or destruction of oil or gas either at the surface or subsurface.

The production of oil or gas in excess of:

Transportation or storage facilities.

The amount reasonably required to be produced in the proper drilling, completing, testing, or operating of a well or otherwise utilized on the lease from which it is produced.

Underground or above ground waste in the production or storage of oil or gas.

"Waste Crude Oil Treatment Facility" means any facility or site constructed or used for the purpose of wholly or partially reclaiming, treating, processing, cleaning, purifying or in any manner making nonmerchantable waste crude oil marketable.

"Well" means an oil or gas well, injection or disposal well, or a hole drilled for the purpose of producing oil or gas or both. The definition of well shall not include water wells, or seismic, stratigraphic test, core hole, or other exploratory holes drilled for the purpose of obtaining geological information only.

"Well Site" means the areas which are directly disturbed during the drilling and subsequent use of, or affected by production facilities directly associated with any oil well, gas well or injection well.

"Wildcat Wells" means oil and gas producing wells which are drilled and completed in a pool in which a well has not been previously completed as a well capable of producing in commercial quantities.

"Working Interest Owner" means the owner of an interest in oil or gas burdened with a share of the expenses of developing and operating the property.

"Workover" means any operation designed to sustain, to restore, or to increase the production rate, the ultimate recovery, or the reservoir pressure system of a well or group of wells and approved as a workover, a secondary recovery, a tertiary recovery, or a pressure maintenance project by the division. The definition shall not include operations which are conducted principally as routine maintenance or the replacement of worn or damaged equipment.

KEY: oil and gas law
June 2, 1998 **40-6-1 et seq.**
Notice of Continuation April 30, 1997

R649. Natural Resources; Oil, Gas and Mining; Oil and Gas.

R649-2. General Rules.

R649-2-1. Scope of Rules.

The following general rules adopted by the board pursuant to Chapter 6 of Title 40 shall apply to all lands in the state in order to conserve the natural resources of oil and gas in the state, to protect human health and the environment, to prevent waste, to protect the correlative rights of all owners and to realize the greatest ultimate recovery of oil and gas. Special rules and orders have been and will be issued by the board when required and shall prevail as against the general rules and orders of the board if in conflict therewith. Exceptions to the general rules may also be granted by the director or authorized agent for good cause shown and shall prevail as against the general rules. No exceptions granted by the board, director, or authorized agent to the rules applicable to the Underground Injection Control Program will be effective without the consent of the federal Environmental Protection Agency.

R649-2-2. Application Of Rules To Lands Owned Or Controlled By The United States.

These general rules shall apply to all lands in the state including lands of the United States and lands subject to the jurisdiction of the United States to the extent lawfully subject to the state's power.

R649-2-3. Application Of Rules To Unit Agreements.

The board may suspend the application of the general rules or orders or any part thereof, with regard to any unit agreement approved by a duly authorized officer of the appropriate federal agency, so long as the conservation of oil or gas and the prevention of waste is accomplished thereby, but such suspension shall not relieve any operator from making such reports as are otherwise required by the general rules or orders, or as may reasonably be requested by the board or the division in order to keep the board and the division fully informed as to operations under such unit agreements.

R649-2-4. Designation Of Agent Or Operator.

A designation of agent or operator shall be submitted to the division prior to the commencement of operations. A designation of agent or operator will, for purposes of the general rules and orders, be accepted as evidence of authority of agent to fulfill the obligations of the owner, to sign any required documents or reports on behalf of the owner, and to receive all authorized orders or notices given by the board or the division. All changes of address and any termination of the designated agent's or operator's authority shall be promptly reported in writing to the division, and in the latter case a designation of a new agent or operator shall be promptly made.

R649-2-5. Right To Inspect.

1. The director or authorized agent shall have the right at all reasonable times to go upon and inspect any oil or gas properties and wells for the purpose of making any investigations or tests reasonably necessary to ensure compliance with the provisions of the statutes, the general rules and orders of the board or any special field rules and orders. The director or authorized agent shall report any observed violation to the board.

2. The documentation of off lease transportation of crude oil required by R649-2-6, Access to Records, shall be carried in the motor vehicle during transportation and shall be available for examination and inspection by the director or an authorized agent upon request.

R649-2-6. Access To Records.

1. Any person who produces, operates, sells, purchases, acquires, stores, transports, refines, or processes oil or gas or who injects fluids for cycling, pressure maintenance, secondary or enhanced recovery, or disposal of salt water or oil field waste within the state, shall make and keep appropriate books and records covering his operations in the state from which he shall be able to make and substantiate all reports required by the board or the division. Such books and records, together with copies of all reports and notices submitted to the board or the division shall be kept on file and available for inspection by the director or an authorized agent at all reasonable times for a period of at least six years. The director or the authorized agent shall also have access to all pertinent well records wherever located.

2. Each owner or operator shall permit the director or authorized agent at his sole risk and expense, in the absence of negligence on the part of the owner or operator, to come upon any lease, property or well operated or controlled by him; to inspect the records pertaining to and the manner of operation of such property or well; and to have access at all reasonable times to any and all records pertaining to such well. All information so obtained by the director or authorized agent shall be kept confidential and shall be reported only to the division or its authorized agent, unless the owner or operator gives written permission to the director to release such information.

3. All off lease transportation of oil by motor vehicle shall be accompanied by a run ticket or equivalent document. The documentation shall identify the name and address of the transporter, the name of the operator, the lease or facility from which the oil was taken, the date of removal, the API gravity of the oil, the calculated percentage of BS and W, the volume of oil or the opening and closing tank gauges or meter readings, and the destination of the oil.

R649-2-7. Naming of Oil and Gas Fields or Pools.

The division shall name oil and gas fields or pools within the state in cooperation with a Fields Names Advisory Committee and with due regard and consideration for any recommendation from the owners or operators of such fields or pools. The Field Names Advisory Committee shall be composed of a representative of the United States Bureau of Land Management and representatives of appropriate state agencies and the oil and gas industry.

R649-2-8. Measurement of Production.

1. The volume of oil production shall be computed in barrels of clean oil on the basis of acceptable meter measurements, tank measurements, or with such greater accuracy as may be required by the division. Computations of the volume of oil production shall be subject to the following

corrections:

1.1. The gross volume of oil shall be corrected to exclude the entire volume of impurities not constituting a natural component part of the oil.

1.2. The observed volume of oil after correction for impurities shall be further corrected to the standard volume at 60 degrees Fahrenheit, in accordance with Table 6A of the API/ASTM D-1250, Chapter 11.1, Manual of Petroleum Measurement (1980), or any revisions or supplements, or any alternative publication or tables approved by the division.

1.3. The observed gravity of oil shall be corrected to the standard API gravity at 60 degrees Fahrenheit in accordance with Table 5A of API/ASTM, D-1250, Chapter 11.1, Manual of Petroleum Measurement (1980), or any revisions or supplements, or any alternative publication or tables approved by the division.

2. All gas shall be measured by an orifice type meter unless otherwise authorized by the division. In computing the volumes of all gas produced, sold, or injected, the standard pressure base shall be 14.73 pounds per square inch absolute (psia), and the standard temperature base shall be 60 degrees Fahrenheit. All measurements of gas shall be adjusted by computation to these standards, regardless of the pressure and temperature at which the gas was actually measured, unless otherwise authorized by the division.

R649-2-9. Refusal To Agree.

1. An owner shall be deemed to have refused to agree to bear his proportionate share of the costs of the drilling and operation of a well under Section 40-6-6(6) if:

1.1. The operator of the proposed well has, in good faith, attempted to reach agreement with such owner for the leasing of the owner's mineral interest or for that owner's voluntary participation in the drilling of the well.

1.2. The owner and the operator have been unable to agree upon terms for the leasing of the owner's interest or for the owner's participation in the drilling of the well.

2. If the operator of the proposed well shall fail to attempt, in good faith, to reach agreement with the owner for the leasing of that owner's mineral interest or for voluntary participation by that owner in the well prior to the filing of a Request for Agency Action for involuntary pooling of interests in the drilling unit under Section 40-6-6(6) then, upon written request and after notice and hearing, the hearing on the Request for Agency Action for involuntary pooling may, at the discretion of the board or its designated hearing examiner, be delayed for a period not to exceed 30 days, to allow for negotiations between the operator and the owner.

R649-2-10. Notification of Lease Sale or Transfer.

The owner of a lease shall provide notification to any person with an interest in such lease, when all or part of that interest in the lease is sold or transferred.

R649-2-11. Confidentiality Of Well Log Information.

1. Well logs marked confidential shall be kept confidential for one year after the date on which the log is required to be filed with the division, unless the operator gives written permission to release the log at an earlier date.

2. Information on a newly permitted well will be held confidential only upon receipt by the division of a written request from the owner or operator.

3. The period of confidentiality may begin at the time the APD is submitted for approval if a request for confidentiality is received at that time, although the information on the application itself will not be considered confidential.

4. Information which shall be held confidential includes well logs, electrical or radioactivity logs, electromagnetic, electrical, or magnetic surveys, core descriptions and analysis, maps, other geological, geophysical, and engineering information, and well completion reports which contain such information.

5. The owner or operator shall clearly mark documents as confidential. Such marking shall be in red to be clearly visible.

6. Confidential wells or information shall be reported separately from wells or information that is not in confidential status.

R649-2-12. Tests and Surveys.

When deemed necessary or advisable the Director or authorized agent is authorized to require that test or surveys be made to determine the presence of waste or oil, gas, water, or reservoir energy; the quantity of oil, gas or water; the amount and direction of deviation of any well from the vertical; formation, casing, tubing, or other pressures; or any other test or survey deemed necessary to carry out the purposes of the Oil and Gas Conservation Act. Directional, deviation, and/or measurements-while-drilling (MWD) surveys must be run on horizontal wells and submitted in accordance with R649-3-21, Well Completion and Filing of Well Logs, as amended for horizontal wells.

KEY: oil and gas law
June 2, 1998 **40-6-1 et seq.**
Notice of Continuation April 30, 1997

R649. Natural Resources; Oil, Gas and Mining; Oil and Gas.
R649-3. Drilling and Operating Practices.
R649-3-1. Bonding.

1. An owner or operator shall furnish a bond to the division prior to approval of a permit to drill a new well, reenter an abandoned well or assume responsibility as operator of existing wells.

1.1. An owner or operator shall furnish a bond to the division on Form 4, for wells located on lands with fee or privately owned minerals.

1.2. An owner or operator shall furnish evidence to the division that a bond has been filed in accordance with state, federal or Indian lease requirements and approved by the appropriate agency for all wells located on state, federal or Indian leases.

2. A bond furnished to the division shall be payable to the division and conditioned upon the faithful performance by the operator of the duty to plug each dry or abandoned well, repair each well causing waste or pollution, and maintain and restore the well site.

3. Bond coverage previously established by an operator of existing wells shall be considered adequate by the division upon the adoption of these rules. In the future, bond coverage for drilling, or reentering a well or for a replacement bond if required for any reason, shall be considered in accordance with these rules.

4. Bond liability shall be for the duration of the drilling, operating and plugging of the well and restoration of the well site.

4.1. The bond shall remain in full force and effect until liability thereunder is released by the division.

4.2. Release of liability shall be conditioned upon compliance with the rules and orders of the board.

5. The bond amount for wells located on lands with fee or privately owned minerals shall be one of the following:

5.1. For wells of less than 1,000 feet in depth, an individual well bond in the amount of $1,000, for each such well.

5.2. For wells of more that 1,000 feet in depth but less than 3,000 feet in depth, an individual well bond in the amount of $10,000 for each such well.

5.3. For wells of more that 3,000 feet in depth but less than 10,000 feet in depth, an individual well bond in the amount of $20,000 for each such well.

5.4. For wells of more than 10,000 feet in depth, an individual well bond in the amount of $40,000 for each such well.

6. If an operator is drilling or operating more than one well on lands with fee or privately owned minerals, a blanket bond may be furnished in lieu of individual well bonds.

6.1. A blanket bond shall be conditioned in a manner similar to individual well bonds and shall cover all wells that the operator may drill or operate on lands with fee or privately owned minerals within the state.

6.2. For wells of less than 1,000 feet in depth, a blanket bond in the amount of $10,000 shall be required.

6.3. For wells of more than 1,000 feet in depth, a blanket bond in the amount of $80,000 shall be required.

7. If an operator desires bond coverage in a lesser amount than required by these rules, the operator may file a Request for Agency Action with the board for a variance from the requirements of these rules.

7.1. Upon proper notice and hearing and for good cause shown, the board may allow bond coverage in a lesser amount for specific wells.

8. If after reviewing an application to drill or reenter a well, the division determines that bond coverage in accordance with these rules will be insufficient to cover the costs of plugging the well and restoring the well site, the division may request a hearing before the board for its consideration of a greater bond coverage.

8.1 Upon proper notice and hearing and for good cause shown, the board may allow bond coverage in a greater amount for specific wells.

9. The bond shall provide a mechanism for the surety or other guarantor of the bond, to provide prompt notice to the division and the operator of any action alleging the insolvency or bankruptcy of the surety or guarantor, or alleging any violations which would result in suspension or revocation of the surety's or guarantor's charter or license to do business.

9.1. Upon the incapacity of the surety or guarantor to guarantee payment of the bond by reason of bankruptcy, insolvency, or suspension or revocation of a charter or license, the operator shall be deemed to be without bond coverage.

9.2. Upon notification of insolvency or bankruptcy, the division shall notify the operator in writing and shall specify a reasonable period, not to exceed 90 days, to provide bond coverage.

9.3. If an adequate bond is not furnished within the allowed period, the operator shall be required to cease operations immediately, and shall not resume operations until the division has received an acceptable bond.

10. The division shall accept a bond in the form of a surety bond, a collateral bond or a combination of these bonding methods.

10.1. A surety bond is an indemnity agreement in a sum certain payable to the division, executed by the operator as principal and which is supported by the performance guarantee of a corporation authorized to do business as a surety in Utah.

10.1.1. A surety bond shall be executed by the operator and a corporate surety authorized to do business in Utah.

10.1.2. Surety bonds shall be noncancellable during their terms, except that surety bond coverage for wells not drilled may be canceled with the prior consent of the division.

10.1.3. The division shall advise the surety, within 30 days after receipt of a notice to cancel a bond, whether the bond may be canceled on an undrilled well.

10.2. A collateral bond is an indemnity agreement in a sum certain payable to the division, executed by the operator which is supported by one or more of the following:

10.2.1. A cash account.

10.2.1.1. The operator may deposit cash in one or more accounts at a federally insured bank authorized to do business in Utah, made payable upon demand only to the division.

10.2.1.2. The operator may deposit the required amount directly with the division.

10.2.1.3. Any interest paid on a cash account shall 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.

10.2.1.4. The division shall 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.

10.2.2. Negotiable bonds of the United States, a state, or a municipality.

10.2.2.1. The negotiable bond shall be endorsed only to the order of and placed in the possession of the division.

10.2.2.2. The division shall value the negotiable bond at its current market value, not at face value.

10.2.3. Negotiable certificates of deposit.

10.2.3.1. The certificates shall be issued by a federally insured bank authorized to do business in Utah.

10.2.3.2. The certificates shall be made payable or assigned only to the division both in writing and upon the records of the bank issuing the certificate.

10.2.3.3. The certificates shall be placed in the possession of the division or held by a federally insured bank authorized to do business in Utah.

10.2.3.4. If assigned, the division shall require the banks issuing the certificates to waive all rights of setoff or liens against those certificates.

10.2.3.5. The division shall 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.

10.2.4. An irrevocable letter of credit.

10.2.4.1. Letters of credit shall be placed in the possession of and payable upon demand only to the division.

10.2.4.2. Letters of credit shall be issued by a federally insured bank authorized to do business in Utah.

10.2.4.3. Letters of credit shall be irrevocable during their terms.

10.2.4.4. Letters of credit shall be automatically renewable or the operator shall ensure continuous bond coverage by replacing letters of credit, if necessary, at least 30 days before their expiration date with other acceptable bond types or letters of credit.

11. The required bond amount specified in R649-3-1.5 of all collateral posted as assurance under this section shall be subject to a margin determined by the division which is the ratio of the face value of the collateral to market value, as determined by the division.

11.1. The margin shall 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 plugging and restoration.

12. The market value of collateral may be evaluated at any time, and in no case shall the market value of collateral be less than the required bond amount specified in R649-3-1.5.

12.1. Upon evaluation of the market value of collateral by the division, the division will notify the operator of any required changes in the amount of the bond and shall allow a reasonable period, not to exceed 90 days, for the operator to establish acceptable bond coverage.

12.2. If an adequate bond is not furnished within the allowed period the operator shall be required to cease operations immediately and shall not resume operations until the division has received an acceptable bond.

13. Persons with an interest in collateral posted as a bond, and who desire notification of actions pursuant to the bond, shall request the notification in writing from the division at the time collateral is offered.

14. The division may allow the operator to replace existing bonds with other bonds that provide equivalent coverage.

14.1. Replacement of a bond pursuant to this section shall not constitute a release of bond under R649-3-1.15.

14.2. The division shall not allow liability to cease under an existing bond until the operator has furnished, and the division has approved, an acceptable replacement bond.

14.3. Transfer of the ownership of property does not cancel liability under an existing bond.

14.4. If a transfer of the ownership of property is made, then the following requirements shall be met:

14.4.1. The operator shall notify the division in writing when ownership of any well associated with the property has been transferred to a named transferee.

14.4.2. The notice shall describe each well by reference to its well name and number, API number, and its location, as described by the section, township, range, and county.

14.4.3. The notice shall contain the endorsement of the new operator accepting such transfer of ownership.

14.4.4. The notice may include a request to cancel liability under the bond upon receipt by the division of an adequate replacement bond in the name of the new operator.

14.5. Within 30 days of the receipt by the division of the notice of transfer of ownership, the new operator shall do one of the following:

14.5.1. Submit a new bond.

14.5.2. Accept responsibility for the wells under an existing blanket bond.

14.5.3. Produce the written consent of the operator and, if applicable, surety of the previous bond that their responsibility shall continue with respect to the new operator.

14.6. When the division has approved the termination of liability under a bond in accordance with R649-3-1.14.2 and R649-3-1.14.3, the original operator is relieved from the responsibility of plugging or repairing any wells and restoring any well site affected by the transfer of ownership.

14.7. If all of the wells covered by a bond are affected by a transfer of ownership, the bond may be released by the division in accordance with R649-3-15.

15. Bond release procedures are as follows:

15.1. Requests for release of a bond held by the division may be submitted by the operator at any time after a subsequent notice of plugging of a well has been submitted to the division.

15.1.1. Within 30 days after a request for bond release has been filed with the division, the operator shall submit signed affidavits from the surface landowner of the well site certifying that restoration has been performed as required by the mineral lease and surface agreements.

15.1.2. If such affidavits are not submitted, the division shall conduct an inspection of the well site in preparation for bond release as explained in R649-3-1.15.2.

15.1.3. Within 30 days after a request for bond release has

been filed with the division, the division shall publish notice of the request in a daily newspaper of general circulation in the city and county of Salt Lake and in a newspaper of general circulation in the county in which the proposed well is located.

15.1.4. If a written objection to the request for bond release is not received by the division within 15 days after publication of the notice of request, the division may release liability under the bond as an administrative action.

15.1.5. If a written objection to the request for bond release is received by the division within 15 days after publication of the notice of request, the request shall be set for hearing and notice thereof given in accordance with the procedural rules of the board.

15.2. If affidavits supporting the bond release application are not received by the division in accordance with R649-3-1.15.1, the division shall within 30 days or as soon thereafter as weather conditions permit, conduct an inspection and evaluation of the well site to determine if restoration has been adequately performed.

15.2.1. The operator shall be given notice by the division of the date and time of the inspection, and if the operator is unable to attend the inspection at the scheduled date and time, the division may reschedule the inspection to allow the operator to participate.

15.2.2. The surface landowner, agent or lessee shall be given notice by the operator of such inspection and may participate in the inspection; however, if the surface landowner is unable to attend the inspection, the division shall not be required to reschedule the inspection in order to allow the surface landowner to participate.

15.2.3. The evaluation shall consider the adequacy of well site restoration, the degree of difficulty to complete any remaining restoration, 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.

15.2.4. Upon request of any person with an interest in bond release, the division may arrange with the operator to allow access to the well site or sites for the purpose of gathering information relevant to the bond release.

15.2.5. The division shall retain a record of the inspection and the evaluation, and if necessary and upon written request by an interested party, the division shall provide a copy of the results.

15.3. Within 60 days from the filing of the bond release request, if a public hearing is not held pursuant to R649-3-1.15.1, or within 30 days after such public hearing has been held, the division shall provide written notification of the decision to release or not release the bond to the following parties:

15.3.1. The operator.

15.3.2. The surety or other guarantor of the bond.

15.3.3. Other persons with an interest in bond collateral who have requested notification under R649-3-1.13.

15.3.4. The persons who filed objections to the notice of application for bond release.

15.4. If the decision is made to release the bond, the notification specified in R649-3-1.15.3 shall also state the effective date of the bond release.

15.5. If the division disapproves the application for release of the bond or portion thereof, the notification specified in R649-3-1.15.3 shall also state the reasons for disapproval, recommending corrective actions necessary to secure the release, and allowing an opportunity for a public hearing.

15.6. The division shall notify the municipality in which the well is located by certified mail at least 30 days prior to the release of the bond.

16. The following guidelines will govern the Forfeiture of Bonds.

16.1. The division shall take action to forfeit the bond if any of the following occur:

16.1.1. The operator refuses or is unable to conduct plugging and site restoration.

16.1.2. Noncompliance as to the conditions of a permit issued by the division.

16.1.3. The operator defaults on the conditions under which the bond was accepted.

16.2. In the event forfeiture of the bond is necessary, the matter will be considered by the board.

16.3. For matters of bond forfeiture, the division shall send written notification to the parties identified in R649-3-1.15.3, in addition to the notice requirements of the board procedural rules.

16.4. After proper notice and hearing, the board may order the division to do any of the following:

16.4.1. Proceed to collect the forfeited amount as provided by applicable laws for the collection of defaulted bonds or other debts.

16.4.2. Use funds collected from bond forfeiture to complete the plugging and restoration of the well or wells to which bond coverage applies.

16.4.3. Enter into a written agreement with the operator or another party to perform plugging and restoration operations in accordance with a compliance schedule established by the division as long as such party has the ability to perform the necessary work.

16.4.4. Allow a surety to complete the plugging and restoration, if the surety can demonstrate an ability to complete the plugging and restoration.

16.4.5. Any other action the board deems reasonable and appropriate.

16.5. In the event the amount forfeited is insufficient to pay for the full cost of the plugging and restoration, the division may complete or authorize completion of plugging and restoration and may recover from the operator all costs of plugging and restoration in excess of the amount forfeited.

16.6. In the event the amount of bond forfeited was more than the amount necessary to complete plugging and restoration, the unused funds shall be returned by the division to the party from whom they were collected.

16.7. In the event the bond is forfeited and there exists any unplugged well or wells previously covered under the forfeited bond, then the operator must establish new bond coverage in accordance with these rules.

16.8. If the operator requires new bond coverage under the provisions of R649-3-1.16.7, then the division will notify the operator and specify a reasonable period, not to exceed 90 days, to establish new bond coverage.

R649-3-2. Location And Siting Of Vertical Wells and Statewide Spacing for Horizontal Wells.

1. In the absence of special orders of the board establishing drilling units or authorizing different well density or location patterns for particular pools or parts thereof, each oil and gas well shall be located in the center of a 40 acre quarter-quarter section, or a substantially equivalent lot or tract or combination of lots or tracts as shown by the most recent governmental survey, with a tolerance of 200 feet in any direction from the center location, a "window" 400 feet square. No oil or gas well shall be drilled less than 920 feet from any other well drilling to or capable of producing oil or gas from the same pool, and no oil or gas well shall be completed in a known pool unless it is located more than 920 feet from any other well completed in and capable of producing oil or gas from the same pool.

2. The division shall have the administrative authority to determine the pattern location and siting of wells adjacent to an area for which drilling units have been established or for which a request for agency action to establish drilling units has been filed with the board and adjacent to a unitized area, where there is sufficient evidence to indicate that the particular pool underlying the drilling unit or unitized area may extend beyond the boundary of the drilling unit or unitized area and the uniformity of location patterns is necessary to ensure orderly development of the pool.

3. In the absence of special orders of the Board, no portion of the horizontal interval within the potentially productive formation shall be closer than six hundred-sixty (660) feet to a drilling or spacing unit boundary, federally unitized area boundary, uncommitted tract within a unit, or boundary line of a lease not committed to the drilling of such horizontal well.

4. The surface location for a horizontal well may be anywhere on the lease.

5. Any horizontal interval shall be not closer than one thousand three hundred and twenty (1,320) feet to any vertical well completed in and producing from the same formation. Vertical wells drilled to and completed in the same formation as in a horizontal well are subject to applicable drilling unit orders of the board or the other conditions of this rule which do not specifically pertain to horizontal wells and may be drilled and produced as provided therein.

6. A temporary six hundred and forty (640) acre spacing unit, consisting of the governmental section in which the horizontal well is located, is established for the orderly development of the anticipated pool.

7. In addition to any other notice required by the statute or these rules, notice of the Application for Permit to Drill for a horizontal well shall be given by certified mail to all owners within the boundaries of the designated temporary spacing unit.

8. Horizontal wells to be located within federally supervised units are exempt from the above referenced conditions of 5, 6 and 7.

9. Exceptions to any of the above referenced conditions of 3 through 7 may be approved upon proper application pursuant to R649-3-3, Exception to Location and Siting of Wells, or R649-10, Administrative Procedures.

10. Additional horizontal wells may be approved by order of the Board after hearing brought upon by a Request for Agency Action (Petition) filed in accordance with the Board's Procedural Rules.

R649-3-3. Exception to Location and Siting of Wells.

1. The division shall have the administrative authority to grant an exception to the locating and siting requirements of R649-3-2 or an order of the board establishing oil or gas well drilling units after receipt from the operator of the proposed well of the following items:

1.1. Proper written application for the exception well location.

1.2. Written consent from all owners within a 460 foot radius of the proposed well location when such exception is to the requirements of R649-3-2, or;

1.3. Written consent from all owners of directly or diagonally offsetting drilling units when such exception is to an order of the board establishing oil or gas well drilling units.

2. If for any reason the division shall fail or refuse to approve such an exception, the board may, after notice and hearing, grant an exception.

3. The application for an exception to R649-3-2 or board drilling unit order shall state fully the reasons why such an exception is necessary or desirable and shall be accompanied by a plat showing:

3.1. The location at which an oil or gas well could be drilled in compliance with R649-3-2 or Board drilling unit order.

3.2. The location at which the applicant requests permission to drill.

3.3. The location at which oil or gas wells have been drilled or could be drilled, in accordance with R649-3-2 or board drilling unit order, directly or diagonally offsetting the proposed exception.

3.4. The names of owners of all lands within a 460 foot radius of the proposed well location when such exception is to the requirements of R649-3-2, or

3.5. The names of owners of all directly or diagonally offsetting drilling units when such exception is to an order of the board establishing oil or gas drilling units.

4. No exception shall prevent any owner from drilling an oil or gas well on adjacent lands, directly or diagonally offsetting the exception, at locations permitted by R649-3-2, or any applicable order of the board establishing oil or gas well drilling units for the pool involved.

5. Whenever an exception is granted, the board or the division may take such action as will offset any advantage that the person securing the exception may obtain over other producers by reason of the exception location.

R649-3-4. Permitting of Wells to be Drilled, Deepened or Plugged-Back.

1. Prior to the commencement of drilling, deepening or plugging back of any well, exploratory drilling such as core holes and stratigraphic test holes, or any surface disturbance associated with such activity, the operator shall submit Form 3, Application for Permit to Drill, Deepen, or Plug Back and obtain approval. Approval shall be given by the division if it appears that the contemplated location and operations are not in violation of any rule or order of the board for drilling a well.

2. The following information shall be included as part of the complete Application for Permit to Drill, Deepen, or Plug Back.

2.1. The telephone number of the person to contact if additional information is needed.

2.2. Proper identification of the lease as state, federal, Indian, or fee.

2.3. Proper identification of the unit, if the well is located within a unit.

2.4. A plat or map, preferably on a scale of one inch equals 1,000 feet, prepared by a licensed surveyor or engineer, which shows the proposed well location. For directional wells, both surface and bottomhole locations should be marked.

2.5. A copy of the Division of Water Rights approval or the identifying number of the approval for use of water at the drilling site.

2.6. A drilling program containing the following information shall also be submitted as part of a complete APD.

2.6.1. The estimated tops of important geologic markers.

2.6.2. The estimated depths at which the top and the bottom of anticipated water, oil, gas, or other mineral-bearing formations are expected to be encountered, and the owner's or operator's plans for protecting such resources.

2.6.3. The owner's or operator's minimum specifications for pressure control equipment to be used and a schematic diagram thereof showing sizes, pressure ratings or API series, proposed testing procedures and testing frequency.

2.6.4. Any supplementary information more completely describing the drilling equipment and casing program as required by Form 3, Application for Permit to Drill, Deepen, or Plug Back.

2.6.5. The type and characteristics of the proposed circulating medium or mediums to be employed in drilling, the quantities and types of mud and weighting material to be maintained, and the monitoring equipment to be used on the mud system.

2.6.6. The anticipated type and amount of testing, logging, and coring.

2.6.7. The expected bottomhole pressure and any anticipated abnormal pressures or temperatures or potential hazards, such as hydrogen sulfide, expected to be encountered, along with contingency plans for mitigating such identified hazards.

2.6.8. Any other facets of the proposed operation which the lessee or operator desires to point out for the division's consideration of the application.

2.6.9. If an Application for Permit to Drill, Deepen, or Plug Back is for a proposed horizontal well, a horizontal well diagram clearly showing the well bore path from the surface through the terminus of the lateral shall be submitted.

2.7. Form 5, Designation of Agent or Operator shall be filed when the operator is a person other than the owner.

2.8. If located on State or Fee surface, an APD will not be approved until an Onsite Predrill Evaluation is performed as outlined in R649-3-18.

3. Two legible copies, carbon or otherwise, of the APD filed with the appropriate federal agency may be used in lieu of the forms prescribed by the board.

4. Approval of the APD shall be valid for a period of 12 months from the date of such approval. Upon approval of an APD, a well will be assigned an API number by the division. The API number should be used to identify the permitted well in all future correspondence with the division.

5. If a change of location or drilling program is desired, an amended APD shall be filed with the division and its approval obtained. If the new location is at an authorized location in the approved drilling unit, or the change in drilling program complies with the rules for that area, the change may be approved verbally or by telegraph. Within five days after obtaining verbal or telegraphic authorization, the operator shall file a written change application with the division.

6. After a well has been completed or plugged and abandoned, it shall not be reentered without the operator first submitting a new APD and obtaining the division's approval. Approval shall be given if it appears that a bond has been furnished or waived, as required by R649-3-1, Bonding, and the contemplated work is not in violation of any rule or order of the board.

7. An operator or owner who applies for an APD in an area not subject to a special order of the board establishing drilling units, may contemporaneously or subsequently file a Request for Agency Action to establish drilling units for an area not to exceed the area reasonably projected by the operator or owner to be underlaid by the targeted reservoir.

8. An APD for a well within the area covered by a proper Request for Agency Action which has been filed by an interested person, or the division or the board on its own motion, for the establishment of drilling units or the revision of existing drilling units for the spacing of wells shall be held in abeyance by the division until such time as the matter has been noticed, fully heard and determined.

9. An exception to R649-3-4-8 shall be made and a permit shall be issued by the division if an owner or operator files a sworn statement demonstrating to the division's satisfaction that on and after the date the Request for Agency Action requesting the establishment of drilling units was filed, or the action of the division or board was taken; and

9.1. The owner or operator has the right or obligation under the terms of an existing contract to drill the requested well; or

9.2. The owner or operator has a leasehold estate or right to acquire a leasehold estate under a contract that will be terminated unless he is permitted to commence the drilling of the required well before the matter can be fully heard and determined by the board.

R649-3-5. Identification.

Every drilling and producible well shall be identified by a sign posted on the derrick or in a conspicuous place near the well. The sign shall be of durable construction. The lettering on the sign shall be kept in a legible condition and shall be large enough to be legible under normal conditions at a distance of 25 feet. The wells on each lease or property shall be numbered in nonrepetitive, logical, and distinctive sequence. Each sign shall show the number of the well, the name of the owner or operator, the lease name, and the location of the well by quarter section, township, and range.

R649-3-6. Drilling Operations.

1. Drilling operations shall be conducted according to the drilling program submitted on the original APD and as approved by the division. Any change of plans to the original drilling program shall be submitted to the division by using Form 9, Sundry Notices and Reports on Wells and shall receive division approval prior to implementation. A change of plans necessary because of emergency conditions may be implemented without division approval. The operator shall provide the division with verbal notice of the emergency change within 24 hours and written notice within five days.

2. An operator of a drilling well as designated in R649-2-4 shall comply with reporting requirements as follows:

2.1. The spudding in of a well shall be reported to the division within 24 hours. The report should include the well name and number, drilling contractor, rig number and type, spud date and time, the date that continuous drilling will commence, the name of the person reporting the spud, and a contact telephone number.

2.2. The operator shall file Form 6, Entity Action Form with the division within five working days of spudding in a well. The division will assign the well an entity number which will identify the well on the operator's monthly oil and gas production and disposition reports.

2.3. The operator shall notify the division 24 hours in advance of all testing to be performed on the blowout preventor equipment on a well.

2.4. The operator shall submit a monthly status report for each drilling well on Form 9, Sundry Notices and Reports on Wells. The report should include the well depth and a description of the operations conducted on the well during the month. The report shall be submitted no later than the fifth day of the following calendar month until such time as the well is completed and the well completion report is filed.

2.5. The operator shall notify the division 24 hours in advance of all casing tests performed in accordance with R649-3-13.

2.6. The operator shall report to the division all fresh water sand encountered during drilling on Form 7, Report of Water Encountered During Drilling, The report shall be filed with Form 8, Well Completion or Recompletion Report and Log.

R649-3-7. Well Control.

1. When drilling in wildcat territory, the owner or operator shall take all reasonably necessary precautions for keeping the well under control at all times and shall provide, at the time the well is started, proper high pressure fittings and equipment. All pressure control equipment shall be maintained in good working condition at all times.

2. In all proved areas, the use of blowout prevention equipment "BOPE" shall be in accordance with the established and approved practice in the area. All pressure control equipment shall be maintained in good working condition at all times.

3. Upon installation, all ram type BOPE and related equipment, including casing, shall be tested to the lesser of the full manufacturer's working pressure rating of the equipment, 70% of the minimum internal yield pressure of any casing subject to test, or one psi/ft of the last casing string depth. Annular type BOPE are to be tested in conformance with the manufacturer's published recommendations. The operator shall maintain records of such testing until the well is completed and will submit copies of such tests to the division if required.

4. In addition to the initial pressure tests, ram and annular type preventers shall be checked for physical operation each trip. All BOPE components, with the exception of an annular type blowout preventer, shall be tested monthly to the lesser of 50% of the manufacturer's rated pressure of the BOPE, the maximum anticipated pressure to be contained at the surface, one psi/ft of the last casing string depth, or 70% of the minimum internal yield pressure of any casing subject to test.

5. If a pressure seal in the assembly is disassembled, a test of that seal shall be conducted prior to the resumption of any drilling operation. A shell test of the affected seal shall be adequate. If the affected seal is integral with the BOP stack, either pipe or blind ram, necessitating a test plug to be set in order to test the seal, the division may grant approval to proceed without testing the seal if necessary for prudent operations.

6. All tests of BOPE shall be noted on the driller's log, IADC report book, or equivalent and shall be available for examination by the director or an authorized agent during routine inspections.

7. BOPE used in possible or probable hydrogen sulfide or sour gas formations shall be suitable for use in such areas.

R649-3-8. Casing Program.

1. The method of cementing casing in the hole shall be by pump and plug method, displacement method, or other method approved by the division.

2. When drilling in wildcat territory or in any field where high pressures are probable, the conductor and surface strings of casing must be cemented throughout their lengths, unless another procedure is authorized or prescribed by the division, and all subsequent strings of casing must be securely anchored.

3. In areas where the pressures and formations to be encountered during drilling are known, sufficient surface casing shall be run to:

3.1. Reach a depth below all known or reasonably estimated, utilizable, domestic, fresh water levels.

3.2. Prevent blowouts or uncontrolled flows.

4. The casing program adopted must be planned to protect any potential oil or gas horizons penetrated during drilling from infiltration of waters from other sources and to prevent the migration of oil, gas, or water from one horizon to another.

R649-3-9. Protection Of Upper Productive Strata.

1. No well shall be deepened for the purpose of producing oil or gas from a lower stratum until all upper productive strata are protected, either permanently by casing and cementing or temporarily through the use of tubing and packer, to the satisfaction of the division.

2. In any well that appears to have defective, poorly cemented, or corroded casing that will permit or may create underground waste or may contaminate underground or surface fresh water, the operator shall proceed with diligence to use the appropriate method and means to eliminate such hazard of underground waste or contamination of fresh water. If such hazard cannot be eliminated, the well shall be properly plugged

and abandoned.

3. Natural gas that is encountered in substantial quantities in any section of a cable tool drilled hole above the ultimate objective shall be shut off with reasonable diligence, either by mudding, casing or other approved method, and shall be confined to its original source to the satisfaction of the division.

R649-3-10. Tolerances For Vertical Drilling.

Deviation from the vertical for short distances is permitted in the drilling of a well without special approval to straighten the hole, sidetrack junk, or correct other mechanical difficulties. All wells shall be drilled such that the surface location of the well and all points along the intended well bore shall be within the tolerances allowed by R649-3-2, Location and Siting of Vertical Wells and Statewide Spacing for Horizontal Wells, or the appropriate board order.

R649-3-11. Directional Drilling.

1. Except for the tolerances allowed under R649-3-10, no well may be intentionally deviated unless the operator shall first file application and obtain approval from the division. An application for directional drilling may be approved by the division without notice and hearing when the applicant is the owner of all the oil and gas within a radius of 460 feet from all points along the intended well bore, or the applicant has obtained the written consent of the owner to the proposed directional drilling program. An application for directional drilling may be included as part of the initial APD for a proposed well.

2. An application for directional drilling shall include the following information:

2.1. The name and address of the operator.

2.2. The lease name, well number, field name, reservoir name, and county where the proposed well is located.

2.3. A plat or sketch showing the distance from the surface location to section and lease lines, the target location within the intended producing interval, and any point along the intended well bore outside the 460 foot radius for which the consent of the owner has been obtained.

2.4. The reason for the intentional deviation.

2.5. The signature of designated agent or representative of operator.

3. Within 30 days following completion of a directionally drilled well, a complete angular deviation and directional survey of the well obtained by an approved well survey company shall be filed with the division, together with other regularly required reports.

R649-3-12. Drilling Practices For Hydrogen Sulfide Areas And Formations.

1. This rule shall apply to drilling, redrilling, deepening, or plugging back operations in areas where the formations to be penetrated are known to contain or are expected to contain H_2S in excess of 20 ppm and to areas where the presence or absence thereof is unknown.

2. A written contingency plan, providing details of actions to be taken to alert and protect operating personnel and members of the public in the event of an accidental release of H_2S gas shall be submitted to the division as part of the initial APD for a well or as a sundry notice.

3. All proposed drill site locations shall be planned to obtain the maximum safety benefits consistent with the rig configuration, terrain, prevailing winds, etc. The drilling rig shall, where possible, be situated so that prevailing winds blow across the rig in a direction toward the reserve pit and away from escape routes. On-site trailers shall be located to allow reasonably safe distances from both the well and the outlet of the flare line.

4. At least two cleared areas shall be designated as crew briefing or safety areas. Both areas shall be located at least 200 feet from the well, with at least one area located generally upwind from the well.

5. Protective equipment shall be provided by the operator or its drilling contractor for operating personnel and shall include the following:

5.1. An adequate number of positive pressure type self-contained breathing apparatus to allow all personnel normally involved in the drilling operation immediate access to such equipment, with a minimum of one working apparatus available for the immediate use of each rig hand in emergencies.

5.2. Chalk boards or note pads to be used for communication when wearing protective breathing apparatus.

5.3. First aid supplies.

5.4. One resuscitator complete with medical oxygen.

5.5. A litter or stretcher.

5.6. Harnesses and lifelines.

5.7. A telephone, radio, mobile phone, or other communication device that provides emergency two-way communication from a safe area at the well location.

6. Each drill site shall have an H_2S detection and monitoring system that activates audible and visible alarms when the concentration of H_2S reaches the threshold limit of 20 ppm in air. This equipment shall have a rapid response time and be capable of sensing a minimum of ten ppm H_2S in air, with at least three sensing points, located at the shale shaker, on the derrick floor, and in the cellar. Other sensing points shall be located at other critical areas where H_2S might accumulate. Portable H_2S detection equipment capable of sensing an H_2S concentration of 20 ppm shall be available for all working personnel and shall be equipped with an audible warning signal.

7. Equipment to indicate wind direction at all times shall be installed at prominent locations. At least two wind socks or streamers shall be located at separate elevations at the well location and shall be easily visible from all areas of the location. Windsocks or streamers shall be located in illuminated areas for night operations.

8. When H_2S is encountered during drilling, well marked, highly visible warning signs shall be displayed at the rig and along all access routes to the well location. The signs shall warn of the presence of H_2S and shall prohibit approach to the well location when red flags are displayed. Red flags shall be displayed when H_2S is present in concentrations greater than 20 ppm in air as measured on the equipment required under R649-3-12-6.

9. Unless adequate natural ventilation is present, portable fans or ventilation equipment shall be located in work areas to disperse H_2S when it is encountered.

10. A flare system shall be utilized to safely gather and

burn H_2S bearing gas. Flare lines shall be located as far from the operating site as feasible and shall be located in a manner to compensate for wind changes. The outlets of all flare lines shall be located at least 150 feet from the well head unless otherwise approved by the division.

11. Sufficient quantities of additives shall be maintained on location to add to the mud system to scavenge or neutralize H_2S.

R649-3-13. Casing Tests.

In order to determine the integrity of the casing string set in the well, the operator shall, unless otherwise requested by the division, perform a pressure test of the casing to the pressures specified under R649-3-7-4 before drilling out of any casing string, suspending drilling operations, or completing the well.

R649-3-14. Fire Hazards On The Surface.

1. All rubbish or debris that might constitute a fire hazard shall be removed to a distance of a least 100 feet from the well location, tanks, separator, or any structure. All waste oil or gas shall be burned or disposed of in a manner to avert creation of a fire hazard.

2. Any gas other than poisonous gas escaping from the well during drilling operations shall be, so far as practicable, conducted to a safe distance from the well site and burned in a suitable flare.

R649-3-15. Pollution And Surface Damage Control.

The operator shall take all reasonable precautions to avoid polluting lands, streams, reservoirs, natural drainage ways, and underground water. The owner or operator shall carry on all operations and maintain the property at all times in a safe and workmanlike manner having due regard for the preservation and conservation of the property and for the health and safety of employees and people residing in close proximity to those operations. At a minimum, the owner or operator shall:

1.1. Take reasonable steps to prevent and shall remove accumulations of oil or other materials deemed to be fire hazards from the vicinity of well locations, lease tanks and pits.

1.2. Remove from the property or store in an orderly manner, all scrap or other materials not in use.

1.3. Provide secure workmanlike storage for chemical containers, barrels, solvents, hydraulic fluid, and other non-exempt materials.

1.4. Maintain tanks in a workmanlike manner which will preclude leakage and provide for all applicable safety measures, and construct berms of sufficient height and width to contain the quantity of the largest tank at the storage facility. The use of crude or produced water storage tanks without tops is strictly prohibited except during well testing operations.

1.5. Catch leaks and drips, contain spills, and cleanup promptly. Waste reduction and recycling should be practiced in order to help reduce disposal volumes. Produced water, tank bottoms and other miscellaneous waste should be disposed of in a manner which is in compliance with these rules and other state, federal, or local regulations or ordinances. In general, good housekeeping practices should be used.

R649-3-16. Reserve Pits and Other Onsite Pits.

1. Small onsite oil field pits including but not limited to reserve pits, emergency pits, workover and completion pits, storage pits, pipeline drip pits, and sumps shall be located and constructed in such a manner as to contain fluids and not cause pollution of waters and soils. They shall be located and constructed according to the Division guidelines for onsite pits.

2. Reserve pit location and construction requirements including liner requirements will be discussed at the predrill site evaluation. Special stipulations concerning the reserve pit will be included as part of the Division's approval to drill.

3. Following drilling and completion of the well the reserve pit shall be closed within one year, unless permission is granted by the Division for a longer period. Pit contents shall meet the Division's Cleanup Levels (guidance document for numeric clean-up levels) or background levels prior to burial. The contents may require treatment to reduce mobility and/or toxicity in order to meet cleanup levels. The alternative to meeting cleanup levels would be transporting of material to an appropriate disposal facility.

R649-3-17. Inspection.

Inspection of wells shall be performed by the division to determine operator compliance with the rules and orders of the board. The inspection shall not interfere with the mechanical operation of facilities or equipment used in drilling and production operations. Inspections of operations involving a safety hazard shall not be conducted, nor shall an inspection be conducted that may cause a safety hazard.

R649-3-18. On-site Predrill Evaluation.

1. An on-site predrill evaluation of drilling operations located on state or private land shall be scheduled and conducted by the division prior to approval of an APD and no later than 30 days after receipt by the division of a complete APD. An on-site predrill evaluation may be performed by the division prior to submittal of a complete APD at the written request of the operator. The division, the operator, and other persons associated with the surface management or construction of the well site shall attend the predrill evaluation. When appropriate, the operator's surveyor and archaeologist may also participate in the predrill evaluation. When the surface of the land involved is privately owned, the operator shall include in the APD the name, address, and telephone number of the private surface owner as shown on the real property records of the county where the well is located. The surface owner shall be invited by the division to attend the predrill evaluation. The surface owner's inability to attend the predrill evaluation shall not delay the scheduled evaluation.

2. Special stipulations concerning surface use or justifications for well spacing exceptions may be addressed and developed at the predrill evaluations. Special stipulations shall be incorporated as conditions of the approved APD, together with any additional conditions determined by the division to be necessary following a review of the complete application.

R649-3-19. Well Testing.

1. Each operator shall conduct a stabilized production test of at least 24 hours duration not later than 15 days following the completion or recompletion of any well for the production of oil

or gas.

The results of the test shall be reported in writing to the division within 15 days after completion of the test. Additional tests shall be taken as requested by the division.

2. The division may request subsurface pressure measurements on a sufficient number of wells in any pool to provide adequate data to determine reservoir characteristics.

3. Upon written request, the division may waive or extend the time for conducting any test.

4. A gas-oil ratio "GOR" test shall be conducted not later than 15 days following the completion or recompletion of each well in a pool which contains both oil and gas. The average daily oil production, the average daily gas production and the average GOR shall be recorded. The results of the GOR test shall be reported in writing to the division within 15 days after completion of the test. A GOR test of at least 24 hours duration shall satisfy the requirements of R649-3-19-1.

5. When the results of a multipoint test or other approved test for the determination of gas well potential have not been submitted to the division within 30 days after completion or recompletion of any producible gas well, the division may order that this test be made. All data pertinent to the test shall be submitted to the division in legible, written form within 15 days after completion of the test. The performance of a multipoint or other approved test shall satisfy the requirements of R649-3-19-1.

6. All tests of any producible gas well will be taken in accordance with the Manual of Back-Pressure Testing of Gas Wells published by the Interstate Oil Compact Commission, with necessary modifications as approved by the division.

R649-3-20. Gas Flaring Or Venting.

1. Produced gas from an oil well, also known as associated gas or casinghead gas, may be flared or vented only in the following amounts:

1.1. Up to 1,800 MCF of oil well gas may be vented or flared from an individual well on a monthly basis at any time without approval.

1.2. During the period of time allowed for conducting the stabilized production test or other approved test as required by R649-3-19, the operator may vent or flare all produced oil well gas as needed for conducting the test. The operator shall not vent or flare gas which is not necessary for conducting the test or beyond the time allowed for conducting the test.

1.3. During the first calendar month immediately following the time allowed for conducting the initial stabilized production test as required by R649-3-19.1, the operator may vent or flare up to 3,000 MCF of oil well gas without approval.

1.4. Unavoidable or short-term oil well gas venting or flaring may occur without approval in accordance with R649-3-20.4, 4.1, 4.2, and 4.3.

2. Produced gas from a gas well may be vented or flared only in the following amounts:

2.1. During the period of time allowed for conducting the stabilized production test, the multipoint test, or other approved test as required by R649-3-19, the operator may vent or flare all produced gas well gas as needed for conducting the test. The operator shall not vent or flare gas which is not necessary for conducting the tests or beyond the time allowed for conducting the tests.

2.2. Unavoidable or short-term gas well gas venting or flaring may occur without approval in accordance with R649-3-20.4, 4.1, 4.2, and 4.3.

3. If an operator desires to produce a well for the purpose of testing and evaluation beyond the time allowed by R649-3-19 and vent or flare gas in excess of the aforementioned limits of gas venting or flaring, the operator shall make written request for administrative action by the division to allow gas venting or flaring during such testing and evaluation. The operator shall provide any information pertinent to a determination of whether marketing or otherwise conserving the produced gas is economically feasible. Upon such request and based on the justification information presented, the division may authorize gas venting or flaring at unrestricted rates for up to 30 days of testing or no more than 50 MMCF of gas vented or flared, whichever is less.

4. Once a well is completed for production and gas is being transported or marketed, the operator is allowed unavoidable or short-term gas venting or flaring without approval only in the following cases:

4.1. Gas may be vented or released from oil storage tanks or other low pressure oil production vessels unless the division determines that the recovery of such vapors is warranted.

4.2. Gas may be vented or flared from a well during periods of line failures, equipment malfunctions, blowouts, fires, or other emergencies if shutting in or restricting production from the well would cause waste or create adverse impact on the well or producing reservoir. The operator shall provide immediate notification to the division in all such cases in accordance with R649-3-32, Reporting of Undesirable Events. Upon notification, the division shall determine if gas venting or flaring is justified and specify conditions of approval if necessary.

4.3. Gas may be vented or flared from a well during periods of well purging or evaluation tests not exceeding a period of 24 hours or a maximum of 144 hours per month. The operator shall provide subsequent written notification to the division in all such cases.

5. If an operator wishes to flare or vent a greater amount of produced gas than allowed by this rule, the operator must submit a Request for Agency Action to the board to be considered as a formal board docket item. The request should include the following items:

5.1. A statement justifying the need to vent or flare more than the allowable amount.

5.2. A description of production test results.

5.3. A chemical analysis of the produced gas.

5.4. The estimated oil and gas reserves.

5.5. A description of the reinjection potential or other conservation oriented alternative for disposition of the produced gas.

5.6. A description of the amount of gas used in lease operations.

5.7. An economic evaluation supporting the operator's determination that conservation of the gas is not economically viable. The evaluation should utilize any engineering or geologic data available and should consider total well production, not just gas production, in presenting the

profitability and costs for beneficial use of the gas.

5.8. Any other information pertinent to a determination of whether marketing or otherwise conserving the produced gas is economically feasible.

6. Upon review of the request for approval to vent or flare gas from a well, the board may elect to:

6.1. Allow the requested venting or flaring of gas.

6.2. Restrict production until the gas is marketed or otherwise beneficially utilized.

6.3. Take any other action the board deems appropriate in the circumstances.

7. When gas venting or flaring from a well has not been approved by the division or the magnitude and duration of venting or flaring exceeds the amounts specified in these rules or any division or board approval, then the board may issue a formal order to alleviate the noncompliance and/or require the operator to appear before the board to provide justification of such venting or flaring. The division shall notify the appropriate governmental taxing and royalty agencies of any unapproved venting or flaring and of any subsequent board action.

8. No extraction plant processing gas in Utah shall flare or vent such gas unless such venting or flaring is made necessary by mechanical difficulty of a very limited temporary nature or unless the gas vented or flared is of no commercial value. In the event of a more prolonged mechanical difficulty or in the event of plant shut-downs or curtailment because of scheduled or nonscheduled maintenance or testing operations or other reasons, or in the event a plant is unable to accept, process, and market all of the casinghead gas produced by wells connected to its system, the plant operator shall notify the division as soon as possible of the full details of such shut-down or curtailment, following which the division shall take such action as is necessary.

R649-3-21. Well Completion And Filing Of Well Logs.

1. For the purposes of this rule only, a well shall be determined to be completed when the well has been adequately worked to be capable of producing oil or gas or when well testing as required by the division is concluded.

2. Within 30 days after the completion of any well drilled or redrilled for the production of oil or gas, Form 8, Well Completion or Recompletion Report and Log, shall be filed with the division, together with a copy of the electric and radioactivity logs, if run.

3. In addition, one copy of all drillstem test reports, formation water analyses, porosity, permeability or fluid saturation determinations, core analyses and lithologic logs or sample descriptions if compiled, shall be filed with the division.

4. As prescribed under R649-2-12, Test and Surveys, the directional, deviation and/or measurement-while-drilling (MWD) survey for a horizontal well shall be filed within 30 days of being run. Such directional, deviation and/or MWD survey specifically related to well location or well bore path shall not be held confidential. Other MWD survey data which presents well log, or other geological, geophysical, or engineering information may be held confidential as provided in R649-2-11, Confidentiality of Well Log Information.

R649-3-22. Completion Into Two Or More Pools.

1. The completion of a single well into more than one pool may be permitted by submitting an application to the division and securing its approval. The application shall be submitted on Form 9, Sundry Notice and Report and shall be accompanied by an exhibit showing the location of all wells on contiguous oil and gas leases or drilling units overlying the pool. The application shall set forth all material facts involved and the manner and method of completion proposed.

2. If oil or gas is to be produced from two or more pools open to each other through the same string of casing so that commingling will take place, the application must also be accompanied by a description of the method used to account for and to allocate production from each pool so commingled.

3. The application shall include an affidavit showing that the operator has provided a copy of the application to the owners of all contiguous oil and gas leases or drilling units overlying the pool. If none of these owners file a written objection to the application within 15 days after the date the application is filed with the division, the application may be considered and approved by the division without a hearing. If a written objection is filed that cannot be resolved administratively, the application may be approved only after notice and hearing by the board.

R649-3-23. Well Workover and Recompletion.

1. Requests for approval of a notice of intention to perform a workover or recompletion shall be filed by an operator with the division on Form 9, Sundry Notices and Reports on Wells, or if the operation includes substantial redrilling, deepening, or plugging back of an existing well, on Form 3, Application for Permit to Drill, Deepen or Plug Back.

2. The division shall review the proposed workover or recompletion for conformance with the Oil and Gas Conservation General Rules and advise the operator of its decision and any necessary conditions of approval.

3. Recompletions shall be conducted in a manner to protect the original completion interval(s) and any other known productive intervals.

4. The same tests and reports are required for any well recompletion as are required following an original well completion.

5. The applicant shall file a subsequent report of workover on Form 9, Sundry Notices and Reports, or a subsequent report of recompletion on Form 8, Well Completion or Recompletion Report and Log, within 30 days after completing the workover or recompletion operations.

6. For the purpose of qualifying for a tax credit under Utah Code Ann. Section 59-5-102(3), the operator on his behalf and on behalf of each working interest owner must file a request with the division on Form 15, Designation of Workover or Recompletion. The request must be filed within 90 days after completing the workover or recompletion operations.

7. A workover which may qualify under Utah Code Ann. Section 59-5-102(3) shall be downhole operations conducted to maintain, restore or increase the producibility or serviceability of a well in the geologic interval(s) that the well is currently completed in, but shall not include:

7.1. Routine maintenance operations such as pump changes, artificial lift equipment or tubing repair, or other

operations which do not involve changes to the wellbore configuration or the geologic interval(s) that it penetrates and which do not stimulate production beyond that which would be anticipated as the result of routine maintenance.

7.2. Operations to convert any well for use as a disposal well or other use not associated with enhancing the recovery of hydrocarbons. Operations to convert a well to a Class II injection well for enhanced recovery purposes may qualify if the secondary or enhanced recovery project has received the necessary board approval.

8. A recompletion which may qualify under Utah Code Ann. Section 59-5-102(3) shall be downhole operations conducted to reestablish producibility or serviceability of a well in any geologic interval(s).

9. The division shall review the request for designation of a workover or recompletion and advise the operator and the State Tax Commission of its decision to approve or deny the operations for the purposes of Utah Code Ann. Section 59-5-102(3).

10. The division is responsible for approval of workover and recompletion operations which qualify for the tax credit. If the operator disagrees with the decision of the division, the decision may be appealed to the board. Appeals of all other workover and recompletion tax credit decisions should be made to the State Tax Commission.

R649-3-24. Plugging And Abandonment Of Wells.

1. Before operations are commenced to plug and abandon any well the owner or operator shall submit a notice of intent to plug and abandon to the division for its approval. The notice shall be submitted on Form DOGM-5, Sundry Notice and Report on Wells. A legible copy of a similar report and form filed with the appropriate federal agency may be used in lieu of the forms prescribed by the board. In cases of emergency the operator may obtain verbal or telegraphic approval to plug and abandon. Within five days after receiving verbal or telegraphic approval, the operator shall submit a written notice of intent to plug and abandon on Form 9.

2. Both verbal and written notice of intent to plug and abandon a well shall contain the following information.

2.1. The location of the well described by section, township, range, and county.

2.2. The status of the well, whether drilling, producing, injecting or inactive.

2.3. A description of the well bore configuration indicating depth, casing strings, cement tops if known, and hole size.

2.4. The tops of known geologic markers or formations.

2.5. The plugging program approved by the appropriate federal agency if the well is located on federal or Indian land.

2.6. An indication of when plugging operations will commence.

3. A dry or abandoned well must be plugged so that oil, gas, water, or other substance will not migrate through the well bore from one formation to another. Unless a different method and procedure is approved by the division, the method and procedure for plugging the well shall be as follows:

3.1. The bottom of the hole shall be filled to, or a bridge shall be placed at, the top of each producing formation open to the well bore, and a cement plug not less than 100 feet in length shall be placed immediately above each producing formation open to the well bore.

3.2. A solid cement plug shall be placed from 50 feet below a fresh water zone to 50 feet above the fresh water zone, or a 100 foot cement plug shall be centered across the base of the fresh water zone and a 100 foot plug shall be centered across the top of the fresh water zone.

3.3. At least ten sacks of cement shall be placed at the surface in a manner completely plugging the entire hole. If more than one string of casing remains at the surface, all annuli shall be so cemented.

3.4. The interval between plugs shall be filled with noncorrosive fluid of adequate density to prevent migration of formation water into or through the well bore.

3.5. The hole shall be plugged up to the base of the surface string with noncorrosive fluid of adequate density to prevent migration of formation water into or through the well bore, at which point a plug of not less than 50 feet of cement shall be placed.

3.6. Any perforated interval shall be plugged with cement and any open hole porosity zone shall be adequately isolated to prevent migration of fluids.

3.7. A cement plug not less than 100 feet in length shall be centered across the casing stub if any casing is cut and pulled, a second plug of the same length shall be centered across the casing shoe of the next larger casing.

4. An alternative method of plugging required under a federal or Indian lease, will be accepted by the division.

5. Within 30 days after the plugging of any well has been accomplished, the owner or operator shall file a subsequent report of plugging with the division. The report shall give a detailed account of the following items:

5.1. The manner in which the plugging work was carried out, including the nature and quantities of materials used in plugging and the location, nature, and extent by depths, of the plugs.

5.2. Records of any tests or measurements made.

5.3. The amount, size, and location, by depths of any casing left in the well.

5.4. A statement of the volume of mud fluid used.

5.5. A complete report of the method used and the results obtained, if an attempt was made to part any casing.

6. Upon application to and approval by the division, and following assumption of liability for the well by the surface owner, a well or other exploratory hole that may safely be used as a fresh water well need not be filled above the required sealing plugs set below the fresh water formation. The owner of the surface of the land affected may assume liability for any well capable of conversion to a water well by sending a letter assuming such liability to the division and by filing an application with and obtaining approval for appropriation of underground water from the Division of Water Rights.

7. Unless otherwise approved by the division, all abandoned wells shall be marked with a permanent monument showing the well number, location, and name of the lease. The monument shall consist of a portion of pipe not less than four inches in diameter and not less than ten feet in length, of which four feet shall be above the ground level and the remainder shall be securely embedded in cement. The top of the pipe must be

permanently sealed.

8. If any casing is to be pulled after a well has been abandoned, a notice of intent to pull casing must be filed with the division and its approval obtained before the work is commenced. The notice shall include full details of the contemplated work. If a log of the well has not already been filed with the division, the notice shall be accompanied by a copy of the log showing all casing seats as well as all water strata and oil and gas shows. Where the well has been abandoned and liability has been terminated with respect to the bond previously furnished under R649-3-1, a $10,000 plugging bond shall be filed with the division by the applicant.

R649-3-25. Underground Disposal Of Drilling Fluids.

1. Operators shall be permitted to inject and dispose of reserve pit drilling fluids downhole in a well upon submitting an application for such operations to the division and obtaining its approval. Injection of reserve pit fluids shall be considered by the division on a case-by-case basis.

2. Each proposed injection procedure will be reviewed by the division for conformance to the requirements and standards for permitting disposal wells under R649-5-2 to assure protection of fresh-water resources.

3. The subsurface disposal interval shall be verified by temperature log, or suitable alternative, during the disposal operation.

4. The division shall designate other conditions for disposal, as necessary, in order to ensure safe, efficient fluid disposal.

R649-3-26. Seismic Exploration.

1. Form 1, Application for Permit to Conduct Seismic Exploration shall be submitted to the division by the seismic contractor at least seven days prior to commencing any type of seismic exploration operations. In cases of emergency, approval may be obtained either verbally or by telegraphic communication. Changes of plans or line locations may be implemented in an emergency situation without division approval. Within five days after the change is performed, the seismic contractor shall submit written notice of the change to the division.

1.1 The permit may be revoked at any time by the division for failure to comply with the rules and orders of the board.

1.2. Any request to deviate from the general plugging and operations procedures of these rules shall be included on the permit application.

1.3. The name, address, and telephone number of the seismic contractor's local contact shall be submitted to the division as soon as determined if not available when the permit application is submitted.

1.4. After review of the application for a seismic permit, the division may require written permission of the owner of the surface of the affected land if it is determined that the seismic operation may significantly impact any building, pipeline, water well, flowing spring, or other cultural or natural feature in the area.

1.5. The permit will be in effect for six months from the date of approval. The permit may be extended upon application to and approval by the division.

2. Bonding shall not be required for seismic exploration requiring the drilling of shot holes.

3. Seismic contractors shall give the division at least 24 hours advance notice of the plugging of seismic holes. The notice shall include the date and time the plugging activities are expected to commence, the name and address of the seismic contractor responsible for the holes, and, if different, the name and address of the hole plugging company.

4. Unless the seismic contractor can prove to the satisfaction of the division that another method will provide adequate protection to ground water resources and other man-made or natural features and will provide long-term land stability, the following procedures shall be required for the conduct of seismic operations and hole plugging:

4.1. Seismic contractors shall take reasonable precautions to avoid conducting shot hole operations closer than 1,320 feet to any building, pipeline, water well, flowing spring, or other cultural/natural feature, e.g., a historical monument, marker, or structure, which may be adversely affected by the seismic operations.

4.2. When nonartesian water is encountered while drilling seismic shot holes, the holes shall be filled from the bottom up with a high grade bentonite/water slurry mixture. The slurry shall have a density that is at least four percent greater than the density of fresh water and shall have a marsh funnel viscosity of at least 60 seconds per quart. The density and viscosity of the slurry are to be measured prior to adding cuttings. Cuttings not added to the slurry are to be disposed of in accordance with R649-3-26-4.6. Upon approval by the division, any other suitable plugging material commonly used in the industry may be substituted for the bentonite/water slurry as long as the physical characteristics of the substitute plugging material are at least comparable to those of the bentonite/water slurry. The hole shall be filled with the substitute plugging material from the bottom up to a depth of three feet below ground level. A nonmetallic permaplug shall be set at a depth of three feet. The remaining hole shall be filled and tamped to the surface with cuttings and native soil. The permaplug shall be imprinted with an approved identification number or mark.

4.3. When drilling with air only, and in completely dry holes, plugging may be accomplished by returning the cuttings to the holes, tamping the returned cuttings to the depth of three feet below ground level, and setting the permaplug topped with more cuttings and soil. A small mound shall be left over the hole for settling allowance.

4.4. If artesian flow, water flowing at the surface, is encountered in the drilling of any seismic hole, cement shall be used to seal off the water flow to prevent cross-flow, erosion, or contamination of fresh water supplies. Unless severe weather conditions prevent access, the holes shall be cemented immediately. Approval may be granted to seismic operator to plug a flowing hole in another manner, if it is proved to this division that the alternate method will provide adequate protection to ground water resources and provide long term land stability. The owner of the surface of the land affected may assume liability for a seismic hole capable of conversion to a water well by sending a letter assuming such liability to the division and by filing an application with and obtaining approval for appropriation of underground water from the

Division of Water Rights.

4.5. Shotholes shall be properly plugged and abandoned as soon as practical after the shot has been fired. No shothole shall be left unplugged for more than 30 days without approval of the division. Until properly plugged, shotholes shall be covered with a tin hat or other similar cover. The hats shall be imprinted with the seismic contractor's name or initials.

4.6. Any slurry, drilling fluids, or cuttings which are deposited on the surface around the seismic hole shall be raked or otherwise spread out to a height of not more than one inch above the surface, so that the growth of the natural grasses or foliage will not be impaired.

4.7. Restoration plans required by the Mined Land Reclamation Act, Chapter 8 of Title 40, or by any other surface management agency will be accepted by the division. The surface area around each seismic shothole shall be reclaimed and reseeded to its original condition insofar as such restoration is practical and is required by the surface management agency. All flagging, stakes, cables, cement, or mud sacks shall be removed from the drill site and disposed of in an acceptable manner.

5. Upon application to the division, approval may be obtained for preplugging of shotholes using coarse bentonite material or a suitable alternative used in the industry. Preplugging of holes in this manner shall be performed according to the following procedures:

5.1. A sales receipt indicating proof of purchase of an adequate amount of coarse bentonite to properly plug all shotholes shall be submitted to the division upon request.

5.2. For shotholes drilled with air which are completely dry, the seismic contractor shall have the option of preplugging with the coarse bentonite material or of using an alternate plugging material under R649-3-26-4.3.

5.3. For conventionally drilled, wet holes, enough approved material shall be used to cover the initial water level, i.e., the depth of the initial water level in the hole prior to adding coarse bentonite material shall be equal to the final plug depth. An additional ten feet of approved material shall be placed above this depth and hole cuttings shall be used to fill the remainder of the hole to a depth of three feet below ground level. A nonmetallic plug imprinted with an approved identification number or mark shall be installed at this depth. The remaining three feet of hole shall be filled and tamped to the surface with cuttings and native soil. The remaining cuttings shall be raked or spread to a height not to exceed one inch above ground level.

5.4. When using heliportable drills and insufficient cuttings are available, the hole shall be preplugged with bentonite plugging material or an approved alternate material to a depth of three feet below ground level. Installation of a nonmetallic plug and filling the remainder of the hole shall be performed as required by R649-3-26-5.3.

5.5. The coarse bentonite plugging material shall have the following specifications - chemically unaltered sodium bentonite, coarse ground, three quarter inch maximum size, not more than 19% moisture content and not more than 15% inert solids by volume.

6. Form 2, Seismic Exploration Completion Report shall be submitted to the Division within 60 days after completion of each seismic exploration project. The report shall include:

Certification by the seismic contractor that all shot holes have been plugged as prescribed by the division.

R649-3-27. Multiple Mineral Development.

1. Drilling operations conducted in areas designated by the board for multiple mineral development shall comply with all rules or orders of the board for drilling, casing, cementing, and plugging except as the general rules or orders may be modified by this rule.

2. It is the policy of the division to promote the development of all mineral resources on land under its jurisdiction. Consistent with that policy, operators engaged in oil and gas operations on lands on which operators are exploring for and developing mineral resources other than oil and gas may enter into a cooperative agreement with these other operators with respect to multiple mineral development. The agreement shall define:

2.1. The extent and limits of liability when one operator, either intentionally or unintentionally, interferes with or damages the deposits of another.

2.2. The coordination of access to and development of the area.

2.3. Mitigation of surface impact including but not limited to issues pertaining to relocation of natural gas pipeline gathering and distribution systems and other surface facilities occasioned by placement of a spent shale pile; phased or coordinated surface occupancy so as to allow each operator to enjoy his respective mineral estate with the least disruption of operations and damage to the oil and gas deposits, either directly or indirectly, through waste; and limitation of oil and gas operations in areas of concentrated surface oil shale facilities.

2.4. Mitigation of subsurface impact including but not limited to issues pertaining to the interface in the underground environment of oil shale mining operations with other mineral operations.

2.5. The extent of exchange of geological, engineering, and production data.

2.6. Other cooperative efforts consistent with multiple mineral development under the rules and orders of the board pertaining to oil and gas operations, oil shale operations, and mined land reclamation.

3. The division, together with the Division of State Lands and Forestry, where applicable, shall be signatory to the agreement.

4. In the event the operators cannot agree on cooperative development of their respective mineral deposits, or having once entered into a cooperative agreement subsequently disagree on the application of the terms and provisions thereof, any operator whose oil and gas or mining operation or deposit may be adversely affected or damaged by the operations of another operator may apply to the board for, or the board may on its own motion enter an order, after notice and hearing, delineating the respective rights and obligations of all operators with respect to development of all minerals concerned.

5. After notice and hearing the board may modify its order to more effectively carry out the policies of multiple mineral development.

R649-3-28. Designated Potash Areas.

1. In any area designated as a potash area, either by the board, the Division of State Lands and Forestry or an appropriate federal agency, all wells shall be drilled, cased, cemented, and plugged in accordance with the rules and orders of the board. The following minimum requirements and definitions shall also apply to the drilling, logging, casing, and plugging operations within the Salt Section to protect against migration of oil, gas, or water into or within any formation or zone containing potash. As used in this rule, Salt Section shall mean the Paradox Salt Section of Pennsylvanian Age.

2. Any drilling media used through the Salt Section shall be such that sodium chloride is not soluble in the media at normal temperatures.

3. Gamma ray-neutron, gamma ray-sonic or other appropriate logs shall be run promptly through the Salt Section. One field copy of the log through the Salt Section shall be submitted to the division within ten days, or upon the request of the division, whichever is the earlier.

4. A directional survey shall be run from a point at least 20 feet below the Salt Section to the surface. The survey shall be filed with the division prior to completion or plugging and abandonment of the well.

5. In addition to the requirements of the R649-3-8, any casing set into or through the Salt Section shall be cemented solidly through the Salt Section above the casing shoe.

6. Any cement used in setting casing or in plugging which comes in contact with the Salt Section shall be of such chemical composition as to avoid dissolution of the Salt Section and to provide weight, strength, and physical properties sufficient to protect uphole formations and prevent blowouts or uncontrolled flows.

7. If a well is dry, cement plugs at least 200 feet in length shall be placed across the top and the base of the Salt Section, across any oil, gas or water show, and across any potash zone. Plugs shall not be required inside a properly cemented casing string. The division shall approve the location of the plugs after examining the appropriate logs, drilling and testing records for the well. No well shall be temporarily abandoned with open hole in the Salt Section.

8. The division may inspect the drilling operations at all times, including any mining operations that may affect any drilling or producing well bores. A potash owner, if contributing by agreement to the logging and directional survey costs of a well, may inspect the well for compliance with this rule.

9. Before commencing drilling operations for oil or gas on any land within designated potash area, the operator shall furnish by registered mail, a copy of the APD, together with the plat or map required under R649-3-4, to all potash owners and lessees whose interests are within a radius of 2,640 feet of the proposed well.

10. After proper notice and hearing, the board may modify this rule for a particular well or area by requiring that greater or lesser precautions be taken to prevent the escape of oil, gas, or water from one stratum into another. The board may also expand or contract from the designated potash areas.

R649-3-29. Workable Coal Beds.

1. Prior to commencing drilling operations for oil and gas on any lands where there are mine workings, the operator shall furnish a copy of the APD, a plat or map as required under R649-3-4, and a designation of the proposed angle and direction of the well, if the well is to be deviated substantially from a vertical course, to all coal owners and lessees whose interests are within a radius of 5,280 feet of the proposed well.

2. A well penetrating one or more workable coal beds or mine workings shall be drilled to a depth and shall be of a size, to permit the placing of casing in the hole at the points and in the manner necessary to exclude all oil, gas or gas pressure from the coal bed, other than oil, gas or gas pressure originating in the coal bed.

3. Unless otherwise authorized by the division, the casing run through a coal bed shall be seated at least 50 feet into the closest impervious formation below the coal bed. The casing shall be cemented solidly through the coal bed to a height at least 50 feet into the closest impervious formation above the coal bed.

4. A directional survey or a cement bond log shall be performed and furnished to the division upon written request by the division.

5. Upon penetrating a coal bed the operator shall notify the division, in writing, before completing or plugging and abandoning the well.

R649-3-30. Underground Mining Operations.

1. Prior to commencing drilling operations for oil and gas on any land where there are known or suspected underground mining operations, solution mining operations or surface mining operations, including solar evaporation ponds, the operator shall include in the APD or in a separate cover letter, any information known to the operator concerning the name and address of the owner or operator of the mining workings.

2. The division may, with the concurrence of the operator, change the surface location of the proposed well if there appears to be any possibility of interference between the proposed well bore and the mine workings.

R649-3-31. Designated Oil Shale Areas.

1. Lands may be designated as an oil shale area by the board, either upon its own motion, or upon the petition of an interested person following notice and hearing.

2. As used in this rule, oil shale section means the sequence of strata containing oil shale beds, including any interbedded strata not containing oil shale, consisting of the Parachute Creek Member of the Green River Formation of Tertiary Age, defined as the stratigraphic equivalent of the interval between 1,428 feet and 2,755 feet below the Kelly Bushing on the induction-electrical log of the Ute Trail No. 10 well drilled by Dekalb Agricultural Association, Inc. and located in the NE 1/4 of Section 34, Township 9 South, Range 21 East, S.L.M., Uintah County, Utah.

The Mahogany Zone is defined as the stratigraphic equivalent of the interval between 2,230 feet and 2,360 feet below the Kelly Bushing on the induction-electrical log of the Ute Trail No. 10 well drilled by Dekalb Agricultural Association, Inc., and located in the NE 1/4 of Section 34, Township 9 South, Range 21 East, S.L.M., Uintah County,

Utah.

3. For purposes of identifying the oil shale intervals, an appropriate electrical log shall be run through the oil shale section. One field copy of the log through the oil shale section shall be made available to the division pursuant to R649-3-23 or upon written request by the division.

4. On all wells which are intentionally deviated from the vertical within the oil shale section, pursuant to the provisions of R649-3-10 and R649-3-11, a directional survey shall be run from a point at least 20 feet below the oil shale section to the surface and shall thereafter be filed with the division within 20 days after reaching total depth.

5. Any oil shale lessee or operator whose oil shale mine workings reach a distance of 2,640 feet from a producing well or any oil and gas lessee or operator whose producing well is approached by oil shale mine workings within a distance of 2,640 feet shall request agency action with the board. The board may promulgate an order after notice and hearing with respect to the running of a directional survey through the oil shale section, the cost and potential resource loss liability and responsibility as to the oil and gas operator and the oil shale lessee or operator and any other issues regarding multiple mineral development.

6. The directional survey shall be the confidential property of the parties paying for the survey and shall be kept confidential until released by said parties or the division.

7. In addition to the requirements pertaining to the cementing of casing contained in the R649-3-8, any casing set into or through the oil shale section shall be cemented over the entire oil shale section.

8. If a well is dry, junked or abandoned, a cement plug shall be placed across that portion of the oil shale section extending 200 feet above and 200 feet below the longitudinal center of the Mahogany Zone. The cement plug shall not be required inside a casing cemented in accordance with R649-3-31-7. When the casing is cemented, cement plugs 200 feet in length shall be centered across the top and across the base of the Parachute Creek Member of the Green River Formation.

9. In the event the casing is not cemented in accordance with R649-3-31-7, the division shall approve the method and procedure to prevent the migration of oil, gas, and other substances through the wellbore from one formation to another.

10. The division shall approve the adequacy and location of the cement plugs after examining the appropriate logs and drilling and testing records for the well, to ensure that the oil shale section is adequately protected.

11. Upon written request of the owner or operator under R649-8-6, the division shall keep all well logs confidential. The division may inspect the drilling operations at all times, including any mining operations that may affect drilling or producing well bores.

12. Before commencing drilling operations for oil or gas on any land within a designated oil shale area, the operator shall furnish a copy of the APD, together with a plat or map as directed under R649-3-4, to all oil shale owners or their lessees whose interests are within a radius of 2,640 feet of the proposed well. A notice of intention to plug and abandon any well in the oil shale area, as required under R649-3-24-1, shall be furnished to the owners or their lessees prior to commencement of plugging operations.

13. The operator shall use generally accepted techniques for vertical or directional drilling as defined under R649-3-10 and R649-3-11 to maintain the well bore within an intact core of a mine pillar. Within 20 days of reaching the total depth or before completion of the well, whichever is the earlier, a directional survey shall be run as prescribed by this rule.

R649-3-32. Reporting of Undesirable Events.

1. The division shall be notified of all fires, leaks, breaks, spills, blowouts, and other undesirable events occurring at any oil or gas drilling, producing, or transportation facility, or at any injection or disposal facility.

2. Immediate notification shall be required for all major undesirable events as outlined in R649-3-32-5. Immediate notification shall mean a verbal report submitted to the division as soon as practical but within a maximum of 24 hours after discovery of an undesirable event. A complete written report of the incident shall also be submitted to the division within five days following the conclusion of an undesirable event. The requirements for written reports are specified in R649-3-32-4.

3. Subsequent notification shall be required for all minor undesirable events as outlined in R649-3-32-6. Subsequent notification shall mean a complete written report of the incident submitted to the division within five days following the conclusion of an undesirable event. The requirements for written reports are specified in R649-3-32-4.

4. Complete written reports of undesirable events may be submitted on Form 9, Sundry Notice and Report on Wells. The report shall include:

4.1. The date and time of occurrence and, if immediate notification was required, the date and time the occurrence was reported to the Division.

4.2. The location where the incident occurred described by section, township, range, and county.

4.3. The specific nature and cause of the incident.

4.4. A description of the resultant damage.

4.5. The action taken, the length of time required for control or containment of the incident, and the length of time required for subsequent cleanup.

4.6. An estimate of the volumes discharged and the volumes not recovered.

4.7. The cause of death if any fatal injuries occurred.

5. Major undesirable events include the following:

5.1. Leaks, breaks or spills of oil, salt water or oil field wastes which result in the discharge of more than 100 barrels of liquid, which are not fully contained on location by a wall, berm, or dike.

5.2. Equipment failures or other accidents which result in the flaring, venting, or wasting of more than 500 Mcf of gas.

5.3. Any fire which consumes the volumes of liquid or gas specified in R649-3-32-5.1 and R649-3-32-5.2.

5.4. Any spill, venting, or fire, regardless of the volume involved, which occurs in a sensitive area stipulated on the approval notice of the initial APD for a well, e.g., parks, recreation sites, wildlife refuges, lakes, reservoirs, streams, urban or suburban areas.

5.5. Each accident which involves a fatal injury.

5.6. Each blowout, loss of control of a well.

6. Minor undesirable events include the following:

6.1. Leaks, breaks or spills or oil, salt water, or oil field wastes which result in the discharge of more than ten barrels of liquid and are not considered major events in R649-3-32-5.

6.2 Equipment failures or other accidents which result in the flaring, venting or wasting of more than 50 Mcf of gas and are not considered major events in R649-3-32-5.

6.3. Any fire which consumes the volumes of liquid or specified in R649-3-32-6.1 and R649-3-32-6.2.

6.4. Each accident involving a major or life-threatening injury.

R649-3-33. Drilling Procedures in the Great Salt Lake.

1. For all drilling activities proposed within the Great Salt Lake, the APD required by R649-3-4 shall be filed at least 30 days prior to the date on which the operator intends to commence operations. As part of the APD, the operator shall include:

1.1. The name of the drilling contractor and the number and type of rig to be used.

1.2. An illustration of the boundaries of all state or federal parks, wildlife refuges, or waterfowl management areas within one mile of the proposed well location.

1.3. An illustration of the locations of all evaporation pits, producing wells, structures, buildings, and platforms within one mile of the proposed well location.

1.4. An oil spill emergency contingency plan.

2. Unless permitted by the board after notice and hearing, no well shall be drilled which has a surface location:

2.1. Within 1,320 feet from an evaporation pit without the consent of the operator of such pit.

2.2. Within one mile from the boundary of a state or federal park, wildlife refuge, or waterfowl management area without the consent of the appropriate state or federal regulatory agency.

2.3. Within three miles of Gunnison Island during the Pelican nesting season (March 15 through September 30) or within one mile from said island at any other time.

2.4. Within any area south of the Salt Lake Base Meridian Line.

2.5. Within any area north of Township 10 North.

2.6. Within one mile inside of what would be the water's edge if the water level of the Great Salt Lake were at the elevation of 4,193.3 feet above sea level.

3. Well casing and cementing shall be subject to the following special requirements for the purpose of this rule, the several casing strings in order of normal installation are drive or structural casing, conductor casing, surface casing, intermediate casing, and production casing. All depths refer to true vertical depth:

3.1. The drive or structural casing shall be set by drilling, driving or jetting to a minimum depth of 50 feet below the floor of the lake bed or to such greater depth required to support unconsolidated deposits and to provide hole stability for initial drilling operations. If drilled in, the drilling fluid shall be a type that will not pollute the lake; in addition, a quantity of cement sufficient to fill the annular space back to the lake floor with returns circulated, must be used.

3.2. The conductor casing shall be set at a minimum depth of 200 feet below the floor of the lake, and shall be cemented with a quantity sufficient to fill the annular space back to the lake surface with returns circulated.

3.3. The surface casing shall be set at a minimum depth of 500 feet if the proposed depth of the well is less than 7,000 feet; or 1,000 feet if the proposed depth is over 7,000 feet but less than 11,000 feet; or 1,500 feet if the depth is 11,000 feet. The casing shall be cemented with a quantity sufficient to fill the annular space back to the lake surface with returns circulated, and the bottom of the casing shall be in competent rock.

3.4. The intermediate and production casing shall be set at any time when drilling below the surface casing and hole conditions justify setting casing. This casing will be cemented in such a manner that all hydrocarbons, water aquifers, lost-circulation or zones of significant porosity and permeability, significant beds containing priority minerals, and abnormal pressure intervals are covered or isolated.

3.5. Prior to drilling the plug after cementing, all casing strings except the drive or structural casing, shall be pressure tested. This test shall not exceed the rated working pressure of the casing. If the pressure declines more than ten percent in 30 minutes, or if there are other indications of a leak, corrective measures must be taken until a satisfactory test is obtained. All casing pressure tests shall be recorded on the driller's log.

4. Blowout preventers and related well control equipment shall be installed, and tested in a manner necessary to prevent blowouts and shall be subject to the following special conditions:

4.1. Prior to drilling below the surface casing, blowout prevention equipment shall be installed and maintained ready for use until drilling operations are completed.

4.2. An inside blowout preventer assembly and a full opening string safety valve in the open position shall be maintained on the rig floor at all times while drilling operations are being conducted. Valves shall be maintained on the rig floor to fit all pipe in the drill string. A top kelly cock shall be installed below the swivel and another at the bottom of the kelly of such design that it can be run through the blowout preventers.

4.3. Before drilling below the surface casing the blowout prevention equipment shall include a minimum of:

4.3.1. Three remotely and manually controlled, hydraulically operated blowout preventers with a rated working pressure which exceeds the maximum anticipated surface pressure, including one equipped with pipe rams, one with blind rams and one hydril type.

4.3.2. A drilling spool with side outlets, if side outlets are not provided in the blowout preventer body.

4.3.3. A choke manifold.

4.3.4. A kill line.

4.3.5. A fill-up line.

4.4. Ram-type blowout preventers and related control equipment shall be tested to the rated working pressure of the stack assembly or to the working pressure of the casing, whichever is the lesser, at the following times:

4.4.1. When installed.

4.4.2. Before drilling out after each string of casing is set.

4.4.3. Not less than once each week while drilling.

4.4.4. Following repairs that require disconnecting a pressure seal in the assembly.

4.5. The hydril-type blowout preventer shall be tested to 70 percent of the pressure testing requirements of ram-type blowout preventers. The hydril-type blowout preventer shall be actuated on the drill pipe once each week.

4.6. Accumulators or accumulators and pumps shall maintain a reserve capacity at all times to provide for repeated operation of hydraulic preventers.

4.7. A blowout prevention drill shall be conducted weekly for each drilling crew to insure that all equipment is operational and that crews are properly trained to carry out emergency duties. All blowout preventer tests and crew drills shall be recorded on the driller's log.

5. The characteristics and use of drilling mud and the conduct of related drilling procedures shall be such as are necessary to maintain the well in a safe condition to prevent uncontrolled blowouts of any well. Quantities of mud materials sufficient to insure well control shall be maintained and readily accessible for use at all times.

6. Mud testing equipment shall be maintained on the derrick floor at all times, and mud tests consistent with good operating practice shall be performed daily, or more frequently as conditions warrant. The following mud system monitoring equipment must be installed, with derrick floor indicators, and used throughout the period of drilling after setting and cementing the surface casing:

6.1. A recording mud pit level indicator including a visual and audio warning device to determine mud pit volume gains and losses.

6.2. A mud return indicator to determine when returns have been obtained, or when they occur unintentionally, and additionally to determine that returns essentially equal the pump discharge rate.

7. In the conduct of all oil and gas operations, the operator shall prevent pollution of the waters of the Great Salt Lake. The operator shall comply with the following pollution prevention requirements:

7.1. Oil in any form, liquid or solid wastes containing oil, shall not be disposed of into the waters of the lake.

7.2. Liquid or solid waste materials containing substances which may be harmful to aquatic life or wildlife, or injurious in any manner to life and property, or which in any way unreasonably adversely affects the chemicals or minerals in the lake shall not be disposed of into the waters of the lake.

7.3. Waste materials, exclusive of cuttings and drilling media, shall be transported to shore for disposal.

8. All spills or leakage of oil and liquid or solid pollutants shall be immediately reported to the division. A complete written statement of all circumstances, including subsequent clean-up operation, shall be forwarded to said agencies within 72 hours of such occurrences.

9. Standby pollution control equipment consistent with the state of the art, shall be maintained by, and shall be immediately available to, each operator.

R649-3-34. Well Site Restoration.

1. The operator of a well shall upon plugging and abandonment of the well restore the well site in accordance with these rules.

2. For all land included in the well site for which the surface is federal, Indian, or state ownership, the operator shall meet the well site restoration requirements of the appropriate surface management agency.

3. For all land included in the well site for which the surface is fee or private ownership, the operator shall meet the well site restoration requirements of the private landowner or the minimum well site restoration requirements established by the division.

4. Well site restoration on lands with fee or private ownership shall be completed within one (1) year following the plugging of a well unless an extension is approved by the division for just and reasonable cause.

5. These rules shall not preclude the opportunity for a private landowner to assume liability for the well as a water well in accordance with R649-3-24.6.

6. The operator shall make a reasonable effort to establish surface use agreements with the owners of land included in the well site prior to the commencement of the following actions on fee or private surface:

6.1 Drilling a new well.

6.2. Reentering an abandoned well.

6.3. Assuming operatorship of existing wells.

7. Upon application to the division to perform any of the aforementioned and prior to approval of such actions by the division, the operator shall submit an affidavit to the division stating whether appropriate surface use agreements have been established with and approved by the surface landowners of the well site.

8. If necessary and upon request by the division, the operator shall submit a copy of the established surface use agreements to the division.

9. If no surface use agreement can be established, the division shall establish minimum well site restoration requirements for any well located on fee or private surface for the purposes of final bond release.

10. Established surface use agreements may be modified or terminated at any time by mutual consent of the involved parties; however, the operator shall notify the division if such is the case and if a surface use agreement is terminated without a new agreement established, the division shall establish minimum well site reclamation requirements.

11. The operator shall be responsible for meeting the requirements of any surface use agreement, and it shall be assumed by the division until notified otherwise that surface use agreements remain in full force and effect until all the requirements of the agreement are satisfied or until the agreement has been terminated by mutual consent of the involved parties.

12. The surface use agreement shall stipulate the minimum well site restoration to be performed by the operator in order to allow final release of the bond.

13. The final bond release by the division shall include a determination by the division whether or not the operator has met the requirements of an established surface use agreement, and the division may suspend final bond release until the operator has completed all the requirements of the surface use agreement.

14. The agreement may state requirements for well site grading, contouring, scarification, reseeding, and abandonment

of any equipment or facilities for which the landowner agrees to assume liability.

15. The agreement shall not address operations regulated by the rules and orders of the board such as:

15.1. Disposal of drilling fluid, produced fluid, or other fluid waste associated with the drilling and production of the well.

15.2. Reclamation or treating of waste crude oil.

15.3. Any other operation or condition for which the board has jurisdiction.

16. If the operator cannot establish surface use agreements then the operator shall so notify the division.

17. Within 30 days of the notification or as soon as weather conditions permit, the division shall conduct an inspection and evaluation of the well site in order to establish minimum well site restoration requirements for the purpose of final bond release.

18. The operator shall be given notice by the division of the date and time of the inspection, and if the operator cannot attend the inspection at the scheduled date and time, the division may reschedule the inspection to allow the operator to participate.

19. The surface landowner, agent or lessee shall be given notice by the operator of such inspection and may participate in the inspection; however, if the surface landowner cannot attend the inspection, the division shall not be required to reschedule the inspection in order to allow the surface landowner to participate.

20. The evaluation shall consider the condition of the land prior to disturbance, the extent of proposed disturbance, the degree of difficulty to conduct complete restoration, the potential for pollution, the requirements for abating pollution, and the possible land use after plugging and restoration are completed.

21. Within 30 days after performing the inspection, the division shall provide the operator with the results of the inspection and the evaluation listing the minimum well site restoration requirements established by the division.

22. The division shall retain a record of the inspection and the evaluation, and if necessary and upon written request by an interested party, the division shall provide a copy of the minimum well site restoration requirements established by the division.

23. If any person disagrees with the results of the inspection and the evaluation and desires a reconsideration of the minimum well site restoration requirements established by the division, such person may submit a request to the board for a hearing and order to modify the requirements.

24. The board, after proper notice and hearing, may issue an order modifying the minimum well site restoration requirements established by the division.

25. The minimum well site restoration requirements established by the division or by board order shall be considered part of any permit granted by the division to conduct operations at a well site, and the inability of the operator to meet such requirements shall be considered grounds for forfeiture of the bond.

26. If the minimum well site restoration requirements suggest to the division that bond coverage for a well should be increased, the division shall take action as stated in R649-3-1.

R649-3-35. Wildcat Wells.

1. For purposes of qualifying for a severance tax exemption under Section 59-5-102(2)(d), an operator must file an application with the division for designation of a wildcat well. The application may be filed prior to drilling the well, and a tentative determination of the wildcat designation will be issued at that time. An application or request for final designation of wildcat status as appropriate, must be filed at the time of filing of Form 8, Well Completion or Recompletion Report and Log. The application shall contain, where applicable, the following information:

1.1. A plat map showing the location of the well in relation to producing wells within a one mile radius of the wellsite.

1.2. A statement concerning the producing formation or formations in the wildcat well and also the producing formation or formations of the producing wells in the designated area, including completion reports and other appropriate data.

1.3. Stratigraphic cross sections through the producing wells in the designated area and the proposed wildcat well.

1.4. A statement as to whether the well is in a known geologic structure. However, whether the well is in a known geologic structure shall not be the sole basis of determining whether the well is a wildcat.

1.5. Bottomhole pressures, as applicable, in a wildcat well compared to the wells producing in the designated area from the same zone.

1.6. Any other information deemed relevant by the applicant or requested by the division.

2. Information derived from well logs, including certain information in completion reports, stratigraphic cross sections, bottomhole pressure data, and other appropriate data provided in R649-3-35-1 will be held confidential in accordance with R649-2-11 at the request of the operator.

3. The division shall review the submitted information and advise the operator and the State Tax Commission of its decision regarding the wildcat well designation as related to Section 59-5-102(2)(d).

4. The division is responsible for approval of a request for designation of a well as a wildcat well. If the operator disagrees with the decision of the division, the decision maybe appealed to the board. Appeals of all other tax-related decisions concerning wildcat wells should be made to the State Tax Commission.

R649-3-36. Shut-in and Temporarily Abandoned Wells.

1. Wells may be initially shut-in or temporarily abandoned for a period of twelve (12) consecutive months. If a well is to be shut-in or temporarily abandoned for a period exceeding twelve (12) consecutive months, the operator shall file a Sundry Notice providing the following information:

1.1. Reasons for shut-in or temporarily abandonment of the well,

1.2. The length of time the well is expected to be shut-in or temporarily abandoned, and

1.3. An explanation and supporting data if necessary, for showing the well has integrity, meaning that the casing, cement,

equipment condition, static fluid level, pressure, existence or absence of Underground Sources of Drinking Water and other factors do not make the well a risk to public health and safety or the environment.

2. After review the Division will either approve the continued shut-in or temporarily abandoned status or require remedial action to be taken to establish and maintain the well's integrity.

3. After five (5) years of nonactivity or nonproductivity, the well shall be plugged in accordance with R649-3-24, unless approval for extended shut-in time is given by the Division upon a showing of good cause by the operator.

4. If after a five (5) year period the well is ordered plugged by the Division, and the operator does not comply, the operator shall forfeit the drilling and reclamation bond and the well shall be properly plugged and abandoned under the direction of the Division.

R649-3-37. Enhanced Recovery Project Certification.

1. In order for incremental production achieved from an enhanced recovery project to qualify for the severance tax rate reduction provided under Subsection 59-5-102(4), the operator on behalf of the producers shall present evidence demonstrating that the recovery technique or techniques utilized qualify for an enhanced recovery determination and the Board must certify the project as an enhanced recovery project.

2. For enhanced recovery projects certified by the Board after January 1, 1996:

2.1. As part of the process of certifying incremental production which qualifies for a reduction in the severance tax rate under Subsection 59-5-102(4), the operator shall furnish the Division an extrapolation (projection) and tabulation of expected non-enhanced recovery of oil and gas production from the project. The projection shall be for not less than seventy-two (72) months commencing with the first month following the project certification by the Board. The projection shall be based on production history of all wells within the project area for not less than twelve (12) months immediately preceding either certification or commencement of the project; reservoir and production characteristics; and the application of generally accepted petroleum engineering practices. The projected production volumes approved by the division shall serve as the base level production for purposes of determining the incremental oil and gas production which qualifies for a reduction in the severance tax rate.

2.2. The operator shall provide a statement as to all assumptions made in preparing the projection and any other information concerning the project that the division may reasonably require in order to evaluate the operator's projection.

2.3. An operator's request for incremental production certification may be approved administratively by the Director or authorized agent. The Director or authorized agent shall review the request within 30 days after its receipt and advise the operator of the decision. If the operator disagrees with the Director or authorized agent's decision, the operator may request a hearing before the Board at its next regularly scheduled hearing. The Director or authorized agent may also refer the matter to the Board if a decision is in doubt.

2.4. Upon approval of a request for incremental production certification, the Director or authorized agent shall forward a copy of the certification to the Utah Tax Commission.

KEY: oil and gas law
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Notice of Continuation April 30, 1997

R649. Natural Resources; Oil, Gas and Mining; Oil and Gas.

R649-5. Underground Injection Control of Recovery Operations and Class II Injection Wells.

R649-5-1. Requirements For Injection Of Fluids Into Reservoirs.

1. Operations to increase ultimate recovery, such as cycling of gas, the maintenance of pressure, the introduction of gas, water or other substances into a reservoir for the purpose of secondary or other enhanced recovery or for storage and the injection of water into any formation for the purpose of water disposal shall be permitted only by order of the board after notice and hearing.

2. A petition for authority for the injection of gas, liquefied petroleum gas, air, water, or any other medium into any formation for any reason, including but not necessarily limited to the establishment of or the expansion of waterflood projects, enhanced recovery projects, and pressure maintenance projects shall contain:

2.1. The name and address of the operator of the project.

2.2. A plat showing the area involved and identifying all wells, including all proposed injection wells, in the project area and within one-half mile radius of the project area.

2.3. A full description of the particular operation for which approval is requested.

2.4. A description of the pools from which the identified wells are producing or have produced.

2.5. The names, description and depth of the pool or pools to be affected.

2.6. A copy of a log of a representative well completed in the pool.

2.7. A statement as to the type of fluid to be used for injection, its source and the estimated amounts to be injected daily.

2.8. A list of all operators or owners and surface owners within a one-half mile radius of the proposed project.

2.9. An affidavit certifying that said operators or owners and surface owners within a one-half mile radius have been provided a copy of the petition for injection.

2.10. Any additional information the board may determine is necessary to adequately review the petition.

3. Applications as required by R649-5-2 for injection wells which are located within the project area, may be submitted for board consideration and approval with the request for authorization of the recovery project.

4. Established recovery projects may be expanded and additional wells placed on injection only upon authority from the board after notice and hearing or by administrative approval.

5. If the proposed injection interval can be classified as an USDW, approval of the project is subject to the requirements of R649-5-4.

R649-5-2. Requirements For Class II Injection Wells Including Water Disposal, Storage And Enhanced Recovery Wells.

1. Injection wells shall be completed, equipped, operated, and maintained in a manner that will prevent pollution and damage to any USDW, or other resources and will confine injected fluids to the interval approved.

2. The application for an injection well shall include a properly completed UIC Form 1 and the following:

2.1. A plat showing the location of the injection well, all abandoned or active wells within a one-half mile radius of the proposed well, and the surface owner and the operator of any lands or producing leases, respectively, within a one-half mile radius of the proposed injection well.

2.2. Copies of electrical or radioactive logs, including gamma ray logs, for the proposed well run prior to the installation of casing and indicating resistivity, spontaneous potential, caliper, and porosity.

2.3. A copy of a cement bond or comparable log run for the proposed injection well after casing was set and cemented.

2.4. Copies of logs already on file with the division should be referenced, but need not be refiled.

2.5. A description of the casing or proposed casing program of the injection well and of the proposed method for testing the casing before use of the well.

2.6. A statement as to the type of fluid to be used for injection, its source and estimated amounts to be injected daily.

2.7. Standard laboratory analyses of (1) the fluid to be injected, (2) the fluid in the formation into which the fluid is being injected, and (3) the compatibility of the fluids.

2.8. The proposed average and maximum injection pressures.

2.9. Evidence and data to support a finding that the proposed injection well will not initiate fractures through the overlying strata or a confining interval that could enable the injected fluid or formation fluid to enter the fresh water strata.

2.10. Appropriate geological data on the injection interval and confining beds, and nearby Underground Sources of Drinking Water, including the geologic name, lithologic description, thickness, depth, water quality, and lateral extent; also information relative to geologic structure near the proposed well which may effect the conveyance and/or storage of the injected fluids.

2.11. A review of the mechanical condition of each well within a one-half mile radius of the proposed injection well to assure that no conduit exists that could enable fluids to migrate up or down the wellbore and enter improper intervals.

2.12. An affidavit certifying that a copy of the application has been provided to all operators, owners, and surface owners within a one-half mile radius of the proposed injection well.

2.13. Any other additional information that the board or division may determine is necessary to adequately review the application.

3. Applications for injection wells which are within a recovery project area will be considered for approval:

3.1. Pursuant to R649-5-1-3.

3.2. Subsequent to board approval of a recovery project pursuant to R649-5-1-1.

4. Approval of an injection well is subject to the requirements of R649-5-4, if the proposed injection interval can be classified as an USDW.

5. In addition to the requirements of this section, the provisions of R649-3-1, R649-3-4, R649-3-24, R649-3-32, and R649-8-1 and R649-10 shall apply to all Class II injection wells.

R649-5-3. Noticing and Approval Of Injection Wells.

1. Applications for injection wells submitted pursuant to R649-5-1-3 shall be noticed in conformance with the procedural rules of the board as part of the hearing for the recovery project. Any person desiring to object to approval of such an application for an injection well shall file the objection in conformance with the procedural rules of the board.

2. The receipt of a complete and technically adequate application, other than an application submitted pursuant to R649-5-3-1, shall be considered as a request for agency action by the Division and shall be published in a daily newspaper of general circulation in the city and county of Salt Lake and in a newspaper of general circulation in the county where the proposed well is located. A copy of the notice of agency action shall also be sent to all parties including government agencies. The notice of agency action shall contain at least the following information:

2.1. The applicant's name, business address, and telephone number.

2.2. The location of the proposed well.

2.3. A description of proposed operation.

3. If no written objection to the application for administrative approval of an injection well is received by the division within 15 days after publication of the notice of agency action, or an aquifer exemption is not required in accordance with R649-5-4, and a board hearing is not otherwise required, the application may be considered and approved administratively.

4. If a written objection to an application for administrative approval of an injection well is received by the division within 15 days after publication of the notice of application, or if a hearing is required by these rules or deemed advisable by the director, the application shall be set for notice and hearing by the board.

5. The director shall have the authority to grant an exception to the hearing requirements of R649-5-1.1 for conversion to injection of additional wells which constitute a modification or expansion of an authorized project provided that any such well is necessary to develop or maintain thorough and efficient recovery operations for any authorized project and provided that no objection is received pursuant to R649-5-3-3.

6. The director shall have authority to grant an exception to the hearing requirements of R649-5-1-1 for water disposal wells provided disposal is into a formation or interval that is not currently nor anticipated to be an underground source of drinking water and provided that no objection is received pursuant to R649-5-3-3.

R649-5-4. Aquifer Exemption.

1. The board may, after notice and hearing and subject to the EPA approval, authorize the exemption of certain aquifers from classification as an USDW based upon the following findings:

1.1. The aquifer does not currently serve as a source of drinking water.

1.2. The aquifer cannot now and will not in the future serve as a source of drinking water for any of the following reasons:

1.2.1. The aquifer is mineral, hydrocarbon or geothermal energy producing, or it can be demonstrated by the applicant as part of a permit application for a Class II well operation, to contain minerals or hydrocarbons that, considering their quantity and location, are expected to be commercially producible.

1.2.2. The aquifer is situated at a depth or location that makes recovery of water for drinking water purposes economically or technologically impractical.

1.2.3. The aquifer is contaminated to the extent that it would be economically or technologically impractical to render water from the aquifer fit for human consumption.

1.2.4. The aquifer is located above a Class III well mining area subject to subsidence or catastrophic collapse.

1.3. The total dissolved solids content of the water from the aquifer is more than 3,000 and less than 10,000 mg/l, and the aquifer is not reasonably expected to be used as a source of fresh or potable water.

2. Interested parties desiring to have an aquifer exempted from classification as a USDW, shall submit to the division an application that includes sufficient data to justify the proposal. The division shall consider the application and if appropriate, will advise the applicant to submit a request to the board for an aquifer exemption.

R649-5-5. Testing And Monitoring Of Injection Wells.

1. Before operating a new injection well, the casing shall be tested to a pressure not less than the maximum authorized injection pressure, or to a pressure of 300 psi, whichever is greater.

2. Before operating an existing well newly converted to an injection well, the casing outside the tubing shall be tested to a pressure not less than the maximum authorized injection pressure, or to a pressure of 1,000 psi, whichever is lesser, provided that each well shall be tested to a minimum pressure of 300 psi.

3. In order to demonstrate continuing mechanical integrity after commencement of injection operations, all injection wells shall be pressure tested or monitored as follows:

3.1. Pressure Test. The casing-tubing annulus above the packer shall be pressure tested not less than once each five years to a pressure equal to the maximum authorized injection pressure or to a pressure of 1,000 psi, whichever is lesser, provided that no test pressure shall be less than 300 psi. A report documenting the test results shall be submitted to the division.

3.2. Monitoring. If approved by the director, and in lieu of the pressure testing requirement, the operator may monitor the pressure of the casing-tubing annulus monthly during actual injection operations and report the results to the division.

3.3. Other test procedures or devices such as tracer surveys, temperature logs or noise logs may be required by the division on a case-by-case basis.

3.4. The operator shall sample and analyze the fluids injected in each disposal well or enhanced recovery project at sufficiently frequent time intervals to yield data representative of fluid characteristics, and no less frequently than every year. The operator shall submit a copy of the fluid analysis to the division with the Annual Fluid Injection Report, UIC Form 4.

R649-5-6. Duration Of Approval For Injection Wells.

1. Approvals or orders authorizing injection wells shall be valid for the life of the well, unless revoked by the board for just cause, after notice and hearing.

2. An approval may be administratively amended if:

2.1. There is a substantial change of conditions in the injection well operation.

2.2. There are substantial changes to the information originally furnished.

2.3. Information as to the permitted operation indicates that an USDW is no longer being protected.

R649-5-7. Unit or Cooperative Development Or Operation.

Any person desiring to obtain the benefits of Section 40-6-7(1) insofar as the same relates to any method of unit or cooperative development or operation of a field or pool or a part of either, shall file a Request for Agency Action and a copy of such agreement with the board for approval after notice and hearing.

KEY: oil and gas law
June 2, 1998 40-6-1 et seq.
Notice of Continuation April 30, 1997

R649. Natural Resources; Oil, Gas and Mining; Oil and Gas.

R649-8. Reporting and Report Forms.

R649-8-1. General Report Forms.

1. The forms listed below, as modified by the Division from time to time shall be used for the purpose indicated in accordance with the instructions and the applicable rule.

Form 1 Application for Permit to Conduct Seismic Exploration R649-8-2

Form 2 Seismic Exploration Completion Report R649-8-3

Form 3 Application for Permit to Drill, Deepen, or Plug Back (APD) R649-8-4

Form 4 Bond R649-8-5

Form 5 Designation of Agent or Operator R649-8-6

Form 6 Entity Action Form R649-8-7

Form 7 Report of Water Encountered During Drilling R649-8-8

Form 8 Well Completion or Recompletion Report and Log R649-8-9

Form 9 Sundry Notices and Reports on Wells R649-8-10

Form 10 Monthly Oil and Gas Production Report R649-8-11

Form 11 Monthly Oil and Gas Disposition Report R649-8-12

Form 12 Report of Transferred Oil R649-8-13

Form 13-A Monthly Summary Report of Gas Processing Plant Operations R649-8-14

Form 13-B Monthly Report of Gas Processing Plant Product Allocations R649-8-15

Form 14 Monthly Report of Waste Crude Oil Treatment Facility Operations R649-8-16

Form 15 Designation of Workover or Recompletion R649-8-17

UIC Form 1 Application for Injection Well R649-8-23

UIC Form 2 Monthly Report of Enhanced Recovery Project R649-8-24

UIC Form 3 Monthly Injection Report R649-8-25

UIC Form 4 Annual Fluid Injection Report R649-8-26

UIC Form 5 Transfer of Authority to Inject R649-8-27

UIC Form 6 Monthly Produced Water Disposition Report R649-8-28

2. Any permitted well which is referenced on a report form, correspondence, or well log should be identified by its assigned API number.

R649-8-2. Form 1, Application for Permit to Conduct Seismic Exploration.

At least seven days prior to commencing any type of seismic exploration operations, an Application for Permit to Conduct Seismic Exploration shall be submitted in duplicate to the division by the seismic contractor in accordance with R649-3-26.

R649-8-3. Form 2, Seismic Exploration Completion Report.

Within 60 days of the completion of each seismic exploration project, a Seismic Exploration Completion Report shall be submitted to the division by the seismic contractor in accordance with R649-3-26.

R649-8-4. Form 3, Application for Permit to Drill, Deepen, or Plug Back (APD).

Prior to the commencement of drilling, deepening, or plugging back any well or the commencement of exploratory drilling such as core holes and stratigraphic test holes, and prior to the commencement of any surface disturbance associated with such activity, the operator shall submit in duplicate an Application for Permit to Drill, Deepen, or Plug Back in accordance with R649-3-4.

R649-8-5. Form 4, Bond.

Except where a bond in satisfactory form has been filed by the operator in accordance with state, federal, or Indian lease requirements and evidence has been furnished to the division that such bond has been approved by the appropriate agency, the division shall require from the operator a good and sufficient bond in accordance with R649-3-1.

R649-8-6. Form 5, Designation of Agent or Operator.

Prior to the commencement of operations, a Designation of Agent or Operator shall be filed with the division in accordance with R649-2-4.

R649-8-7. Form 6, Entity Action Form.

1. For the purpose of accurately establishing the division's computerized oil and gas production accounting system and properly maintaining division of interest data for each well in the system, the operator shall file an Entity Action Form with the division within five working days of any of the following actions:

1.1. Spudding of a well, R649-3-6.

1.2. A change in operations which requires adding or removing a well from a group of wells that have identical division of interests, produce from the same formation, have product sales from a common tank, LACT meter, or gas meter, and have the same operator.

1.3. A change in operations when a service well is converted to a producing oil or gas well.

1.4. A change in operations when a well is recompleted and is capable of producing from another formation, R649-3-23.

1.5. A change in interest which requires adding or removing a well from a participating area of a properly designated unit.

2. Upon receipt of an Entity Action Form, the division will assign an entity number to a new well or change the entity number as needed for an existing well. This number identifies the well on the operator's monthly oil and gas production and disposition reports. Entity numbers are used by the State Tax Commission and the Division of State Lands and Forestry to properly account for all production taxes and the divisions of royalty interest on state leases.

3. This form does not take the place of Form 9, Sundry Notices and Reports on Wells, which is to be used to provide detailed accounts of physical operations on wells.

R649-8-8. Form 7, Report of Water Encountered During Drilling.

The operator shall report to the division all fresh water sands encountered during drilling in accordance with R649-3-6.

The report shall be filed with the Well Completion or Recompletion Report and Log, Form 8.

R649-8-9. Form 8, Well Completion or Recompletion Report and Log.

In accordance with R649-3-11, R649-3-21, R649-3-23, and R649-3-24, the operator shall file a Well Completion or Recompletion Report and Log and a copy of the electric and radioactivity logs, if run, within 30 days after completing, recompleting, or plugging a well.

R649-8-10. Form 9, Sundry Notices and Reports on Wells.

1. This report form shall be used to notify the division of the intention to do miscellaneous work on any well for which a specific report form is not provided, and to report the subsequent results of that work. A notice of intention to do work on a well located on lands with state, fee or privately owned minerals or to change plans previously approved shall be submitted in duplicate and must be received and approved by the division before the work is commenced. The operator is responsible for receipt of the notice by the division in ample time for proper consideration and action. In cases of emergency the operator may obtain verbal approval to commence work. Within five days after receiving verbal approval, the operator shall submit a Sundry Notice describing the work and acknowledging the verbal approval.

2. In addition to the types of work listed on the form, a Sundry Notice is required for the following:

2.1. Monthly status report for each drilling well in accordance with R649-3-6.

2.2. Application for permit to complete a well into more than one pool in accordance with R649-3-22.

2.3. Notice of intent to plug and abandon a well in accordance with R649-3-24.

2.4. Notice of intent to pull casing in accordance with R649-3-24.

2.5. Notice of change of operator. The report form should be submitted by both the previous operator and the new operator.

R649-8-11. Form 10, Monthly Oil and Gas Production Report.

1. The division will provide this report monthly to operators of all oil and gas wells within the state. Each operator shall complete the form to properly account for all oil, gas, and water produced from each well.

2. This report shall be submitted in conjunction with Form 11, Monthly Oil and Gas Disposition Report before the fifteenth day of the second calendar month following the month of production.

R649-8-12. Form 11, Monthly Oil and Gas Disposition Report.

1. All oil and gas well operators shall complete this form monthly to account for all oil and gas dispositions from each entity.

1.1. The report should account for the physical dispositions of all oil and gas produced during the report month from each well or group of wells (entity). Only the initial disposition of each product as it leaves the well site or is used at the well site should be reported. Residue gas and/or load oil received from another well, plant, or field should not be shown on this report.

2. This report shall be submitted in conjunction with Form 10, Monthly Oil and Gas Production Report and Form 12, Report of Transferred Oil on or before the fifteenth day of the second calendar month following the month of production.

R649-8-13. Form 12, Report of Transferred Oil.

1. This report is to be used only in accounting for oil that is transferred from one entity to another entity or oil that is acquired and used during remedial operations on a well. This includes situations such as (1) oil that is produced at one entity or is acquired from another company, is then used as load oil at a "second" entity, and is then recovered and sold, or (2) oil that is produced and then transferred to a "second" entity for treatment and sale due to mechanical problems at the producing entity.

1.1. Load oil that is recovered at the "second" entity and non-load oil that is transferred to the "second" entity should be excluded from all reported production, dispositions, and stocks of the "second" entity on Form 11, Monthly Oil and Gas Disposition Report. This allows the reporting of the "second" entity's true production and sales on Form 11, while the remainder of any sales is accounted for on this form. The transported volumes reported on this form plus the transported volume for the "second" entity on Form 11 should equal the total run ticket volume as reported by the trucking or pipeline company serving this entity.

2. This report is to be filed as an attachment to Form 11, Monthly Oil and Gas Disposition Report during the month in which recovered load oil or any other transferred oil (non-load oil) is sold from the "second" entity.

R649-8-14. Form 13-A, Monthly Summary Report of Gas Processing Plant Operations.

1. Gas processing plant operators shall complete and submit a monthly report in accordance with R649-6-1, to account for the receipt, processing and disposition of all gas by the plant.

2. The report is due on or before the fifteenth day of the second calendar month following the operations month covered by the report.

R649-8-15. Form 13-B, Monthly Report of Gas Processing Plant Product Allocations.

1. Gas processing plant operators that are required by contractual arrangements to allocate residue gas and extracted liquids to the individual producing wells must complete and submit this form monthly in accordance with R649-6-1.

2. The report is to be filed as an attachment to Form 13-A, Monthly Summary Report of Gas Processing Plant Operations on or before the fifteenth day of the second calendar month following the operations month covered by the report.

R649-8-16. Form 14, Monthly Report of Waste Crude Oil Treatment Facility Operations.

1. Each operator of treatment or reclaiming facilities

handling tank bottoms, oil from pits or ponds, or any other waste crude oil, shall complete and submit this report monthly in accordance with R649-6-2 to account for stocks, receipts, and deliveries of processed and unprocessed waste crude oil.

2. The report is due on or before the fifteenth day of the second calendar month following the operations month covered by the report.

R649-8-17. Form 15, Designation of Workover or Recompletion.

1. In accordance with Rule R649-3-23, each operator desiring to claim a tax credit for workover or recompletion work performed must submit this report within 90 days after the workover or recompletion work is completed. Upon determination and notification by the division that the described work qualifies for a tax credit under this rule, the operator may claim the tax credit on reports submitted to the Tax Commission during the third quarter after completion of the work.

2. The following workover and recompletion operations qualify for a tax credit: perforating, stimulation (e.g., acid jobs, frac jobs, solvent treatments, nitrogen cleanouts), sand control, water control or shut-off, wellbore cleanout, casing or liner repair, well deepening, initiation of enhanced recovery (excluding surface equipment and associated costs), change of lift system (excluding surface equipment and associated costs), gas well tubing changes (i.e., down-sizing), thief zone identification and elimination. The following workover and recompletion operations do not qualify for a tax credit: pump changes, rod string fishing and repair/replacement, tubing repair/replacement, surface equipment installation and repair, operations generally classified as routine maintenance or repair. Division approval is conditional subject to audit, and actual final expenses may be disallowed if they are not appropriate workover or recompletion expenses.

R649-8-18. UIC Form 1, Application for Injection Well.

Prior to the commencement of operations for injecting any fluid into a well for the purpose of enhanced recovery, disposal, or storage, the operator shall submit an Application for Injection Well and obtain division approval in accordance with R649-5-2.

R649-8-19. UIC Form 2, Monthly Report of Enhanced Recovery Project.

1. The operator shall submit this report monthly to report the injection pressure, rate, and volume for each enhanced recovery injection well or project.

2. The report is due within 30 days following the end of the month of operations.

R649-8-20. UIC Form 3, Monthly Injection Report.

1. The operator shall submit this report monthly to report the daily injection pressure, rate, and volume for each disposal well and/or storage well.

2. The report is due within 30 days following the end of the month of operations.

R649-8-21. UIC Form 4, Annual Fluid Injection Report.

1. The operator of disposal wells, storage wells, or enhanced recovery projects shall file an annual report with the division using this form.

2. The report is due within 60 days following the end of the year.

R649-8-22. UIC Form 5, Transfer of Authority to Inject.

1. The authority to inject for any injection well shall not be transferred from one operator to another without the approval of the division. The transfer of authority to inject for any injection well from one operator to another shall be submitted to the division on this form prior to the date of the proposed transfer.

2. The division shall, within 30 days after receipt of a properly completed form, return a copy of the form to each operator indicating approval or denial of the transfer of authority to inject. If approved, a copy of the order authorizing injection shall be attached to the form returned to the new operator.

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June 2, 1998 40-6-1 et seq.
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R649. Natural Resources; Oil, Gas and Mining; Oil and Gas.

R649-9. Waste Management and Disposal.

R649-9-1. Introduction.

1. Section 40-6-5 UCA authorizes the board to regulate the disposal of salt water and oil-field wastes. It is the intent of the Board and Division to regulate E and P Wastes and facilities for the disposal of these wastes in a manner which protects the environment, limits liability to producers, and minimizes the volume of waste.

2. These rules specify the informational and procedural requirements for waste management and disposal, the permitting of disposal facilities, and cleanup requirements for E and P related sites.

R649-9-2. General Waste Management.

1. Wastes addressed by these rules are E and P Wastes which are exempt from the RCRA hazardous waste management requirements.

2. Reduction of the amount of material generated which must be disposed of is the preferred practice. Recycling should be used whenever possible and practical. In general, good housekeeping practices shall be used. Operators shall catch leaks and drips, contain spills, and cleanup promptly.

3. The method of disposal used shall be compatible with the waste which is the subject of disposal. RCRA exempt waste shall not be mixed with nonexempt waste. Before using a commercial disposal facility the Division may be contacted to verify the status of the facility.

4. The operator shall file an Annual Waste Management Plan by January 15 of each year to account for the proper disposition of produced water and other E and P Wastes. If changes are made to the plan during the year, then the operator shall notify the division in writing of this change. This plan will include the type and estimated volume of wastes to be generated, the disposal facilities (central and commercial) to be used for disposal, and the description of any waste reduction or minimization procedures and any onsite disposal/treatment to be implemented by the operator. Each site and/or facility used for disposal must be permitted and in good standing with the division.

R649-9-3. Permitting of Disposal Pits.

1. All commercial disposal pits and disposal pits located off of an existing mineral lease shall be bonded in accordance with R649-9-9, Bonding of Disposal Facilities to assure proper operation, maintenance, and closure of the pits.

2. Application shall be made to the Division for approval of any disposal pit. The pit shall be designed appropriately for the intended purpose. Commercial disposal pits shall be designed and constructed under the supervision of a registered professional engineer. The application and site shall meet the following requirements:

2.1 The pit shall be located on level, stable ground, and an acceptable distance away from any established or intermittent drainage.

2.2. The pit shall not be located in a geologically and hydrologically unsuitable area, such as aquifer recharge areas, flood plains, drainage bottoms, and areas near faults.

2.3. The pit shall have adequate storage capacity to safely contain all produced water even during those periods when evaporation rates are at a minimum.

2.4. The pit shall be designed and constructed so as to prevent the entrance of surface water.

2.5. The pit shall be designed, maintained and operated to prevent unauthorized surface or subsurface discharge of water.

2.6. The pit shall be fenced and maintained to prevent access by livestock, wildlife and unauthorized personnel and if required, equipped with flagging or netting to deter entry by birds and waterfowl.

2.7. The pit levees for produced water pits receiving volumes in excess of five barrels per day, shall be constructed so that the inside grade of the levee is no steeper than 3:1 and the outside grade no steeper than 2:1. The top of the levee shall be level and of sufficient width to allow for adequate compaction.

2.8 All approved produced water pits not located at a well site shall be identified with a suitable sign.

2.9. The artificial materials used in lining pits shall be impervious and resistant to weather, sunlight, hydrocarbons, aqueous acids, alkalies, salt, fungi, or other substances which might be contained in the produced water.

3. If rigid materials are used, leak proof expansion joints shall be provided, or the material shall be of sufficient thickness and strength to withstand, without cracking, expansion, contraction and settling movements in the underlying earth.

3.1. If flexible materials are used, they shall be of sufficient thickness and strength to be resistant to tears and punctures. Commercial disposal pits shall be lined with a minimum liner thickness of 40 mils or as approved by the Division.

3.2. Lined pits constructed in relatively impermeable soils shall have an underlaying gravel filled sump and lateral system or suitable leak detection system.

3.3 Lined pits constructed in relatively permeable soils shall have a secondary liner underlaying the leak detection system, which is graded so as to direct leakages to the observation sump.

3.4. Test borings shall be taken in sufficient quantity and to an adequate depth to satisfactorily define subsurface conditions and assure that the liner will be placed on a firm stable base and to determine the appropriate leak detection system.

4. Requirements for Unlined Disposal Pits.

4.1 An application for disposal of produced water into an unlined pit will be considered if such disposal does not demonstrate significant pollution potential to surface or ground water and meets at least one of the following criteria:

4.2. The water to be disposed of does not have a higher total dissolved solids "TDS" content than ground water that could be affected and provided that the water does not contain objectionable levels of constituents and characteristics including chlorides, sulfates, pH, oil, grease, heavy metals and aromatic hydrocarbons.

4.3. That all, or a substantial part of the produced water is being used for beneficial purposes such as irrigation and livestock or wildlife watering and a water analysis indicates that the water is acceptable for the intended use.

4.4. The volume of water to be disposed of does not exceed five barrels per day on a monthly basis.

5. Application Requirements for Produced Water Pits.

5.1. Applications for disposal of produced water into lined pits shall include the following information:

5.2. A topographic map and drawing of the site on a suitable scale that indicate the pit dimensions, cross section, side slopes, leak detection system and location relative to other site facilities. The drawings shall be of professional quality.

5.3. The maximum daily quantity of water to be disposed of and a representative water analysis of such water that includes the concentrations of chlorides and sulfates, pH, total dissolved solids "TDS", and information regarding any other significant constituents if requested.

5.4. Climatological data indicating the average annual evaporation and precipitation for the area.

5.5. The method and schedule for disposal of precipitated solids.

5.6. Drawings of unloading facilities and explanation of the method for controlling and disposing of any liquid hydrocarbon accumulation so that the evaporation process is not hampered.

5.7. The engineering data and design criteria used to determine the pit size which includes a 2-foot free-board.

5.8. The type, thickness, strength, and life span of material to be used for lining the pit and the method of installation.

5.9. A description of the leak detection method to be utilized and the proposed inspection frequency of the detection system. Also the proposed procedures for repair of the liner should leakage occur.

6. Applications for disposal of produced water into unlined pits shall include the following information:

6.1. A topographic map and drawing of the site on a suitable scale that indicate the pit dimensions, cross section, side slopes, size and location relative to other site facilities.

6.2. The daily quantity of water to be disposed of and a representative water analysis of such water that includes the total dissolved solids "TDS", pH, oil and grease content, the concentrations of chlorides and sulfates, and information regarding any other significant constituents if required.

6.3. Climatological data indicating the average annual evaporation and precipitation for the area.

6.4. The estimated percolation rate based on soil characteristics under and adjacent to the pit.

6.5. Estimated depth and areal extent of any USDW in the area and an indication of any effect or interaction of the produced water with any such water resources present at or near the surface.

6.6. If beneficial use is the basis for the application, written confirmation from the user should be submitted.

6.7. If the application is made on the basis that surface and subsurface waters will not be adversely affected by disposal in an unlined pit, the following additional information is required:

6.7.1. A map showing the location of surface waters, water wells, and existing water disposal facilities within a one mile radius of the proposed disposal facility.

6.7.2. The weighted average concentration of total dissolved solids "TDS" of all surface and subsurface waters within a one mile radius that might be affected by the proposed disposal.

6.7.3. Any reasonable geological and hydrological evidence showing that the proposed disposal method will not adversely affect existing water quality or major uses of such waters.

7. Within 30 days of the submission of an application for disposal of produced water into a commercial disposal pit, the division shall review the application as to its completeness and adequacy for the intended purpose and shall require such changes that are found necessary to assure compliance with the applicable rules. If the application is in order, the Division shall provide for a public notice to be published in a newspaper of general circulation in the county where the pit is to be located.

R649-9-4. Permitting of Other Disposal Facilities.

1. Facilities used for the treatment and disposal of E and P wastes other than evaporation pits shall be permitted by the Division. This would include such activities as landfarming, composting, solidifying, bioremediation, and others.

2. All commercial treatment and disposal facilities must be bonded in accordance with R649-9-9, Bonding of Disposal Facilities, to assure proper operation, maintenance, and closure of the facility.

3. Application Requirements for Treatment and Disposal Facilities. The application shall contain the following:

3.1 A complete description of the proposed facility and processes involved including a complete list of all wastes to be accepted at the facility and products generated.

3.2 Maps and drawings of suitable scale showing all facilities and equipment.

3.3 Materials or products to be applied to the land surface or subsurface shall meet the Division's cleanup levels for contaminated soil and other wastes. If leachability and/or toxicity is of concern due to the type or source(s) of wastes, tests will be required and may utilize the Toxicity Characteristic Leaching Procedure (TCLP).

3.4 The submission of an application to the Division of Water Quality, Department of Environmental Quality, for a discharge permit may be required if it is determined that the facility and associated activity will not have a de minimus actual or potential effect on ground water quality. If the Division determines there is potential for discharge, or if the proposal involves a commercial disposal operation it will be forwarded to the Division of Water Quality for their review.

R649-9-5. Construction and Inspection Requirements for Disposal Facilities.

1. Division personnel shall be afforded a reasonable opportunity for inspection of any proposed disposal facility during the construction and operation of the facility.

2. The division shall be notified at least two working days prior to the installation of a pit liner so that an inspection of the leak detection system can be conducted.

3. In any case, the division shall be notified after completion of facility construction, at least two working days prior to its use, so that an inspection can be conducted to verify that the facility has been constructed in accordance with the approved application.

4. Disposal facilities shall be operated in accordance with

an approved application and in a manner which does not cause pollution or safety and health hazards.

5. Failure to meet the requirements and standards for construction and operation of a disposal facility shall be considered as noncompliance and will result in the imposition of corrective actions and compliance schedules or a cessation of operations order.

R649-9-6. Reporting and Recordkeeping Requirements for Disposal Facilities.

1. All unauthorized discharges or spills from disposal facilities including water observed in a leak detection system shall be promptly reported to the division.

2. Each producer who utilizes any approved produced water disposal facility shall comply with the reporting requirements of R649-8-10.

3. Each operator of a disposal facility, excluding disposal wells, shall report to the Division on a quarterly basis. This report shall include the volume and type of wastes received at the facility during the quarter and results of the leak detection system inspections.

4. The occurrence of water in a leak detection system during operation of a pit constitutes liner failure and requires immediate action. The Division has the option of allowing the operator a short period of time to take corrective action. Further utilization of the pit will be allowed only after liner repairs and an inspection by the Division.

5. Each owner/operator of a commercial disposal facility shall keep records showing at a minimum the following: date and time waste was received, origin, volume, type, transporter, and generator of the waste. These records shall be available for inspection by the Division for at least six years.

R649-9-7. Final Closure and Cleanup of Disposal Facilities.

1. A plan for final closure of a disposal facility shall be submitted to the Division for approval. The closure plan shall include the following:

1.1 Provisions for removal of all equipment at the site.

1.2 Proposed plans and procedures for sampling and testing soils and ground water at the site. Soils will need to meet the Division's Cleanup Levels for Contaminated Soils or background levels whichever is less stringent.

1.3 Provisions for a monitoring plan if required by the Division, and

1.4 A consideration of post disposal land use and landowner requests when the closure plan is developed.

2. A bond for a disposal facility will be released when the requirements of a closure plan approved by the Division has been met as determined by the Division.

R649-9-8. Variances from Requirements and Standards.

Requests for approval of a variance from any of the requirements or standards of these rules shall be submitted to the director in writing and provide information as to the circumstances which warrant approval of the requested variance and the proposed alternative means by which the requirements or standards will be satisfied. Variances may be approved only after proper notice and public hearing before the board.

R649-9-9. Bonding of Disposal Facilities.

1. Disposal facilities, other than injection wells, shall be bonded according to this rule in order to protect the State and oil and gas producers from unnecessary liabilities and cleanup costs in the future. The objectives are to provide the State with adequate security to allow rehabilitation of a site to the point of preventing further or future pollution, and health and safety hazards should a facility owner default.

1.1. The parameters used to calculate the proper bond amount are: pit area, storage capacity, and volume of waste stored.

1.2. Bonds accepted shall be of the same type as those accepted for wells i.e. surety, collateral, or a combination of the two as described in the R649-3-1. In order to assist facility owners in providing bonding, the total bond amount provided may consist of an initial amount as determined by the division and an additional amount collected at a price per barrel and/or price per cubic yard of waste collected until the total bond amount is reached. The total bond will be held by the division or financial institution until the facility has been closed and inspected by the division in accordance with a division approved closure plan.

1.3. Total bond amount is calculated using values for pit area, pit storage capacity, and volume of stock piled waste material. No salvage value of equipment or removal cost is used. This bond will only be used by the State to treat or remove waste from the site and secure the facility to prevent any future contamination should the facility owner default on cleanup responsibilities. Bond amounts will be calculated as follows, and the per volume or per acre figures may be adjusted periodically to compensate for change in cost to perform the necessary cleanup work:

$14,000 per acre of pit, partial acres will be calculated at the rate of $14,000 per acre; plus

$1.00 per barrel of produced water for one-quarter of the total storage capacity of the facility; plus

$30 per cubic yard of solid or semi-solid waste material stockpiled at the facility.

$10,000 Minimum bond amount.

1.4 All commercial disposal facilities (except injection wells covered by R649-3-1) will be covered by an adequate and acceptable bond before being permitted to accept any exploration and production waste. The initial and minimum bond payment will be at least $10,000. The total bond amount will be calculated as described in Subsection R649-9-9(1.3). If requested by the disposal facility owner, the bond beyond the initial amount may be posted at a rate of two cents per barrel of liquid or sixty cents per cubic yard of solid/semi-solid waste material accepted for disposal at the facility.

KEY: oil and gas law
June 2, 1998 **40-6-1 et seq.**
Notice of Continuation April 30, 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 will notify the petitioner of its decision in writing as soon as possible.

KEY: parole, inmate
February 18, 1998 77-27-7
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, 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 will 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.

R671-311-4. Special Conditions Hearing.

The Board will order special conditions as part of a parole agreement on an individual basis only if such conditions can be reasonably related to rehabilitation of the offender, the protection of society, or the compensation of victims. The offender will be given an opportunity to respond to proposed special conditions.

At any time, the Board may review an offender on its own initiative or upon recommendation by the Department of Corrections or others and add special conditions it deems appropriate. The offender may be afforded a personal appearance hearing before a Board Hearing Officer to discuss the proposed condition(s) unless that appearance is waived by the offender.

KEY: parole, inmate

February 18, 1998	**77-27-7**
Notice of Continuation December 12, 1997	**77-27-5**
	77-27-6
	77-27-10
	77-27-11

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 or administrative review.

KEY: government hearings, parole, inmate
February 18, 1998 77-27-5
Notice of Continuation December 12, 1997

R671. Pardons (Board of), Administration.
R671-402. Special Conditions of Parole.
R671-402-1. General.

The Board will 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, the protection of society, or compensation of the victim. The offender will 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

February 18, 1998	**77-27-5**
Notice of Continuation December 12, 1997	**77-27-6**
	77-27-10
	77-27-11

R728. Public Safety, Peace Officer Standards and Training.
R728-409. Refusal, Suspension, or Revocation of Peace Officer Certification.
R728-409-1. Purpose.

In recent decisions made in the area of civil litigation, agencies have had to address the problem of vicarious liability. It has been found that judgments have been rendered against employing agencies who have allowed individuals who do not possess peace officer authority or have not maintained the qualifications necessary for this type of work to be employed or continue employment. In some situations, liability has been partially shifted to Peace Officer Standards and Training, provided that agencies adhere to the laws and rules developed in this area. The purpose of a procedure for the refusal, suspension, or revocation of peace officer certification/authority is to further law enforcement professionalism and to provide protection to both employing agencies and law enforcement officers alike.

R728-409-2. Authority.

The authority for the refusal, suspension or revocation of peace officer certification is authorized under Section 53-6-202 203, 205, 206, and 211.

R728-409-3. Cause to Evaluate Certification for the Refusal, Suspension, or Revocation of Peace Officer Certification or Authority.

The division may initiate an investigation when it receives an allegation that grounds for refusal, suspension, or revocation of certification exist. The initial allegation may come from any responsible source, including those provisions of R728-409-5. Pursuant to the purpose and intent of 53-6-211, revocation is a permanent deprivation of peace officer certification or authority, and except as outlined in R728-409-28 does not allow for a person who has been revoked in the State of Utah to be readmitted into any peace officer training program conducted by or under the approval of the division, or to have peace officer certification or authority reinstated or restored by the division.

Should the allegation against a peace officer, defined under Title 77, Chapter 1a, be made to the division alleging failure to meet or maintain the minimum qualifications established under Sections 53-6-3, 5, 6, 211 or Section 77-1a 1, et seq., any of the following provisions may constitute cause for refusal, suspension, or revocation of peace officer certification or authority:

A. Any willful falsification of any information provided to the division to obtain certified status. The information could be in the form of written application, supplementary documentation requested or required by the division, testimony or other oral communication to the division, or any other form of information which could be considered fraudulent or false for purposes of Subsection 53-6-211(1)(d)(i).

B. "Physical or mental disability" for purposes of Section 53-6-211(1)(d)(ii), shall be defined as set forth in Utah Administrative Code, Rule R728-403-9, Physical, Emotional, or Mental Condition Requirement, and division medical guidelines.

C. Conviction of any drug related offense including the provisions of Title 58 Chapter 37.

D. "Addiction to drug or narcotics" for purposes of Section 53-6-211(1)(d)(iii) means addiction to any drug or narcotic as defined in Title 58, Chapter 37.

1. Peace officers who, in the normal course of their peace officer duties and functions, possess, attempt to simulate, unintentionally use or are forced to use, narcotics, drugs, or drug paraphernalia, shall be exempt from the provisions of Section 53-6-211(1)(d)(iii) and (v), so long as their conduct:

a. is authorized by their law enforcement employer; and

b. does not jeopardize the public health, safety or welfare.

2. Addiction to drugs or narcotics as a direct result of the legitimate treatment of a physical, emotional or psychological disease, or injury which is currently being treated by a licensed physician or medical practitioner licensed in this state or any other state, and which has been reported, in writing, to the law enforcement employer and P.O.S.T., shall not be considered a violation of Section 53-6-211(1)(d)(iii) so long as the addiction does not jeopardize the public health, safety or welfare.

a. Addiction to unlawfully obtained drugs or narcotics arising from circumstances not involving (a) the legitimate treatment of a physical disease; (b) circumstances involving surgery or serious injury; (c) from psychological illness; and (d) which has not been treated by a licensed physician or medical practitioner, licensed in this state or any other state, shall be considered a violation of Section 53-6-211(1)(d)(iii).

b. No applicant shall be granted peace officer certification or authority if it is demonstrated that the applicant has a drug addiction which is not under control.

c. A peace officer may have peace officer certification or authority temporarily suspended for the duration of drug rehabilitation. If the peace officer has demonstrated control of the drug addiction as determined by a division medical consultant, peace officer certification or authority shall be restored.

d. Criminal conduct by a person asserting the conduct was the result of drug addiction or dependence shall be grounds for refusal, suspension or revocation of peace officer certification or authority despite the fact that rehabilitation has not occurred prior to the peace officer certification or authority being refused, suspended or revoked.

3. Notwithstanding anything contained in this administrative rule to the contrary, a peace officer may have peace officer certification or authority revoked for conduct in violation of Section 53-6-211(1)(d)(iii), if, prior to the conduct in question, the peace officer has had a previous suspension or revocation of peace officer certification or authority under Section 53-6-211(1)(d)(iii), or similar statute of another jurisdiction.

E. Conviction of a felony.

F. "Crimes involving dishonesty" for purposes of Section 53-6-211(1)(d)(iv) means conviction for criminal conduct, under the statutes of this state or any other jurisdiction, which under the rules of evidence can be used to impeach a witness or involving, but not limited to, any of the following:

1. theft;
2. fraud;
3. tax evasion;
4. issuing bad checks;
5. financial transaction credit card offenses;

6. deceptive business practices;
7. defrauding creditors;
8. robbery;
9. aggravated robbery;
10. bribery or receiving a bribe;
11. perjury;
12. extortion;
13. falsifying government records;
14. forgery;
15. receiving stolen property;
16. burglary or aggravated burglary.

G. "Crimes involving unlawful sexual conduct" for purposes of Section 53-6-211(1)(d)(iv) means any violation described in Title 76, Chapter 5, Part 4; Chapter 5a; Chapter 7, Part 1; Chapter 10, Part 13; or Chapter 9, Part 7, Section 702 and 702.5.

H. "Crimes involving physical violence" for purposes of Section 53-6-211(1)(d)(iv) means any violation of Part 1, Assault and Related Offenses, and Part 2, Criminal Homicide, of Title 76, Chapter 5.

I. "Driving under the influence of alcohol or drugs" for purposes of Section 53-6-211(1)(d)(iv) means any violation of Section 41-6-44.

1. Convictions for violations of Section 41-6-44, in which no aggravating circumstances are present shall be considered in the following manner for purposes of Section 53-6-211(1)(d)(iv):

a. a first conviction shall result in a letter of censure from the director to the peace officer, with a copy of the letter sent to the law enforcement employer.

b. a second conviction shall result in suspension of peace officer certification or authority for a period of 0 to 12 months, as determined by the director with the concurrence of the council.

c. a third conviction, shall result in revocation of peace officer certification or authority.

2. Any conviction for a violation of Section 41-6-44, in which one or more aggravating circumstances are present may result in refusal, suspension or revocation of peace officer certification or authority.

3. For purposes of section (1) and (2) of R728-409-3(I) above, an aggravating circumstance includes, but is not limited to, one or more of the following:

a. false information to a peace officer;
b. resisting arrest;
c. felony or misdemeanor evading a peace officer;
d. disorderly person;
e. driving on a suspended or revoked driver license at the time of the arrest;
f. involvement in a traffic accident while under the influence of alcohol or drugs;
g. possession of drugs;
h. contributing to the delinquency of a minor; or
i. previous conviction for driving under the influence of alcohol or drugs, prior to obtaining peace officer certification or authority, whether or not the charge was reduced to reckless driving or a lesser traffic violation, and whether or not the charge was dismissed for assistance in other law enforcement investigations.

4. Criminal conduct by an individual asserting the conduct was a result of drug addiction or dependence shall be grounds for refusal, suspension or revocation despite the fact that rehabilitation has not occurred prior to the refusal, suspension or revocation.

J. "Conduct or pattern of conduct" for purposes of Section 53-6-211(1)(d)(v) means an act or series of acts by a person which occur prior to or following the granting of peace officer certification or authority.

1. Conduct that shall be considered as grounds for violation of Section 53-6-211(1)(d)(v) shall include:

a. uncharged conduct which includes the conduct set forth in Rule R728-409-3, which could be considered criminal, although such conduct does not result in the filing of criminal charges against the person, but where the evidence shows that the criminal act did occur, that the person committed the act, and that the burden of proof by a preponderance of the evidence could be established by the division;

b. criminal conduct where a criminal charge is filed, a conviction is not obtained, but where the evidence shows that the criminal act did occur, that the person committed the act, and that the burden of proof by a preponderance of the evidence appears to exist;

c. criminal conduct as enumerated in Section 53-6-211(1)(d)(iv) and 53-6-203, where the filing of a criminal charge has resulted in a finding of guilt based on evidence presented to a judge or jury, a guilty plea, a plea of nolo contendere, a plea of guilty or nolo contendere which is held in abeyance pending the successful completion of probation, diversion agreements, or conviction which has been expunged, dismissed, or treated in a similar manner to either of these procedures;

d. violations of Section 53-6-211(1)(d)(i) or the refusal to respond, or the failure to respond truthfully, to the questions of POST investigators asked pursuant to R728-409-5;

e. violations of Section 53-6-211(1)(d)(iii) which involve criminal conduct or jeopardize the public health, safety or welfare;

f. sexual harassment which is:

(i) conduct which rises to the level of behavior of a criminal sexual nature which includes, but is not limited to, the unwelcomed touching of the breasts of a female, buttocks or genitals of another, and or taking of indecent liberties with another;

(ii) behavior by a supervisor which creates the perception in the mind of the subordinate that the granting or withholding of tangible job benefits shall be based on the granting of sexual favors.

g. sexual conduct which is:

(i) subject to criminal punishment; or

(ii) substantially diminishes or, if known, would tend to diminish public confidence and respect for law enforcement; or

(iii) damages or, if known, would tend to damage a law enforcement department's efficiency or morale; or

(iv) impairs or, if known, would tend to impair the ability of the peace officer to objectively and diligently perform the duties and functions of a peace officer;

h. sexual activity protected by the right of privacy, that does not hamper law enforcement, shall not be grounds for

refusal, suspension or revocation of peace officer certification or authority.

i. Other conduct, whether charged or uncharged, which constitutes: malfeasance in office, non-feasance in office, violates the peace officer's oath of office, or a willful and deliberate violation of Title 53, Chapter 6, or the administrative rules contained in Utah Administrative Code, Agency R728.

(i) Malfeasance for purposes of subsection (h) shall include the commission of some act which is wholly wrongful or unlawful that affects, interrupts or interferes with the performance of official duties.

(ii) Non-feasance for purposes of subsection (h) shall include the omission of an act which a peace officer by virtue of his employment as such is charged to do.

(iii) oath of office for purposes of subsection (h) shall include the swearing of a person, upon employment as a peace officer defined in Title 77, Chapter 1a, to an oath to support, obey and defend the Constitution of the United States and the Constitution of the State of Utah and discharge the duties of the office with fidelity, or, a similar oath of a county, city or town.

j. arrest for driving under the influence of alcohol or drugs, where the elements of the offense could be established by a preponderance of the evidence.

(i) A first conviction, with no aggravating circumstance, shall result in a letter of censure from the director to the peace officer, with a copy of the letter sent to the law enforcement employer.

(ii) A second conviction, with no aggravating circumstance shall result in suspension of peace officer certification or authority for a period of 0 to 12 months, as determined by the director with the concurrence of the council.

(iii) A third conviction shall result in revocation of peace officer certification or authority.

k. Addiction to alcohol:

(i) if it is demonstrated that a peace officer or applicant for peace officer certification or authority has an alcohol addiction which is not under control;

(ii) a peace officer with an alcohol addiction may have peace officer certification or authority temporarily suspended for the duration of alcohol rehabilitation. If the peace officer has demonstrated control of the alcohol addiction as determined by a division medical consultant, peace officer certification or authority may be restored;

(iii) criminal conduct by an individual asserting the conduct was a result of alcohol addiction or dependence shall be grounds for refusal, suspension or revocation despite the fact that rehabilitation has not occurred prior to the refusal, suspension or revocation.

l. Acts of gross negligence or misconduct which is "clearly outrageous" or shock the conscience of a reasonable person;

(i) violations of the Law Enforcement Code of Ethics as adopted by the Council;

(ii) lying under the Garrity warning

m. A dismissal from military service under any of the following circumstances:

(i) Bad conduct discharge (BCD)

(ii) Dishonorable discharge (DD)

(iii) Administrative discharge of "General under honorable conditions" (GEN).

R728-409-4. Conduct Not in Violation of Section 53-6-211(1).

Conduct which shall not be considered a violation of this subsection includes:

A. Traffic violations other than those enumerated in Section 53-6-211(1)(d)(iv) or R728-409-3 herein; or

B. Violations of individual department policy and procedure as enumerated in Section 53-6-211(4).

R728-409-5. Investigative Procedure.

A. All investigations initiated shall be commenced upon the reasonable belief that cause exists for the refusal, suspension or revocation of peace officer, correctional officer, reserve/auxiliary officer or special function officer certification as indicated in section 409-3 above.

B. The initiation of an investigation may occur upon any of the following circumstances:

1. A peace officer who has been charged with a criminal violation of law;

2. A peace officer who has committed conduct which is a criminal act under law, but which has not been criminally charged and/or where criminal prosecution is not anticipated;

3. A peace officer who has committed conduct in violation of section 409-3 above, where the department has conducted disciplinary action and notification of the conduct has been made to the division by the peace officer's department;

4. A department which has terminated a peace officer from employment for conduct which is in violation of section 409-3 above;

5. A department which has agreed to allow a peace officer to resign, rather than terminate the employment, for conduct which is in violation of section 409-3 above;

6. A complaint from a citizen which, on its face, appears to be a violation of section 409-3 above;

7. Media attention, confirmed by the employing agency, reporting peace officer misconduct which appears to be in violation of section 409-3 above;

8. Information from a peace officer, concerning another peace officer or law enforcement department, alleging improper, unethical, or unlawful conduct in violation of section 409-3 above;

9. Information against a peace officer received from any law enforcement agency, criminal justice related agency, or political subdivision alleging improper, unethical, or unlawful conduct in violation of section 409-3 above;

10. Administrative procedures instituted by the division to uncover or reveal past criminal conduct or the character of an individual requesting peace officer certification, or entrance into a certified peace officer training program which upon completion would create eligibility for peace officer certification; and/or

11. The peace officer may be directed to respond to questions pursuant to a "Garrity Warning." Refusal to respond to questions after being warned, or the failure to respond truthfully, will result in an automatic suspension for a minimum of one year and may be suspended longer than one year for aggravating circumstances.

C. All citizens complaining about peace officers will be requested to sign a written statement detailing the incident,

swear to the accuracy of the statement, be advised that complaints found to be malicious in nature may be prosecuted under Section 76-8-511, Falsification of Government Record, and may require that the citizen submit to a polygraph examination concerning the truth and veracity of the complaint.

D. Non-criminal complaints or information about a peace officer initiated by another peace officer will be submitted in writing detailing the incident or offer the division a tape recorded statement detailing the incident.

E. A staff member will be assigned to investigate the complaint or information and to make a recommendation to proceed or to discontinue action in the matter.

1. If a peace officer under investigation is employed by a law enforcement agency, POST shall notify the peace officer's employing agency concerning the complaint or information.

2. POST will refer any complaints made by officers or citizens of a criminal nature to the appropriate agency having jurisdiction.

3. Criminal complaints will be handled by the agency having jurisdiction.

4. POST will wait until the case has been investigated by the responsible agency and the adjudicative process has been completed before taking action.

5. POST will use the investigation and the adjudicative findings to help determine its action with regard to an individual's certification. POST will do it's own investigation whenever it feels the necessity to do so.

6. POST will take action based on the actual conduct of the individual as determined by an investigative process, not necessarily on the punishment or finding of the court.

7. POST's primary concern is conduct that disrupts, diminishes or otherwise jeopardizes public trust and fidelity in law enforcement.

8. Complaints that are not criminal will be investigated by the agency having jurisdiction. If the employing agency chooses not to investigate, a POST staff investigator may be assigned to conduct the investigation.

9. Witnesses and other evidence may be subpoenaed for the investigation pursuant to Section 53-6-210.

10. If ordinary investigative procedures cannot resolve the facts at issue, the peace officer may be requested to submit to a polygraph examination. Refusal to do so could result in the immediate suspension of peace officer certification until such time as an administrative proceeding can be established or other factual information has been received which no longer requires the need for the polygraph examination.

11. If an officer is found to have lied under the Garrity warning, his certification will automatically be suspended for a minimum of one year and may be suspended longer than one year for aggravating circumstances.

F. Subsection (E) will be the method preferred for the investigation of alleged violations of Title 53, Chapter 6, unless special investigative procedures are determined to be more beneficial to the investigative process by the director and the council as per R728-409-7.

G. If the alleged conduct constitutes a public offense for which the individual involved has not been previously convicted, the division shall immediately notify the appropriate prosecutorial authority. If the conduct would also, if proven, constitute grounds for suspension or decertification under Section 53-6-211(1), the director in his discretion may immediately suspend the certification of the individual as provided in Section 63-46b-20 and Rule R728-409-25.

H. If immediate suspension of a peace officer's certification is believed necessary to ensure the safety and welfare of the public, or for insuring the continued public trust or professionalism of law enforcement, the director shall immediately establish the procedures for investigation and adjudicative proceedings in order to fulfill the due process rights of the peace officer.

I. Whenever an investigation is initiated the officer(s) who is under investigation and his department will be notified as soon as reasonably possible, except in cases where the nature of the complaint would make such a course of action impractical. The date and time the department administrator and the officer are notified should be noted in the appropriate space on the complaint form.

J. In all cases, where possible, the investigation shall be conducted with the full knowledge and assistance of the department administrator or the administrator of the employing political subdivision.

K. If during the course of an investigation it appears that criminal action may be involved the information is to be turned over to appropriate local authorities for disposition. It is not the position of the division to be involved in investigating criminal cases against officers. If criminal charges are pending against an officer the division may wait until the case is adjudicated before deciding if any further action is warranted by the division (subject to subsection (5)(J) above).

L. Assigned investigators are to ensure that all investigative procedures are properly documented and recorded in the case file.

M. Final disposition of a case (i.e., close case, refer to department for follow-up action, refer for adjudicative proceeding, etc.) will be made by the deputy director with the approval of the director.

R728-409-6. Special Investigative Proceedings - Procedures.

A. The Director with the concurrence of the Council on Peace Officer Standards and Training, may initiate special investigative proceedings.

B. The purpose of the special investigative proceeding is to hear testimony and other evidence regarding violations of Chapter 6, Title 53.

C. Special investigative proceedings will be presided over by a panel of the Council on Peace Officer Standards and Training consisting of at least three Council members and any persons designated by the Council Chairman and Director of the division.

D. Direct examination of witnesses will be conducted by members of the panel.

E. The division and presiding officer may subpoena witnesses and other evidence for special investigative proceedings, as per Sections 53-6-210 and 63-46b-7(2).

F. The special investigative proceeding will be a proceeding of record by the use of tape recording and/or court reporter.

G. If an officer is found to have lied under the Garrity

warning, his certification will be automatically suspended for a minimum of one year and may be suspended longer than one year for aggravating circumstances.

R728-409-7. Purpose of Adjudicative Proceedings.

A. The purpose of adjudicative proceedings will be to establish whether or not:

1. the respondent did in fact commit the alleged conduct; and

2. such conduct falls within the grounds for administrative action enumerated in Section 53-6-211(1); or

3. to exonerate the respondent if the evidence presented fails to prove that the respondent committed the alleged conduct or that such conduct falls within grounds for administrative action enumerated in Section 53-6-211(1); or

4. to recommend, to the Council on Peace Officer Standards and Training and the Director of the Division of Peace Officer Standards and Training, any action to be taken with respect to the respondent if the evidence presented indicates that the respondent committed the alleged conduct and that such conduct falls within grounds for administrative action enumerated in Rule R728-409-2 above and in Section 53-6-211(1).

B. The Administrative Law Judge may recommend refusal, suspension or revocation of the respondent's peace officer, correctional officer, reserve/auxiliary officer or special function officer certification, as applicable.

C. Any decision reached by the Administrative Law Judge against the respondent involving a violation of Subsection 53-6-211(1), must meet the standard burden of proof which will be a preponderance of evidence.

R728-409-8. Commencement of Adjudicative Proceedings - Administrative Complaint.

A. Except as otherwise permitted by Sections 53-6-211(6) and 63-46b-20 and Rules R728-409-8(C) and R728-409-25, all adjudicative proceedings shall be commenced by notice of an Administrative Complaint accompanied by a Notice of Agency Action. The Administrative Complaint will set forth the allegations complained of by the division. A copy of the Administrative Complaint and Notice of Agency Action shall be sent to the individual named on the administrative complaint and notice of agency action or by certified mail.

B. The Administrative Complaint shall be filed and served according to the following requirements:

1. when adjudicative proceedings are commenced by the division, the Administrative Complaint shall be in writing, signed by the Council Chairman and shall include:

a. the name and mailing address of the respondent, and the name and address of the agency employee or attorney designated to represent the division;

b. the division's file number or other reference number;

c. the name of the adjudicative proceeding;

d. the date that the notice of the division's action was mailed;

e. a statement indicating that a formal hearing will be conducted according to the provisions of Sections 63-46b-6 to 63-46b-11, except as otherwise indicated by Rule R728-409 in reference to time of response, as allowed under Section 63-46b-3(2)(f);

f. a statement that the respondent shall file a responsive pleading within 30 days of the mailing date of the notice of agency action;

g. a statement of the time and place of the scheduled adjudicative proceeding, a statement indicating the purpose for which the adjudicative proceeding is to be held, and a statement indicating that a party who fails to attend or participate in the adjudicative proceeding may be held in default;

h. a statement of the legal authority and jurisdiction under which the administrative proceeding is to be maintained;

i. the name, title, mailing address, and telephone number of the presiding officer; and

j. a statement of the purpose of the adjudicative proceeding and, to the extent known by the presiding officer, the questions to be decided.

C. When the cause of action under Section 53-6-211 and Rule R728-409-3 is conviction of a felony, the following procedures shall apply:

1. The division shall send written notice to the peace officer stating that proceedings prior to revocation shall be limited to an information review of written documentation by the presiding officer, and that revocation is mandatory when the presiding officer determines that the peace officer has been convicted of a felony.

2. The notice shall state that within 15 days of the mailing date of the notice, the peace officer may request, in writing, an informal hearing before the presiding officer to present evidence that there was no felony conviction, or that the conviction has been overturned, reduced to a misdemeanor or expunged. This notice shall also state that if the peace officer does not so request, the presiding officer, and POST Council, will proceed on the documentation of conviction.

R728-409-9. Responsive Pleadings.

A. In all adjudicative proceedings, the respondent shall file and serve a written response signed by the respondent or his representative within 30 days of the mailing date of the notice of agency action, that shall include:

1. the division's file number or other reference number;

2. the name of the adjudicative proceeding;

3. a statement of the relief that the respondent seeks;

4. a statement of facts;

5. a statement summarizing the reasons that the relief requested should be granted.

B. The response shall be filed with the division.

C. The presiding officer or the division, pursuant to rule, may permit or require pleadings in addition to the notice of agency action and the response. All papers permitted or required to be filed shall be filed with the division.

R728-409-10. Consent Agreements.

A. The director may seek a consent agreement for the refusal, suspension or revocation of certification with the individual. The consent agreement will be delivered with the administrative complaint.

B. The individual will have 10 days from receiving the consent agreement to respond to the Director on the consent agreement.

C. If a consent agreement is not sought or is not reached, the procedure outlined in R728-409-9 above will proceed.

D. If a consent agreement has been signed by both parties, the adjudicative proceeding will conclude.

E. The consent agreement procedure will not extend the period of time for responsive pleading to the administrative complaint and notice of agency action.

R728-409-11. Scheduling the Adjudicative Proceeding - Hearing.

A. After the division has been served with the responsive pleading, notice of the location, date and time for the adjudicative hearing will be issued.

B. The adjudicative hearing will be held within a reasonable time after service of the responsive pleading unless a later scheduling is ordered by the presiding officer, or mutually agreed upon by the individual and the division.

C. When the cause for action is conviction of a felony, the presiding officer will conduct an informal review of the documentation within 30 days after the notice is mailed to the peace officer. If the peace officer timely requests a hearing, the presiding officer shall, within 30 days of the request, hold an informal hearing pursuant to Section 53-6-211(6).

R728-409-12. Discovery and Subpoenas.

A. In formal adjudicative proceedings parties may conduct limited discovery. The respondent is entitled to a copy of all evidence the division intends to use in the adjudicative proceeding, and other relevant documents in the agency's possession which are necessary to support his or her claims or defenses subject, however, to the Government Records Access and Management Act, UCA 63-2-101 et seq. Discovery does not extend to interrogatories, requests for admissions or depositions.

B. Subpoenas and other orders to secure the attendance of witnesses or the production of evidence for adjudicative proceedings shall be issued by the Division of Peace Officer Standards and Training pursuant to Section 53-6-210, or the presiding officer when requested by any party, or may be issued by the presiding officer on his own motion pursuant to Section 63-46b-7.

C. Discovery is prohibited in informal proceedings.

R728-409-13. Procedures for Adjudicative Proceedings - Hearing Procedures.

A. All formal adjudicative proceedings shall be conducted as follows:

1. The presiding officer shall regulate the course of the hearing to obtain full disclosure or relevant facts and to afford all the parties reasonable opportunity to present their positions.

2. On his own motion, or upon objection by a party, the presiding officer:

a. may exclude evidence that is irrelevant, immaterial, or unduly repetitious;

b. shall exclude evidence privileged in the courts of Utah;

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

d. may take official notice of any facts that could be judicially noticed under the Utah Rules of Evidence, or the record of other proceedings before the agency, and of technical or scientific facts within the agency's specialized knowledge.

3. The presiding officer may not exclude evidence solely because it is hearsay.

4. The presiding officer shall afford to all parties the opportunity to present evidence, argue, respond, conduct cross-examination, and submit rebuttal evidence.

5. The presiding officer may give persons not a party to the adjudicative proceeding the opportunity to present oral or written statements at the hearing.

6. 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.

7. The hearing shall be recorded at the division's expense.

8. Any party, at his own expense, may have a person approved by the division prepare a transcript of the hearing, subject to any restrictions that the division is permitted by statute to impose to protect confidential information disclosed at the hearing.

9. All hearings shall be open to all parties.

10. This rule does not preclude the presiding officer from taking appropriate measures necessary to preserve the integrity of the hearing.

11. The respondent has the right to counsel. Counsel will not be provided by the division and all costs for counsel will be the sole responsibility of the respondent.

12. Witnesses at adjudicative hearings may have counsel present. Counsel for witnesses will not have the right to cross-examine. Counsel will not be provided by the division and all costs for counsel will be the sole responsibility of the witness.

13. Witnesses before an adjudicative hearing may be excluded from adjudicative hearing while other witnesses are testifying.

14. The presiding officer may issue an order to admonish witnesses not to discuss their testimony with other witnesses appearing to testify or offer evidence to the presiding officer at the adjudicative hearing. This order shall remain in effect until all testimony and evidence has been presented at the hearing.

15. A person's failure to comply with the admonishment order may result in the refusal to consider testimony or evidence presented, if it is deemed that the testimony or evidence has been tainted through violation of the admonishment order.

B. When the cause for action is conviction of a felony and the peace officer requests an informal hearing, it shall be conducted, except as modified by these rules, pursuant to Section 63-46b-5.

C. If the presiding officer finds, by informal review or hearing, that the peace officer has been convicted of a felony, he shall recommend revocation of certification. If the presiding officer determines that there was not a conviction, he or she may recommend action other than revocation.

R728-409-14. Procedures for Adjudicative Proceedings - Intervention.

A. Any person not a party may file a signed, written petition to intervene in a formal adjudicative proceeding with the division. The person who wishes to intervene shall mail a copy of the petition to each party. The petition shall include:

1. the division's file number or other reference number;

2. the name of the proceeding;

3. a statement of facts demonstrating that the petitioner's legal rights or interests are substantially affected by the formal adjudicative proceeding, or that the petitioner qualifies as an intervenor under any provision of law; and

4. a statement of the relief that the petitioner seeks from the division.

B. The presiding officer shall grant a petition for intervention if he determines that:

1. the petitioner's legal interests may be substantially affected by the adjudicative proceeding; and

2. the interests of justice and the orderly and prompt conduct of the adjudicative proceedings will not be materially impaired by allowing the intervention.

C.1. Any order granting or denying a petition to intervene shall be in writing and sent by mail to the petitioner and each party.

2. An order permitting intervention may impose conditions on the intervenor's participation in the adjudicative proceeding that are necessary for a just, orderly, and prompt conduct of the adjudicative proceeding.

3. The presiding officer may impose the conditions at any time after the intervention.

R728-409-15. Default.

A. The presiding officer may enter an order of default against a party if:

1. a party fails to attend or participate in the hearing; or

2. the respondent in the proceeding fails to file the response required under Rule R728-409-9.

B. The order shall include a statement of the grounds for default and shall be mailed to all parties.

C. The defaulted party may seek to have the presiding officer set aside the default order in accordance with Rule 60(b) of the Utah Rules of Civil Procedure.

D. After issuing the order for default, the presiding officer shall conduct the necessary proceedings 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.

R728-409-16. Procedures for Adjudicative Proceedings - Recommendations.

A. In adjudicative proceedings:

1. 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 a recommendation that includes:

a. a statement of the presiding officer's findings of fact based exclusively on the evidence of record in the adjudicative hearing or on facts officially noted;

b. a statement of the presiding officer's conclusions of law;

c. a statement of the reasons for the presiding officer's recommendation;

d. a statement of recommended agency action;

e. a notice of the right to apply for council review; and

f. the time limits applicable to any review.

2. The presiding officer may use his experience, technical competence, and specialized knowledge to evaluate the evidence.

3. No finding of fact that was contested may be based solely on hearsay evidence.

4. This section does not preclude the presiding officer from issuing interim orders to:

a. notify the parties of further hearings;

b. notify the parties of provisional rulings on a portion of the issues presented; or

c. otherwise provide for the fair and efficient conduct of the adjudicative hearing.

R728-409-17. Notice of Presiding Officer's Recommendation.

A. If the evidence against the individual does not support the conduct alleged in the administrative complaint with respect to Section 53-6-211(1), the presiding officer, hereafter referred to as Administrative Law Judge, will mail the parties a copy of the recommendation upon issuance of the recommendation.

B. If the Administrative Law Judge finds that the evidence against the individual does support the conduct alleged in the administrative complaint with respect to Section 53-6-211(1), the Administrative Law Judge will mail the parties a copy of the recommendation upon issuance of the recommendation.

C. The Administrative Law Judge may issue his recommendation to the parties by certified mail.

R728-409-18. Request for Review of Presiding Officer's Recommendation.

A. Except when revocation is recommended for conviction of a felony, the parties will have 15 days from the date of issuance of the Administrative Law Judge's recommendation to request a review of the recommendation before the council.

B. A request by any party for council review of the Administrative Law Judge's recommendation will be made in writing to the council and will contain all issues which the party wishes to raise. The request must specify whether the party is challenging the ALJ's recommended findings of fact, conclusions of law, and/or agency action. If the party is challenging the recommended findings or conclusions, the request must particularly set forth which findings and/or conclusions it wants reviewed and considered by the council. A copy of the request will be served upon all other parties.

C. The party seeking review shall provide transcripts, documents, and briefs to the council within 45 days after the filing of the notice requesting review. If the party is challenging the recommended findings of fact or conclusions of law, it must support its request with specific references and citations to the hearing record, and copies of the evidence received by the ALJ at the hearing, and which are relevant to the challenged recommendations. If the request is based on oral testimony presented at the hearing, the party shall provide, at its expense, a transcription of that relevant testimony. No party shall be permitted oral argument before the council unless a request for oral argument is filed with the Council within this same 45 day period.

D. The other party or parties shall have 30 days from the date the transcripts, documents and briefs are filed by the party seeking review, to file any response to the request for review.

Any response may include additional transcripts or documents necessary for review.

E. The council shall whenever possible within a reasonable time from the filing of the notice requesting review to provide for a review hearing before the council.

F. Any review shall be based upon the administrative hearing record and briefs or other documents submitted by the parties. If a party has submitted portions of the hearing transcript, or other evidence admitted at the hearing, the council may, in its discretion, require the division to submit all or any other portion of the hearing transcript or evidence, and may continue the review hearing for that purpose. If necessary to make a determination, the council may also require the agency to subpoena any of the witnesses who testified in the evidentiary hearing, to appear at the next regularly scheduled council meeting, to answer questions from council members.

G. If oral argument is requested by either party, at the review hearing the parties will be permitted 20 minutes each to present oral argument on their respective positions identified in their written requests and briefs. Any testimony presented during oral argument, if offered as evidence to be considered in reaching a decision on the review, shall be given under oath.

H. If no oral argument is requested, the council shall, within a reasonable time after all documents, transcripts and briefs have been filed, issue to the director a review decision.

I. If oral argument has been received, the council, within a reasonable time after the review hearing, shall issue to the Director a review decision.

J. The council has the power to make a full review of the Administrative Law Judge's recommendation. This power includes, but is not limited to, the power to accept the ALJ's recommended findings of fact, conclusions of law, and/or agency action, or to reject all or a portion thereof, and render its own findings, conclusions and proposed action on the officer's certification.

K. Any periods of time designated in this rule for the filing of documents and pleadings, or for scheduling of hearings may be extended by the council for good cause.

R728-409-19. Council Action and Finding by Director.

A. Unless a consent order has been signed by all parties as per Rule R728-409-10 or a request for review is made to the Council as per Rule R728-409-18, and following the adjudicative proceeding or following a default by the individual as outlined in Rule R728-409-15:

1. The division representative will issue to the council the recommendation of the Administrative Law Judge. The council will review the Administrative Law Judge's recommendation and make a decision to concur or reject that recommendation, and to issue any alternative recommendation it may desire.

2. The council will issue and file its decision with the director.

R728-409-20. Director's Final Order.

A. In adjudicative proceedings:

1. After a majority of the council recommends to refuse, suspend or revoke respondent's peace officer, correctional officer, reserve/auxiliary officer, or special function officer certification, or to take no action against respondent, the director shall prepare and issue a final order within 30 days outlining the council's decision.

2. The final order will include information on the appeal process as outlined in administrative rules R728-409-21, 22, 23.

3. The director shall, upon issuance, serve a copy of the final order on the respondent and the employing agency by certified mail.

R728-409-21. Division Review - Reconsideration.

A. Except when revocation is recommended for conviction of a felony within ten days after the date that the director's final order is issued, 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 order.

B. The request for reconsideration shall be filed with the division by the person making the request.

C.1. The director, or a person designated for that purpose, shall issue a written order granting the request or denying the request.

2. If the director or the person designated for that purpose does not issue an order within 20 days after the filing of the request, the request for rehearing shall be considered to be denied.

R728-409-22. Judicial Review - Exhaustion of Administrative Remedies.

A. A party aggrieved may obtain judicial review of final agency action only after exhausting all administrative remedies available, except that:

1. The court may relieve a party seeking judicial review of the requirement to exhaust any or all administrative remedies if:

a. the administrative remedies are inadequate; or

b. exhaustion of remedies would result in irreparable harm disproportionate to the public benefit derived from requiring exhaustion.

B.1. A party shall file a petition for judicial review of final agency action within 30 days after the date that the order constituting the final agency action is issued.

2. The petition shall name the agency and all other appropriate parties as respondents and shall meet the form requirements specified in Chapter 46b of Title 63.

R728-409-23. Judicial Review - Adjudicative Proceedings.

A. At the conclusion of formal adjudicative proceedings, the Utah Court of Appeals has jurisdiction to review the director's final order.

B. To seek judicial review of the director's final order, the petitioner shall file a petition for review of agency action in the form required by the Rules of the Utah Court of Appeals.

1. The Rules of the Utah Court of Appeals govern all additional filings and proceedings in the Utah Court of Appeals.

C. The contents, transmittal, and filing of the agency's record for judicial review of formal adjudicative proceedings are governed by the Rules of the Utah Court of Appeals, except that:

1. all parties to the review proceedings may stipulate to shorten, summarize, or organize the record;

2. the Utah Court of Appeals may tax the cost of preparing

transcripts and copies for the record:

a. against a party who unreasonably refuses to stipulate to shorten, summarize, or organize the record; or

b. according to any other provision of law.

c. The scope of judicial review by the Utah Court of Appeals is controlled by Section 63-46b-16(4). Relief granted by the Utah Court of Appeals is controlled by Section 63-46b-17.

D. If peace officer certification is revoked for conviction of a felony after an informal hearing, the district courts have jurisdiction to review the final order pursuant to Sections 63-46b-14 and 63-46b-15.

R728-409-24. Judicial Review - Stay and Other Temporary Remedies Pending Final Disposition.

A. The director may grant a stay of the final order or other temporary remedy during the pendency of judicial review, according to the division's rules.

B. Parties shall petition the director for a stay or other temporary remedies unless extraordinary circumstances require immediate judicial intervention.

C. If the director denies a stay or denies other temporary remedies requested by a party, the director's order of denial shall be mailed to all parties and shall specify the reasons why the stay or other temporary remedy was not granted.

D. If the director has denied a stay or other temporary remedy to protect the public health, safety, or welfare against a substantial threat, the court may not grant a stay or other temporary remedy unless it finds that:

1. the director violated the division's rules in denying the stay; or

2.a. the party seeking judicial review is likely to prevail on the merits when the court finally disposes of the matter;

b. the party seeking judicial review will suffer irreparable injury without immediate relief;

c. granting relief to the party seeking review will not substantially harm other parties to the proceedings; and

d. the threat to the public health, safety, or welfare relied upon by the agency is not sufficiently serious to justify the director's action under the circumstances.

R728-409-25. Emergency Adjudicative Proceedings.

A. The division may issue an order on an emergency basis without complying with the requirements of this chapter if:

1. the facts known by the division or presented to the division show that an immediate and significant danger to the public health, safety, or welfare exists; and

2. the threat requires immediate action by the division.

B. In issuing an emergency order, the division shall:

1. limit the 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 division's utilization of an emergency adjudicative proceeding; and

3. give immediate notice to the person who is required to comply with the order.

C. Upon the commencement of an emergency adjudicative proceeding, the division shall commence a formal adjudicative proceeding in accordance with the other provisions of this rule in order not to infringe upon any legal right or interest of any party.

R728-409-26. Civil Enforcement.

A.1. In addition to other remedies provided by law, an division may seek enforcement of an order by seeking civil enforcement in the district courts.

2. The action seeking civil enforcement of the division's order must name, as defendants, each alleged violator against whom the agency seeks to obtain civil enforcement.

3. Venue for an action seeking civil enforcement of the division's order shall be determined by the requirements of the Utah Rules of Civil Procedure.

4. The action may request, and the court may grant, any of the following:

a. declaratory relief;

b. temporary or permanent injunctive relief;

c. any other civil remedy provided by law; or

d. any combination of the foregoing.

B.1. Any person whose interests are directly impaired or threatened by the failure of the division to enforce the division's order may timely file a complaint seeking civil enforcement of that order, but the action may not be commenced;

a. until at least 30 days after the plaintiff has given notice of his intent to seek civil enforcement of the alleged violation to the director, the attorney general, and to each alleged violator against whom the petitioner seeks civil enforcement;

b. if the division has filed and is diligently prosecuting a complaint seeking civil enforcement of the same order against the same or a similarly situated defendant; or

c. if a petition for judicial review of the same order has been filed and is pending in court.

2. The complaint seeking civil enforcement of the division's order must name, as defendants, the division, and each alleged violator against whom the plaintiff seeks civil enforcement.

3. Except to the extent expressly authorized by statute, a complaint seeking civil enforcement of the division's order may not request, and the court may not grant, any monetary payment apart from taxable costs.

C. In a proceeding for civil enforcement of the division's order, in addition to any other defenses allowed by law, a defendant may defend on the ground that:

1. the order sought to be enforced was issued by the division without jurisdiction to issue the order;

2. the order does not apply to the defendant;

3. the defendant has not violated the order; or

4. the defendant violated the order but has subsequently complied.

D. Decisions on complaints seeking civil enforcement of the division's order are reviewable in the same manner as other civil cases.

R728-409-27. Declaratory Orders.

A. Any person may file a request for division actions, requesting that the division issue a declaratory order determining the applicability of a statute, rule, or order within

the primary jurisdiction of the division to specified circumstances.

B. The division shall not issue a declaratory order if:

1. the request is one of a class of circumstances that the division has by rule defined as being exempt from declaratory orders; or

2. the person requesting the declaratory order participated in an adjudicative proceeding concerning the same issue within 12 months of the date of the present request.

a. The division may issue a declaratory order that would substantially prejudice the rights of a person who would be a necessary party, only if that person consents in writing to the determination of the matter by a declaratory proceeding.

C. Persons may intervene in declaratory proceedings if:

1. they meet the requirements of Rule R728-409-12; and

2. they file timely petitions for intervention according to division rules.

D. After receipt of a petition for a declaratory order, the division may issue a written order:

1. declaring the applicability of the statute, rule, or order in question to the specified circumstances;

2. setting the matter for adjudicative proceedings;

3. agreeing to issue a declaratory order within a specified time; or

4. declining to issue a declaratory order and stating the reasons for its action.

E. A declaratory order shall contain:

1. the names of all parties to the proceeding on which it is based;

2. the particular facts on which it is based; and

3. the reasons for its conclusion.

F. 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.

G. A declaratory order has the same status and binding effect as any other order issued in an adjudicative proceeding.

H. Unless the petitioner and the division agree in writing to an extension, if the division has not issued a declaratory order within 60 days after receipt of the request for a declaratory order, the petition is denied.

R728-409-28. Reconsideration Based on Mistake, Fraud, or Newly Discovered Evidence.

A. Reconsideration of a decision by POST Council, and a new opportunity to be heard, may be granted for any of the following reasons:

1. The decision of POST Council was based on a mistake of law or fact;

2. There was fraud, misrepresentation or misconduct in the adjudicative proceeding; or

3. There is newly discovered material evidence which the party could not, with reasonable diligence, have discovered and produced during the adjudicative proceedings.

B. At any time after a final order is issued, either party may request reconsideration under this rule, by complying with the procedures set forth in R728-409-18(B) through (K).

C. Reconsideration by POST Council pursuant to this rule shall be a two-step process:

1. A written request and information outlining the reasons and justification for making the request shall be submitted to a special subcommittee consisting of the presidents of the Chiefs of Police Association and the Sheriffs Association, or their designees, and another POST Council member designated by the Chairman, which shall review the request and information provided and decide whether the party seeking consideration has, by a preponderance of the evidence, established that the prior decision was based on one or more of the grounds set forth above. The subcommittee will notify the director of its decision, who will then send out a notice of that decision to both parties.

2. If the subcommittee decides step one in the affirmative, the matter will be scheduled for consideration by POST Council at the next regularly scheduled meeting. POST shall give reasonable notice to the parties of the date, time and location of the meeting. POST Council shall reconsider the correct, clarified or new evidence, and render a decision based on the written request and information and oral argument, (if such was timely requested.) Any oral testimony presented to the council shall be under oath, and subject to the penalty of perjury.

3. POST Council's decision shall be communicated to the Director, who shall then notify the parties thereof, in writing and consistent with R728-409-20. The parties will then have the same appeal rights set forth in R728-409-22, 409-23, and 409-24.

D. The definitions set forth in Utah Rules of Civil Procedures, Rules 59 and 60, and interpretive case law thereon, shall apply to determinations under this rule.

KEY: law enforcement officers, certification, investigations, rules and procedures
June 2, 1998 53-6-211
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R728. Public Safety, Peace Officer Standards and Training.
R728-505. Service Dog Program Rules.
R728-505-1. Admission Requirements.

Persons applying for admission into the Service Dog Training Program shall be sworn personnel representing federal, state, county, municipal or other agencies. Any question or dispute regarding admissibility shall be submitted in writing to the Service Dog Training Supervisor.

R728-505-2. Training Requirements.

Training requirements in the Service Dog Program are established to provide each student with sufficient knowledge and skill to begin the respective Service Dog task. Training is intended and designed to achieve optimal efficiency in the allotted time. The content and duration of training shall be designated as the "Approved Curriculum." Each training category and skill level has its own specific approved curriculum.

A. Dogs.

Dogs participating in the Service Dog Program shall be trained according to the approved curriculum. The curriculum shall be based on at least the following concepts:

1. successful achievement according to the approved curriculum shall enable the Service Dog to perform in a state-of-the-art professional manner;

2. successful achievement according to the approved curriculum shall enable the Service Dog to perform in a discriminating and humanitarian manner;

3. the approved curriculum must be subject to constant revision and upgrading of the approved curriculum to meet the ever-changing criminal behavior and methodology and also the legal constraints associated with criminal and civil court rulings regarding service dog deployments.

B. Handlers.

Handlers participating in the Service Dog Program shall be trained according to the approved curriculum. The curriculum shall be based on at least the following concepts:

1. successful achievement according to the approved curriculum shall enable the Handler to perform in a state-of-the-art professional manner;

2. successful achievement according to the approved curriculum shall enable the Handler to perform in a discriminating and humanitarian manner;

3. the approved curriculum must be subject to constant revision and upgrading of the approved curriculum to meet the ever-changing criminal behavior and methodology and also the legal constraints associated with criminal and civil court rulings regarding service dog deployments.

C. Instructors.

Instructors participating in the Service Dog Program shall be trained according to the approved curriculum. The curriculum shall be based on at least the following concepts:

1. successful achievement according to the approved curriculum shall enable the Instructor to perform in a state-of-the-art professional manner;

2. successful achievement according to the approved curriculum shall enable the Instructor to perform in a discriminating and humanitarian manner;

3. the approved curriculum must be subject to constant revision and upgrading of the approved curriculum to meet the ever-changing criminal behavior and methodology and also the legal constraints associated with criminal and civil court rulings regarding service dog deployments.

D. Judges.

Judges participating in the Service Dog Program shall be trained according to the approved curriculum. The curriculum shall be based on at least the following concepts:

1. successful achievement according to the approved curriculum shall enable the Judge to perform in a state-of-the-art professional manner;

2. successful achievement according to the approved curriculum shall enable the Judge to perform in a discriminating and humanitarian manner;

3. the approved curriculum must be subject to constant revision and upgrading of the approved curriculum to meet the ever-changing criminal behavior and methodology and also the legal constraints associated with criminal and civil court rulings regarding service dog deployments.

E. Administrators.

Administrators participating in the Service Dog Program shall be trained according to the approved curriculum. The curriculum shall be based on at least the following concepts:

1. successful achievement according to the approved curriculum shall enable the Administrator to perform in a state-of-the-art professional manner;

2. successful achievement according to the approved curriculum shall enable the Administrator to perform in a discriminating and humanitarian manner;

3. the approved curriculum must be subject to constant revision and upgrading of the approved curriculum to meet the ever-changing criminal behavior and methodology and also the legal constraints associated with criminal and civil court rulings, regarding service dog deployments,

d. constant revision and upgrading of the approved curriculum to meet the ever changing personnel-development concepts and employee-related laws and guidelines.

E. Waiver of Training.

1. If a student has gained prior knowledge or skill which would be duplicated in a training course, a written request for waiver may be submitted to the Service Dog Training Supervisor. The request shall include authentication of any training requested to be waived.

2. The Service Dog Training Supervisor shall evaluate the waiver request and determine to what extent a waiver may be granted.

3. No waiver shall be granted which would preclude a minimum of 40 hours observation period during any training course, with the exception of Administrator training, for which no waiver of training shall be granted.

R728-505-3. Graduation Requirements.

Graduation from the Service Dog Program shall be determined according to the knowledge and skill level exhibited. A student's knowledge shall be evaluated by administering a written examination. A student's skill shall be evaluated in the final week of any training course.

A. Scoring.

The passing score for a written examination shall be 80%

or higher. Skill level shall be determined according to the following:

1. 96 - 100% = Superior,
2. 90 - 95% = Commendable,
3. 85 - 89% = Typical,
4. 80 - 84% = Suitable,
5. 60 - 79% = Needs Improvement,
6. 0 - 59% = Unsatisfactory.

B. Skills.

Skills shall be evaluated according to one of the following:

1. Superior, denoting exemplary or ideal performance,
2. Commendable, denoting noteworthy or above average performance,
3. Typical, denoting normal or average performance,
4. Suitable, denoting satisfactory or sufficient performance,
5. Needs Improvement, denoting skill exhibited that is just barely below the minimum level performance,
6. Unsatisfactory, denoting little or no skill level exhibited.

C. Reports.

Handlers, Instructors, and Judges shall submit reports according to the approved curriculum. Reports shall be rated according to the appropriate skill level.

D. Written Examinations.

Examinations and quizzes are a necessary method of testing a student's substantive knowledge, reading comprehension, and reasoning abilities, all of which are essential criteria for proper performance of peace officer functions. Handlers, Instructors, Judges and Administrators shall be given written examinations and quizzes as indicated in the curriculum schedule. Examinations are given on the honor basis. Evidence of dishonor shall result in dismissal from the Academy. Written exams are scored, with the minimum passing score to be 80%.

E. Practical Skills Examinations.

Service Dogs, Handlers, Instructors, Judges and Administrators shall be given practical skills examinations as indicated in the curriculum schedule. Examinations are given on the honor basis. Evidence of dishonor shall result in dismissal from the Academy. Students must achieve a rating of "Suitable" in each Practical Skills examination.

F. Failure to Qualify

1. If a student fails a Report, Written Examination or Practical Skills Examination, he/she shall be allowed to take a Make-Up Examination. Regardless of what passing rating or score earned on the Make-Up Examination, the student shall be given the rating of "Suitable" or the score of 80%, depending on which Examination it is. If the Make-Up Examination rating or score is less than passing, the student shall be invited to return at a later date and attend further training in the respective skill or topic. When the Service Dog Training Supervisor deems it reasonable to re-examine the student, another opportunity shall be afforded to challenge the respective examination.

2. If a student fails to achieve a passing rating or score within 12 months of the original examination, the student shall be required to retake the respective course in its entirety before challenging the examination again.

G. Mitigating Circumstances.

1. The Service Dog Training Supervisor shall be empowered with the discretion of deciding if mitigating circumstances should be taken into consideration when a student fails any examination. Mitigating circumstances include, but are not limited to:

a. weather,
b. quality/quantity of Instructors or Judges,
c. equipment problems,
d. medical problems.

2. If the Service Dog Training Supervisor decides there were one or more circumstances beyond the control of the student and the student fails an examination, the Service Dog Training Supervisor may schedule another examination.

H. Physical Training.

1. Patrol Dog Courses.

Physical fitness is especially valuable for Patrol Dogs, Handlers, Instructors, and Judges. Students participating in Patrol Dog courses shall participate in a daily physical training program, as outlined in the approved curriculum. Physical fitness training shall be supervised by the Service Dog Training Supervisor.

2. Detector Dog Courses.

Physical fitness is valuable for Detector Dogs, Handlers, Instructors, and Judges. Students participating in Detector Dog courses may participate in a daily physical training program, as outlined in the approved curriculum. Physical fitness training shall be supervised by the Service Dog Training Supervisor.

3. Administrative Courses.

Physical fitness is valuable for Administrators of Service Dog Units. Students participating in Administrator courses may participate in a daily physical training program, as outlined in the approved curriculum. Physical fitness training shall be supervised by the Service Dog Training Supervisor.

I. Counsel.

Individual counseling is available to any student on request to the Service Dog Training Supervisor.

J. Attendance.

1. Students shall be required to attend all training unless an emergency exists or a valid excuse is given.

2. More than three unexcused absences may result in suspension from the Service Dog Program. Acceptable excuses include but are not limited to illness, court, and death of an immediate family member. Whenever possible, absences shall be cleared through the Service Dog Training Supervisor before the absence occurs. It is the student's responsibility to report when he/she is absent or late. Attendance information may be made available to department heads periodically.

3. Anyone who is tardy three times without an acceptable excuse may be subject to disciplinary action.

K. Grounds for Dismissal From the Service Dog Program.

1. Dogs.

a. The Service Dog Training Supervisor shall have the authority to evaluate Dogs participating in the Service Dog Program and dismiss any Dog which exhibits one or more of the following.

i. Unwarranted aggressive behavior.

ii. Severely deficient performance of any kind.

iii. Any behavior which is deemed to unsafe for any person, including the Handler.

2. Handlers, Instructors, Judges, or Administrators.

a. The Service Dog Training Supervisor shall have the

authority to evaluate Handlers, Instructors, Judges, or Administrators participating in the Service Dog Program and dismiss any student who exhibits one or more of the following.

i. Failure to comply with Academy rules.

ii. Evidence of any health condition that would keep the student from successfully completing the respective training course.

iii. Evidence of any conduct that is deemed so inappropriate as to considerably undermine the integrity of the Service Dog Program.

R728-505-4. Health Services and Emergencies.

A. Any person who becomes ill or injured while at the Academy shall notify a member of the Academy staff immediately.

B. The Academy is not authorized funds to pay for prescriptions, x-rays, casts, bandages, medications or out-patient visits to hospitals. Students or their departments shall be expected to pay for the above services and supplies.

C. All personal calls are to be conducted on one of the phones located strategically throughout the building. Collect calls shall not be accepted.

R728-505-5. Classrooms.

A. Students shall be responsible for keeping the classrooms neat and clean. No food, drinks or smoking shall be allowed in the classroom.

B. From time to time, P.O.S.T. shall take portions of the training to locations other than the Academy. While at any of these locations, students shall respect the property of others and conduct themselves accordingly. If any damage occurs, it shall be reported to the Service Dog Training Supervisor as soon as possible.

R728-505-6. Special Regulations.

A. Alcohol and Gambling.

No student shall consume alcohol in any form during the course of the training day. The training day shall be interpreted to mean two hours prior to the first class of the day until the completion of the last class of the day. In circumstances where classes end at 5:00 p.m. and there is scheduled evening or night classes, the last class of the day means the last night class.

1. No alcoholic beverages of any kind shall be brought onto or consumed on the Academy site unless it's part of the training schedule.

2. Gambling shall not be permitted at any time or place on the Academy site.

3. Persons found to be in violation of R728-505-6 shall be dismissed from the Academy.

B. Dress Code.

Students shall maintain a professional appearance at all times. Accordingly, the following dress code shall be adhered to.

1. Classroom.

Students shall wear neat, unsoiled clothing when training in a classroom. Uniforms are suitable but not mandatory.

2. Field.

Students shall wear neat, unsoiled clothing when training in the field. Uniforms are suitable but not mandatory.

3. Demonstrations.

Occasionally, a public demonstration of the Service Dog Training Program occurs. Students shall wear uniforms or official clothing so as to present the optimal professional image.

4. Physical Training.

Physical training shall be administered according to the approved curriculum.

5. Practical Problems.

The training supervisor may allow students to wear appropriate civilian clothing for designated training.

C. Grooming.

All students shall be expected to maintain proper grooming habits at all times. Clothing shall be clean and well cared for. Hair must be clean and neat.

D. Firearms.

1. Any firearm brought into the Academy by a resident student may be surrendered for storage in the weapons vault. Unload all such weapons prior to entering the building. No weapons are allowed in student dormitory rooms under any condition. Weapons may be secured in vehicles if done so such that the weapon is not visible to passers-by.

2. A firearm may be retrieved from the weapons vault at the conclusion of the course or prior to departure on the weekends. Routinely checking the weapon out at the end of each training day shall not be possible.

3. Weapons may be checked out for use on the range, for weekends, or as directed by the training staff.

4. Any discharge of a weapon on the Academy property, unless a part of the training experience, shall result in immediate suspension from the Academy pending an investigation.

E. Conduct.

1. All students shall be expected to conduct themselves in a professional manner at all times.

2. No loud, abusive, or obscene language shall be permitted unless necessary in a practical exercise.

F. All students shall realize that while at the Academy they shall be directly supervised by their training supervisor and the Academy staff. Therefore, all decisions relative to their training status shall be made by the Service Dog Training Supervisor and approved, where necessary, through the chain of command.

R728-505-7. Lost, Damaged or Destroyed Items.

Students who lose or damage items beyond serviceability shall be required to reimburse the Academy for the replacement value.

R728-505-8. Cost of Training.

Costs of training are borne by the state for In-State students. Out-of-State students shall be charged the currently approved rate.

R728-505-9. Disciplinary Action.

A. Any student who becomes the subject of an inquiry into an allegation of violation of Academy rules or standards shall be dealt with following the procedures outlined in the Procedures for Dismissing Students from Peace Officer Training Programs for Cause found in the P.O.S.T. Policy and Procedure Manual.

B. A violation of any of the Academy rules can result in anyone or more of the following actions.

1. Verbal Reprimand.
2. Written Reprimand.
3. Probation.
4. Referral to department for discipline.
5. Suspension.
6. Dismissal.

C. A student may be prohibited from participating in Academy functions during the course of an inquiry into alleged misconduct.

D. In all cases, the student shall be given the opportunity to speak in his/her behalf before any action is taken.

E. Once an action is decided upon, the student and his/her employing agency shall be immediately notified.

F. In all cases where a student is suspended or dismissed from the Academy, his/her employing agency shall be immediately notified.

G. Students may appeal any decision by following the procedures outlined in the P.O.S.T. Policy and Procedure Manual.

R728-505-10. Dormitory Facilities.

A. Each student occupying the Academy dormitory is required to keep the room clean and orderly and to make the bed daily. Random inspections may be held to insure compliance. When noncompliance is found, the student in violation may be subject to disciplinary action.

B. Damage incurred through neglect or intentional abuse to Academy property shall result in the student or department head being billed for all repairs and replacements.

C. Visitors are not allowed in dormitory rooms. They are invited to visit with students in the lounges.

D. Persons of the opposite sex are strictly forbidden in the dormitory room unless such person has been instructed to be there by the Academy staff. Persons found to be in violation shall be suspended from the Academy.

E. The academy shall not be responsible for personal items left unsecured.

F. Housekeeping Information.

Because of the obvious importance of cleanliness in a group living environment, anyone who demonstrates an unwillingness to follow the Academy's housekeeping guidelines may be required to leave the dormitory facility and provide his/her own housing.

KEY: police dog training rules*, K-9 training*
June 2, 1998 **53-6-105**
53-6-106
53-6-107

R746. Public Service Commission, Administration.
R746-110. Uncontested Matters to be Adjudicated Informally.
R746-110-1.

When a request for agency action is filed with the Commission and the party filing such request anticipates and represents in the request that the matter will be unopposed and uncontested, or when the Commission determines that the matter can reasonably be expected to be unopposed and uncontested the request may be adjudicated informally in accord with Section 63-46b-5 and the following:

R746-110-2.

The applicant shall file in support of the request such sworn statements and certified documents as may be necessary to establish the pertinent facts of the matter. Thereupon, the Commission may, without hearing, enter its Report and Order in tentative form not to be effective for a minimum of 20 days after its issuance. Provided, however, that in cases where the applicant shall establish good cause therefor, the Commission may waive the 20-day tentative period and issue a final order. (See Section 63-46b-12, Utah Code, which provides for review of final agency orders.) The order shall provide that any person may file a protest thereto prior to its effective date and that if the Commission finds such protest to be meritorious, the effective date shall be suspended pending further proceedings. The order shall be served by the applicant upon all persons deemed by the Commission to have an interest or potential interest in the subject matter, and the Commission may require public notice in the form designated by the Commission.

Absent meritorious protest, the order shall automatically become effective without further action.

R746-110-3.

In cases where a public utility seeks an increase in rates, fees, or charges, informal summary procedure may be invoked if the applicant files in addition to supporting documentation a sworn statement from each person impacted by the increase that such person has no objection to the increase. This provision does not apply to energy-cost pass-through cases, which are provided for in Section 54-7-12(3)(d), Utah Code, nor does it apply to cases brought under Section 54-7-12(6), Utah Code.

KEY: public utilities, rules and procedure
1988 54-4-1
Notice of Continuation June 26, 1998 63-46b-5

R746. Public Service Commission, Administration.
R746-210. Utility Service Rules Applicable Only to Electric Utilities.
R746-210-1. Public Utility Regulatory Policy Act (PURPA) Standards for Master-Metered Multiple Tenancy Dwellings.

A. The Public Utility Regulatory Policy Act (PURPA) standards for Master Metered Multiple Tenancy Dwellings as set forth below are hereby adopted by the Commission.

1. Section 113 of PURPA 16 USCA states:

"To the extent determined appropriate under Section 115(d), master metering of electric service in the case of new buildings shall be prohibited or restricted to the extent necessary to carry out the purpose of this Title.

Section 115(d) states:

"Separate metering shall be determined appropriate for any new building for purposes of section 113(b)(1) if --

(1) there is more than one unit in such building,

(2) the occupant of each such unit has electric energy used in such unit, and

(3) with respect to such portion of electric energy used in such unit, the long-run benefits to the electric consumers in such building exceed the costs of purchasing and installing separate meters in such building.

R746-210-2. Exemptions.

A. Automatic Exemptions -- Separate individual metering is not required for:

1. Those portions of transient multiple occupancy buildings and transient mobile home parks normally used as temporary domiciles in such buildings as hotels, motels, dormitories, rooming houses, hospitals, nursing homes and those mobile home park sections designated for travel trailers;

2. Residential unit space in multiple occupancy buildings where all space heating, water heating, ventilation and cooling are provided through central systems and where the electric load within each unit that is controlled by the tenant is projected to be near minimum bill requirements of the tariff;

3. Common building areas such as hallways, elevators, reception and/or washroom, security lighting areas.

4. Commercial unit space which is:

a. Subject to alternation with change in tenants as evidenced by temporary as distinguished from permanent type of load bearing wall and floor construction separating the commercial unit spaces, and

b. Non-energy intensive as evidenced by connected loads other than space heating, water heating, and air-conditioning of five watts or less per square foot of occupied space.

R746-210-3. Exemptions Requiring a Cost-Effectiveness Test.

Cases not covered under "automatic exemptions" will be granted an exemption if the benefit-to-cost ratio is less than one (1) with respect to separate metering using the cost effectiveness test guidelines described below. The burden of proof rests with the person requesting exemption and the evidence required to sustain that burden must demonstrate that the long-run benefits of individual metering to the electric consumer are less than the costs of purchasing and installing separate meters. Written requests to the utility for an exemption will be given consideration based upon the following criteria and conditions:

A. "New buildings" shall be defined as those structures or mobile home parks for which a building permit is obtained on or after August 1, 1984, or, if no permit is required, for which construction is commenced on or after August 1, 1984. Construction is defined to begin when footings are poured.

B. The benefits shall be quantified in dollars of savings and shall reflect the difference in electricity use which results when separate metering is utilized rather than master-metering. The lump sum savings shall reflect a present worth analysis using as a discount rate the percentage interest rate of long-term debt such as the utility's latest long-term bond issue, or a mortgage rate, and a period equal to the estimated life of the building. Such analysis, including its preparation and expense, shall be the sole responsibility of the customer.

C. The customer's determination of benefit shall be based on electric service supplied by the utility at electric service rates and regulations approved by the Commission, including but not limited to, regulations that prohibit resale of electric service to any other person or entity unless taking service under rate schedules that specifically provide for reselling.

D. The cost shall be quantified in dollars and shall reflect the current difference in installed cost between master and individual metering. The lump sum differential cost reflecting the purchase and installation of separate meters versus a single meter shall be prepared by the utility. The preparation of the differential costs of meter bases and building wiring shall be the sole responsibility of the customer; and

E. The benefit-to-cost ratio shall equal the present worth of benefits described in paragraph (b) divided by the current (present worth) costs described in paragraph (d).

R746-210-4. Exemption by Appeal.

In the event the customer disagrees with the utility's determination of the exemption, such dispute shall be resolved by the Commission. The Commission, upon its own motion or upon the petition of any person, may initiate formal or investigative proceedings upon any matter arising out of an informal complaint. Further, a formal investigation requires not only the benefit-to-cost determination, but also a showing by the customer that a granted exemption status will be consistent with the stated purposes of Title I of PURPA; i.e., conservation, efficiency, and equity. It is appropriate that equity, conservation and efficiency not be negatively impacted as required under the promulgated PURPA regulations.

R746-210-5. Submetering as an Alternative to Individual Metering.

There are no circumstances, other than exemptions, where submetering is an acceptable alternative to individual metering under the constraints of PURPA. Submetering, while giving consumers control over their energy consumption, still retains a primary objection to master metering; namely, that since customers of a master metered utility customer are not customers of a regulated public utility, the Commission is without authority to provide redress where appropriate, such as in cases of service or billing problems.

KEY: electric utility industries, rules, procedure

1988 **54-4-1**
Notice of Continuation June 26, 1998

R746. Public Service Commission, Administration.
R746-340. Substantive Rules Governing Telecommunications Utilities.
R746-340-1. General.

A. Application of Rules -- These rules promulgated herein shall apply to each telephone corporation, as defined in Section 54-2-1(24).

1. These rules govern the furnishing of communications services and facilities to the public by a telecommunications utility, hereinafter referred to as "utility," subject to the jurisdiction of the Commission. The purpose of these rules is to establish reasonable service standards to the end that adequate and satisfactory service will be rendered to the public.

2. The adoption of these rules by the Commission shall in no way preclude it from altering or amending its rules pursuant to applicable statutory procedures, nor shall the adoption of these rules preclude the Commission from granting temporary exemptions to rules in exceptional cases as provided in R746-100-16, Deviation from Rules.

B. Definitions -- In the interpretation of these rules, the following definitions shall apply:

1. "Central Office" -- A building that contains the necessary telecommunications equipment and operating arrangements for switching, connecting, and inter-connecting the required local, interoffice, and interexchange services for the general public.

2. "Central Office Area" -- A geographic area served by a central office.

3. "CFR" means the Code of Federal Regulations, 1991 edition.

4. "Commission" -- Public Service Commission of Utah.

5. "Customer" -- A person, firm, partnership, corporation, municipality, cooperative, organization, or governmental agency, provided with telecommunications services by a utility.

6. "Exchange" -- A unit established by a utility for the administration of telecommunication services in a specified area for which a separate local rate schedule is provided. It may consist of one or more central office areas together with associated outside plant facilities used in furnishing telecommunications services in that area.

7. "Exchange Service Area" -- The geographical territory served by an exchange.

8. "Local Access Line" -- A facility, totally within one central office area, providing a telecommunications connection between a customer's service location and the serving central office.

9. "Out of Service" -- When there exists neither incoming or outgoing telecommunication capability.

10. "Party Line Service" -- A grade of local exchange service which provides for a number of customers to be served by the same local access line.

11. "Tariff" -- A portion or the entire body of rates, tolls, rentals, charges, classifications and rules, filed by the telecommunications utility and approved by the Commission.

12. "Telecommunications Utility" -- A "telephone corporation" as defined in Section 54-2-1(24).

R746-340-2. Records and Reports.

A. Availability of Records -- Each utility shall make its books and records open to inspection by representatives of the Commission during normal operating hours.

B. Retention of Records -- All records required by these rules shall be preserved for the period of time specified at 47 CFR 32, incorporated by this reference.

C. Reports --

1. Each utility shall maintain records of its operations in sufficient detail to permit review of its service performance.

2. Central offices with more than 500 local access lines, shall each report as promptly as possible to the Commission and the local news media, when applicable, failure or damage to the equipment or facilities which disrupts the local or toll service of 25 percent or more of the local access lines in that central office for a time period in excess of two hours.

D. Uniform System of Accounts -- The Uniform System of Accounts for Class A and Class B telephone utilities, as prescribed by the Federal Communications Commission at 47 CFR 32 is the prescribed system of accounts to record the results of Utah intrastate operations.

E. Data to be Filed with the Commission --

1. Tariffs -- Each utility shall have its tariff on file with the Commission in accordance with the rules governing the filing of tariffs as prescribed by the Commission.

2. Exchange Maps -- Each utility shall have on file with the Commission an exchange area boundary map for each of its exchanges within the state. Each map shall clearly show the boundary lines of the exchange area wherein the utility serves. Exchange boundary lines shall be located by appropriate measurement to an identifiable location where that portion of the boundary line is not otherwise located on section lines, waterways, railroads, roads, etc. Maps shall show the location of major highways, section lines, geographic township and range lines and major landmarks located outside municipalities. An approximate distance scale shall be shown on each map.

R746-340-3. Engineering.

A. Utility plant shall be designed, constructed, maintained and operated in accordance with the provisions outlined in the National Electrical Safety Code, 1993 edition, incorporated by reference.

B. When party-line service is to be provided, no more than eight customers shall be connected on one local access line, unless approved by the Commission. The utility may re-group customers as may be necessary to carry out the provisions of this rule.

R746-340-4. Emergency Operation.

1. Utilities shall make reasonable arrangements to meet emergencies resulting from failures of service, unusual and prolonged increases in traffic, illness of personnel, fire, storm or other acts of God, and inform its employees as to procedures to be followed in the event of emergency in order to prevent or minimize interruption or impairment of telecommunication service.

2. Each central office shall have a minimum of three hours battery reserve.

3. In central offices exceeding 5,000 lines, a permanent auxiliary power unit shall be installed.

R746-340-5. Maintenance.

A. Maintenance of Plant and Equipment --

1. Each utility shall adopt and pursue a maintenance program aimed at achieving efficient operation of its system to permit the rendering of safe, adequate and continuous service at all times.

2. Maintenance shall include keeping all plant and equipment in a good state of repair consistent with safety and the adequate service performance of the plant affected.

B. Customer Trouble Reports --

1. Each utility shall provide for the receipt of customer trouble reports at all hours, and shall make a full and prompt investigation of and response to each complaint. The utility shall maintain a record of trouble reports made by its customers. This record shall include appropriate identification of the customer or service affected, the time, date and nature of the report, and the action taken to clear the trouble or satisfy the complaint.

2. Provision shall be made to clear emergency out-of-service trouble at all hours, consistent with the bona fide needs of customers and the personal safety of utility personnel.

3. Provisions shall be made to clear other out-of-service trouble not requiring unusual repair, within 48 hours of the report received by the utility, unless the customer agrees to another arrangement.

4. If unusual repairs are required, or other factors preclude clearing of reported trouble promptly, reasonable efforts shall be made to notify affected customers.

C. Inspections and Tests -- Each utility shall adopt a program of periodic tests, inspections and preventative maintenance aimed at achieving efficient operation of its system and rendering safe, adequate, and continuous service.

D. Planned Service Interruptions -- If service must be interrupted for purposes of rearranging facilities or equipment, the work shall be done at a time which will cause minimal inconvenience to customers. Each utility shall attempt to notify each affected customer in advance of the interruption. Emergency or alternative service shall be provided, during the period of the interruption, to assure communication is available for local law enforcement and public safety units and agencies.

R746-340-6. Safety.

A. Safety -- Each utility shall:

1. require its employees to use suitable tools and equipment to perform their work in a safe manner;

2. instruct employees in safe work practices;

3. exercise reasonable care in minimizing the hazards to which its employees, customers and the general public may be subjected.

KEY: procedure, telecommunications, telephone utility regulation

1988	**54-4-1**
Notice of Continuation June 26, 1998	**54-4-14**
	54-4-23
	54-2-1(24)

R805. Regents (Board of), University of Utah, Administration.

R805-2. Government Records Access and Management Act Procedures.

R805-2-1. Purpose.

The purpose of this rule is to establish procedures for the University of Utah in accordance with the Government Records Access and Management Act.

R805-2-2. Authority.

This rule is authorized by Sections 63-2-204(2), 63-2-904(2), and 63-46a-3.

R805-2-3. Allocation of Responsibility.

All departments, institutes, offices, divisions, centers, schools, colleges, related functions and organizations of the University of Utah shall be considered as a single government entity for purposes of this rule.

R805-2-4. University Records Officer Designated.

Pursuant to Section 63-2-903, the University of Utah shall maintain the appointment of a Records Officer, Marriott Library, University of Utah, 84112.

R805-2-5. Requests for Access.

Requests for access to records held by the University of Utah shall be made in writing. Such requests shall be directed as follows:

(1) Requests for personnel records of University Hospital personnel shall be sent to: Manager, Hospital Human Resources, Room 140, 421 Wakara Way, University of Utah, Salt Lake City, Utah 84112.

(2) Requests for personnel records of all other personnel shall be sent to: Director, Personnel Administration, 101 Annex, University of Utah, Salt Lake City, Utah 84112.

(3) Requests pertaining to financial records of the University shall be sent to: Director, Finance 408 Park Building, University of Utah, Salt Lake City, Utah 84112.

(4) Requests pertaining to student records shall be sent to: University Registrar, 250 N Student Services Building, University of Utah, Salt Lake City, Utah 84112.

(5) All other requests shall be sent to the office of the vice-president responsible for overseeing the division of the University in which the records are maintained. The list of those vice-presidents is as follows.

(a). Vice President, Budget and Planning, 201 Park Building, University of Utah, Salt Lake City, Utah 84112.

(b). Vice President, Health Sciences, 211 Park Building, University of Utah, Salt Lake City, Utah 84112.

(c). Vice President, Academic Affairs, 205 Park Building, University of Utah, Salt Lake City, Utah 84112.

(d). Vice President, Research, 210 Park Building, University of Utah, Salt Lake City, Utah 84112.

(e). Vice President, Student Affairs and Services, 208 Park Building, University of Utah, Salt Lake City, Utah 84112.

(f). Vice President, Development, 304 Park Building, University of Utah, Salt Lake City, Utah 84112.

(g). Vice President, Administrative Services, 209 Park Building, University of Utah, Salt Lake City, Utah 84112.

(h). Vice President, University Relations, 206 Park Building, University of Utah, Salt Lake City, Utah 84112.

R805-2-6. Fees.

As provided by Section 63-2-203, a fee schedule reflecting actual costs of duplication or compiling a record may be obtained from the Records Officer, 546 Marriott Library, University of Utah 84112.

R805-2-7. Appeals of Access, Classification or Designation Determination.

Appeals of access, classification or designation determinations shall be directed to the Records Officer, 546 Marriott Library, University of Utah 84112, who has been designated by the President to hear appeals on his behalf pursuant to Section 63-2-401(9).

R805-2-8. Appeals of Denial of Request to Amend Record.

A denial of a request to amend a record may be appealed to the Records Officer, who shall act as the presiding officer for such appeals.

KEY: higher education, GRAMA*, records

1993	**63-2-204(2)**
Notice of Continuation June 17, 1998	**63-2-904(2)**
	63-46a-3

R865. Tax Commission, Auditing.
R865-4D. Special Fuel Tax.
R865-4D-1. Utah Special Fuel Tax Regulation Pursuant to Utah Code Ann. Section 59-13-102.

A. Motor vehicle means and includes every self-propelled vehicle operated or suitable for operation on the highways of the state which is designed for carrying passengers or cargo; but does not include vehicles operating on stationary rails or tracks, or implements of husbandry not operating on the highways.

B. User means any person using special fuel for the propulsion of a motor vehicle on the highways of the state, including:

1. interstate operators of trucks and buses,

2. intrastate operators of trucks and buses, and

3. contractors using special fuel in self-propelled vehicles for carrying of passengers or cargo.

R865-4D-2. Clean Special Fuel Certificate, Refund Procedures for Undyed Diesel Fuel Used Off-Highway or to Operate a Power Take-Off Unit, and Sales Tax Liability Pursuant to Utah Code Ann. Sections 59-13-301 and 59-13-304.

A. If the vehicle is registered in Utah, the fee for a clean special fuel certificate under Section 59-13-304 is due at the time the vehicle is placed in operation and annually thereafter on the date the vehicle's registration is renewed. Certificates may be obtained from any Tax Commission office or any local motor vehicle office. If a vehicle is not registered in Utah, the fee is due on the date the vehicle begins operation in Utah. The fee paid for a vehicle placed in operation may be pro-rated on a monthly basis if the certificate obtained for the vehicle is valid for a period of less than 12 months. Fees paid will not be refunded if a vehicle is sold or otherwise disposed of prior to the expiration date of the certificate.

B. Fuel used in a vehicle off-highway is calculated by taking off-highway miles divided by the average number of miles per gallon. Any other method of calculating undyed diesel fuel used off-highway must be supported by on-board computer information or other information that shows the number of gallons used off-highway with accuracy equal or comparable to on-board computers.

C. Where a power take-off unit is driven by the main engine of the vehicle and used to operate auxiliary equipment, a quantity, as enumerated below, of the total undyed diesel fuel delivered into the service tank of the vehicle shall be deemed to be used to operate the power take-off unit. The allowances for power take-off units are as follows:

1. concrete mixer trucks - 20 percent;

2. garbage trucks with trash compactor - 20 percent;

3. vehicles with powered pumps, conveyors or other loading or unloading devices may be individually negotiated but shall not exceed:

a) 3/4 gallon per 1000 gallons pumped; or

b) 3/4 gallon per 6000 pounds of commodities, such as coal, grain, and potatoes, loaded or unloaded.

4. Any other method of calculating the amount of undyed diesel fuel used to operate a power take-off unit must be supported by documentation and records, including on-board computer printouts or other logs showing daily power take-off activity, that establish the actual amount of power take-off activity and fuel consumption.

D. Allowances provided for in B. and C. above will be recognized only if adequate records are maintained to support the amount claimed.

E. In the case of users filing form TC-922, Fuel Tax Return For International Fuel Tax Agreement (IFTA) And Special Fuel User Tax, or form TC-922C, Refund of Tax Paid on Exempt Fuel for Non-Utah Based Carriers, the allowance provided for in C. will be refunded to the extent total gallons allocated to Utah through IFTA exceed the actual taxable gallons used in Utah, except that in no case will refunds be allowed for power take-off use that does not occur in Utah.

F. Undyed diesel fuel used on-highway for the purpose of idling a vehicle does not qualify for a refund on special fuel tax paid since the fuel is used in the operation of a motor vehicle.

G. Diesel fuel that is purchased exempt from the special fuel tax or for which the special fuel tax has been refunded is subject to sales and use tax, unless specifically exempted under the sales and use tax statutes.

R865-4D-3. User-Dealer's License Pursuant to Utah Code Ann. Section 59-13-302.

A. Prior to any sale or use of special fuel in this state each user-dealer shall apply for and obtain a special fuel user-dealer's license for each bulk plant or service station from which such special fuel is to be sold or used. Application for a special user-dealer's license shall be made on a form provided by the Tax Commission. Under the law the Tax Commission may require a user-dealer to furnish a bond. Upon receipt and approval of the application, the commission will issue the license. A special fuel user-dealer's license is valid only for the user-dealer in whose name issued and for the specific bulk plant or service station named on the license. The license shall remain in force and effect unless the holder of the license ceases to act as a user-dealer, or the Tax Commission for reasonable cause terminates the license at an earlier date.

B. Upon sale or discontinuance of the sale or distribution of special fuel as defined in this rule from a bulk plant or service station for which a license has been issued, the user-dealer shall return for cancellation the license issued for the bulk plant or service station.

R865-4D-5. Special Fuel Tax Entrance Permits Pursuant to Utah Code Ann. Section 59-13-303.

A. Any owner or operator of a qualified motor vehicle entering or traveling within the state of Utah must:

1. carry in the cab of the vehicle a special fuel permit or license pursuant to Utah Code Ann. Sections 59-13-303, 59-13-305, and 59-13-502, or

2. purchase a Special Fuel Tax Entrance Permit.

B. Special Fuel Tax Entrance Permits shall:

1. state the name and address of the registered owner of the vehicle,

2. identify the vehicle for which it is issued,

3. be valid until the expiration of 96 hours from the time of issuance or until the vehicle exits the state, whichever occurs first, and

4. cost $20.

C. A person who buys a Special Fuel Tax Entrance Permit for a motor vehicle is required to pay special fuel tax to the user-dealer on purchases of special fuel which are delivered into the vehicle's fuel supply tank.

D. A licensed or permit user having occasion to buy the Special Fuel Tax Entrance Permit is required to report and pay tax on miles traveled under such permit; no credit or refund is allowed on the tax report either for miles traveled under the permit or for dollars paid for the permit.

R865-4D-6. Invoices Pursuant to Utah Code Ann. Section 59-13-307.

A. Every user-dealer or retail dealer of special fuel who sells special fuel, other than propane, exempt from special fuel tax must at the time of each sale and delivery issue an invoice to the purchaser.

1. If requested, an invoice must also be issued to the purchaser of special fuel that pays the special fuel tax at the time of purchase. This invoice shall serve as evidence that the special fuel tax has been paid.

B. Invoices must be numbered consecutively, made in duplicate, and contain the following information:

1. name and address of seller;
2. place of sale;
3. date of sale;
4. name and address of purchaser;
5. fuel type;
6. number of gallons sold;
7. unit number or other vehicle identification if delivered into a motor vehicle;
8. type of container delivered into if not a motor vehicle;
9. invoice number; and
10. amount and type of state tax charged, if any.

C. The user-dealer must retain a copy of each special fuel tax exempt invoice and be able to account for each tax-exempt delivery made.

D. Every user-dealer or other retail dealer of propane who sells propane exempt from special fuel tax, but subject to sales tax, must at the time of each sale and delivery keep a record of the exempt sale. This record shall be in the form of an invoice or a log, and shall serve as evidence that the sale is exempt from special fuel tax.

1. If the record is in the form of an invoice, it shall contain the information required under B.

2. If the record is in the form of a log, it shall contain the following information:

a) name and address of the seller;
b) date of sale;
c) amount of propane sold; and
d) purchaser's name.

E. The burden of proving that a sale of special fuel is exempt shall be upon the person who makes the sale. In any case, if during an audit or at other times upon request of any member or agent of the Tax Commission, the user-dealer fails to produce an acceptable invoice or other acceptable evidence in support of the user-dealer's claim that a sale is exempt, the sale is considered taxable and the tax shall be payable by the user-dealer.

F. On an exempt sale of propane or other special fuels other than diesel fuel for which a valid special fuel tax exemption certificate is presented to the dealer as evidence of exemption, the invoice must contain the following information:

1. the make, year, and license number of the vehicle;
2. the name and address of the purchaser;
3. the number of gallons sold; and
4. the special fuel tax exemption certificate number.

G. Generally, a user-dealer or retail dealer of special fuel making sales of special fuel by means of an unattended, automated metering system activated by a card or key, or similar device, must charge special fuel tax on the sales made through the various meters on the system. The tax must be charged because without information to the contrary, it is assumed that the fuel sold through the various meters is delivered into the service tanks of motor vehicles.

1. As an exception to the general rule, the user-dealer may exempt a particular meter number assigned to a customer from the special fuel tax if the customer signs a statement to the effect that none of the fuel metered under that meter number will be delivered into a motor vehicle. The statement must be retained on file by the user-dealer to support the special fuel tax exempt nature of the sale.

2. The user-dealer must charge sales tax on special fuel tax exempt sales except in those cases where the user-dealer has received and retains on file a properly completed Sales and Use Tax Exemption Certificate exempting the transaction from sales tax.

R865-4D-18. Maintenance of Records Pursuant to Utah Code Ann. Sections 59-13-305(1) and 59-13-312.

A. The records and documents maintained pursuant to Section 59-13-312 must substantiate the amount of fuel purchased and the amount of fuel used in the state and claimed on the special fuel report required by Section 59-13-305(1).

B. Every user must maintain detailed mileage records and summaries for fleets traveling in Utah, detailed fuel purchase records, and bulk disbursement records. From this information, an accurate average miles per gallon (mpg) figure can be determined for use in computing fuel tax due. No fuel entering the fuel supply tank of a motor vehicle may be excluded from the mpg computation. Refer to Tax Commission rule R865-4D-2.

C. Individual vehicle mileage records (IVMRs) separating Utah miles from non-Utah miles must be maintained. Utah miles must be separated further into taxable Utah miles and nontaxable Utah miles. An adequate IVMR will contain the following information:

1. starting and ending dates of trip;
2. trip origin and destination;
3. route of travel, beginning and ending odometer or hubometer reading, or both;
4. total trip miles;
5. Utah miles;
6. fuel purchased or drawn from bulk storage for the vehicle; and
7. other appropriate information that identifies the record, such as unit number, fleet number, record number, driver's name, and name of the user or operator of the vehicle.

D. If the user fails to maintain or provide adequate records

from which the user's true liability can be determined, the Tax Commission shall, upon giving written notice, estimate the amount of liability due. Such estimate shall take into consideration any or all of the following:

1. any available records maintained and provided by the user;

2. historical filing information;

3. industry data;

4. a flat or standard average mpg figure.

a) The standard average mpg normally applied is four mpg for qualified motor vehicles and six miles per gallon for nonqualified motor vehicles.

E. Section 59-13-312(2) requires that the user be able to support credits claimed for tax-paid fuel with documents showing payment of the Utah special fuel tax. If documents and records showing payment of the Utah special fuel tax are not maintained or are not provided upon request, the credits will be disallowed.

R865-4D-19. Refund of Special Fuel Taxes Paid by Government Entities Pursuant to Utah Code Ann. Section 59-13-301.

A. Governmental entities entitled to a refund for special fuel taxes paid shall submit a completed Application for Government Motor Fuel and Special Fuel Tax Refund, form TC-114, to the commission.

B. A governmental entity shall retain the following records for each purchase of special fuel for which a refund of taxes paid is claimed:

1. name of the government entity making the purchase;

2. license plate number of the government vehicle for which the special fuel is purchased;

3. invoice date;

4. invoice number;

5. vendor;

6. vendor location;

7. product description;

8. number of gallons purchased; and

9. amount of state special fuel tax paid.

C. Original records supporting the refund claim must be maintained by the government entity for three years following the year of refund.

R865-4D-20. Exemption or Refund for Exported Undyed Diesel Fuel Pursuant to Utah Code Ann. Section 59-13-301.

A. If untaxed undyed diesel fuel is sold by a supplier directly out-of-state or is sold by a supplier to a purchaser that will deliver the fuel directly out-of-state, the fuel may be sold by the supplier exempt from the special fuel tax.

B. If untaxed undyed diesel fuel is sold tax exempt under A., the supplier shall report the fuel sold tax exempt on the export schedule of its special fuel supplier return.

C. If special fuel tax has been paid on undyed diesel fuel that is exported, the exporter may apply to the Tax Commission, on a monthly basis and on the export refund request form provided by the Tax Commission, for a refund of special fuel taxes paid.

D. Original records supporting the exemption or refund claim must be maintained by the entity claiming the exemption or refund for three years following the year of exemption or refund.

R865-4D-21. Consistent Basis for Diesel Fuel Reporting Pursuant to Utah Code Ann. Sections 59-13-301 and 59-13-307.

A. Definitions.

1. "Gross gallon" means the United States volumetric gallon with a liquid capacity of 231 cubic inches.

2. "Net gallon" means the gross metered gallon with temperature correction in volume to 60 degrees Fahrenheit.

B. All Utah licensed special fuel suppliers shall elect to calculate the tax liability on the Utah Special Fuel Supplier Tax Return on a consistent and strict gross gallon or net gallon basis. The election must be declared in writing and must be sent to the Tax Commission. The declared basis must be the exclusive basis used for 12 consecutive months. Any supplier failing to make an election will default to the gross gallon basis and must then report and pay the excise tax on that basis. Request for changes in the reporting basis must be submitted in writing and approved by the Tax Commission prior to any change in the reporting basis. Changes in basis may occur only on January 1 and must remain in effect 12 consecutive months.

C. All invoices, bills of lading, and special fuel tax returns must include both the gross and net gallon amounts. Conversion from gross to net must conform to the ASTM-API-IP Petroleum Measurement Tables.

D. All transactions, such as purchases, sales, or deductions, reported on the Special Fuel Supplier Tax Return must be reported on a consistent and exclusive basis. The taxpayer shall not alternate the two methods on any return or during any 12-month period.

E. This rule shall take effect July 1, 1997.

KEY: taxation, fuel, special fuel

February 24, 1998	**59-13-102**
Notice of Continuation March 21, 1997	**59-13-301**
	59-13-302
	59-13-303
	59-13-304
	59-13-305
	59-13-307
	59-13-312

R909. Transportation, Motor Carrier.
R909-1. Safety Regulations for Motor Carriers.
R909-1-1. Adoption of Federal Regulations.

A. Safety Regulations for Motor Carriers, 49 CFR Parts 350 through 399, as contained in the October 1, 1997 edition as printed by the Regulations Management Corporation Service, is incorporated by reference, except for parts 395.1(l), 395.1(m), 395.1(n) and 395.1(o). In addition, amendments to the same edition, which appear in the November 1, 1997, December 1, 1997, January 1, 1998, February 1, 1998, March 1, 1998 and April 1, 1998, are incorporated by reference within this rule. These requirements apply to all motor carrier(s) as defined in 49 CFR Part 390.5 engaged in Interstate and/or Intrastate Commerce.

B. In the instance of a driver who is used primarily in the transportation of construction materials and equipment, as defined under 395.2, to and from an active construction site, any period of 7 or 8 consecutive days may end with the beginning of any off-duty period of 36 or more successive hours.

KEY: trucks, transportation safety

June 16, 1998	**27-17-103**
Notice of Continuation March 31, 1997	**27-17-104**
	54-6-9
	63-49-4

R982. Workforce Services, Administration.
R982-401. JTPA Fiscal Procedures.
R982-401-1. Authority.

(1) This rule adopts and incorporates by reference:

(a) Title 35A, Chapter 5; "Training and Workforce Improvement Act".

(b) "Job Training Partnership Act" (JTPA).

(c) "Economic Dislocation and Worker Adjustment Assistance Act" (EDWAA).

(d) Public Law 100-379, August 4, 1988; "Worker Adjustment and Retraining Notification Act" (WARN).

(e) Federal regulations 20 CFR parts 626, 627, 628, 629, 630, and 631, 1990; which apply to programs under the Job Training Partnership Act and the Economic Dislocation and Worker Adjustment Assistance Act.

(f) Federal regulation 20 CFR part 639, 1990; which applies to the Worker Adjustment and Retraining Notification Act.

(2) These laws, rules, and federal regulations govern the activities of the Department relating to programs authorized by the Job Training Partnership Act. Unless otherwise specified in a rule subsection; rules R986-603, R986-601, R986-602, R986-603, R982-401, R982-501, and R994-600 are based on these laws and federal regulations.

R982-401-2. Fiscal Accountability: Funding Sources and Limitations.

(1) General Grantee Funding Sources - Title II of the Job Training Partnership Act consists of two major sub-title funding classifications, II-A Adult and Youth, and II-B Summer Youth Employment, each restricted by various cost limitations. The Funding Classification II-A Adult and Youth consist of five funding codes of which each has respective limitations.

Title III funds are allocated for the Economic Dislocation and Worker Adjustment Assistance Act (EDWAA).

(2) Cost Limitations - The following summarizes the various cost limitations by funding code to which the Grantee will be required to adhere.

(a) Title II-A 78 Percent Adult and Youth/Youth Limitations - Grantees shall ensure that no less than 40 percent of the funds available under this source shall be expended to provide services to eligible youth. (Section 203(b)(1) JTPA) However, this minimum expenditure may be reduced or increased by a local adjustment factor to the extent that the ratio of economically disadvantaged adults in the Grantee's areas differs from the ratio of such individuals to the national ratio. The adjustment factor will be supplied by the Grantor at the beginning of each planning period.

(i) Public Sector OJT Limitations - The Grantee shall ensure that Public Sector OJT expenditures are not made when the ratio of OJT participants in the public sector to participants in such training in the private sector exceed the ratio between civilian governmental employment and nongovernmental employment in that district. (Section 203(b)(4) JTPA)

(ii) Administration, Participant Support and Training Limitation - The Grantee shall insure that not more than 15 percent of the funds available for any fiscal year will be spent for the cost of administration. Therefore, not less than 85 percent will be expended for the costs of Training and Participant Support. (Section 629.39(a)(1) JTPA), and 629.39(a)(2) Regulations). Not more than 30 percent of the funds will be expended for administration and participant support costs. Therefore, not less than 70 percent will be expended for Training Costs. (Section 629.39(a) and 629.39(c) Regulations)

Grantee expenditures for Participant Support will consist of the following four general subcategories:

(A) 50 percent of any limited Work Experience expenditures.

(B) 100 percent of any nonlimited Work Experience expenditures.

(C) Supportive services.

(D) Needs-based payments necessary for individuals to participate in the program.

(iii) Employment Generating Activities are not allowed.

(iv) Waivers - The Grantor may approve expenditures made in excess of the 30 percent combined Administrative and Participant Cost limitation if the Grantee expresses the need for a waiver in its approved Job Training Plan. The Private Industry Council must initiate the request for the costs, and these must be due to one or more of the following conditions in the Grantee's district:

(A) An unemployment rate which exceeds the national average unemployment rate by at least 3 percentage points, and the ratio of current private employment to population in the Grantee's district is less than the national average of such ratio.

(B) The Job Training Plan for the Grantee proposes to serve a disproportionately high number of participants from groups requiring exceptional supportive service costs such as handicapped, offenders, and single heads of household with dependent children.

(C) The cost of providing necessary child care exceeds 1/2 of the costs of participant support.

(D) The costs of providing necessary transportation exceeds 1/3 of the costs of participant support.

(E) A substantial portion of the participants in activities are in training programs of a nine (9) months duration or more.

The approval of a 30 percent waiver will not allow the Grantee to exceed the 15 percent administrative cost limitation.

(b) Title II-A 3 Percent Older Workers.

(i) Administration, Participant Support and Training Limitations - The Grantee shall ensure that not more than 15 percent of the funds available for any fiscal year will be expended for the cost of administration. Therefore, not less than 85 percent will be expended for the costs of Training and Participant Support. (Section 629.39(a)(1) JTPA and 629.39(a)(2) Regulations)

(ii) Waivers - The Grantor may approve expenditures made in excess of the 30 percent combined Administrative and Participant Cost limitation if the Grantee expresses the need for a waiver in its approved Job Training Plan. The Private Industry Council must initiate the request for such excess cost. These costs must be due to one or more of the following conditions in the district:

(A) An unemployment rate which exceeds the national average unemployment rate by at least 3 percentage points, and the ratio of current private employment to population in the Grantee's district is less than the national average of such ratio.

(B) The Job Training Plan for the Grantee proposes to serve a disproportionately high number of participants from groups requiring exceptional supportive service costs such as handicapped, offenders, and single heads of household with dependent children.

(C) The cost of providing necessary child care exceeds 1/2 of the costs of participant support.

(D) The costs of providing necessary transportation exceeds 1/3 of the costs of participant support.

(E) A substantial portion of the participants in activities are in training programs of nine (9) months duration or more.

The approval of a waiver of the 30 percent will not allow the Grantee to exceed the 15 percent administrative cost limitation.

(iii) Public Sector OJT Limitations - The Grantee shall ensure Public Sector OJT expenditures are not made when the ratio of OJT participants in the public sector to participants in such training in the private sector exceed the ratio between civilian governmental employment and nongovernmental employment in that district. (Section 203(b)(4) JTPA)

(c) Title II-A Six Percent Incentive.

(i) Administration, Participant Support and Training Limitations -Grantees shall ensure that not more than 30 percent of the funds will be expended for the combination of administration and participant costs. Therefore, not less than 70 percent will be expended for training programs.

(ii) Waivers - Grantee waivers shall be the same as set forth under the section dealing with Title II-A, 78 percent Adult and Youth of these procedures.

(iii) Public Sector OJT Limitations - The Grantee shall ensure Public Sector OJT expenditures are not made when the ratio of OJT participants in the public sector to participants in such training in the private sector exceed the ratio between civilian governmental employment and nongovernmental employment in that district. (Section 203(b)(4) JTPA).

(d) Title II-A Six Percent Technical Assistance - Technical Assistance funds are excluded from the 15 percent Administrative Cost limitations, 85 percent Training limitation, and the 30/70 percent Participant Support and Training limitations.

(e) Title II-A Eight Percent Education - Title II-A, Eight Percent Education funds shall be used to provide financial assistance to State Education agencies for education and training. Not more than 20 percent of the available funds may be spent to facilitate a coordination of education and training services for eligible participants through cooperative agreements. These funds are excluded from JTPA cost limitations. (Section 629.34(b-1(2) and 629.39(d)(2) Regulations). The balance of the available funds, 80 percent, shall be used by the Grantee to provide services for eligible participants and have the following limitations:

(i) Administration, Participant Support, and Training Limitations - The Grantee shall ensure that no more than 15 percent of the funds available for any fiscal year will be expended for the cost of administration. Therefore, not less than 85 percent will be expended for the costs of training and participant support. (Section 629.39(a)(1) and 629.39(a)(2) Regulations).

(ii) Matching Requirement - The Grantee shall provide for the contribution from non-JTPA funding sources a total amount of funds equal to the amount provided by the Grantor.

(A) The matching contribution may consist of:

- Necessary and reasonable charges limited to allowable expenditures by an SDA to accomplish the objectives of the Eight Percent Education plan. Project costs may be cash or non-cash, such as depreciation and use charges for buildings and equipment.

- Cash donated to the SDA by non-federal entities.

- Services and real or personal property, or use thereof, donated by non-federal entities.

- Direct cost of employment and training services provided by State or local agencies, private non-profit organizations, educational institutions or private-for-profit employers, including OJT employer contributions.

- Unemployment Insurance costs (state funds expended during the first 26 weeks of the U.I. benefit period) provided to participants while enrolled in a training or retraining program for up to 50 percent of the matching requirement.

(B) In-kind contributions are considered non-cash contributions and will be accepted as part of the SDA's matching share when such contributions meet the following criteria:

- The SDA's records identify the matching source, program, activity and amount of the contribution.

- The contributions are not included as part of any other federally-assisted program.

- Volunteer work contributions are to be supported by source documents such as time sheets.

- Proper documentation is used in determining charges for materials, equipment, and land.

(C) The value of in-kind non-federal contributions are determined as follows:

- Volunteer Services - Each hour of volunteered service may be counted as a matching share if the service benefits the project and is an integral and necessary part of such project.

- Rates for volunteers should be consistent with rates paid for similar work in other activities in Utah or local governments. Where no similar skills exist in other activities of the state or local governments, rates used should be consistent with those paid for similar work in the labor market of each SDA's jurisdiction.

- Services donated by other employers shall be valued at the employee's regular rate of pay (exclusive of fringe benefits and overhead cost) provided such services are in the same skill for which the employee is normally paid.

(D) Materials/expendable personal property - Items as office supplies, maintenance supplies, or workshop and classroom supplies.

- Assessed values should be reasonable and should not exceed the cost of the materials to the donor or current market prices, whichever is less, at the time they are charged to the project.

(E) Equipment, buildings and land, or use of space/nonexpendable personal property.

- Total value of property donated may be claimed as matching if the purpose of the donation is to provide a facility.

- Depreciation or use charges may be made if the purpose of the charge is to support project activities. Fair rental charges

for land may be made if approved by the state.

- Equipment and buildings will be based on the donor's cost less depreciation or current market value of similar property, whichever is less.

- Land or use of space may not exceed the fair rental value of comparable space and should be established by an independent appraiser, and certified by the SDA.

- Loaned equipment may not exceed its fair rental value.

(F) Other charges.

- Necessary charges incurred specifically for and in direct benefit to the project may be accepted as matching share.

- Charges must be adequately supported and permissible under JTPA and be reasonable and properly justifiable.

(iii) Economically Disadvantaged Limitation - The Grantee shall expend not less than 75 percent of available funds for activities for economically disadvantaged individuals. (Section 123(c)(3) JTPA)

(f) State Single Head of Household Program - These funds must be used to train single heads of household who are receiving Temporary Assistance to Needy Families (TANF). Grantees will be allocated a maximum of 15% for program administration, a maximum of 10% for coordination activities and a minimum of 75% for training and support services.

(g) Title II-B Summer Youth and Employment - Administration and Training Limitations The Grantee shall ensure that not more than 15 percent of the funds available will be used for the costs of administration. Therefore, not less than 85 percent of the funds will be expended for the costs of Training and Participant Support limitation.

(h) Title III-EDWAA -

(i) Not more than 15 percent of the Governor's reserve funds expended for Title III dislocated workers assistance are used for administration.

(ii) Not more than 25 percent of the Governor's reserve funds expended for Title III dislocated works assistance are used for needs-related payments and supportive services.

(iii) No more than 40 percent of the Governor's reserve funds are reserved for state administration, technical assistance to substate areas, statewide or industrywide projects, rapid response activities, incentives for workers engaged in long-term training, needs-related payments, and discretionary grants to help substate areas confront unexpected, major layoffs.

(iv) Not less than 50 percent of the federal funds expended by a substate area for Title III dislocated workers assistance are used for retraining, unless waived by the Governor to not less than 30 percent.

(v) Not more than 15 percent of the total funds expended in a substate area (divided by 50 percent, or not less than 30 percent, if a waiver is granted by the Governor) are used for administration.

(vi) Not more than 25 percent of the total funds expended in a substate area (divided by 50 percent, or not less than 30 percent, if a waiver is granted by the Governor) are used for needs-related payments and supportive services. (Section 315 JTPA)

(vii) Title IV - Cost limitations are specified in the Solicitation of Grant Acceptance.

R982-401-3. Fiscal Accountability: Cash Management.

The Grantee shall have adequate written procedures established for forecasting cash needs, disbursements, reconciliation requirements, and cash control monitoring which will minimize excess cash on hand. This written procedure will be part of the Job Training Plan and will clearly identify and delineate their cash management policy and system. The Grantee shall limit cash requests for funds to actual and immediate cash needs. Immediate cash needs shall be defined as 3 days or less, of cash on hand. (This calculation comes from the "Schedule of OJTED Funds Received and Disbursed Form.) The subcontractor of the Grantee will maintain procedures for cash management which conform substantially to the standards of timing, necessity, and reasonableness imposed on the Grantee. Cash requests by funding codes shall not be more frequent than once a week. It is not permissible for Grantees to request cash monthly and disburse cash as a monthly advance to its recipients. Regardless of negotiations between the Grantor and Grantee on audit resolution, excess cash shall be returned to the Grantor within thirty days of the Grantee's termination of agreement. The Grantor will conduct ongoing monitoring of the cash system through desk and on-site reviews of cash projections and status. The Grantor may impose sanctions based upon the amount of cash maintained by the Grantee or its subcontractor in excess of reasonable cash needs, establish a debt for the amount of such excessive cash, and charge interest. If such cash abuses continue repeatedly, the Grantor may impose a cost reimbursement system.

R982-401-4. Fiscal Accountability: Indirect Costs and Cost Allocations.

The Grantee shall charge direct and indirect cost in accordance with Regulation Part 29-70.102 and 29-70.103 of CFR 41, which defines direct and indirect costs. Section 41 CFR 29-70.103 stipulates that indirect cost rates be established through the application of cost principles referenced in the Rules and Regulations of OMB Circular A-87, revised 1981, and by referencing the Grantee's cognizant agency plan.

The Grantee shall submit a Cost Allocation and/or an Indirect Cost Plan as part of the Job Training Plan. The Cost Plan shall be comprised of three subparts which shall each identify and delineate a fair and equitable distribution methodology of allocating allowable indirect costs.

The three parts of the plan are:

(1) An inter-title cost section which will allocate allowable indirect costs of Administration, Participant Support, and Training between various funding codes.

(2) An intra-title cost section which will allocate allowable indirect costs of Administration, Participant Support, and Training between various funding codes.

(3) An inter-agency section which will deal with the Grantee who is integrated with another agency and provides indirect costs to that agency. The submittal of the Indirect or Allocation Plan covering the expenditure relationship with their cognizant agency plan shall not excuse the Grantee from submitting parts 1 and 2 of this section.

R982-401-5. Fiscal Accountability: Cost Categories And Limitations.

(1) All costs are confined to those that are necessary and

reasonable for proper and efficient administration of the program (20 CFR 629.37)

(a) Necessary costs: A cost is necessary if it is essential to achieve the intent of the JTPA and/or the award; and it is allowable under Federal and State laws and regulations.

(b) Reasonable costs: A cost is reasonable if, in its nature or amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the costs. In determining the reasonableness of a given cost, consideration shall be given to:

(i) Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the organization of the performance of the award.

(ii) The restraints or requirements imposed by such factors as generally accepted sound business practices, arms length bargaining, Federal and State laws and regulations, and terms and conditions of the award.

(iii) Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the organization, its members, employees and clients, the public at large, and the Government.

(iv) Significant deviations from the established practices of the organization which may unjustifiably increase the award costs.

(2) Allowable costs are costs necessary and reasonable for proper and efficient administration of the grant program, be allocable thereto under these principles, and not be a general expense to carry out the overall responsibilities of the grantee. Costs charged to the program shall be consistent with those normally allowed in like circumstances in nonfederally sponsored activities, and within applicable State and local law, rules or regulations. Allocable costs are costs that comply with the Grantee's approved cost classification plan.

(3) Allocable costs are allocable to a particular cost category to the extent that benefits are received by such category. Any cost allocable to a particular grant or cost objective may not be shifted to other Federal grant programs to overcome fund deficiencies, avoid restrictions imposed by law or grant agreements, or for other reasons.

(4) Classification Description of Cost Categories (Title II).

(a) Administrative Costs - Administrative costs consist of all direct and indirect costs that are associated with management of the program. Indirect administrative costs represent the general management and support functions of an organization. Included are salaries and fringe benefits of personnel engaged in executive, fiscal, personnel, legal audit, data processing, communications, and similar functions. Related materials, supplies, equipment, office space costs, and staff training are also included.

Direct administrative costs include salaries and fringe benefits of direct program administrative positions such as program supervisors or analysts, labor market analysts, and project directors. All costs of clerical personnel, materials, supplies, equipment, space, utilities, and travel which are identifiable with these program administration positions shall be charged directly to administration. Some examples of direct administrative costs are:

- the salary of a clerical assistant to a program supervisor; that part of an instructor's salary representing time spent supervising other instructors;

- desk top supplies used by supervisors; and, consultant services under contract not involving direct training or services to participants.

(b) Participant Support.

(i) 50 percent of any Work Experience expenditures that meet the requirements of Section 108(b)(3), JTPA.

(ii) 100 percent of the cost of any Work Experience expenditures that do not meet the requirements of Section 108(b)(3), JTPA.

(iii) Support services includes services which are necessary to enable an individual, eligible under the program, but who cannot afford to pay for such services, to participate in a training program funded under JTPA.

Such supportive services may include transportation, health care, special services and materials for the handicapped, child care, meals, temporary shelter and financial counseling.

(iv) Needs-based payments necessary to participate in accordance with a locally developed formula or procedure.

(c) Training Costs:

(i) Training costs are those which are direct costs of the training, such as on-the-job training services, salaries, fringe benefits, equipment, and supplies of personnel engaged in providing training (including remedial education, job-related counseling for participant, employability assessment, and job development, job search assistance; including preparation for work and labor market orientation). The salaries and fringe benefits of individuals who both instruct and supervise other instructors shall be prorated among the training and administration cost categories based on time records or other verifiable means.

Examples:

-Books and other teaching aids; equipment and materials used in providing training to participants.

-Classroom space and utility costs; and tuition and entrance fees that represent instruction costs which have a direct and immediate impact on participants.

-Employability assessment to include screening for eligibility, initial determination as to whether the program can benefit the individual; completion of an employability development plan; the determination of the employment and training activities and services which would be appropriate for the applicant; the determination of the availability of an appropriate employment and training activity; a decision of selection; and dissemination of information on the program.

- Orientation to the world of work.

- Counseling - employment-related counseling and testing.

- Job development.

- Job search assistance - includes transition services, such as job seeking skills instruction, individualized job search plan, labor market information, and other special activities for transition to unsubsidized employment.

- Job referral and placement.

- Costs which are billed as a single unit charge do not have to be allocated or prorated among the several cost categories, but may be charged entirely to training when the agreement:

- Is for training;

- Is fixed unit price; and

- Stipulates that full payment for the full unit price will be

made only upon completion of training by a participant and placement of the participant into unsubsidized employment in the occupation trained for and at no less than the wage specified in the agreement.

(ii) Limitations on Costs.

(A) Costs resulting from violations or failure to comply with Federal, State or local laws and regulations are not allowable.

(B) Entertainment costs are not allowable.

(C) Insurance policies offering protection against debts established by the Federal Government are not allowable JTPA costs.

(D) Personal liability insurance for PIC members is allowable.

(E) The cost of legal expenses required in the administration of grant programs is allowable. Legal services furnished by the chief legal officer of a state or local government or staff solely for the purpose of discharging general responsibilities as a legal officer are unallowable. Legal expenses for the prosecution of claims against the federal government are unallowable.

(F) Benefits and working conditions for all individuals in subsidized jobs are at the same level and to the same extent as other employees working a similar length of time and doing the same type of work for that employer. (Section 143(a)(4) JTPA)

(G) Construction costs for training or participant support costs are allowable only to purchase equipment, materials, and supplies for use by participants, and to cover costs of a training program in a construction occupation. (CFR 20, 629.38(e)(7))

(H) Expenditures for duplicative facilities and services must be identified in the Job Training Plan. The Plan must establish that these alternative services or facilities would be more effective or more likely to achieve performance goals. (Section 143(b)(2) JTPA)

(I) No program shall impair existing contracts for services or collective bargaining agreements, except that no program under this Act, which would be inconsistent with the terms of a collective bargaining agreement shall be undertaken without the written concurrence of the labor organization and employer concerned. (Section 143(b)(2) JTPA)

(J) Funds are used only for activities which are in addition to those which would otherwise be available in the area in the absence of such funds. (Section 141(b) JTPA)

(K) Payments to employers for OJT during the period of training shall not average more than 50 percent of the wages paid by the employer to such participants. (Section 141(g) JTPA)

(L) Participant's wages in OJT are paid by the employer at the same rates, including periodic increases, as similarly situated employees or trainees, but in no event less than the higher of the rate specified in Section 6(a)(1) of the FLSA. (Section 142(a)(2) JTPA)

(M) Participant's wages in activities authorized under JTPA are to be paid wages which shall not be less than the highest of (A) the minimum wage under Section 6(a)(1) of the FLSA, (B) the minimum wage under the applicable State or local minimum wage law, or (C) the prevailing rates of pay for individuals employed in similar occupations by the same employer. (Section 142 (a)(3) JTPA)

(N) Funds obligated for any program year are to be expended no later than two years after the program year. (Section 161(b) JTPA)

(O) Funds are not spent for relocating establishments unless such relocation will not result in an increase in unemployment in the area of original location or in any other area. (Section 141(c) JTPA)

(P) Services to a substantial number of members of labor organizations are to be provided only after full consultation with such labor organization. (Section 306, JTPA)

(Q) Training is only for occupations for which there is a demand in the area served or in another area to which the participant is willing to relocate, and consideration given in occupations determined to be in sectors of the economy which have a high potential for sustained demand or growth. (Section 141(d)(1) JTPA)

(R) A trainee is not to receive payments for training activities in which the trainee fails to participate without good cause. (Section 142(a)(1) JTPA)

(S) Commercially available training packages are purchased at off-the-shelf prices and without requiring a breakdown of the cost components of the package, only if such packages are purchased competitively and include performance criteria. (Section 141(d)(3)(a) JTPA)

(T) Contributions to a reserve for a self-insurance program for injuries suffered by participants who are not covered by existing Worker's Compensation, are made only to the extent that the type and extent of coverage and the rates and premiums would be allowable and are chargeable to participant support or training as appropriate.

(U) Employment Generating activities are not allowed.

(5) Classification Description of Costs Categories (EDWAA) are listed in Section 631.13. All costs are to be allocated to the cost category to the extent that benefits are received in it. Allowable costs for activities under the EDWAA are to be charged against the following categories:

(a) Rapid response services as defined in EDWAA Section 314(b).

(b) Basic readjustment services as defined in EDWAA Section 314(c).

(c) Retraining services as defined in EDWAA Section 314(d).

(d) Needs-related payments as defined in EDWAA Section 314(e).

(e) Supportive services as defined in EDWAA Section 4(24).

(f) Administration is that portion of necessary and allowable costs which is not directly related to the provision of services and otherwise allocable to the other cost categories. It also includes activities conducted to coordinate and exchange information with other programs to assist eligible individuals, including coordination with the Federal-State unemployment compensation system and with Title II of the Trade Act.

R982-401-6. Fund Disbursement.

(1) System Overview - Disbursement of funds to the Grantee is accomplished through one of two systems, Electronic Fund Transfer (EFTS) or the State Finance Warrant System. The EFTS is used to disburse funds to the Grantee by funding

code and when summed, will equal the Grantee's Notice of Fund Availability. The State Finance Warrant System disburses funds to non-EFTS Grantees and State agencies.

(a) Electronic Fund Transfer Systems (EFTS) - The EFTS is a computer to computer link between the Federal Entities, the Grantor and the Grantees. This system provides the capability for automated receipt and processing of fund transfers utilizing the Treasury Financial Communications System (TFCS) and the Utah Commercial Bank system. The collection and deposit components of this system provides a viable cash management tool for the Grantor and the Grantee. Within the EFTS, the Grantor will utilize the State commercial bank and transfer funds to the commercial bank chosen by the Grantee. The Grantee shall initiate fund drawdowns against their Notice of Fund Availability (NFA) by submitting a Utah Request for Funds message (URF-01). This request will be evaluated against the Grantee's Accrued Budget and Cost Report, Bank Reconciliation Report, and NFA balance. If the request is rejected, the Grantor will transmit a rejection notice to the Grantee on the day following receipt with an explanation for the rejection.

(b) State Finance Warrant Request System - The Grantor will disburse funds under the Agreement to State Agencies and other Grantees without EFTS capabilities in accordance with State of Utah, Department of Finance procedures. These procedures are detailed in four Utah Financial Information and Resource Management (Utah/FIRMS) manuals. The manuals include:

(i) Forms and Procedures

(ii) Systems Reference

(iii) Chart of Accounts

(iv) Organizational Structure, and

(v) Management Guide and Reports.

All requests, receipts and disbursements completed under this system meet the cash management standards of the Grantee.

(2) Drawdowns - The Grantee will be provided with an NFA specifying fund availability by funding code. Fund requests submitted by the Grantee are limited by four constraints:

(a) NFA fund code balance

(b) cash on hand

(c) Cash Reconciliation report, and

(d) current budget.

The Grantor will review these four factors when determining the necessity, reasonableness and allowability of their request:

(i) Electronic Fund Transfer System (EFTS) - Grantees using the EFTS shall request cash drawdowns by funding code in whole dollars only and shall submit the request by 5:00 p.m. on Thursday. Following completion of the transmittal of the cash request message, the initiator will mail a signed and dated print of the transmitted request for verification to the Grantor. If the print is not received before the next Grantee request message is initiated, the new request will not be processed. The cash request message includes two general categories of data providing present cash status and requested cash.

(ii) State Finance Warrant Request System - The Grantee using the State Finance Warrant Request System shall submit cash drawdowns according to funding codes in whole dollars only. Cash request messages must be received by the Grantor by 5:00 pm on Thursday. By close of business on that day, the Grantor will have initiated a Warrant Request to State Finance based on the request of the Grantee. Warrant payment will be made to the Grantee directly from State Finance.

The cash request message, under Warrant Request System, will consist of two general categories of data providing present cash status and requested cash.

(3) Notice of Fund Availability.

(a) General Purpose - The Notice of Fund Availability (NFA) is a unilateral document issued by the Grantor after completion of the Grant Agreement and provides authority to the Grantee to expend funds. The NFA identifies changes and balances by funding code as a result of new obligations, cash drawdowns, and modifications. At the beginning of each new fiscal period, an original NFA will be issued to the Grantee obligating new funds.

(b) NFA Item Description:

(i) Identification

(A) Grant Period - the beginning and ending dates of the period during which services are provided in accordance with the Grant Agreement.

(B) Grant Number - is assigned by the Grantor.

(C) NFA Number - a four digit number assigned by the Grantor to identify the Grantee and the NFA sequence number.

(ii) Funding Summary

(A) Funding Code # - is assigned by the Grantor and will identify the funding source.

(B) Description - is required to identify the funding code.

(C) Prior Balance - on the first NFA this column will show "O" (zero) for all entries. On all subsequent NFAs, this column will show the previous NFA balance.

(D) Increase - will reflect dollar increases to the NFA.

(E) Decrease to NFA - will reflect all dollar decreases to the NFA by funding code.

(F) New Balance - is the current NFA Balance subsequent to all increases and decreases known at issuance date.

(G) Total Grantee Availability - this column will total all prior balances, increases, decreases, and new balances.

(iii) Notification - This box is checked at the end of the Grant period after the Grantee's final accrued expenditures and net disbursements are in balance with adjusted availability. It indicates that the Grantor accepts the amount as the final account settlement. The NFA date associated with this action, is the beginning of the record retention requirement for the Grant period.

(iv) Approved for the Grantor by: - the NFA will be signed by an authorized official. The date shown will be the effective date for changes in the availability of funds.

R982-401-7. Fiscal Reporting.

(1) Management Systems, Reporting and Recordkeeping

(a) The grantee is required to establish and maintain, on a current basis, an adequate accrual accounting system sufficient to permit preparation of required reports; permit the tracing of funds to a level expenditure adequate to establish that funds have not been used in violation of the restrictions on the used of such funds; and demonstrate compliance with the matching requirements. (Section 165(a)(1) JTPA)

(b) The financial management system and the participant data system shall provide federally required records and reports that are uniform in definition, accessible to authorized Federal and State staff, and verifiable for monitoring reporting, audit and evaluation purposes. (Section 165(a)(1) JTPA)

(2) Reporting requirements - The grantee shall maintain such records and submit reports, in the form, and containing the information, as the grantor requires regarding the performance of its programs. The required reports are:

(a) The Monthly Expenditure Report which reports the accrued monthly expenditures, by program, of the grantee. The due dates are: July and August reports are due the last working day of September. October, November, January, February, and April reports will be due the last working day of the following month. September December and March will be due the closest working day to the 5th of November, February and May respectively. The monthly expenditures for May and June will be reported on the year-end settlement package.

(b) The Monthly Schedule of OJTED Funds Received and Disbursed, which includes all funds received from the grantor, and all funds disbursed. The funds disbursed will be reported on a cash basis. This report will show the grantee's cash position and number of day of cash on hand. The due dates will be the same as the Monthly Expenditure Report.

(c) The Utah Request for Funds (URF), which is used to request weekly cash receipts from the grantor. This will record the grantee's cash request.

(d) The Year-end Financial Settlement Package, which includes reports to close-out lapsing programs and finalize year-end financial records of the grantee. The annual Settlement Package is due the to OJTED on the closest working day to August 7.

(e) The Authorized Signature Card, which certifies individuals authorized to sign the URF, the Monthly Expenditure Reports, the Monthly Schedule of OJTED Funds Received and Disbursed, and the Year-end Settlement Reports.

These reports allow the grantor to fulfill DOL reporting requirements as well as perform the necessary monitoring of the grantee.

KEY: training programs, employment, unemployed workers, unemployment
1992 35A-5
Notice of Continuation June 29, 1998

R982. Workforce Services, Administration.
R982-501. JTPA Procurement/Property Management Procedures.
R982-501-1. Authority.

(1) This rule adopts and incorporates by reference:

(a) Title 35A, Chapter 5; "Training and Workforce Improvement Act".

(b) "Job Training Partnership Act" (JTPA).

(c) "Economic Dislocation and Worker Adjustment Assistance Act" (EDWAA).

(d) Public Law 100-379, August 4, 1988; "Worker Adjustment and Retraining Notification Act" (WARN).

(e) Federal regulations 20 CFR parts 626, 627, 628, 629, 630, and 631, 1990; which apply to programs under the Job Training Partnership Act and the Economic Dislocation and Worker Adjustment Assistance Act.

(f) Federal regulation 20 CFR part 639, 1990; which applies to the Worker Adjustment and Retraining Notification Act.

(2) These laws, rules, and federal regulations govern the activities of the Department relating to programs authorized by the Job Training Partnership Act. Unless otherwise specified in a rule subsection; rules R986-603, R986-601, R986-602, R986-603, R982-401, R982-501, and R994-600 are based on these laws and federal regulations.

R982-501-2. Scope And Purpose.

(1) These procedures set forth the standards and guidelines required by the Grantor for establishing consistency and uniformity among the various entities engaged in property management and procurement for the Job Training Partnership Act (JTPA).

(2) Basic policies and procedures are incorporated herein to implement the provisions of: The Job Training Partnership Act - (JTPA), (Public Law 97-300), and Federal regulations promulgated as published in the Federal Register, Volume 48, No. 51, Tuesday, March 15, 1983, and other generally accepted principles concerning property management and procurement published in various Federal and State documents.

R982-501-3. Policy.

All property which is either purchased with JTPA funds and is totally owned or which is purchased on a "Lease Purchase Agreement" with JTPA funds, or is transferred into the JTPA Program is covered by these procedures. For the purposes of these procedures, "transferred" shall be defined as property which is inducted into the inventory of capital assets for which JTPA funds were not expended in order to acquire the item(s).

(1) Property Management.

(a) The SDA shall use all property, personal or real, purchased with JTPA funds or acquired through CETA transfer, or other transfer means into JTPA for purposes authorized under the JTPA Program.

(b) It shall be the responsibility of each SDA to maintain inventory records which adequately identify the fixed assets.

(c) All property records maintained must comply with the requirements of these procedures and are subject to audit by Federal, State, and independent auditors, and review by the Grantor.

(d) Each SDA shall ensure that all fixed assets acquired under JTPA, or transferred into the JTPA Program are tagged for identification and inventory control purposes.

(e) Each SDA shall take a 100% physical inventory every twelve months, and thirty (30) days prior to the end of the grant period. Any changes in the inventory during the period from the 30 day inventory to the close of the grant period shall be reflected in the year-end settlement.

(f) The SDA shall maintain an inventory control system which ensures adequate safeguards against property damages, loss, or theft. Immediately upon discovery of a loss of property where theft is suspected, the SDA shall notify the local law enforcement agency requesting an investigation. The SDA must also file an incident report with the Regional Office of the Department of Labor, as outlined in Subsection R986-602-13(a), and provide a copy to the Department of Workforce Services. After proper notification has been provided to the Grantor regarding any asset which has been misplaced, stolen, or otherwise lost, the Grantor will authorize the SDA, in writing, to remove the asset from the inventory. Items lost, misplaced, or stolen cannot be removed from the inventory at the discretion of the SDA.

(g) When JTPA acquired property is no longer needed or is no longer being used in a JTPA Program, title may be transferred to a non-JTPA program or sold to private parties or entities. In any case, the JTPA program will be reimbursed for the property item(s) at the fair market value. The proceeds from the sale of any property shall be used for purposes authorized under JTPA.

(h) Depreciation is allowed on JTPA acquired fixed assets.

(2) Procurement.

(a) Proposed procurements with a purchase price of $1,000.00 or more, for fixed asset items; and $10,000.00 or more, for capital improvements, shall be reviewed by the Grantee to determine consolidation of requirements for greater economy and to avoid unnecessary or duplication of purchases; and where appropriate, shall analyze lease purchase or other purchase alternatives to determine which method will provide the best use of JTPA funds.

(b) Each SDA shall use the type of procuring instrument, i.e., Sealed Bid, Request for Proposal, or Purchase Order, etc., which is appropriate to the Grantee organization for procurement, and which is in the best interest of the JTPA Program.

(c) A "cost-plus-a-percentage-of-cost" contract involving JTPA funds shall not be used.

(d) Sealed bid or proposals shall be used according to the specific needs and requirements of the procurement being made.

(e) The Grantee may use negotiated procurement procedures if competitive procurement is not feasible for one or more of the following reasons:

(i) Emergency purchases. Emergency purchase shall be defined as any purchase which is necessary as a result of a threat to public health, welfare, or safety under emergency conditions.

(ii) Sole source procurement. Sole source procurement shall be defined as the procurement of any goods or services which are only available from a single vendor.

(iii) Purchases where the aggregate cost is less than $8,000.00.

(iv) Procurements for professional services to be rendered by a university, college, or other educational institution.

(v) Procurement for which no acceptable bid is received after formal advertising or bid procedures are completed.

(vi) The procurement of highly perishable materials, or services where the price may be established by law.

(vii) Procurement of technical items or equipment requiring standardization and interchangeability with existing equipment.

(viii) Procurement for which negotiation is otherwise regulated by local law, rules, or regulations.

(f) Competition for all "negotiated" procurements shall be to the maximum extent practicable, and shall be documented in writing by no less than two bids whenever possible. Documentation shall be inclusive of such items as the date of the bid, the name of the bidding company, the individual providing the bid; along with the bid prices and the method of the bid.

(g) The Grantee shall only award contracts to responsible contractors (bidders) who appear to possess the ability to perform successfully under the terms and conditions of the proposed procurement "agreement."

(h) The first priority in selecting a bid for the delivery of services to a Grantee or participant in the JTPA Program shall be the effectiveness of the agency or organization in delivering comparable or related services based on demonstrated performance, (in terms of the likelihood of meeting performance goals, cost, and quality of services). In compliance with the Act, Sec. 107(d), and the Governor's Special Services Coordination Plan, "proper consideration shall be given to community based organizations as service providers."

(i) JTPA funds shall not be used to duplicate facilities or services available from federal, state, or local sources, unless it is demonstrated that alternative services or facilities would be more effective or more likely to achieve the Grantee's performance goals.

(j) Educational agencies shall be given first opportunity to provide educational services, unless it can be demonstrated that alternative agencies or organizations would be more effective, or have a greater potential to enhance the participant's continued occupational and career growth.

(k) The Grantee shall not procure any occupational skill training program unless the level of skills provided in the training are in accordance with guidelines established by the Private Industry Council.

(l) The following procurements will require prior Grantor approval:

(i) All capital improvements costing $10,000.00 or more. A 100% Performance Bond shall be required for all capital improvements. Supporting documents will be required.

(ii) The purchase of all motor vehicles regardless of value.

(3) Property Disposition.

(a) Cannibalization is not an acceptable form of property disposition under the JTPA Program, unless all other resources for disposition have been exhausted; and then only with written permission of the Grantor.

(b) Property items may be disposed of under the JTPA Program by sale of items to private entities or other governmental agencies at the fair market value on the date of disposition. Documentation of fair market value will be required.

R982-501-4. Fixed Asset and Inventory Control.

(1) Each Grantee or subcontractor shall designate a staff member who will be responsible for coordination of property management activities and to serve as the contact person with the Grantor. This person shall be thoroughly familiar with the requirements of these procedures and shall:

(a) Review all property requirements prior to anticipated purchases of "assets" with a unit acquisition cost of $1,000.00 or more; and any anticipated cost of capital improvements with an cost of $10,000.00.

(b) Acquire prior approval from the Grantor to purchase assets.

(c) Be responsible for inventory requirements.

(d) Maintain property records in accordance with the guidelines of these procedures.

(e) Mark or "tag" all JTPA fixed assets.

(2) When a fixed asset is purchased or is in a lease-purchase status, and the Grantee has received delivery, a Fixed Asset and Inventory Control Record shall be initiated.

(a) The Fixed Asset and Inventory Control Record is a three-part carbon-packed form, available from the grantor, which describes the asset. This form must be typewritten; hand-written copies will not be accepted. The purpose of the Inventory Control Record is to accurately record and maintain historical data relative to each capitalized asset.

(b) In conjunction with the Inventory Control Record, a pre-numbered Inventory Control Tag (unnumbered tags are also supplied) is necessary for the operation of the JTPA inventory control system.

(c) One Inventory Control Record and one Inventory Control Tag will be used for each asset. The location of the Inventory Control Tag will be affixed to only fixed, permanent portions of assets, using pre-numbered tags provided by the Grantor, assigned in sequence.

(d) Whenever possible, without damaging the asset, all prior Federal identification tags should be removed from the asset so that only the JTPA Inventory Control Tag may be affixed to the asset. If it is not possible to remove prior inventory control tags, paint over the prior tag with a similar colored paint. Do not, at any time, place the JTPA Inventory Control Tag over any other identification tag.

(e) Any inventory tag which is erroneously destroyed or damaged will be replaced with a "stenciled" type of tag as stated in above information in these instructions. The Grantee is requested to "stencil" all necessary unnumbered tags with a typewriter--do not hand write the tags.

(f) Upon completion of the Fixed Asset and Inventory Control Record, and the tagging of the fixed asset with the JTPA Inventory Control Tag, the white copy of the Inventory Record will be forwarded to the Grantor. The white copy is the officially recognized master copy and will remain in the possession of the Grantor.

(g) The two carbon copies will be retained by the Grantee. The Pink copy will be the Grantee master record and will not be altered or changed at any time other than to correct induction or exit errors. This copy will be the Grantee historical record of account for each Inventory Control Tag used or assigned, as

well as a master record of all assets purchased or otherwise acquired at the Grantee or subcontractor level.

(h) The yellow copy is a status change form. At any time at which the condition of the asset changes significantly, the location of the asset is changed, the asset is placed in storage or is otherwise not used, or is determined to be damaged beyond repair; a photographic copy of the yellow copy (Status Change Form) shall be made, and appropriate information corrected on the Status Change Form. The copy shall then be forwarded to the Grantor. The yellow copy will only be sent in original form to the grantor when the item is totally exited from the grantee. At that time, the Final Disposition section of the form will be completed and the yellow copy will be submitted to the Grantor.

(i) Any time an error of updated information is discovered, immediate action is required. The property officer at the Grantee Organization will notify the Grantor, in writing, of the necessary changes to correct the data.

(j) At any point that an Inventory Control Tag is be affixed to an asset that should never have been tagged, the following procedures must be followed:

(k) Prepare a Capital Asset and Inventory Control Record indicating the tag number assigned to the item.

(ii) Also indicate "Item," "Where located," the "Grantee Name," and type in large bold letters in the "Explanation" section VOIDED.

(iii) Distribution of the copies of the Inventory Record will be the same as stated above. However, both the white and yellow copies will be submitted to the Grantor at the same time.

(iv) A letter from an authorized individual at the Grantee Organization must accompany the completed white and yellow copy of the Inventory Control Record explaining in detail the reason the tag was voided.

KEY: training programs, employment, unemployed workers, unemployment
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Notice of Continuation June 29, 1998

R986. Workforce Services, Employment Development.
R986-220. Financial Assistance Tables.
R986-220-2. Financial Assistance and Current Need Standards.

TABLE
FINANCIAL ASSISTANCE AND CURRENT NEED STANDARDS
AS LISTED BELOW ARE EFFECTIVE 7/1/98

These figures are monthly

Household Size	Standard Financial Assistance Base	Adjusted Standard Needs Budget	185% of Standard Budget
1	$261	$329	$608
2	362	456	843
3	451	568	1,050
4	528	665	1,230
5	601	757	1,400
6	663	834	1,542
7	693	873	1,615
8	726	914	1,690
9	760	957	1,770
10	792	997	1,844
11	825	1,038	1,920
12	857	1,079	1,996
13	890	1,120	2,072
14	922	1,161	2,147
15	956	1,203	2,225
16	988	1,244	2,301

R986-220-4. Computation of Earned Income Disregards.

1. The department shall use the following calculation formula to determine the earned income disregard.

2. These steps are applied in the order listed :

a. A $100 earned income disregard is deducted from client's total gross earned income.

b. Next, 50% of the remainder is subtracted.

TABLE

EXAMPLE	
Gross Earnings	$819.00
Work Expense	-100.00
	719.00
Subtract 50% of the remainder	
$719.00/2 =	-359.50
Remainder equals the countable earned income amount	$359.50

KEY: financial assistance amount, income disregards*, need standard*
June 25, 1998 **35A-3-103**
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R986. Workforce Services, Employment Development.
R986-601. Authority and Definitions for Programs Authorized under JTPA.
R986-601-101. Authority.

(1) This rule adopts and incorporates by reference:

(a) Title 35A, Chapter 5; "Training and Workforce Improvement Act".

(b) "Job Training Partnership Act" (JTPA). P.L. 97-300, October 13, 1982, as amended in 1992.

(c) "Economic Dislocation and Worker Adjustment Assistance Act" (EDWAA). Enacted as Subtitle D of Title VI of the Omnibus Trade and Competitiveness Act of 1988. It amends portions of the Job Training Partnership Act and substitutes a completely new Title III. It was also amended in 1992.

(d) Public Law 100-379, August 4, 1988; "Worker Adjustment and Retraining Notification Act" (WARN).

(e) Federal regulations 20 CFR parts 626, 627, 628, 631, and 632, 1994; which apply to programs under the Job Training Partnership Act and the Economic Dislocation and Worker Adjustment Assistance Act.

(f) Federal regulation 20 CFR part 639, 1990; which applies to the Worker Adjustment and Retraining Notification Act.

(g) Standardized Program Information Reporting instructions and definitions published on page XXX of the Federal Register November 12, 1992.

(h) All Training and Employment Guidance Letters and Training and Employment Information Notices pertaining to JTPA disseminated by the U.S. Department of Labor since 1983.

(2) These laws, rules, and federal regulations govern the JTPA activities of the Utah Department of Workforce Services (DWS).

R986-601-102. General Definitions.

(1) This section provides Utah's Service Delivery Areas (SDAs), Substate Areas (SSAs), and subcontractors with a set of definitions for terms commonly used by DWS for recordkeeping and reporting.

(2) "Accounts payable, liabilities" means the amounts due and owing to others for goods and services received and performance accepted. This includes amounts administratively approved for payments of grants, contracts, and agreements.

(3) "Accrual basis" is the method of accounting where financial transactions are recorded in accounts as they take place. This means that as goods and services are purchased or used and as revenues are earned they are recorded even though the cash in such transactions is paid out or received at other dates.

(4) "Accrued expenditures" means the charges incurred by the recipient or subrecipient during a given period requiring provision of funds for:

(a) Goods and other tangible property received;

(b) Services performed by employees, contractors, subrecipients, and other payees; and

(c) Other amounts becoming owed under programs for which no current services or performance is required such as annuities, insurance claims, and other benefit payments.

(d) For simplicity, accruals are generally classified as Class A or Class B.

(i) Class A accruals are accrued expenditures which have been incurred during the accounting period for which some form of supporting documentation has been received, such as a paid payroll journal, invoice, or receiving report. They may have been recorded in the accounting system as an accounts payable, but have not been paid.

(ii) Class B accruals are accrued expenditures which have been incurred during the accounting period, but no documentation currently exits to support their cost. These expenditures must be estimated and included in the reports. An example would be a bill for the month's telephone services which is not normally received until the 15th of the following month.

(5) "Active status" is the status of a participant who has:

(a) Been determined eligible for participation at intake and

(b) Started receiving subsidized employment, training or services.

(c) Except for a dislocated worker who is receiving only basic readjustment services, a person who receives only outreach or intake and assessment services is not considered a participant and is not enrolled in an activity.

(6) "Administrative agency" refers to DWS.

(7) "Administrative directive" is the DWS system of disseminating the instructions that will govern operations under JTPA to the grantees.

(8) "Adult employability enhancement" is an outcome for adults, other than entered unsubsidized employment, which is recognized as enhancing long-term employability and contributing to the potential for a long-term increase in earnings and employment. Outcomes which meet this requirement are restricted to:

(a) Attained Adult Employability Skills (one or more), which requires the participant to demonstrate proficiency as defined by the local area in one or more of the following two skill areas: basic education skills and occupational skills in which the terminee was deficient at enrollment.

(b) Completed a Major Level of Education.

(c) Entered and was retained for at least 90 days in an occupational skills employment or training program, not funded under JTPA Title II, which builds upon and does not duplicate training received under Title II.

(9) "Advanced career training programs" provide a formal combination of OJT, institutional training, and internship assignments for career employment. These programs should prepare individuals for jobs beyond entry-level positions.

(10) "Advance payments" are advances of money made by DWS to an SDA under a statutory authorization and applicable regulations before there are disbursements required to carry out a project under the grant or agreement.

(11) "Agreement" refers to the Grant Agreement between the Grantor, DWS, and the SDA, the local JTPA grant recipient.

(12) "Allocation" is the distribution of funds among SDAs or eligible applicants according to formulas contained in JTPA or GCSSP.

(13) "Allotment" is a formal authorization to incur obligations within a specified amount and time period for a specific purpose, in accordance with an allocation,

appropriation or other statutory provision.

(14) "Alternative school" is a specialized, structured curriculum offered inside or outside of the public school system which may provide work/study and/or GED preparation. This is allowed as a full-time school for youth who attain and are terminated with an employability enhancement that requires them to either return to school or remain in school.

(15) "Assessment" means services designed to initially determine each participant's employability, aptitudes, abilities, and interests, through interviews, testing, and counseling to achieve the applicant's employment related goals.

(16) "Audit" is the examination of financial and program transactions, documents, records and reports to determine the propriety of operations, adequacy of records and controls, validity of reports and compliance with applicable laws and regulations.

(17) "Average Followup Weekly earnings"" (Adult and Welfare) is the sum of weekly earnings of terminees who were employed during the 13th week after termination divided by the number of terminees who completed a followup interview and were employed during the 13th week after termination. Earnings are pre-tax, and include bonuses, overtime and commissions.

(18) "Average Wage at Placement" (Older Worker and Title III) is the sum of the hourly wages for terminees who entered employment at termination, divided by the number of terminees. Wages are pre-tax, and include bonuses, overtime and commissions. For Title III, exclude the terminees retained or recalled by their layoff employer from the calculation.

(19) "Basic education skills, adult" includes remedial reading, writing, mathematics, or English for non-English speakers.

(20) "Basic education skills, youth" includes the above plus reading comprehension, math computation, writing, speaking, listening, problem solving, reasoning, and the capacity to use these skills in the workplace.

(21) "Basic Skills Deficient" means an individual who has English reading or computing skills at or below the 8th grade level on a generally accepted standardized test or a comparable score on a criterion-referenced test.

(22) "Basis of Accounting" refers to methods of accounting. They are:

(a) Under the "cash basis" of accounting, revenues and transfers in are not recorded in the accounts until cash is received, and expenditures and transfers out are recorded only when cash is disbursed.

(b) Under the "accrual basis" of accounting, most transactions are recorded when they occur, regardless of when cash is received or disbursed.

(23) "Bonding" is a protection or insurance which guarantees repayment for loss, damage, or failure to meet contractual obligations.

(24) "Budget" is a statement in financial terms of projected or expected operations of a program or accounting entity for a given period.

(25) "Called Back/Remained with Layoff Employer" means either the individual was called back to work by the same employer after having terminated employment, or the individual had been given a notice of layoff or termination which never occurred.

(26) "Capital improvements" are any modification, addition, restoration, or other improvements which:

(a) Are classified for accounting purposes as a fixed asset;

(b) Increases the usefulness, productivity, or serviceable life of an existing building, structure, or major item of equipment;

(c) The cost of which increases the recorded value of the existing building, structure, or major item of equipment.

(27) "Career exploration" is a program that helps a person explore various vocational and career options by matching aptitudes, abilities, interests, values, needs and limitations with educational facts and labor market conditions. The process requires accurate and timely occupational information which relates to available training opportunities.

(28) "Case Management" means the provision of a client-oriented approach in the delivery of services, designed to

(a) prepare and coordinate comprehensive employment plans, such as service strategies, for participant to ensure access to the necessary training and supportive service, using, where feasible, computer-based technologies; and

(b) provide job and career counseling during program participation and after job placement.

(29) "Cash contributions" are cash provided by the SDA or by third parties to the SDA as a share of the total costs of a Grant or Agreement.

(30) "Certifying officer" is a person authorized to assure the legality and correctness of specific documents.

(31) "Citizenship" means designation of an applicant as a citizen or an "eligible noncitizen" whose status permits permanent employment in the United States. "Eligible noncitizen" includes nationals of the United States, lawfully admitted permanent resident aliens, lawfully admitted refugees and parolees, and other individuals authorized by the attorney general to work in the United States.

(32) "Classroom Training, Educational" is academic training provided by PIC approved institutions, organizations, or individuals with the expectation of participants achieving pre-established levels of academic competency. This includes remedial education and basic academic skills training, literacy and bilingual training, and attainment of certificates of high school equivalency.

(33) "Classroom Training, Occupational Skills" Training provided by State of Utah approved institutions or organizations with the expectation of participants obtaining specific occupational skills sufficient for entry level, semi-skilled, or skilled employment.

(34) "Closeout" The process by which DWS determines that all required work of the Grant or Agreement has been completed or that the period of the Grant or Agreement has expired and that all applicable administrative actions have been completed by DWS.

(35) "Competitive Negotiation" A competitive procurement method which is used when the nature of services or products needed precludes development of a description or specifications which are sufficiently precise to enable all prospective suppliers to have an identical understanding of the requirement. Proposals submitted are subject to negotiation and change. Either a fixed-price or cost-reimbursement contract may be awarded.

(36) "Completed a Major Level of Education" The participant completed, during enrollment, a level of educational achievement which had not been reached at entry. Levels of educational achievement are secondary and postsecondary. Completion standards shall be governed by State standards and shall include a high school diploma, GED certificate or equivalent at the secondary level, and shall require a diploma or other written certification of completion at the postsecondary level. In order to take credit for this the completion must have resulted primarily from active JTPA program participation of at least 90 calendar days or 200 hours.

(37) "Completion Date" The date when all work under the Grant or Agreement is completed (if the Grant or Agreement stipulates completion of such work); or the date in the award document or any supplement or amendment thereto, on which DWS assistance ends. After that date, expenditures may not be charged against DWS's share of a Grant or Agreement except to satisfy obligations incurred on or before that date.

(38) "Concurrent Enrollment/Participant" A participant may be enrolled in more than one activity or title on the same record number, if the initially determined training objective will require concurrent participation. Concurrent enrollment may be in more than one activity in the same title, in more than one program/title (including non-JTPA funded programs), or a combination of multiple activities in the same title and multiple programs/titles. It may be either at the same time or sequentially. A separate activity record should be entered for each activity/title.

(39) "Contract" is a written agreement between two or more parties which is enforceable by law.

(40) "Cooperative Education" is a program that coordinates educational programs with work in the private sector.

(41) "Cost" is the financial measure of resources consumed in accomplishing a specified purpose such as performing a service, carrying out an activity, or completing a unit of work or a specific project.

(42) "Cost analysis" is the review and analysis of a contractor's or prospective contractor's submitted cost data to form an opinion as to whether the contractor's proposed costs represent what the contract should cost to perform. It includes:

(a) The verification of cost data;

(b) The necessity for specific costs;

(c) The allowability of contingencies;

(d) The reasonableness of estimated amounts; and

(e) The basis used for allocation of and appropriateness of particular items of overhead costs.

(43) "Cost Reimbursement Contract" A contract which establishes an estimation of total costs for the purpose of obligating funds and a ceiling that the contractor may not exceed (except at contractor risk) unless the awarding party agrees to amend the contract to provide additional funds. The contract provides for payment of all allowable costs to the extent prescribed in the contract.

(44) "Customized Training" Training designed for specific occupations in a new or expanded business or industry conducted with a commitment by an employer or group of employers to employ trainees upon successful completion of training. This training may be coupled with institutional or on-the-job training and is usually developed at the request of the employer.

(45) "Date Leaving This Activity" is the date at which the individual is not longer receiving employment, training or services (except post termination services) funded under this title/program.

(46) "Dependent" Any person for which, both currently and during the previous twelve months, the applicant has assumed at least 50% of his/her support and who can be claimed as a dependent on the applicant's tax return under Section 151(e) of the Internal Revenue Code of 1954.

(47) "Direct Costs" The costs which can be specifically identified with particular projects, activities or objectives. Such costs are incurred by an SDA and subcontractors directly responsible for administering JTPA programs. For JTPA purposes, direct costs consist of assigned and unassigned costs.

(a) Assigned Costs - Costs identified with a specific activity to be charged immediately to the known JTPA activity (examples: textbooks and instructor's salary cost incurred solely for one training activity).

(b) Unassigned Costs - Costs incurred for more than one JTPA activity or all JTPA activities (example: a supervisor's time that benefits two or more activities but the SDA/subcontractor is unable to identify how much time was spent for each activity). The supervisor's salary cost is therefore temporarily classified as unassigned costs to be distributed on a pro-rata basis to the other program activities.

(48) "Disallowed Cost" Charges to the Grant/contract which DWS determines to be unallowable for reimbursement.

(49) "Disbursements" The amount of payments, net of refunds, by check or cash, including advances.

(50) "Drawdown" The process to obtain cash (EFT or warrant request) by submitting a request for funds, URF-01, to DWS within the amount authorized by a NFA.

(51) "Early Intervention" is programs conducted with employers or labor organizations to provide early intervention to a layoff or closing. It could include any of the Basic Readjustment services. In Utah this is a Rapid Response function.

(52) "Early Readjustment Assistance: could include any of the Basic Readjustment Services that are appropriate for the still- employed worker. Many of the Basic Readjustment Services could, under the appropriate circumstances, be considered to be rapid response assistance.

(53) "Education to Work Transition Activities" Activities that are designed to provide individuals with information on how to deal with change and to understand work values and interests; and to help people identify transferable skills and develop the motivation necessary to succeed in a job.

Such a program may include job search assistance, job clubs, assessment, counseling, placement assistance, and follow-up.

(54) "Eligible Population" The estimated number of economically disadvantaged persons in the state and each SDA, and the percentage of various significant sub-groups in the total economically disadvantaged population, as published by DWS.

(55) "Employed" For Title II and Title III performance standards, employment must be 20 hours or more per week. Earnings and performance measures are computed only for

persons working at least 20 hours per week.

(b) Assessment - services designed to initially determine each participant's employability, aptitudes, abilities and interests, through interview, testing and counseling to achieve the applicant's employment related goals.

(56) "Encumbrances" Obligations in the form of purchase orders, contracts, or salary commitments which are chargeable to an appropriation and for which a part of the appropriation is reserved. They cease to be encumbrances when paid or when the actual liability is set up.

(57) "Entered Employment Rate" is the total number of individuals (in II-C, Older Worker and Title III) who entered employment at termination, divided by the total number of terminations. For Youth, exclude those who claimed a Returned to School or Remained in School employability enhancement. For Title III, exclude the terminees retained or recalled by their lay-off employer from the calculation.

(58) "Entered Non-Title II Training" The participant entered prior to termination from JTPA an occupational-skills employment/training program that is not funded by JTPA Title II and builds upon and does not duplicate training received under Title II. In order to take credit for this the participant must have been retained in that program for at least 90 calendar days or 200 hours or have received a certification of occupational skill attainment. During the period the participant is in non-Title II training, she/he may or may not have received JTPA services.

(59) "Entered Unsubsidized Employment" The category for participants who were terminated from the program and entered (through the efforts of the SDA/subcontractor or through their own efforts) full or part-time unsubsidized employment.

(For JTPA reporting purposes, this term includes entry into the Armed Forces, entry into employment in a registered apprenticeship program, and participants who became self-employed.)

(60) "Entrepreneurial Training" is the provision of services intended to enable participants to start their own businesses including any necessary equipment, supplies, books or teaching aids, as well as tuition and entrance fees or similar subcontracted services.

(61) "Expenditures" Amounts payable or accrued for goods received, work performed, or services rendered, regardless of when paid. An expenditure is recognized when the government has received and becomes liable for payment for goods and services. An expenditure should be recognized in the period in which the amount can be objectively measured, the goods or services have been delivered or received, and title has passed.

(62) "Exposure" An exposure consists of the application, activity, and termination phases of a participant's contact with JTPA. A participant may be enrolled in more than one activity or title in the same exposure. Each exposure is designated by a different Record Number. The enrollments may be either at the same time or sequential. A participant can have more than one exposure if they are terminated and later are reenrolled for further services. For example, a youth who participates in the Summer Youth Program in more than one year. If a participant has more than one record/exposure they will be counted as a separate individual for each exposure just as it they were two different people.

(63) "Family" is two or more persons related by blood, marriage, or decree of court, who are living in a single residence, and are included in one or more of the following categories:

(a) A husband, wife and dependent children.

(b) A parent or guardian and dependent children.

(c) A husband and wife.

(64) "Family Income" All income received from all sources by all members of the family for the six month period prior to application computed on an annual basis, except as specified in paragraphs (1) and (2) below. Family size shall be the maximum number of family members during the income determination period. When computing family income, income of a spouse and/or other family members shall be counted for the portion of the income determination period that the person was actually a part of the family unit of the applicant.

(a) for the purpose of determining eligibility, family income includes:

(i) Gross wages and salaries (before deductions);

(ii) Net farm and non-farm self-employment income (gross receipts minus operating expenses. A net loss cannot be used to offset other earned income; it should be recorded as '0'.); and

(iii)

(b) Family income does not include:

(i)

(iii) under a Federal, State or local welfare program.

(iv) Public assistance TANF

(viii) 25% of Social Security and Old Age Survivors' insurance benefit payments under Title II of the Social Security Act for the purpose of determining income eligibility for individuals 55 years of age or older for the 3% Older Worker program.

(ix) Educational financial assistance received under Title IV of the Higher Education Act as amended by section 479(B) of the HEA amendments of 1992. This includes Pell grants.

(x) Earned Income Credit (EIC) from the IRS.

(xi) Foster child care payments

(xii) Income received by a veteran while on active military duty in the Armed Forces (If the veteran applies for JTPA within six months of discharge)

(xiii) Benefit payments to veterans under 38 USC 4213, items 1 and 3

(65) "Family Status" describes the status of the applicant in his/her family, as defined by JTPA. These categories are:

Parent in a one-parent family

Parent in a two-parent family

Other family member. An individual who is living with his/her family of two or more persons and not indicated above

Not a family member. An individual who is not living with his/her family.

(66) "Followup--13 Week" The data collected by the SDAs thirteen weeks after the participant was terminated from JTPA. This contact and the data collected are DOL mandated.

(67) "Followup Response Rate" is the number of terminees with complete followup information divided by the total number of terminees included in the followup sample, expressed as a percentage.

(68) "Foster Child" A child who is not living with his/her parent or guardian and on whose behalf State or local government payments are made.

(69) "Grant" is an agreement which establishes a binding legal relationship between DWS and the SDA. It obligates DWS to an expenditure of funds by the SDA for the satisfactory performance of specified programs, services and activities.

(70) "Grantee" is the Service Delivery Area receiving JTPA funding from DWS through a Grant Agreement.

(71) "Grantor" is the Department of Workforce Services (DWS) which represents Utah.

(72) "Grant year" is an accounting period of 12 successive months beginning on the date the grant is executed.

(73) "Highest Grade Completed" is the highest school grade completed by an applicant

00 - no school grade completed

01-11 - number of elementary or secondary grades completed. Use 11 if 12 years were completed but the applicant is not a high school graduate or equivalent.

12 - high school graduate or equivalent, even if a high school graduate from another country which may be less than 12 years.

13-15 - If a high school graduate or equivalent, the number of school years completed including college, or full-time technical or vocational school

16 - Bachelor's degree or equivalent

17 - Fifth year of college, Master's degree (1-year program) or equivalent

18 - Sixth year of college or more, Master's degree(2-year program), Ph.D. Or equivalent.

(74) "Hold Status" is to be used when a. the participant is between training activities, and this period has been well documented in the ISS before the hold status begins. For instance, when the participant is going to be out of school for a semester but is planning on returning to school, hold status should be used. Contact with the participant must be maintained and documented during this period. S/he is not an active participant during this period and should not be left in active training status if the interruption exceeds 45 days. Hold status is NOT an applicant pool. Hold may be used when the participant is not currently receiving training or services in one of the tittles in which s/he is currently enrolled, or the participant has completed one concurrent activity and is still receiving training or services in another. The same termination is taken for all concurrent enrollments at the time of termination of the last activity. An exception is that Title II-B SYETP participants must be recorded as terminated with the leave reason appropriate at the end of SYETP completion, regardless of other training enrollments.

(75) "Inactive Status" begins when planned JTPA or SHH training or services are completed. A participant is entitled to up to 90 days in inactive status, during which no training or services are received. Services may be provided for up to six months after planned training is completed, as long as a service is received at least every 89 days. A participant must be terminated from the program six months after training is completed.

(76) "Incremental Funding" The funding of a Grant or Agreement in increments when an award is made prior to the necessary amount of funds becoming available to DWS. Awards are conditioned upon funds becoming available, and DWS assumes no legal liability beyond funds available at time of award until the grant officer gives the SDA written notice of availability of additional funds.

(77) "Indirect Costs" The costs incurred for the mutual benefit of several fund sources, objectives, activities or projects, and not specifically identifiable with a singular end product or service.

(78) "Individual with a Disability" is any individual who has a physical or mental disability which for such individual constitutes or results in a substantial handicap to employment.

(a) The term "substantial handicap to employment" means a severe chronic disability which:

(i) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

(ii) Is likely to continue indefinitely;

(iii) Results in substantial functional limitations in three or more of the following areas of major life activity:

(A) Self care,

(B) Receptive and expressive language,

(C) Learning,

(D) Mobility,

(E) Self direction,

(F) Capacity for independent living,

(G) Economic self-sufficiency; and

(iv) Reflects the need for a combination and sequence of special, interdisciplinary, or sequence of special, interdisciplinary, or generic care, treatment, or other services to be individually planned coordinated during the lifetime of such person or for an extended period of time.

(b) This definition includes disabled veterans for reporting purposes, but is not required to be used for program eligibility determination under JTPA Subsection 4(8)(E).

(79) "In-kind Contributions" Noncash contributions provided by the SDA or third parties as all or part of the SDAs matching share of a project when the SDA is required, by terms of the Grant or Agreement, to share in the costs of a project.

(80) "Instrumentalities of a State" Agencies, commissions, departments, or other State-level bodies created by the State to perform State functions. The term does not include the governments of the political subdivisions of a State, e.g., a county, city, or town.

(81) "Intake and Assessment" is the process of collecting personal data on individuals to determine program eligibility and preliminary suitability for services. The initial assessment process will identify and individual's skill levels. The objective assessment will further determine the skill levels and service needs of the participant, which shall include basic skills, occupational skills, prior work experience, employability, interest, aptitudes, and support services needs.

(82) "Invitation for Bids" A set of documents which includes a description of the product or service desired and all other information needed to enable a prospective contractor to submit a bid. The invitation for bids is the specific term applied to the solicitation used in Government contracts when the formal advertising procurement method is used.

(83) "Job Development" Development of jobs through individual employer contact for an individual or group of

individuals. Under Basic Readjustment, Job Development is employer outreach and activities including, but not limited to contacts with potential employers for the purpose of job placement.

(84) "Job Search Assistance" is planned activities and services which assist job seekers to seek, locate, apply for and obtain a job. It may include but is not limited to labor market information, telephone techniques, development of job seeking skills, job development, referral to job openings, and continual contact with the participant throughout the job seeking process.

(85) "Job Specific Skills" An adult employability enhancement and a youth employment competency. This includes:

(a) Primary Job Specific Skills that encompass the proficiency to perform actual tasks and technical functions required by certain occupational fields at entry, intermediate or advanced levels.

(b) Secondary Job Specific Skills that entail familiarity with and use of set-up procedures, safety measures, work-related terminology, record keeping and paperwork formats, tools, equipment and materials, and breakdown and clean-up routines.

(86) "Job Training Plan" (JTP) is the plan of an SDA for operating programs under JTPA.

(87) "Labor Force Status"

(a) "Employed" - An individual who, during the 7 consecutive days prior to application to a JTPA program, did any work at all:

(i) as a paid employee,

(ii) in his or her own business, profession or farm, or worked 15 hours or more as an unpaid worker in a enterprise operated by a member of the family; or

(iii) An individual who was not working but has a job or business from which he or she was temporarily absent because of illness, bad weather, vacation, labor-management dispute, or personal reasons, whether or not paid by the employer for time off, and whether or not seeking another job. (This term includes members of the Armed Forces on active duty, who have not been discharged or separated; participants in registered apprenticeship programs; and self-employed individuals.)

(b) "Unemployed" - An individual who did not work during the 7 consecutive days prior to application to a JTPA program, who has made specific efforts to find a job within the past 4 weeks prior to application, and who was available for work during the 7 consecutive days prior to application, except for temporary illness. Also those who did not work and were waiting to be called back to a job from which they had been laid off, or were waiting to report to a new wage or salary job scheduled to start within thirty days.

(c) "Not in Labor Force" - A civilian 14 years of age or over who did not work during the 7 consecutive days prior to application for a JTPA program and is not classified as employed or unemployed as defined above. This term includes persons who never worked at a full-time job lasting 2 weeks or longer and "discouraged workers" who have been unemployed for a substantial length of time and are no longer actively seeking employment.

(88) "Lacks Significant Work History" An individual who has not worked for the same employer for longer than three consecutive months in the two years prior to JTPA eligibility determination.

(89) "Limited English Language Proficiency" The inability of an applicant, whose native language is not English, to communicate in English, resulting in a job handicap or barrier to employment.

(90) "Limited Work Experience" (Single Head of Household) The State-funded Single Head of Household program has as one of its activities an internship program. This program is a work assignment designed to enhance the employability of participants who have never worked or who have been out of the labor market for an extended period of time. The work assignment may be in a public agency, a private non-profit organization, or a private profit making company. Participation in this activity is limited to 6 months duration.

(91) "Local Elected Official" The chief elected executive officer of a unit of general local government in a substate area.

(92) "Local Government" A local unit of government including specifically: a county, municipality, city, town, township, local public authority, district, intrastate district, council of government, sponsor group representative organization and other regional or interstate government entities, or any agency or instrumentality of a local government, exclusive of institutions of higher education, hospitals, and school districts.

(93) "Long-term Cash Assistance Recipient" An adult or youth listed on the welfare grant who had received cash payments under TANF (SSA Title IV) for any 36 or more of the 60 months prior to JTPA eligibility determination. The individual may or may not be receiving TANF payments at the time of eligibility determination.

(94) "Long-term Unemployed" Any individual who is unemployed at the time of eligibility determination and has been unemployed for 15 or more of the 26 weeks immediately prior to such determination and has limited opportunities for employment or reemployment in the same or a similar occupation in the area in which such individual resides, including any older individual who may have substantial barriers to employment by reason of age.

(95) "Migrant or Seasonal Worker" A member of a family which had one or more persons who, during the 24 months preceding application, worked at least 25 days in farm work or earned at least $400 in farm work and has been previously employed in farm work on a seasonal basis. Both migratory and nonmigratory farm workers are included, but supervisory or nonmigratory individuals who are full-time students or farm workers who are not "seasonal" as defined in the preceding sentence are not included.

(96) "Modification" Any written alteration of the Agreement to show changes in amount, terms or conditions, budget, or project period, scope of project, or other administrative, technical, or financial provisions. The changes may be accomplished by unilateral action of DWS in accordance with the Agreement or by mutual agreement of DWS and the SDA.

(97) "Negotiated Procurement" A procurement method (normally competitive) which is used when the nature of a product or service precludes the development of specifications or a precise description so that all prospective suppliers have an identical understanding of the requirement. Responses to

solicitations (proposals) are not opened publicly; contents are generally not revealed prior to award; and they may be changed following evaluation, discussion, and negotiation.

(98) "Nepotism" occurs when a person holding a position, for which compensation is paid out of funds received under the agreement, employs or appoints their father, mother, spouse, son, daughter, sister, brother, uncle, aunt, nephew, niece, first cousin, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, in or to a position for which the salary, wages, or other form of compensation is paid out of funds under the agreement.

(99) "NFA Balance" is the portion of the NFA, at a designated point in time, that has not been legally obligated for a specific purpose by the SDA.

(100) "Noncompetitive Negotiation" is negotiated procurement in which a proposal is solicited from only one source.

(101) "Nonexpendable Personal Property" Tangible personal property having a useful life of more than 1 year and an acquisition cost of $300 or more per unit. An SDA may use its own definition provided that such definition includes all tangible nonexpendable personal property covered by the above definition.

(102) "Notice of Fund Availability" (NFA), authorized in grant agreements, is the instrument used to issue obligational authority to grantees by sources of funding. Further detail is reflected to control subtitle funds. The NFA is issued on a weekly basis and show the amount of cash draw down weekly through the Electronic Funds Transfer (EFT) and NFA process, and the remaining cash available. The system insures that grantees will not overdraw their authority.

(103) "Notice of obligation of funds (NOO)" system is a control that assures that DWS will not overdraw its authority by recording the historical data of all Electronic Funds Transfer (EFT) and NFA processes.

(a) Obligations are amounts required to legally meet out resources. They include not only actual liabilities, but also unliquidated encumbrances.

(b) Unliquidated Obligations are:

(i) For reports prepared on a cash basis, they represent the amount of obligations incurred by the grantee that has not been paid.

(ii) For reports prepared on an accrual expenditure basis, they represent the amount of obligations incurred by the grantee for which an outlay or expenditure has not been recorded.

(c) The unobligated balance is the portion of the approved final annual plan that has not been obligated by the grantee.

(104) "Other Training" Title II.

(105) "Other Training Programs" for a Title III termination means the participant entered another occupational skills program as a result of being transferred to a program operated by another SSA, a program funded under another JTPA Title, or a program not funded by JTPA.

(106) "Outreach" An active effort on the part of SDA staff to encourage persons to avail themselves of JTPA program services. It includes the collection, publication, and dissemination of information about JTPA services such as counseling, employment, employment services, training, and other special program services. Outreach is directed toward the economically disadvantaged and other individuals eligible to receive JTPA training and support services.

(107) "Out Of Area Job Search" (Title III) includes the work associated with securing job openings outside the commuting area, such as identifying out of the area job opportunities, making arrangements for participants' travel to the associated interviews, and the travel itself. The "commuting area" is defined by each SSA. IRPs must document to appropriateness of, and need for, job search out of the SSA.

(108) "Participant" (Title II) is an individual who has been determined to be eligible to participate in and who is receiving services (except port-termination services authorized under sections 204(c)(4) and 264(d)(5) and followup services authorized under section 253(d)) under a program authorized by JTPA. Participation shall be deemed to commence on the first day, following eligibility determination, on which the participant began receiving subsidized employment, training, or other services provided under JTPA.

Except for a dislocated worker receiving only Basic Readjustment Services, a person who receives only outreach and/or intake and initial assessment services or postprogram followup is NOT considered a participant. If an individual receives concurrent employment, training and/or services under more than one title, they are to be considered participants in both titles for purposes of recording actual number of weeks participated, dollars expended, and other pertinent data.

(109) "Participant" (EDWAA) Any individual who has:

(a) been determined eligible for participation in one of the dislocated worker titles upon intake; and

(b) started receiving subsidized employment, training or services (except post-termination services) funded by the EDWAA.

An individual who receives ONLY the following services is NOT an EDWAA participant:

(a) outreach and/or intake and initial assessment services or postprogram followup, or

(b) rapid response assistance and information,

(110) "Personal Property" Property of any kind except real property. It may be tangible-having physical existence, or intangible-having no physical existence (e.g., patents and copyrights). Tangible property may be expendable or nonexpendable.

(111) "Pre-Apprenticeship Programs" Classroom and/or on-the-job training designed to prepare participants for entry into apprenticeship programs.

(112) "Pre-Employment Skills" Pre-employment skills include work of work awareness, labor market knowledge, occupational information, values clarification and personal understanding, career planning and decision making, and job search techniques (resumes, interviews, applications, and followup letters). They also encompass survival/daily living skills such as using the phone, telling time, shopping, renting an apartment, opening a bank account, and using public transportation.

(113) "Pre-Layoff Assistance" could include any of the Basic Readjustment services listed in this section that are appropriate for still-employed workers. Many of the Basic Readjustment Services could under the appropriate circumstances, be considered to be rapid response assistance

and their associated costs charged to the rapid response category rather than BRS.

(114) "Pregnant or Parenting Youth" is an individual under 22 years of age and who is pregnant, or a youth (male or female) who is providing custodial care for one or more dependents under age 18.

(115) "Procurement" The acquisition of property or services, including construction (through purchase orders, contracts, leases, or other means) which are needed by the SDA or subcontractors in carrying out projects under the Agreement.

(116) "Program" A planned activity for which a budget has been submitted and funds have been authorized for accomplishing specific objectives.

(117) "Program Year, PY" The twelve month period that the funds received are intended to be expended in. It starts on July 1 and ends the following June 30. For example, PY 88 began July 1, 1988 and ended on June 30, 1989.

(118) "Pro-rata" (Pro rate) A method used to distribute unassigned costs to the program activities by using percentages.

(119) "Real Property" is land, land improvement, structures and appurtenances thereto, excluding movable machinery.

(120) "Records" Documents of actions taken with respect to the Grant or Agreement including financial records, statistical records, and supporting documents.

(121) "Referral" The act of bringing to the attention of an employer, a local office, a training sponsor, or a supportive service agency, an individual (or group of individuals) who need jobs, training, or related supportive services.

(122) "Relocated Out of Area" (EDWAA) An outcome for an EDWAA participant who was provided with relocation assistance by JTPA, and placed in unsubsidized employment outside of the SDA where JTPA services were received

(123) "Relocation Assistance" (EDWAA) The activities necessary to arrange for a family to move to a new abode for the purpose of accepting long-duration employment. Activities may include, but are not limited to: the cost of actual transfer of goods and property, including mileage for the family's travel, emergency assistance, rent subsidies, and other supportive services.

(124) "Request for Proposal" (RFP) A set of documents which includes a description of the product or service desired to enable a prospective contractor to submit a proposal which includes information that procurement and technical personnel need to evaluate proposals submitted. The request for proposals is the specific term applied to the solicitation used in Government contracts when negotiated procedures are used.

(125) "Residence" An individual's principal dwelling or home. A mailing address alone is insufficient to determine residency; however, P.O. Box and R.F.D. numbers are acceptable in rural areas.

(126) "Reserve" An account which records a portion of the fund balance which must be segregated for some future use and which is, therefore, not available for further appropriation or expenditure.

(127) "Responsible Contractor" (Responsible Bidder) A contractor or prospective contractor who appears to possess the ability to perform successfully under the terms and conditions of a proposed procurement based on a review of such factors as a satisfactory record of past performance, integrity, and business ethics; and financial and technical resources or access to such resources.

(128) "Responsive" A bid or proposal complies, with respect to method and timeliness of submission and to substance of the bid or proposal, in all material respects, with the requirements of the invitation for bids or request for proposals. A minor irregularity in a bid or proposal which is deemed to be a matter of form rather than substance, the correction of which would not be prejudicial to other bidders, does not render a bid or proposal nonresponsive.

(129) "Retraining" (EDWAA) Programs designed to provide training to individuals who have been laid off due to a plant closure or other reduction in employment. Participants must be those who have little or no opportunity to be reemployed in their current occupation and must be trained in skills distinct from those possessed upon entering the program. Training may only be offered in high demand occupations.

(130) "Satisfactory Progress in School" One of the conditions that must be met by a participant who is terminated with credit for meeting the youth employability enhancement "Youth Remained in School" or "Youth Returned to School". Each SDA, in cooperation with the local school system, must develop a written policy which defines an individual standard of progress that each participant is required to meet. Such a standard should, at a minimum, include both a qualitative element of a participant's progress, (e.g., performance on a criterion referenced test or a grade point average) and a quantitative element (e.g., a time limit for completion of the program or course of study). This policy may provide for exceptional situations in which students who do not meet the standard of progress are nonetheless making satisfactory progress during a probationary period because of mitigating circumstances.

(131) "School Dropout" is an adult or youth who is not attending school full-time and has not received a high school diploma or a GED certificate.

(132) "Single Head of Household" A single, abandoned, separated, divorced or widowed individual who has responsibility for one or more dependent children under age 18.

(133) "Single Head of Household Program" is a State funded program to train single heads of household who:

(a) are receiving, or

(b) are displaced homemakers (defined as an individual who has not recently been in the labor force, but has worked in the home providing unpaid services for family members and for that reason has diminished marketable skills), or

(c) meet the local PIC defined criteria for this program (limited to 10% of available funds).

Funds may be used for training, support services (defined as for JTPA), administration (up to 15%), or coordination (up to 10%).

(134) "Subcontract" is a written contract between an SDA and a subcontractor.

(135) "Subcontractor" is any person, organization, or other entity which receives DWS funds via a written contract with an SDA.

(136) "Subsidized Employment" Employment created in the public sector and in private for profit or nonprofit

organizations which is financed by the SDAs program funds. Subsidized employment includes work experience. On-The-Job Training is a reportable training activity, rather than subsidized employment.

(137) "Substance Abuse" an individual abuses alcohol and/or other drugs, and the abuse results in dependency that constitutes or results in a substantial handicap to employment.

(138) "Support Services, Other" on the termination form , is any support service not previously defined provided to eligible individuals to enable them to participate in planned activities. Includes the provision of tools, equipment, and special work clothing. Include here individuals who had received a Pell or TRA grant within 12 months prior to initial participation in the JTPA program and for whom the grant coverage continues after participation in JTPA begins

(139) "Suspension" An action which temporarily stops State assistance under a grant/contract usually pending some type of corrective action.

(140) "Termination" The separation of a participant from JTPA who is no longer receiving employment, training, or services (except post-termination services) funded under that title.

(141) "Termination" The cancellation of Federal assistance prior to the stated date of completion.

(142) "Training Programs Operated by the Private Sector" Training programs that are operated by labor organizations or private sector employers using private sector facilities equipment, or personnel. Such training could be a combination of institutional skills training and on-the-job training.

(143) "Training Related Job" is any job deemed training-related per the SDA definition.

(144) "UI Claimant" Any individual who has filed a claim and has been determined monetarily eligible for benefit payments under one or more State or Federal unemployment insurance programs, and who has not exhausted benefit rights or whose benefit year has not ended and who has not exhausted his benefit rights.

(145) "UC Exhaustee" Any individual who has exhausted his/her unemployment compensation benefits (not including Federal Supplemental, additional State, or extended benefits) for which the applicant has been determined monetarily eligible.

(146) "Unsubsidized Employment" Employment not financed from funds provided under the Act.

(147) "Upgrading Programs" Programs for JTPA-eligible persons already in the work force, who are in need of supplemental training to maintain and/or advance in their current employment.

(148) "Veteran" is a person who

(i) served on active duty in the military service of the U.S. for a period of more than 180 days and who was discharged or released with other than a dishonorable discharge, or

(ii) was discharge or released from active duty because of a service-connected disability, or

(iii) was discharged as a member of a reserve component under an order to active duty, who served on active duty during a period of war or in a campaign or expedition for which a campaign badge is authorized and was discharged from duty with other than a dishonorable discharge.

(a) 'Disabled Veteran" is entitled to compensation for a disability under the Dept. Of Veterans' Affairs, or who was discharged or released from active duty because of a service-connected disability.

(b) 'Vietnam Era Veteran' is a veteran, any part of whose active military, naval or air service was during the Vietnam Era (August 5, 1964 through May 7, 1975).

(149) "Vocational Exploration" exposes individuals to the operation and types of jobs available in the private sector through observation of such jobs and instruction including, where appropriate, limited practical experience.

(150) "Ward of the Court" A youth under age 18 who, after a hearing, has been taken out of the family unit and has been placed in the custody of the Department of Human Services. The youth is generally placed in another family situation. If the youth has lived with his own family 50% or more of the time in the last six months, his family income must be included for those months for eligibility determination. If the youth has lived with his own family less than 50% of the time in the last six months, only his income is used.

(151) "Welfare Average Weekly Earnings at Followup" Total weekly earnings for all adult welfare respondents employed during the 13th full calendar week after termination, divided by the total number of adult welfare respondents employed at the time of followup. This has been a DOL performance standard since program year 1988.

(152) "Welfare Followup Employment Rate" The total number of adult welfare respondents who were employed at least 20 hours per week during the 13th full calendar week after termination, divided by the total number of adult welfare respondents. This has been a DOL performance standard since program year 1988.

(153) "Welfare Recipient" An individual who receives or whose family receives cash payments under TANF, General Assistance (State or local government), or the Refugee Assistance Act of 1980 (PL 96-212). For reporting and performance standards purposes, this term excludes recipients of SSI (SSA Title XVI) and Food Stamps.

(154) "Work Maturity Skills" This includes positive work habits, attitudes, and behavior such as punctuality, regular attendance, presenting a neat appearance, getting along and working well with others, exhibiting good conduct, following instructions and completing tasks, accepting constructive criticism from supervisors and co-workers, showing initiative and reliability, and assuming the responsibility involved in maintaining a job. This category also entails developing motivation and adaptability, obtaining effective coping and problem-solving skills, and acquiring an improved self image.

(155) "Youth at Risk of Dropping Out of School" Any individual between the ages of 14 and 21 who is enrolled in a secondary school, or an equivalent program (GED, for example), and who for any of the reasons listed below is in danger of dropping out of school. Documentation must be kept in the participant file for any condition causing a student to be considered at risk. An individual can be considered in danger of dropping out of school if he/she:

(a) Has a poor attendance record, with at least 20 absences/tardies in a semester;

(b) Functions two or more years behind grade level in math, reading, or writing;

(c) Has been identified by the educational system as having a learning disability;

(d) Is a parenting or pregnant teen;

(e) Has school- or medically-documented emotional behavior problems which may result in suspension (this includes but is not limited to substance abuse, immature behavior for grade level, or lack of social skills);

(f) Has medically documented health problems which can interfere with school attendance;

(g) Is enrolled in an alternative school or in an in-school program designed for the potential dropout;

(h) Is involved with the court system;

(i) Has a mental or physical disability;

(j) Has limited English language proficiency;

(k) Has significant family conditions (includes but not limited to divorce, single parent family, care of siblings, substance abuse, family illiteracy, abuse, neglect);

(l) Is homeless;

(m) Has a sibling who dropped out; or

(n) Has documentation from the school that the student is at risk of dropping out.

(156) "Youth Competencies" Two youth competencies count as a youth employability enhancement. They are youth skills in the following areas:

(a) Pre-employment/work maturity

(b) Basic education (youth)

(c) Job-specific skills

The necessary level of demonstrated proficiency in each area is defined by the PIC. Competency gains must have been achieved through program participation and be tracked through sufficiently developed systems that must include quantifiable learning objectives, related curricula/training modules, pre- and post-assessment, employability planning, documentation, and certification. The participant may attain these competencies regardless of the reason for termination.

(157) "Youth Employability Enhancement" An outcome for a youth, other than entered unsubsidized employment, which is recognized as enhancing long-term employability and contributing to the potential for long-term increase in earnings and employment. Outcomes which meet this requirement are restricted to:

(a) Attained PIC-Recognized Youth Employment Competencies (two or more)

(b) Returned to Full-Time School

(c) Remained in School

(d) Completed Major Level of Education

(e) Entered Non-Title II Training

(158) "Youth Employability Enhancement Rate" Total number of youth who attained one of the employability enhancements at termination, whether or not they also obtained a job, divided by the total number of youth who terminated. This is a DOL performance standard for program years 90-present.

(159) "Youth Entered Employment Rate" The total number of youth who entered employment at termination divided by the total number of youth who terminated, excluding those who remained in school or returned to school. This is a DOL performance standard for the program years 90-present.

(160) "Youth Remained in School" One of the Youth Employability Enhancement Terminations. In order to take credit for this the youth must:

(a) have been, at enrollment, attending school and was considered "at risk of dropping out of school", as defined by the Governor in consultation with the State Education Agency;

(b) have not received, at enrollment, a high school diploma or equivalent;

(c) have been retained in a full-time secondary school (e.g. junior high school, middle school, high school, or alternative school) for at least 120 days or one semester;

(d) for a youth age 16 to 21, have attained a PIC-approved Youth Employment Competency in Basic Skills or Job Specific Skills, or for a youth age 14 to 15, attained a PIC-approved Youth Employment Competency in Pre-Employment/Work Maturity or Basic Skills;

(e) be making satisfactory progress in school; and

(f) be remaining in school as a result of continuing, active participation in JTPA activities.

(161) "Youth Returned to School" One of the Youth Employability Enhancement Terminations. In order to take credit for this the youth must:

(a) have been, at enrollment, a dropout that had not obtained a high school diploma or equivalent;

(b) have returned to and was retained in a full-time secondary school (e.g. junior high school, middle school, high school, or alternative school) for at least 120 days or one semester;

(c) for a youth age 16 to 21, have attained a PIC-approved Youth Employment Competency in Basic Skills or Job Specific Skills, or for a youth age 14 to 15 attained a PIC-approved Youth Employment Competency in Pre-Employment/Work Maturity or Basic Skills;

(d) be making satisfactory progress in school; and have returned to school and is remaining in school as a result of continuing, active participation in JTPA activities.

KEY: economic development, training programs, employment, unemployed workers, unemployment
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R986. Workforce Services, Employment Development.
R986-602. General Administrative Provisions.
R986-602-101. Authority.

(1) This rule adopts and incorporates by reference:

(a) Title 55, Chapter 17; "Job Training Coordination Act".

(b) "Job Training Partnership Act" (JTPA).

(c) "Economic Dislocation and Worker Adjustment Assistance Act" (EDWAA).

(d) Public Law 100-379, August 4, 1988; "Worker Adjustment and Retraining Notification Act" (WARN).

(e) Federal regulations 20 CFR parts 626, 627, 628, 629, 630, and 631, 1990; which apply to programs under the Job Training Partnership Act and the Economic Dislocation and Worker Adjustment Assistance Act.

(f) Federal regulation 20 CFR part 639, 1990; which applies to the Worker Adjustment and Retraining Notification Act.

R986-602-102. Definitions.

(1) Terms used in this rule are defined in:

(a) The acts and CFR sections cited in R986-602-101.

(b) R986-601. Definitions.

(2) As used in this rule:

(a) "Agreement" means the grant agreement between the Department of Workforce Services (DWS) and:

(i) the local Job Training Partnership Act grant recipient,

(ii) the local Economic Dislocation And Worker Adjustment Assistance Act, or

(iii) either a public or private agency contracted to provide services to participants under either act.

R986-602-103. Administrative Sanctions.

(1) Administrative Sanctions apply when a JTPA administrative entity funded by DWS fails to comply with Federal and/or State laws, regulations, administrative rules, grants or contracts. Sanctions may apply to one, several, or all DWS JTPA programs.

(2) Four types of sanctions exist. Any of the following letters may be used depending on the severity of the condition.

(a) Letter of Administrative Concern is a warning detailing concern about the performance of the administrative entity.

(b) Letter of Cash Restriction is an action that restricts cash drawdowns immediately on a temporary basis.

(c) Letter of Funding Restriction is an action that restricts additional funding issued in the Notice of Fund Availability (NFA).

(d) Letter of Funding Suspension is an NFA action deobligating any or all funding from the NFA.

(3) After determining which sanction is necessary, the Director of the Employment Development Division (EDD) will:

(a) Notify the SDA Director by phone of the intent to send a sanction letter, and discuss the problem(s). The SDA may respond within five days, or immediately at the discretion of the director.

(b) If the terms of the phone call are not met, the sanction letter will be faxed to the administrative entity and the original sent by certified, return receipt mail.

(c) If the terms of the first letter are not met the director will fax a second sanction letter to the administrative entity and mail another certified, return requested original. Copies will be sent to the Private Industry Council and the chief elected official.

(d) The sanction letter(s) will describe the problematic condition(s), prescribe corrective action and a deadline, provide terms for lifting of sanctions and/reinstatement, and identify technical assistance available from the state.

R986-602-104. Audit Conduct and Reporting.

This section sets forth guidelines, based on the Office of Management and Budget (OMB) Circular Nos. A-128 and A-133, to be followed in the conduct and reporting of audits of DWS JTPA funds.

(1) Audit Standards - Audits shall be performed in accordance with generally accepted auditing standards and Governmental Auditing Standards ("Yellow Book") which are published by the Comptroller General of the United States. Among other requirements the "Yellow Book" requires:

(a) Auditors responsible for planning, directing, conducting, or reporting on government audits should complete, every 2 years, at least 80 hours of continuing education and training which contributes to the auditor's professional proficiency.

(b) Individuals responsible for planning, directing, conducting substantial portions of the field work, or reporting on the government audit should complete at least 24 of the 80 hours of continuing education and training in subjects directly related to the government environment and to government auditing.

(c) If the audited entity operates in a specific or unique environment (such as JTPA), auditors should receive training that is related to that environment.

Audit organizations conducting government audits should have an appropriate internal quality control system in place and participate in an external quality review program.

(2) Audit Requirements

(a) "State or local governments that receive federal financial assistance and provide $25,000 or more of it in a fiscal year to a subrecipient shall determine whether the subrecipient spent federal assistance funds provided in accordance with applicable laws and regulations" (OMB Circular A-128).

(b) Each Grantee/Subrecipient shall have an annual independent audit conducted in accordance with OMB Circular A-128 (governmental entities) or OMB Circular A-133 (nonprofit organizations).

(c) It is DWS's responsibility to ensure that all SDA audits are in compliance with DWS policies and the applicable OMB Circular. In turn, each SDA is to ensure that their subrecipients are audited in accordance with DWS policies and the applicable OMB Circular.

(d) Costs associated with audits not performed in accordance with OMB Circulars A-128 or A-133 are unallowable charges to DWS funded programs.

(3) Audit Notification - Each SDA shall upon contract approval provide written notification of the firm name, address, phone number and contact person selected to perform the SDA's annual audit. The SDA must notify DWS at least 15 days prior to the audit entrance conference, so that DWS officials, at their option, may elect to attend. A representative of DWS will

contact the selected audit firm to discuss results of monitoring reports, incident reports and other areas of concern to DWS. The auditor should consider these issues in planning and performing the audit.

(4) Illegal Acts or Irregularities

(a) If, through monitoring or incident reports received from the SDA, DWS suspects or becomes aware of illegal acts or irregularities DWS shall notify the U.S. DOL Office of Inspector General (OIG) in accordance with established policies and procedures. Should OIG choose not to investigate the matter, DWS may elect to expand monitoring procedures and/or notify the SDA's auditor. The SDA's auditor is required to consider the issue in planning and performing the annual audit. However, the auditor shall use his/her professional judgment in determining whether any additional audit procedures are necessary. DWS may contact the auditor regarding the auditors conclusions, if any.

(b) If, during the course of the audit, the auditor suspects or becomes aware of illegal acts or other irregularities, prompt notice should be given to management officials above the level of involvement. The management officials should promptly notify DWS.

(5) Subrecipient Audit Plan - Each SDA shall submit as part of their Title II-A Annual Plan a Subrecipient Audit Plan to DWS. If the SDA has no subrecipients, so state. DWS shall review the Audit Plan and approve it with the Annual Plan. The Annual Plan will be conditionally approved until all deficiencies in the Audit Plan are corrected. The SDA shall identify:

(a) All subrecipients in the current program year;

(b) Each subrecipient's fiscal year end; and

(c) Cognizant agency, as defined in OMB Circular A-128, paragraph 11, Cognizant Agency Responsibilities.

(6) Audit Report Submission

(a) SDA annual audit reports including management letters must be submitted to DWS within 180 days of the SDA's fiscal year end, except for Utah State Agencies, who have one year to complete audit, plus one month for submission of their report.

(b) SDA's shall establish policies and procedures which ensure that subrecipient audit reports are submitted to the SDA within 180 days of the subrecipient's fiscal year end, except for Utah State Agencies, who have one year to complete audit, plus one month for submission of their report.

(7) Audit Report Acceptance - Governmental Entities and Nonprofit Organizations: The audit resolution period shall begin upon receipt of the audit report. DWS will rely on the audit report review performed by the Utah Sate Auditor's Office for format and completeness. The audit report will not be considered complete without the Utah State Auditor's acceptance letter.

R986-602-105. Audit Resolution.

This section deals with DWS's procedures for resolution of audit findings. Each SDA shall adopt policies and procedures for resolution of subrecipient audits which, at a minimum, meet the requirements of this section. The audit resolution process must be completed within 180 days of receipt of the audit report.

(1) Initial Determination

Within thirty (30) days of receipt of an audit report, DWS will complete the following:

(a) Review all findings and questioned costs related to DWS funded programs (internal control weaknesses and findings of noncompliance).

(b) Determine whether the corrective action plan submitted with the audit report adequately addresses issues related to DWS funded programs.

(c) Make an initial determination regarding any questioned costs and the proposed corrective action plan.

(d) Notify the SDA by issuing an Initial Determination Letter.

(2) Informal Resolution - The SDA shall have a maximum of 120 days of the Initial Determination letter to informally resolve issues identified in the audit report. During this period the SDA may submit documents, provide additional pertinent information, or request technical assistance to resolve audit findings. Depending on the findings involved, DWS may elect to shorten the time for informal resolution.

(3) Corrective Action Verification

(a) Within 150 days of receipt of an audit report, DWS will verify that the SDA's corrective action plan has been implemented. Such verification may include an on-site review by DWS's audit resolution team; supplemental procedures performed by the SDA's auditors; or other actions deemed necessary by DWS officials. DWS may elect to have auditor verification in the next audit cycle.

(b) SDA's shall be notified in writing of the results of DWS's corrective action verification. Any deficiencies not corrected must be resolved within 180 days of receipt of the audit report or, when necessary, the SDA must obtain written approval from DWS for delayed implementation of the corrective action plan.

(4) Final Determination - DWS shall issue a Final Determination letter within 180 days of receipt of an approved audit report. The Final Determination will respond to issues raised in the initial determination, conclude on the SDA's implementation of the corrective action plan, and notify the SDA of debt related to questioned costs. The Final Determination letter shall also indicate repayment methods and appeal rights (see Section 3 for additional information).

(5) USDOL Resolution of Audit Findings

(a) USDOL has the right to reject DWS's resolution of SDA audit issues. USDOL may issue an initial determination letter to the SDA disallowing costs previously allowed by DWS (20 CFR 629.54(e)). The SDA should notify DWS upon receipt of a USDOL initial determination letter. DWS will, if requested, assist the SDA in informal resolution with USDOL.

(b) USDOL has 180 days from issuance of the initial determination for informal resolution before issuing a final determination. Any debt established by USDOL must be paid directly to USDOL. The SDA has the right to appeal a determination by USDOL, which imposes a sanction or corrective action to the Office of the Administrative Judge.

(6) DWS Resolution of Subrecipient Audit Findings

(a) Each SDA must submit with the annual fiscal settlement package, the "Subrecipient Audit Coverage Summary". The form includes an annual summary of SDA action on all subrecipient findings and questioned costs related to DWS funded programs.

(b) DWS has the authority to reject the SDA's resolution

of subrecipient audit findings. DWS may issue an initial determination letter directly to the subrecipient. In such cases the subrecipient shall be subject to DWS's audit resolution policies and procedures included herein.

R986-602-106. Audits: Debt Collection, Corrective Action, and Sanctions.

(1) Establishment of Debt

When DWS issues a Final Determination and disallows costs, a debt is established and payable within 25 days or on a date set by agreement. The Final Determination/Debt Collection Notification will establish the severity and classification of the misexpenditure, the method of repayment, and what actions/options must be followed by the recipient.

JTPA fund recipients must satisfy all disallowed costs to the Department of Labor (DOL). In debt collection situations involving Grantees or their Subrecipients the State JTPA Administrative Agency, DWS will first pursue disallowed costs through the Grantee. In accordance with the Act, all JTPA funded recipients will insure prompt, appropriate, and aggressive debt collection action by adhering to the following outlined items:

(a) When the unallowable expenditure of JTPA funds was due to any of the following, repayment must be made from nonfederal funds within 25 days and these amounts will not be available for reprogramming; such funds will revert to the U.S. Treasury:

(i) Willful disregard of JTPA requirements, gross negligence, or failure to observe accepted standards of administration (Section 164(e)1);

(ii) Incidents of fraud, malfeasance, misapplication of funds or other serious violations as defined in TEGL No. 6-84; or

(iii) Illegal acts or irregularities which are required to be reported in accordance with Paragraphs 11.b.(4) and 12. of OMB Circular A-128.

(b) Upon final Determination/Debt Collection Notification of a Grantee or Subrecipient may:

(i) Request a contested case hearing within 10 days as in accordance with 20 CFR 629.52(b) and Utah Administrative Rules. (Subrecipients would first request a hearing through the Grantee's hearing/grievance system.)

(ii) Request a waiver of liability from DWS in accordance with Section 164(e)(2), JTPA. It is the Governor's decision to decline the waiver request or endorse it and request approval from DOL (20 CFR 629.44(d)(2)). The mandated conditions of Section 164(e)(2) must be functioning at the level responsible for overseeing accountability. Therefore, the entity that directly incurred the misexpenditure is always liable for the disallowance and it is the State and Grantee oversight level that substantial compliance with the requirements of Section 164 must be met if a waiver is to be granted. DWS or the Grantee must adequately demonstrate that it has:

(c) Established and adhered to an appropriate system for the award and monitoring of contracts with subgrantees which contains acceptable standards for ensuring accountability;

(d) Entered into a written contract with such subgrantee (Grantee/Subrecipient) which established clear goals and obligations in unambiguous terms;

(e) Acted with due diligence to monitor the implementation of the subgrantee contract, including the carrying out of the appropriate monitoring activities (including audits) at reasonable intervals; and

(f) Taken prompt and appropriate corrective action upon becoming aware of any evidence of a violation of the JTPA or the federal regulations by such subgrantee.

(g) When JTPA misexpended funds are not due to items listed in item number one above, such funds may be deemed as reprogrammable. According to Training and Employment Guidance Letter No. 2-87, the following conditions must be met:

(i) Repayment of non-Federal funds to the recipient must first occur;

(ii) The funds shall be reprogrammed in the same JTPA program and title; and

(iii) This reprogramming must take place during the program year such funds were obligated by DOL or the two succeeding program years.

Funds meeting the above criteria will be equitably reprogrammed on a case by case basis, at the discretion of DWS. All documentation relating to the repayment of the liability and the reprogramming of the funds will be maintained at DWS.

(2) Debt Collection

Under the Job Training Partnership Act debt collection follows the fundamental principle that the responsibility for the proper use of resources flows with the funds. Utah's JTPA system imposes this responsibility on both the Grantee and Subrecipient level.

DWS shall determine which sanctions or corrective actions to impose and what actions are needed to collect the debt. The Final Determination letter will outline the collection action, expected method of repayment, interest requirements, and the proper notice of appeal rights. A description of the debt settlement methods follows:

All debts of $1,000 or less:

(a) Must be paid in cash, or

(b) May be reprogrammed according to item 3 above.

All debts of $1,000 or more, other than those listed in item 1 above will be settled by:

(a) "Cash" Cash repayment in a lump sum is the preferred debt settlement method and will require payment within 25 days of the date of the Final Determination or the date set by agreement between DWS and the debtor.

(b) "Cash Installment Payments" The Federal Claims Collection Standards limit cash installment repayment to 36 months and suggest repayments of shorter duration (from three to twelve months). Repayment duration may be negotiated based on the amount of the debt and the debtor's ability to pay the full amount in a lump sum payment. All repayments will be subject to current interest charges set at the current Federal Treasury interest rates.

(c) "Reprogramming" The repayment of a misexpenditure may be reprogrammed according to item 3 above.

(d) "Withholding" This repayment method involves withholding amounts owed the debtor for past services or other considerations already provided, in satisfaction of the debt owed. A reduction in services must not occur as a result of this

method. Withholding requires negotiation and written contract agreement with the debtor and such costs are subject to audit.

(e) "Stand-in Costs" This method is not actually a debt repayment but is an acceptable method of "erasing" the debt by charging allowable costs which were not originally charged to the grant. The debtor must identify allowable costs associated with the grant but not charged to the grant and substitute those identified/verifiable costs for the disallowed costs. This method requires negotiation and a written agreement with the debtor and such costs are subject to audits.

(f) "Future Services" This repayment method involves providing additional expenditures and/or services beyond the plan in the years subsequent to the grant year in which the debt was incurred. The debtor must identify the additional allowable expenditures/services. The method required negotiation and a written agreement with the debtor. DWS may require an audit of level of services provided.

(g) "Offset" This method of repayment will generally be used when demands/agreements for repayment have been made and not honored. This is not a negotiated repayment method. The Act allows DWS to use this option when DOL offsets a debt against the State and the debt resulted from a disallowed cost by the Grantee/Subrecipient. Payments to the recipients will be withheld and unexpended funds drawn back to collect the debt. Program expenditures and/or services cannot be reduced from their plan even though the grant amount has been reduced. DWS may require an audit of the level of services provided.

(3) Delinquent Debt

(a) DWS will issue up to three progressively stronger written demands for payment by the debtor at intervals of approximately 30 days (certified mail, return receipt requested). If payment is not received on or before the date set by the final demand letter, the debt shall be delinquent. DWS will then take appropriate action to satisfy the debt.

(b) DWS will suspend debt collection against the Grantee/Subrecipient while proceedings for either waiver request or contested case hearing are in effect. DWS will reinstate debt collection proceedings, as appropriate, upon outcome of the waiver request or contested case hearing.

(c) All debt payments are due on the date set and determined by the method of repayment. Interest is applicable to installment payments as well as any delinquent debts. In the event that the payment is not received when due, interest accrues at the current Federal Treasury rates from the date on which notice of the debt and interest requirement is first mailed or hand delivered to the debtor.

(d) A delinquent debt, in addition to the assessment of interest, will be assessed for additional administrative costs incurred in processing and handling of the debt. Also, a six (6) percent per annum penalty will be assess after the debt has been delinquent 90 days. Such penalty will accrue from the day the debt became delinquent. For debts under Administrative Review will accrue from the day the debt became delinquent. For debts under Administrative Review (hearing or waiver request) interest accrued shall not begin until the date when notice of the debt and interest requirements are provided in the first demand letter following the hearing or request.

(4) Corrective Action and Sanctions - Corrective action and/or sanctions may be imposed related to internal control structure and regulatory non-compliance findings included in audit or monitoring reports. Sanctions shall be imposed by the Governor. Relevant timeliness shall be set forth in the modification of the imposition of sanctions. Corrective actions shall have specific timeliness for implementation and include monitoring procedures to be used in ensuring compliance.

R986-602-107. Bonding.

Every individual authorized by the SDA, through designation or subcontract, to receive or deposit funds into proper accounts or to issue financial documents, checks or other instruments of payment for program costs shall be bonded to provide protection against loss. The fidelity bond shall be in an amount equal to the highest fund request received through the Utah Weekly Request for Funds, form URF-05, which is described in Subsection R982-401-104(5).

R986-602-108. Bonuses for Participants.

R986-602-109. Disclaimer.

The United States Department of Labor shall in no event be construed to be a party to the Agreement.

R986-602-110. Drug Free Workplace.

SDAs shall certify to DWS that they comply with drug free workplace regulations. Subcontractors shall certify to the SDAs that they comply with drug free workplace regulations. This applies to government agencies, private subcontractors, and schools; but does not apply to OJT employers.

R986-602-111. Financial Requirements.

(1) Each SDA is required to establish and maintain, on a current basis, adequate accounting systems in accordance with generally accepted principles and safeguards under:

(a) The JTPA;

(b) The EDWAA;

(c) Sections 20 CFR 626 through 631;

(d) Rule R982-401, Fiscal Procedures; and

(e) Utah Administrative Rules.

(2) Adequate staff must be provided:

(a) To maintain the financial system;

(b) To prepare the required reports; and

(c) To ensure compliance with applicable laws, regulations, administrative rules and guidelines.

(3) Minimum staff qualifications include a basic knowledge of accounting theory and procedures and the educational ability and experience to apply such knowledge.

R986-602-112. Fraud and Abuse.

(1) JTPA regulation 20 CFR 629.55, states, "All information and complaints involving fraud, abuse or other criminal activity shall be reported directly and immediately to the Secretary of Labor." Two mechanisms exist for reporting to the DOL known or suspected incidents of fraud, malfeasance, misapplication of funds, gross mismanagement, or other possible criminal activities in JTPA funded programs.

(a) The Incident Report, DOL Form DL 1-156, is used to notify the DOL Regional Administrator of all known or suspected cases of fraud and abuse.

(i) Incident Reports should provide information on fraudulent activities which may or may not be prosecuted. This reporting procedure is intended to supplement, but not supplant, other systems of oversight. All such incidents must be reported immediately even though the case may be subsequently handled by the governor, Grantees, or local law enforcement agencies. The original and one copy should be mailed within one working day of the discovery of the occurrence. Mail Incident Reports to:

Regional Administrator
U.S. Department of Labor
Employment and Training Administration
1999 Broadway, Suite 1780
Denver, Colorado 80202-5716

(ii) Each Grantee must establish procedures at the Grantee, subrecipient, and contractor levels to ensure that each fulfills their responsibility to forward Incident Reports within one working day of the discovery of the occurrence. Mail a courtesy copy of the report to DWS.

(b) The second mechanism is a toll-free hotline to the Office of the Inspector General for DOL. The hotline allows for anonymous reporting, if desired, to avoid reprisal. The hotline should not be used for resolving employee grievances, equal employment opportunity complaints, labor disputes, or other personal concerns. The hotline number is (800) 347-3756.

R986-602-113. Hold Harmless.

The Grantee shall hold and save DWS, representatives, associates and employees harmless from liability of any nature or kind, including costs and expenses, for or on account of any suit or damages sustained by any persons or property resulting in whole or part from the negligent performance or omission of any representative, associate or employee of the Grantee.

R986-602-114. I-9 Forms for Employment Eligibility.

If the Grantee pays a wage directly to a participant, the Grantee must have an I-9 form on file for that participant. Only one form need be on file if the participant receives training more than one time. If the Grantee reimburses wages or partial wages to an employer, the Grantee need not require the I-9 form for that participant.

R986-602-115. Nepotism.

Grantees are prohibited from allowing nepotism, as defined in Rule Subsection R986-601-102(98), to occur. However, JTPA service delivery area administrative staff cannot deny services to relatives. Denial of services to a relative who meets all JTPA eligibility requirements is unreasonable and discriminatory. Eligible relatives must have an equal opportunity to receive benefits and services to the same extent that other eligible recipients are receiving them.

R986-602-116. Obligation to Third Parties.

DWS will not be obligated to any party other than the Grantee which is signatory to the agreement.

R986-602-117. Performance.

(1) The Grantee shall maintain levels of performance consistent with the scope of the agreement.

(2) Performance below the relevant standards may constitute noncompliance with the agreement. DWS will provide the Grantee written notification of areas of noncompliance and require the Grantee to:

(a) Submit a written plan of corrective action, including the date on which corrective action will be completed; or

(b) Present justification for modification of the standard that noncompliance is based on.

R986-602-118. Political and Lobbying Activities.

(1) Funds, materials, property or services provided, directly or indirectly, under the agreement shall not be used for the conduct of any partisan political activity, or to further the election or defeat of any candidate for public office. The Grantee agrees to comply with the provisions of the Hatch Act, which limits the political activity of certain state and local government employees.

(2) The Grantee certifies that federally appropriated funds shall not be paid to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, or an employee of a member of congress in connection with:

(a) The awarding of any federal contract or grant;

(b) The making of any federal loan;

(c) The entering into of any cooperative agreement; and

(d) The extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

(3) Certification language regarding lobbying activities is required in the award documents for all:

(a) Subcontracts;

(b) Subgrants; and

(c) Contracts under grants, loans, and cooperative agreements.

R986-602-119. Private Industry Council Appointments.

As the Chief Elected Official(s) appoint people to fill vacant or newly created positions on a PIC, appointments must meet the requirements of JTPA and must consider recommendations made by the Governor and the Job Training Coordinating Council. JTPA Section 102 outlines how Private Industry Councils must be established. The same procedures must be followed for new appointments to a PIC. The Act states that PIC members must be selected from people nominated by appropriate organizations. Once a nomination list has been developed for a PIC membership category (e.g., the private sector), the SDA may use the same list for subsequent appointments to that category during the same program year. General purpose business organizations (GPBOs), as defined by JTPA, will coordinate the development of a nominations list for private sector PIC members. If the GPBOs refuse to accept nominations from other business organizations, an SDA may request nominations directly from all business organizations.

(1) The Governor and the Job Training Coordinating Council recommend the following:

(a) Both a secondary and post-secondary vocational education representative should be appointed to each PIC to represent education agencies. A person from the area vocational center can be considered either a secondary or post-secondary

representative.

(b) The community-based organizations appointed to a PIC should have a recognized record of advocacy for the population to be served.

(c) The "rehabilitation agency" position should be filled by a representative of the Division of Vocational Rehabilitation.

(d) A representative of the Department of Human Services should be include on each PIC.

(e) The Act requires the private sector representation constitute a majority of the membership of the PIC and must also be owners of business concerns, chief executive officers or chief operating officers, or other private sector representatives who have substantial management or policy responsibility. It is recommended that non-private sector appointees have comparable management or policy responsibilities.

(f) PIC appointments should be made with full dialogue among all elected officials, educational agencies and other interested entities. This can be accomplished by providing an open selection procedure through which all interested parties can nominate individuals for PIC membership.

(g) Special efforts should be made to actively seek nominations and appointments of women and minorities on each PIC.

(2) The Governor must certify that PIC appointments meet the outlined requirements. Service Delivery Areas must submit the following:

(a) Name of the SDA submitting the information.

(b) Name, official title, and signature(s) of the Chief Elected Official(s) making the PIC appointment(s).

(c) Explain how nominations for the position(s) were requested. List all groups contacted. List nominations by nominating group.

(d) Explain how private sector appointments reasonably represent the industrial and demographic composition of the business community, including small and minority business. Also explain how the appointments, other than the private sector representatives, reflect the demographic composition of the SDA, including minority and female appointees as appropriate.

(e) For each appointment list:

(i) Name of appointee (note if female or minority).

(ii) Business address and phone.

(iii) Organizational affiliation. Identify those which meet the small business definition.

(iv) Position within the organization.

(v) Nominating organization.

(vi) Term of appointment.

(f) Submit a current PIC membership list with certification request for a review of overall PIC membership compliance.

R986-602-120. Rights and Remedies Not Waived.

In no event shall any payment by DWS constitute or be construed by the SDA to be a waiver, breach of agreement, or default which may then exist on the part of the SDA. The making of any such payment, when any such breach or default exists, shall in no way impair or prejudice any right or remedy available to DWS with respect to such breach or default.

R986-602-121. Severability of Provisions.

In the event that any provision of the agreement is held invalid, the remainder of the agreement shall not be effected, if it continues to conform to the terms and requirements of applicable law, federal regulations, and state rules.

R986-602-122. Selective Service Registration.

The following steps should be followed when determining Selective Service status:

(1)A. For males born after December 31, 1959, who are at least 18 but less than 26, verify Selective Service Registration with:

(a) A registration card.

(b) A "Letter of Acknowledgment" (SSS Form No. 3-A)

(c) A "Change of Information Letter" (SSS Form No. 3-B)

(d) A "Verification Letter" (SSS Form No. 3-V)

SSS mails these forms only to people who are registered with the SSS.

(e) If a person has registered with SSS but cannot produce proof of registration the intake worker can get immediate verification by calling the SSS (708-688-6888). Provide the individual's full name, Social Security number and date of birth. Documentation of the call and registration number should be noted in the participant file.

(f) If a person has not registered or cannot produce proof of registration, the applicant should complete a registration form (SSS Form No. 1). The SSS will handle duplicate submissions for those persons already registered.

(2) For males 26 years of age and older, and born on or after January 1, 1960:

(a) Verify SSS Registration.

(b) If the applicant has not complied with SSS registration requirements, determine if:

(i) He has received an honorable discharge from the military (keep a copy in the participant file); or

(ii) He has an obvious disability that would permanently disqualify him from military service. (Be sure that the disability would disqualify him and note in the participant file.)

(c) If the applicant has not complied, has not received an honorable discharge from the military or does not have an obvious disability the would disqualify him from the military, the following procedure must be followed.

(d) The applicant should request a "Determination of Whether an Applicant Knowingly and Willfully Failed to Register" from the SSS. The applicant should send the following information:

(i) Applicant's Name

(ii) Current Address

(iii) Date of Birth

(iv) Social Security Number (optional, for like names)

(v) State the applicant is requesting an advisory opinion under the Military Selective Service Act, Section 3; and

(vi) Documentation for the reasons he did not register, to: The Office of General Counsel, Selective Service System, National Headquarters, Washington, DC 20435

(3) JTPA staff are not responsible for offering advice to individuals when obtaining a statement of the reasons for not registering for the draft. SSS will respond with an advisory opinion within 30 days. If the SSS determines the applicant did knowingly and willfully fail to comply with the Military Selective Service Act, he will be ineligible for JTPA services.

If the SSS does not make a determination of wilfully failing to comply, the SDA may be able to make the decision to serve or not.

R986-602-123. Ten Percent Window Eligibility For Title II-A and II-C, and Twenty-Five Percent Window Eligibility, Eight Percent Education Set-aside Program.

After reasonable attempts to document barriers to employment have been made, a self-certification of the employment barrier may be accepted. The self-certification must be signed by the participant and placed in their participant file. Self-certification applies to employment barriers only. Documentation is required for all other applicable eligibility criteria.

participants served under the 25% window eligibility of the 8% education set-aside shall be a member of one of the following groups:

(a) Non-economically disadvantaged people with barriers whose income has been verified and documented. The barriers can be one or more of those listed in Section 203 or 263 of the Act, or those defined in the SDA's approved plan of service, or

(b) Dislocated workers, who have been verified and documented;

After making all reasonable attempts to document barriers to employment, a self-certification of barriers, signed by the participant and placed in the participant record will be acceptable. Self-certification applies to barriers only, documentation will be required on all other eligibility criteria.

(3) Priority for the 8% program should be given to those participants residing within the SDA boundaries. However, SDAs may certify eligible participants who reside in an adjacent SDA for the 8% Set-aside program.

R986-602-124. Verbal Agreements or Interpretations.

(1) Verbal agreements or interpretations from any employee of DWS shall not affect or modify any of the terms or obligations contained in the agreement, the JTPA, the EDWAA, federal regulations, or Utah rules. They are not binding upon DWS.

(2) If an SDA is in doubt about the meaning of any part of the agreement, the JTPA, the EDWAA, federal regulations, or Utah rules; a written request for interpretation shall be submitted to the EDD Director. A written response will be sent to the SDA within ten working days of receipt of the request. The written interpretation is considered a clarification of the agreement, the JTPA, the EDWAA, federal regulation, or Utah rule. It is binding upon the agencies involved.

On the Job Training

(1) OJT contracts may not be written for trainees who are recruited during new employee orientations if they have already been hired.

(2) An OJT contract may not be written with the participant's current or previous employer in the same, a similar, or an upgraded job in the same career path. If conditions for eligibility and participation are met, there must be a demonstrable difference between the job and skill requirements of the upgraded job and those or the current or prior job. JTPA may not unnecessarily subsidize an employer's normal workforce training expenses.

(3) Participants may not be trained or employed in any religious or political activities.

(4) Persons with immediate family members employed in an administrative capacity with the employer may be referred for OJT with that employer IF: (a). The currently employed family member will not supervise the trainee or sign timesheets or paychecks for the trainee, (b) The currently employed family member does not own the company or an interest in it, and (c), the currently employed family member does not in any way benefit from the participant's training.

(5). No more than 25 % of the employer's workforce may be on OJT at one time. Employers with four or less employees may have one OJT contract at a time. Exceptions may be made by the SDA director if supporting documentation is retained, including assurance of adequate training and supervision.

(6) For the purpose of enforcing Section 141 (g) (4) of the Act, long-term employment means a minimum of six months. The long-term retention rate must be at least 80%. If the employer has had only two or three trainees, these trainees must have been retained for additional OJTs to be written. The SDA director may approve OJTs for an employer with a lower retention ate, with justification kept in the contract file.

(7) If participants are terminated by the employer without cause for other than business reasons, they may not be replaced with other OJT participants. Employers should not be penalized for a trainee's personal decisions or irresponsible behavior, or for unforeseeable changes in business conditions. Employers should not be penalized for unforeseeable changes in business conditions. Multi-site employers will be considered on a site-by-site basis. OJT trainees may not be paid a higher wage than regular trainees to meet SDA standards, nor have their wages reduced at the completion of training.

(8). The employer must provided information such as the IRS Employer Identification Number, evidence of Workers' Compensation or similar insurance, and a state tax employer number to demonstrate that they are a legitimate employer, and that appropriate taxes will be paid. A new employer must supply these number as soon as they are obtained.

(9) In general, OJT contracts may not be written for jobs that are intermittent, temporary, or seasonal, or jobs that pay only commissions or tips, or by piece rate. Limited exceptions may be made with a written justification approved by the SDA director. Predictable, short term layoffs are included in this prohibition for the term of the layoff.

(10) If a DOT code or other job title-related code is used to help determine training length, the skills listed in the training plan must accurately reflect that occupational title. For example, a salad prep trainee may not be coded as a Chef with a longer training time indicated.

(11) A trial period is not allowable under any circumstances without a signed contract in place. The SDA may specify that the employer will not receive reimbursement if the trainee leaves before a specified period, but the trainee must be enrolled in JTPA from the first day on the job.

(12) Training outlines must be acknowledged by the trainees to assure their awareness of program enrollment.

(13) The contract will be reviewed by the contract officer or a fourth party before it is signed. The review will include the participant's eligibility, the need for training, the training

outline, and correct dates and math computations. Contract monitoring will take place at least once during the life of the contract and once before the final invoice is submitted.

(14) An unpaid intern can be hired on an OJT in the same job. This includes a trainee who has been paid JTPA work experience or youth internship wages at the employer.

(15) Tools must be included in the SDA OJT policy: who retains ownership during the contract period, when ownership goes to the trainee, what happens to the tools if the contract is not completed, and what attempt will be made to retrieve tools that 'disappear'.

KEY: training programs, employment, unemployed workers, unemployment
July 1, 1997 35A-5
Notice of Continuation June 29, 1998

R986. Workforce Services, Employment Development.
R986-603. Participant Data System Procedures.
R986-603-101. Authority.

(1) This rule adopts and incorporates by reference:

(a) Title 55, Chapter 17; "Job Training Coordination Act".

(b) "Job Training Partnership Act" (JTPA).

(c) "Economic Dislocation and Worker Adjustment Assistance Act" (EDWAA).

(d) Public Law 100-379, August 4, 1988; "Worker Adjustment and Retraining Notification Act" (WARN).

(e) Federal regulations 20 CFR parts 626, 627, 628, 629, 630, and 631, 1990; which apply to programs under the Job Training Partnership Act and the Economic Dislocation and Worker Adjustment Assistance Act.

(f) Federal regulation 20 CFR part 639, 1990; which applies to the Worker Adjustment and Retraining Notification Act.

R986-603-102. Eligibility Verification.

(1) A determination shall be made of the applicant's eligibility for each program based on the information in the completed and signed application form.

(2) The certifying officer shall allow the participant ten working days from the time of enrollment to provide supporting documentation of the required eligibility factors. The documentation provided shall be placed in the participant's permanent file.

(3) If an applicant appears to be eligible for services under more than one program, the SDA is encouraged, but not required, to document the information for the additional programs. This allows the SDA to:

(a) Certify a participant under different program if the participant is subsequently determined to be ineligible for the initial program.

(b) Provide a participant with services from more than one program.

(4)

(5) All Title II applicants are required to provide documentation for:

(a) income;

(b) employment barriers;

(c) residence;

(d) employment eligibility;

(e) age, if applying for an age-specific program;

(f) family size; and

(g) disability if applicable

R986-603-103. Reporting Requirements.

Quarterly MIS data will be due to DWS the last working day of October, January, April and July.

R986-603-104. Active Participant Enrollment.

(1) All Title II A and C participants must be enrolled into Objective Assessment (OA) as their first activity, and enrollment must be effective on the date that the objective assessment begins. When the OA is complete and the participant begins an actual training activity, then the participant must be transferred into that training activity. The transfer date is the date that the direct JTPA-funded training actually begins.

(2) Title III participants who are assessed must be enrolled into Basic Readjustment Services (BRS) Assessment as their first activity. Include any other BRS provided.

(3) Participants may not be enrolled into OA for more than 90 days, except for extreme cases which are well documented. Tuition may be paid while the participant is active in OA, before school starts.

(4). If the service strategy determines that JTPA Title II need only coordinate services for the participant, and JTPA will not pay any training costs, the activity "Other Employment Skills Training" may be used. In this case there must be documented services provided no more than 30 days apart. Actual services such as support service or case management must be provided; a file notation that 'everything is fine' will not count as a service provided.

(5) Hold status may be used when the participant is between planned training activities, and this period is well documented in the ISS before the hold status begins. Documentation includes the beginning and ending date, as well as the reason for the Hold. Contact with the participant must be maintained and documented during this period. Hold status is not an applicant pool and is not to be used often.

Youth Employability Enhancements

(1) For the enhancement, "Completed a Major Level of Education", the phrase, ". . . must result primarily from active JTPA program participation . . .", means that the SDA must be prepared to document how school completion depended on active JTPA participation. If the SDA pays for tuition and books at the post-secondary level, active participation is taking place. Incidental program participation doesn't count. The phrase, "at least 90 days or 200 hours", means that the active program participation must be for this period of time, at a minimum. This does not mean the period of active status, this means actual participation in an activity. If the participant is receiving counseling only, then the SDA must be able to document that at least 200 hours of counseling was received.

(2) For the enhancements, "Returned to Full-time School" and "Remained in School", the phrase ". . . the SDA must be prepared to demonstrate that retention results from continuing, active participation in JTPA activities . . ." means exactly that--incidental participation does not contribute to this enhancement. The SDA must be able to document the active participation in JTPA activities that results in the school retention. For both enhancements, the JTPA-funded training activities will be reviewed.

KEY: training programs, employment, unemployed workers, unemployment
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R994. Workforce Services, Workforce Information and Payment Services.
R994-306. Charging Benefit Costs to Employers.
R994-306-201. Notice to Employers and Time Limitation for Protests.

All base period employers and all employers for which a claimant worked after the base period but prior to when the claim is filed, shall be notified prior to the payment of benefits that a claim has been filed.

(a) All employers who receive this notice may protest payment of benefits to former employees and all contributing employers may request relief of charges.

(i) All protests and requests must be made in writing to the Department within ten days after the notice is issued and must state in detail the circumstances which are alleged by the employer to justify a denial of benefits to the claimant, or relief of charges to the employer.

(ii) If the employer's request for relief of charges would justify the relief requested but the employer fails to provide separation information within the time limits of the request or to make a timely protest against the payment of benefits, the employer's request to be relieved of those charges will be adjudicated pursuant to R994-303-110.

R994-306-202. Relief of Charges Decisions.

When an employer makes a written request for relief of charges, a decision is made as to the employer's liability for benefit costs.

(a) The employer is notified of the decision and if an appeal is not filed, the decision becomes final and binding on both the employer and the Department.

(b)(i) A request for relief of charges or appeal that is filed after the expiration of the applicable time limit may be considered by the Department if:

(A) the employer has good cause for the late request or appeal as provided in R994-406-308;

(B) relief of charges was denied due to a mistake as to the facts and the Department did not rely on the requesting or appealing employer's failure to submit correct information in determining a claimant's eligibility for benefits. However, the Department will not consider such a request after September 30 with respect to benefits paid in the fiscal year that ended the prior June 30, even if there was a mistake as to facts.

(c) If the Department fails to give the relief of charges granted by a previous decision, the employer must request a correction of this error in accordance with Section R994-303-103.

R994-306-301. Benefit Cost Calculation Errors.

(1) Employers will be notified of benefit costs as they accrue at the end of each quarter. The notice used is called the "Statement of Unemployment Benefit Costs" (Form 66). This statement notifies the employer of the amount of benefits paid during the preceding quarter and gives the employer an opportunity to advise the Department of any errors. Upon written request from the employer, corrections will be made for all quarters not yet used to determine the employer's contribution rate. The following are examples which may occur:

(a) The employer is charged for costs for which the Department should have granted relief in accordance with Section R994-303-109.

(b) The employer did not receive prior notice that a claim had been filed or the determination of the claimant's eligibility and therefore did not have an opportunity to request relief of charges.

R994-306-401. Annual Notice of Contribution Rate.

(1) When the "Contribution Rate Notice" (Form 45) is issued at the end of the year, as per Subsection R994-303-103, the employer will have 30 days to protest the rate. When this decision, which establishes the contribution rate for the next year, becomes final it will not be changed even upon a showing of a mistake as to facts.

KEY: unemployment compensation, rates
June 17, 1996 35A-4-303
Notice of Continuation June 12, 1998

R994. Workforce Services, Workforce Information and Payment Services.

R994-307. Social Costs -- Relief of Charges.

R994-307-101. Relief of Charges to Contributing Employers.

(1) Under the following circumstances a written request is required for relief of charges:

(a) Separation Issues.

(i) Relief may be granted based only on the circumstance which caused the claim to be filed or a separation which occurred prior to the initial filing of the claim. If there is more than one reason for separation from the same employer, charges or relief of charges will be based on the reason for the last separation occurring prior to the effective date of the claim. Separations occurring after the initial filing of a claim do not result in relief of charges on that claim, but may be the basis for relief of charges on a subsequent claim.

(A) The claimant voluntarily left work for that employer due to circumstances which would have resulted in a denial of benefits under Subsection 35-4-405(1) of the Act.

(B) The separation from that employer would have resulted in an allowance of benefits made under the provisions of "equity and good conscience" under circumstances not caused or aggravated by the employer. For example: If the claimant quit because of a personal circumstance which was not the result of this employment the employer would be relieved of charges. However, if the quit was precipitated by a reduction in the claimant's hours of work, even though the change in working conditions was necessitated by economic conditions, the employer would NOT be relieved of charges.

(C) The claimant quit that employer for health reasons which were beyond reasonable control of the employer. Although the job may have caused or aggravated the health problems, the employer is eligible for relief if it was in compliance with industry safety standards.

(D) The claimant quit work for that employer not because of adverse working conditions, but solely due to a personal decision to accept work with another employer.

(E) The claimant quit work from that employer for personally compelling circumstances not within the employer's power to control or prevent.

(F) The claimant was discharged from that employer for circumstances which would have resulted in a denial of benefits under Section 35-4-405(2) of the Act.

(G) The claimant was discharged for nonperformance due to medical reasons. The employer is eligible for relief:

(I) only if the employer complied with industry health and safety standards, and

(II) the non-performance was due to a chronic medical condition, and

(III) the medical circumstances are expected to continue. The medical problems may be attributed to the worker or to a dependent. A series of unrelated absences attributed to medical problems do not qualify as chronic without medical verification that the conditions will probably continue to cause absences.

(H) The claimant continued to work for an acquiring employer when a portion of the business assets was sold or transferred to another business entity. For the purpose of this rule, employees are not considered assets and there must be an actual sale or transfer of business assets. Because the selling employer lost control of the employees to the acquiring employer, the selling employer may be eligible for relief of charges. Such relief may be sought by a timely written request following the claimant's subsequent claim for benefits. "Continued to work for the acquiring employer" means the claimant began work as soon as work was available with the acquiring employer.

(b) Non-Separation Issues.

(i) The claimant's customary hours of work with the concurrent employer, even though not necessarily constant have not been reduced either during the base period or prior to the filing of the claim below the least number of hours worked during the base period. For this circumstance to exist, the claimant must have worked for two or more employers during the base period of his claim, and when separated from one of the employers, he continues to work less than full-time for the other employer. Only the part-time employer can be relieved of benefit costs under the provisions of this section.

(ii) The employer was previously charged for the same wages which are being used a second time to establish a new claim. For example, as the result of a change in the method of computing the base period, or overlapping base periods due to the effective date of the claim.

(iii) The claimant did not work for the employer during the base period.

(iv) The Department incorrectly used wages which were or should have been correctly reported by the employer in determining the claimant's weekly benefit amount or maximum benefit amount.

(c) The Department may, on its own motion, grant relief of charges without a written request if in the Department representative's discretion there is sufficient information in the record to justify relief.

(2) Under the following circumstances a written request is NOT required for relief of charges:

(a) All employers shall be relieved of benefit costs:

(i) resulting from the state's share of extended benefit payments;

(ii) which, during the same fiscal year, have been designated by the Department as benefit overpayments;

(iii) resulting from combined wage claims that are charged to Utah employers, which are insufficient when separately considered for a monetary claim under Utah law but have been transferred to a paying state;

(iv) resulting from payments made after December 31, 1985 to claimants who have been given commission approval to attend school. Relief is granted only for those benefit costs during the period of commission approval.

(b) An employer shall be relieved of benefit costs if the employer has terminated coverage.

KEY: unemployment compensation, rates
June 17, 1996 35A-4-303
Notice of Continuation June 12, 1998

R994. Workforce Services, Workforce Information and Payment Services.
R994-315. Centralized New Hire Registry Reporting.
R994-315-101. Authority.

This rule is authorized by 35A-7-101 et seq. Utah Code Ann. 1953.

R994-315-102. Definitions.

In addition to definitions included in 35A-7-102, this rule makes the following definition:

(1) Multi-state Employer: A multi-state employer is defined as an employer who has employees in two or more States and who transmits new hire reports magnetically or electronically.

R994-315-103. Reporting Formats.

Employers may submit information by paper, or by magnetic tape, cartridge, or diskette. Submittals should not be duplicated.

(1) Paper

Employers may mail or fax copies of any one of the following:

(a) the Utah New Hire Registry Reporting Form (form 6)

(b) the employee's W-4 (Employee's Withholding Allowance Certificate), the worksheet portions are not necessary.

(c) computer printouts or other printed information that provides all six of the mandatory data elements required by 35A-7-104 (1).

(2) Magnetic Media

Employers may submit their new hire information on magnetic tape, cartridge, or diskette. Magnetic media must be submitted according to specifications approved by the Department.

R994-315-104. Multi-state Employers.

(1) Multi-state employers have the option to report all new hires to a single state, chosen by the employer, in which the employer has employees. To exercise this option, the employer must designate one state for reporting new hires, transmit the report magnetically or electronically, and notify the Secretary of Health and Human Services in writing.

The letter of request should include the following information:

(a) Employer Federal ID Number (FEIN).

(b) Any other FEIN's under which the employer does business.

(c) Employer Company name, address and telephone number.

(d) The state to which the employer will report all workers.

(e) A list of states in which the employer employs workers.

(f) Name and phone number of person responsible for providing data.

KEY: new hire registry
June 25, 1998 **35A-7-101 et seq.**
42 U.S.C. 654(a) et seq.
Pub. L. No. 104-193

R994. Workforce Services, Workforce Information and Payment Services.

R994-508. Appeal Procedures.

R994-508-201. Appeal of Contribution Decisions - General Definition.

Section 35A-4-508(2) provides the opportunity to appeal a contribution decision. Examples of decisions which may be appealed include, but are not limited to: whether an employing unit is an employer, whether services performed are employment, and determinations involving contribution liability. The Department will also require compliance with Sections R994-406-301 through R994-406-315 which relates to appeals of benefit decisions and therefore applies to appeals of contribution decisions.

R994-508-501. Review by Workforce Appeals Board - General Definition.

Subsection 35A-4-508(5) explains the procedure under which the Workforce Appeals Board will accept or reject cases appealed from decisions of Administrative Law Judges and provides for sending the disputed matters for further judicial review. It also explains conditions under which new evidence will be accepted by the Board for review.

R994-508-502. Appeals to the Board.

(1) Appeals as of Right.

If the Administrative Law Judge's decision did not affirm a prior decision, the Board will accept a timely appeal from any party to that decision.

(2) Appeals Not Accepted by the Board.

The Workforce Appeals Board has the discretion not to accept an appeal if the decision of the Administrative Law Judge affirms a prior decision of the Department. Prior to making a determination not to accept an appeal, a review will be made of the record by an individual designated by the Board.

(3) Filing an Appeal.

(a) An appeal to the Workforce Appeals Board from a decision of an Administrative Law Judge must be on an appeal form provided by the Department, or a written statement which includes:

(i) the name of the appellant,

(ii) the name and social security number of the claimant in cases involving benefit rights,

(iii) the identification of the case on which the appeal is being made, and

(iv) the grounds upon which the appeal is made. However, the issues presented in the appeal are not limited to the issues presented at the hearing. Further, the review by the Board will not be limited to the issues raised by the appeal. The appeal may be accompanied by references to or excerpts from the record made before the Administrative Law Judge.

R994-508-503. Workforce Appeals Board of Administrative Law Judge Decisions.

(1) Notice that An Appeal Has Been Filed.

All parties entitled to receive the decision of the Administrative Law Judge will receive notice from the Department that an appeal has been filed with the Workforce Appeals Board.

(2) Presentation of Argument.

In its review of an appeal, the Workforce Appeals Board may in its discretion allow the parties to file written arguments. When written arguments are allowed, the parties will be granted 15 days from the date of notification to submit their arguments. No other argument will be allowed, unless the Board determines that additional written argument is necessary to a proper understanding of the appeal.

R994-508-504. Notice of Decisions from the Workforce Appeals Board.

(1) A copy of the decision of the Workforce Appeals Board, including an explanation of the right to judicial review, will be promptly delivered or mailed to each interested party.

(2) In each case where the Workforce Appeals Board declines to accept an appeal, the findings of fact and decision of the Administrative Law Judge will be deemed to be the findings and decision of the Workforce Appeals Board and will be subject to judicial review upon action commenced within ten days after the decision of the Workforce Appeals Board declining acceptance of the appeal has become final.

R994-508-505. Withdrawals.

Any party who has filed an appeal from a decision of an Administrative Law Judge may request withdrawal of the appeal by making a written statement to the Workforce Appeals Board explaining the reasons for the withdrawal. The Workforce Appeals Board may deny such a request if it could result in a disservice to any of the parties, including the Department.

R994-508-506. Postponements and Untimely Appeals.

The Workforce Appeals Board will consider and dispose of untimely appeals and requests for postponement in the same manner provided in the regulations pertaining to Subsection 35A-4-406(3).

R994-508-601. Appeals Hearings.

These rules govern procedures in administrative hearings before the Appeals Tribunal of the Utah Department of Workforce Services and shall be construed to secure the just, speedy and inexpensive determination of every appeal proceeding.

R994-508-602. Appeal Hearings Designated As Formal Adjudicative Proceedings.

All initial decisions made by the Department of Workforce Services are exempt from the provisions of the Utah Administrative Procedures Act (UAPA). Appeals from initial decisions must be filed within 10 calendar days of the date of issuance and must meet the requirements of Subsections 63-46b-3(1)(a) and 63-46b-3(1)(b) of the UAPA. Whenever the initial decision, or other paper requiring or permitting some action on behalf of a party, is served on a party by mailing, three days shall be added to the prescribed period as allowed under Rule 6 of the Utah Rules of Civil Procedures. Proceedings on such appeals will be conducted consistent with the provisions of the UAPA governing formal adjudicative proceedings.

R994-508-603. Pleadings.

(1) Generally, the factual and legal issues are defined by the parties during the exempt initial proceeding. Therefore, further written statements, such as a response from the respondent party, will not usually be required. However, respondent parties may file a response if they want to raise additional issues or respond to issues raised in the appeal. Such a response must be filed within 14 calendar days from the date of notification that an appeal has been filed and the respondent party must send a copy by mail to the Administrative Law Judge (ALJ) and all known parties. An extension of the response time may be granted at the discretion of the ALJ.

(2) Occasionally, the Administrative Law Judge may require an appellant party to file a supplemental statement of appeal or a respondent party to file a response when, in the discretion of the ALJ, this additional information is necessary for the parties to properly prepare for the hearing. Such additional statements must be filed within the time limitation established by the ALJ, and a copy must be sent by mail to all known parties.

R994-508-604. Default for Failure to Make an Adequate Response.

The respondent will not be held in default for failure to make an adequate written response unless it is shown that the lack of the response, or omissions in the response, adversely affected the ability to prepare for the hearing. If there is reasonable cause for failure to make an adequate response, the hearing may be continued.

R994-508-605. Department to Provide Information.

The information which the Department used to make an initial decision and the reasoning upon which that decision was based will generally be provided to the parties. If the Department fails to provide information to the parties necessary for the preparation of the hearing, the ALJ shall not become an advocate for the Department, but shall take reasonable steps to obtain such information, either prior to or during the hearing. If a party is prejudiced in his preparation for the hearing by the Department's failure to provide the information, the ALJ may reschedule the hearing. If the Department's initial decision failed to state adequately the facts or reasoning on which it was based, the ALJ may vacate the decision and remand it to the Department for a new decision which must include specific findings of fact and reasoning.

R994-508-606. Discovery.

(1) Discovery is a procedure for obtaining information which is necessary for the preparation of a hearing. In most unemployment insurance hearings, informal methods of discovery are sufficient. Informal discovery is the voluntary exchange of information regarding evidence or witnesses to be presented at the hearing. Usually a telephone call to the other party requesting the needed information is adequate. Parties are encouraged to cooperate in providing information. If this information is not voluntarily provided, the party requesting the information may request that the ALJ compel the information through a verbal or written order or issuance of a subpoena. In deciding such requests, the ALJ shall balance the need for such information with the burden such requests place upon the opposing party and the need to promptly decide the appeal.

(2) The use of formal discovery procedures in unemployment insurance appeals proceedings are rarely necessary and tend to increase costs while delaying decisions. Formal discovery may be allowed for unemployment insurance hearings only if so directed by the ALJ and when:

(a) informal discovery was inadequate to provide the information required,

(b) there is no other available alternative that would be less costly or less intimidating,

(c) it is not unduly burdensome,

(d) it is necessary for the parties to properly prepare for the hearing, and

(e) it does not cause unreasonable delays. Formal discovery includes requests for admissions, interrogatories and other methods of discovery as provided by the Utah Rules of Civil Procedure.

R994-508-607. Telephone Hearings.

(1) At the discretion of the ALJ, any party may be permitted to testify by telephone. Parties who do not reside within 50 miles or approximately one hour of commuting distance from the location of a scheduled hearing will be notified of the opportunity to testify by telephone. A party or a witness scheduled to testify by telephone may participate in person by reporting to the place of hearing. Telephone participation will be permitted only if adequate telephone facilities exist.

(2) Documents to be offered into evidence in a telephone hearing will be mailed to all parties prior to the hearing when possible. If parties do not receive the documents prior to the hearing, they will be given an opportunity to request that the hearing be reopened to make comments on the documents after they are received.

(3) The appeals office will permit collect calls from parties participating in telephone hearings and their witnesses; however, professional representatives not at the physical location of their client must pay their own telephone charges. If a party or witness has a physical impairment precluding effective participation by telephone, has numerous witnesses, large amounts of documentary evidence, or any other established hinderance or legitimate disadvantage to a telephonic hearing, an in-person hearing will be scheduled.

R994-508-608. Ex Parte Communications.

No parties will be permitted to discuss the merits or facts of any pending case with the ALJ assigned to that case either before or after the hearing, prior to the issuance of the decision, unless all other parties to the case have been given notice and opportunity to be present. Any discussions between the parties and the ALJ on procedural issues or inadvertent ex parte information regarding the merits of the case will be reported to the parties at the time of the hearing and made a part of the record. Discussions with Department employees who are not designated to represent the Department on the issue or who do not provide factual information and are not expected to participate in the hearing of the case, are not ex parte communications and do not need to be made a part of the record.

R994-508-609. Correction of Error and Augmentation of the Record.

Any party may request correction of an ALJ decision if the request is made in writing and filed or mailed within 30 calendar days of the date of the decision. The ALJ retains jurisdiction to reopen the hearing, amend or correct any decision which is not final, or exercise continuing jurisdiction as provided by the rules pertaining to Subsections 35A-4-406(2) and 35A-4-406(3) unless the Workforce Appeals Board has accepted an appeal. Whenever a request for correction is submitted to the ALJ, a decision will be issued and new appeal rights to the Workforce Appeals Board will be established.

R994-508-610. Requests for Removal of an ALJ from a Case.

A party may request that an ALJ remove himself from a case on the basis of partiality, interest or prejudice. The request for removal must be made in writing prior to the hearing, unless the reason for the request was not or could not have been known prior to the hearing. The request must state specific facts which are alleged to establish cause for removal. If the ALJ agrees that he should be reassigned, another ALJ will be assigned to the case. However, if the ALJ finds no reason to remove himself, he will rule on the request verbally during the hearing and explain the basis for the ruling. Challenges to the partiality of the ALJ will not result in a delay of the hearing. Appeals pertaining to the partiality of the ALJ may be filed consistent with the time limitations for appealing the decision.

KEY: unemployment compensation, appellate procedures
1994 35A-4-508(2)
Notice of Continuation June 12, 1998 35A-4-508(5)
35A-4-508(6)